

The Harvard Law School Record

VOL. 5 NO. 7

CAMBRIDGE, MASS., TUESDAY, NOVEMBER 18, 1947

PRICE TEN CENTS

NEWS IN BRIEF

Touch Football

This week the Trover Boys continued their parade of wins in League No. 1 by chalking up their 5th win. In League No. 2, the Benedicts scored another triumph as they increased pressure on the first place Counselors. The Phillips Brooks House Law School Committee will present a prize to the winner of the post-league championship play-off. *Standings of the Clubs:*—

League No. 1—Trover Boys, won 5—lost 0; Tigers, 4—1; Amblers, 1—1; King's Bench, 1—3; Renegades, 0—3.

League No. 2—Counselors, won 5—lost 1; Benedicts, 4—1; Chancery, 3—3; Legal Beagles, 2—3; Arsonists, 2—3.

Yale-Columbia Competition

The Association of the Bar of the City of New York announces an Inter-Law School Competition between Yale and Columbia on November 26, at the house of the association, 42 West 44th Street, N. Y. C. The competition will be held at 8 p.m., and it is open to all members of the bar and to all law students. The two teams will argue before an Appeal Court composed of Judge Bernard L. Sheintag, Judge Edward A. Conger, and Judge James B. M. McNally.

Ames Briefs

The National Lawyers Guild received a request from the office of Lee Pressman, General Counsel, C. I. O., for the briefs prepared by the contestants in the recent final arguments of the Ames Competition. Mr. Pressman was interested in the research which had been done in connection with the right of unions to appeal to the courts from a decision of the National Labor Relations Board in representation cases.

Professor Cavers

Professor David F. Cavers recently underwent a successful exploratory operation at the New England Deaconess Hospital and is well on the road to recovery. No serious condition was revealed by the operation, but the surgeon took the occasion to remove an appendix. Professor Cavers hopes to return to his classrooms sometime before the Christmas holidays, if possible.

Wellesley Protest

Coach of the Year Gene Flanagan of the mighty Law School Bachelors has filed a protest with the American Touch Football Association in connection with the Wellesley College 48-24 triumph over his team on Armistice Day. "Our loss was partly due to unaccustomed adverse weather conditions—that is, fresh air," he admitted. "However, my objection is based on Wellesley's unannounced, semi-professional, surprise line-up, including Nat 'Buddy' Buddy Young and 'Chuckin' Charlie' Gordon."

Ames Quarter-Finals

In the first quarter-final argument of the Ames Competition this term, the Blackstone Club was victorious over the Powell Club. Frank Padgett and Dow Votaw, fifth term students, handled the oral assignment for the winning club.

The Honorable Edward F. Hanify, Massachusetts Superior Court Justice, presided as Chief Justice; he and his associates praised both clubs highly for the excellence of their written and oral presentations.

In contrast to the final Ames argument, there were many good seats available for the quarter-final. For this reason, there is no rule limiting the attendance to law students; guests are welcome to come to the remaining arguments.

(Continued on page three)

FIFTH TERM ARGUMENT SCHEDULED

Langdell, Morgan, Hughes and Casner Clubs Will Compete

The third and fourth arguments of the fifth-term Ames Competition will be held within the next week. In this Quarter-Final Round the Casner Club will meet the Langdell Club Thursday at 8 p.m. in Langdell Courtroom. Next Tuesday at the same time and place the Hughes Club will argue against the Morgan Club.

The Honorable Robert G. Wilson, Jr. (LL.B. '17), Judge of Probate, Probate Court of Suffolk County, Mass., will preside as Chief Justice at the third argument. His associates will be two Boston lawyers, Robert I. Hunneman (LL.B. '31) and Charles Y. Wadsworth (LL.B. '35). The case involves a widow who seeks to get her distributive share from moneys that were put into an *inter vivos* trust, and who alleges that the trust is illusory and a fraud on her marital rights.

Oral counsel for the Casner Club representing the widow are John R. Alexander and Richard R. Baxter. The brief was written by Arthur Medow, Framp-ton W. Toole, Seth A. Abbott, John A. McMahon, Herbert W. Irwin, and Walter M. Robinson. Oral counsel for the Langdell Club supporting the trust provisions are Robert G. Bailey and Norman H. Brown. Of counsel for the brief are Eastman Birkett, Kendall M. Cole, (Continued on page four)

Board Of Student Advisers Offers Variety Of Tasks To Its Members

Second only to the Harvard Law Review in scholarship rank, the Board of Student Advisers has been active at the Harvard Law School since the Ames Competition was founded in 1911 by a bequest in the will of the late Professor James Barr Ames.

Highlighting the development of this student organization was the publication last year of its basic pamphlet, "Introduction to Advocacy." Originally, it had been the custom of the Board to issue mimeographed sheets containing general instructions for written and oral argument and an outline of the form of brief to be followed. A more detailed work combining example with precept was under advisement for some time. Its preparation was begun about two years ago under the supervision of James Perkins (3L) and culminated in the extremely helpful "Introduction to Advocacy."

Participants in the Ames Competition who have "griped" about the cases assigned to them may be interested to know that the cases on the Student Board roster undergo a constant process of revision. One of the first jobs given to a new member of the Board is to revise cases which the test of argument has shown to be either one-sided or unrealistic. This job keeps the Board busy as it is estimated that one-third or more of the new cases require revision.

Another assignment of the tyro Board member is the responsibility of advising counsel. The Adviser sits in on the "Facts" and "Briefs" conferences which initiate each round of the competition and gives a general orientation to the first-termers whose impressions of what is before them combine memories of high school debating teams with visions of movie courtroom scenes.

Design Pirates May Copy Princess' Wedding Gown Unhindered by Law

The design of the wedding gown which Princess Elizabeth will wear Thursday has been a closely guarded secret. The security measures used approach General Grove's atomic bomb counter-espionage. Rather dramatically this highlights an unsolved social-legal-business problem,—how to keep Susy O'Grady's dress from copying too closely the Colonel's lady's fashionable exclusive gown. As yet, the law has not been willing to find an answer. So, within the week, brides of all social and economic levels throughout the world will be walking altarwards in reasonably priced facsimiles of the wedding dress for which the English King paid \$5,000.00. Neither the designer nor his royal customer will have the slightest common law rights to the design once it has been "published" (i.e. publicly exhibited).

The Black Letter lawyer can find in the Yearbooks an occasional case on medieval sumptuary laws which regulated apparel according to occupation and social standing, but the commercial law of fashion is relatively new. There was no real garment industry until comparatively recent years. Not until 1891 were the first factories to manufacture women's waists established, and it took World War I to make a major change in the traditional home production of women's wear. The feminist movement and business jobs decreased home sewing and increased the demand for women's ready-to-wear of good style and quality. Better communication (especially the motion picture) made women style conscious.

With this increasing emphasis on the unpredictable shifts of fashion, it was not possible for any one firm to dominate the industry. There are no secret

processes. The powerful unions have standardized wage rates throughout the industry and arranged a ready supply of any desired skill. The machinery can be rented or bought for a small down payment. So the ladies' garment trades are an almost perfectly competitive field with hordes of small entrepreneurs who yesterday were cutters and tomorrow may return to the workbench. The trade saying is that anyone with a colossal amount of nerve and \$2,500.00 can open a dress factory.

In an industry which in number employed and value of output (\$4 billion) ranks with the nation's largest, we thus find thousands of small business units (Continued on page three)

FORUM TURNS AWAY CROWD

Niebuhr Finds Similarity In Communism, Christianity

Dr. Reinhold Niebuhr and the Reverend John A. O'Brien, S.J. discussed the incompatibility of Christianity and Communism before a record Law School Forum audience of 1,600 at Rindge Technical auditorium last Friday night.

Hundreds had to be turned away from the meeting at which Father O'Brien of Boston College declared that Marxian communism is irreconcilable with the tenets of Christianity. The Jesuit priest stated flatly: "The communist cannot be a Christian and the Christian cannot be a communist."

Although unwilling to say the communism as developed in the Soviet is compatible with Christianity, nevertheless Dr. Niebuhr, Professor at the Union Theological Seminary who describes himself as a "heretic," found similarity in the spiritual idealism that motivated both ideologies. While declaring that communism is based on the fundamental misconception that private property is the basis of social evil, the Protestant theologian pointed out that whereas early Christians regarded private property as a necessary evil, a protective religious aura has been developed about the ambiguities of the social and economic systems so that the Church now regards the absoluteness of private property as the basis of social virtue.

Father O'Brien postulated four essentials of the Marxian philosophy which make it incompatible with the Christian concept of God and the spiritual nature of mankind—the materialism of communism, its mechanistic conception of history, the excessive emphasis of economic factors and encouragement of the class struggle.

STUDENTS OPPOSE MEMORIAL PLAQUE

A final decision on the type of University War Memorial to be established will be made soon, according to an announcement by Ralph Lowell '12, acting chairman of the Harvard Alumni War Memorial Committee. The Memorial is University-wide in its conception.

A plaque and statue within Memorial Church, together with a scholarship fund, now has the overwhelming support of the official selection committee appointed jointly by the Alumni Association and the Associated Harvard Clubs. Lowell, leading deliberations in the absence of Chairman Leverett Saltonstall '14, estimated the plaque's expense at \$200,000, with the scholarship fund flexible in scope and based on a \$500,000 minimum. The plaque would be placed back to back with the World (Continued on page four)

PLACEMENT PROSPECTS IMPROVING

Inexorable Supply And Demand Curves Await Harvard Men

Placement opportunities for the February graduates are brighter at this time than they have been for any previous post-war class, with seventeen per cent of the prospective candidates for degrees already under contract for positions. Although job offers are arriving at the Placement Office in greater volume than at any other time in 1947, Assistant Dean of Admissions and Placement Louis A. Toepfer states that his office can only start the job seeker on his road. "Like courtship before marriage," he said, "the law graduate must spend an extensive period in negotiation before landing a position."

The geographical distribution of the 34 placements from a class of 200 shows a wide range of locations. New York and Boston lead with six placements respectively. The remaining men have been located as follows: Washington, D. C. (2), Cleveland (2), Los Angeles (2), Massachusetts, outside Boston (2); one man in San Francisco, Baltimore, Seattle, St. Louis, Chicago, Dallas, Maine, Texas, and New Jersey; four men have not indicated the location of their new jobs.

Placement experience has shown that the best results are obtained during the last term of residence. Firms are reluctant to hire a student until he has almost completed his course of study. For this reason, the Placement Office is anxious to acquaint the prospective June '48 graduates with the placement procedure, but it is advisable for these men to wait until February before seeking help. At the present time, 14 out of the 300 in the June class have definite positions, but the jobs are for the most part in the "working for my father" class.

Mr. Toepfer offers three possible explanations for the present increase in demand: older lawyers, now slowing down after heavy wartime activity, are (Continued on page four)

YEARBOOK PICTURES ALMOST COMPLETED

Yearbook picture-taking is now in its last stages. Those who have not as yet had their portrait sitting can still do so between now and the end of the week. Any student who is not photographed by Friday afternoon will not appear in the 1948 Yearbook. Pictures are being taken in the basement of Gannett House between 9 a.m. and 4:30 p.m. The photographs will serve a dual purpose. After their use in the Yearbook, they will be turned over to Mr. Dimmitt's office for use in a project, the success of which depends upon a complete picturing of the enrollment.

Besides the dedicatory section, which this year will contain reproductions of the basic liberty-giving documents, the Committee is considering another new feature, namely, photographs and stories about the individual law clubs. Although a final decision on the matter will not be forthcoming until inquiries sent to the club supervisors are answered, the plan will probably operate in the following manner. Each club will be entitled to one cut and descriptive material about the organization. The charge will be \$12.50 for a half-page and \$18 for a full page. A part of the activities section of the Yearbook will be devoted to the law clubs subscribing to this plan. (See page three for latest word.—Ed.)

The Harvard Law School Record

Published weekly on Tuesdays for twelve weeks of each term by *The Harvard Law School Record Corporation*, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$4.00 per year (24 issues); student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies \$1.00 each at the Law School; \$1.15 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7600, extension 133.

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CHANGES OF ADDRESS should be sent to the RECORD office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

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

Editorials

A CROWDED LAW SCHOOL: BUT APPRECIATION, NOT CONDEMNATION, IS IN ORDER.

Harvard Law School is crowded. In many classrooms, every seat is occupied. It is understandable that Dean Griswold has been faced with complaints, which have ranged from "no soap dispensers" to charges of glutting the market with lawyers."

But this post-war expansion is temporary. In less than two years, the school will have returned to normal size. It is time for students and graduates to think the matter through, and offer sincere congratulations to the Dean and to the Faculty. They are undertaking to give a legal education at Harvard to as many men as the Law School would have graduated had there been no war. Those who do what ought to be done deserve recognition.

As a recent article on Yale Law School illustrates, many other schools have refused to undergo to any great extent the inconvenience of educating men who were barred from education during war years. Such schools are improving neither themselves nor the profession by allowing a three-year void of graduates to remain uncorrected. For the sort of men who are filling the classrooms at Harvard have behind them years of training, experience, and responsibility—assets which few lawyers have been in a position to acquire.

It is not presumptuous to say that the students who crowd the graduation lists during 1948 are the men who will crowd the top ranks of our legal and political life by 1968. In successful alumni lies the strength of any law school, and the measure of its contribution to society.

In spite of the accelerated program, the facts are: (1) that at Harvard post-war entrance standards necessarily are far higher than they were before the war, because of the number of men applying for admission, (2) that during the period 1940 to 1950 this School will graduate only the same number of men it would have graduated during the same period had there been no war, and (3) that educational standards have been raised above those prevailing at other institutions by requiring seven terms of normal work before graduation. This, combined with the present dearth of young lawyers, makes it seem improbable that serious placement difficulties will be encountered by those now in school. The risk is well calculated.

All those interested in the progress of the Law School ought to thank the Dean and the Faculty for undertaking a great burden. Many will be benefitted: the School, the present students, and the legal profession. The results will make the difficulties insignificant.

R. H. W.

Letters to the Editor

To the Editor of the RECORD:
Statement in regard to the viewpoint of Student Council President Edric Weld, Jr. concerning the World War II Memorial (*The Harvard Crimson*, p. 1, Sat., Nov. 8, 1947).

No sensible person will argue but that the donors should have the principal voice in the

form of any proposed War Memorial. However, it would seem that an additional element should be considered as regards the proposed Student Activities Center as a War Memorial.

The Law School (as is doubtless true to a lesser extent in the other graduate schools of the University) is made up principally of the graduates of other colleges than Harvard. An unsatisfactory "brush" with the H.A.A. on ticket priorities or some chance contact with the administrative authorities in the yard is customarily sufficient to seal off the law student's mind and interests to the Law School alone for the necessary 3 year period. Apparently this attitude continues after the lawyer is engaged in professional life. It would be to the inestimable advantage of all parties if every student, whatever his background and whatever he studies, feels himself a part of the University Community. This is a considerable problem, but a Student Center, of which all parts of the University felt they had some voice in the operation and control, as well as right to use, might well be an important step towards the cohesive Harvard University spirit, now largely academic. I should think its contribution would be far more fundamental to the real purpose of the University than plaques, certainly in view of their present over supply.

JULIUS A. LEETHAM, 3L
Chairman, Harvard Law School
Committee (PBH)

To the Editor of the RECORD:

I want to tell you how pleased I am with the HARVARD LAW SCHOOL RECORD.

Your grand paper has brought me right back to law school. It affords me again the opportunity of being at the school. I feel certain that a vast majority of law school men feel the same way about your paper.

It is nice to get the opportunity to chat with Chafee, attend the Ames finals, and hear the echoes of the many arguments that resound in Langdell and Austin Halls.

Extend my congratulations to your entire staff for what they are doing.

EDWARD S. SILVER
(1924.)

To the Editor of the RECORD:

As one of many wives going through the "joint enterprise" of getting through Harvard Law School, I want to express my thanks to Dean Griswold for his generous and considerate remarks concerning the official attitude toward students' wives. (RECORD, Nov. 12) Of course, we do feel a part of the School, what with keeping quiet at home so that husband-student can concentrate, worrying as much or more at exam time, attending early arguments in the Ames competition, and often working to help keep family finances in the black.

I hope the Board of Student Advisers will reconsider its decision to limit the attendance of student wives at future Ames arguments in the courtroom. We're suffering the hardships of Law School; can't we enjoy the few pleasures?

LAW WIFE

Because of the limited space available in these columns, correspondents are asked to keep their letters under 250 words.—Ed.

Off the Record

Squeeze for Fees

"Mr. Poe, a leading Baltimore lawyer in the 1890s, occasionally told younger lawyers what I suspect was a very old bit of classical legal humour relating to a lawyer's fee. It runs as follows: When there is a long, protracted litigation over a fund in controversy the lawyer should first ask for a retainer, then, after a period, for a refresher, and then, still later, for a reminder, and finally, at the end, for the remainder." P. 65, *A Federal Judge Sums Up*, W. Calvin Chestnut, U. S. District Judge, Maryland.

The Unspeakable

A criminal known as Mumbles disports
In comic sheets daily, we're told in reports.
According to all that we've heard about him,
He pesters his group with sadistical vim.

His counterpart goes to the law school, alas,
The viper who bothers the rest of the class.
This culprit's the student whose voice is so low
It just about carries the length of one row.

Cleaning the Law Dept.

"COURT OF PIEPOUDRE. The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed to have been so called from the dusty feet of the suitors. . . . This court long ago fell into disuse." (*Black's Law Dictionary*, 3rd Ed.)

"CLEAN HANDS. It is a rule of equity that a plaintiff must come with 'clean hands' . . . everything else is immaterial." (*Ibid.*)

Gallery

JOHN McILHENNY SMITH

Servant of the Bar

The story of Col. John McIlhenney Smith is intertwined with the development of the city of Harrisburg, Penna., to such an extent that one must get a picture of the city before understanding Mr. Smith. Harrisburg is the capital of Pennsylvania and is the seat of the county of Dauphin. It is also the home of some 85,000 souls, the center of a prosperous farming hinterland, and the home of a steel and railroad industry of considerable proportions.

Mr. Smith was born on a farm near Harrisburg in 1890. He matriculated at Princeton, was graduated in 1915 and entered the Harvard Law School the following fall. The arrival of World War I cut short Mr. Smith's formal legal education. He served overseas with the 29th Division and was discharged with the rank of Captain. He laughingly says that a shortsighted Congress' failure to provide a GI Bill of Rights caused the Harvard Law School Association untold disappointment in listing him as ex '18 instead of just plain '18.

Mr. Smith completed his legal education in the law offices of C. H. Bergner and Jesse E. B. Cunningham in Harrisburg. Characteristically enough he now occupies the same chair in the same room of the same building in which Mr. Bergner once held forth. You can find it on Third Street just off Market. It's known as the Bergner Building. The offices are much like Mr. Smith himself, comfortable and roomy and conservative. Behind his cluttered desk stands an ancient Grandfather's clock. It is in perfect running order.

In World War II Mr. Smith served first as Deputy State Director of Selective Service and then as Director. In these posts he had direct supervisory control over the induction of more than 1,200,000 Pennsylvanians into the Armed Services, a job of tremendous proportions and one which he carried out with extraordinary dispatch and efficiency, as is indicated by the citation awarded him with his Legion of Merit. He was released from active duty as a Colonel in 1945 and has since returned to private practice.

When discussing the practice of law Mr. Smith's eyes light up. It is evident that he thoroughly enjoys his work and his life. With his enumeration of the advantages of practice in Harrisburg he was certain to add the fact that he can sneak away for a round of golf three or four afternoons a week if he finds it desirable to do so, and he wonders how many big city lawyers are able to do the same. Other major advantages of "medium-sized" city work include his being personally acquainted with the entire membership of the county bar. As a result of this his relations with the local bench are cordial, friendly, and pleasant. "Law in Harrisburg" he says, "is more of a profession than it is a business." Mr. Smith makes it sound more like an attractive way of life than an office humdrum or an intellectual exercise that lasts so many hours each day. He doubts that he would care for the greater degree of commercialization involved in larger cities. But inasmuch as the partnership of Nauman, Smith and Hurlock specializes in corporations and handles the local affairs of such giants as Pennsylvania Railroad and General Electric, Mr. Smith is assured of a comfortable living.

For the past fourteen years Mr. Smith has served as Secretary of the Pennsylvania State Bar Association. This, of course, brings him into contact with members of the profession throughout the State, and he finds the work personally satisfying in that he is doing a valuable job in a position vital to the well-being of the profession. He is a past president of the Dauphin County Bar Association. During the week of September 21-27, Mr. Smith attended the meeting of the National Council of State Bar Associations and served as chairman of a group composed of the Secretaries of each State Bar.

Mr. Smith has been a lifelong Republican. He is a genuine Conservative but certainly is not afraid of new ideas. He is a great believer in community work and thinks that the young lawyer should actively participate in that phase of community work which interests him.

When speaking about the law school Mr. Smith has confidence that it is still turning out a shining product well grounded in the fundamentals of legal education. Having watched a generation of Harvard men he is not at all alarmed by rumors of radicalism at the School since he knows that Harvard is still in the business of teaching lawyers, "and a busy office will soon bring the young lawyer to the realities of life." Off the record, Mr. Smith hopes that the young lawyer will also be brought to the Grand Old Party.

B. M.

Sub Judice

VICE-CHANCELLOR JAYNE MAKES EVERYTHING PLAIN

Collectors of judicial trivia may want to become acquainted with the works of Vice-Chancellor Jayne of the New Jersey Court of Chancery. Consider the following flow of language in one of his recent opinions:

"Once upon a time those who chose to stroll to the Cadwalader property in Trenton would catch the view of an exceedingly picturesque ravine. Between its moss-covered banks and beneath a verdant canopy of overhanging boughs and migrant vines a stream flowed peacefully along the corridor, sparkling only intermittently from some intrusive ray of the sun.

"However, like many of nature's aesthetic gifts the ravine in the march of time fell prey to the mastery of man and became, perhaps conventionally, an overspread body of ashes. The site was recently acquired by the defendant and on April 10, 1947, the defendant began the erection upon it of four groups of buildings containing residential units — an enterprise modernly described as a 'housing project'. The complainants insist that the project as contemplated by the defendant is violative of a neighborhood scheme of restrictive covenants."

The learned Vice-Chancellor refused to grant the injunction sought by the complainant, bringing his 3000 word essay to a ringing close with the following pearls:

"In whatever a propitious pageant the facts of this cause are assembled, the fundamental and basic right of the complainants to enjoin the defendant remains nevertheless in a dim and indistinct frame. It is, of course, aphoristic that to doubt the right requires a denial of injunctive interference." *Majeski v. Stuyvesant Homes*, 55 A. (2d) 33 (October 7, 1947).

TWO HANDS ARE WORTH \$160,000

A four-year-old boy was struck by a train and sustained injuries which necessitated amputation of one arm above the wrist and the other above the elbow. The first trial of the case resulted in a hung jury; the second, in a verdict for \$100,000 which was reversed by the Circuit Court of Appeals. On the remand the jury brought in a verdict for the boy in the amount of \$160,000. Among the grounds urged in the railroad's motion to set aside the verdict and grant a new trial were contentions that the verdict was a quotient verdict, that it was not the true verdict of the jury, and that it was excessive. The Court followed the conventional rule in rejecting the motion on the ground that there was a quotient verdict, pointing out that the evil to be avoided is present only where the jury agrees in advance to the average of the amounts each juror puts down. Here the jurors first expressed their individual opinions, and the verdict was arrived at after the conventional give and take. The contention that the verdict was not a true verdict was based on an affidavit of one of the jurors that he would have denied the verdict had he been asked at the trial. In answering this contention, the Court merely referred to the transcript of the record, pointing out that at the trial the clerk had read the verdict and then asked the customary question: "And so say each of you?" To this the jury answered "Yes."

In meeting the challenge that the verdict was excessive, the Court set out eight pages of mathematical calculations to support its view that \$160,000 was not excessive. It estimated that a four-year-old would live 60 and 1/2 years, that his potential earnings after age 21 would have averaged \$3700 per year through age 64, that with his handicap he would actually earn only \$700 per year for that period, that personal service and care would average \$1200 per year for life, and that the income tax on the interest from the fund of \$160,000 would be reduced by at least thirty per cent from its present level. Allowing \$50,000 for pain and suffering, the Court came to the conclusion that \$150,743 would be required to compensate the injured boy. At the end of the eight pages of calculations the Court saw fit to add the comment:

"It may be stated here that to the Court's personal knowledge, there were some men on this jury who, from long experience, would be naturally expected to weigh and scrutinize figures and calculations, and to see that no imaginative or speculative considerations were permitted to influence the verdict. R. E. Plott, the foreman, has for years been an executive of one of the largest trust companies in the state. Walter H. Beckner is an officer of West Virginia's largest local life insurance company, with home offices in Charleston. John K. Robinson is a veteran employee of a large public utility company which distributes gas to the Charleston area. . . . *Armentrout v. Virginian Ry. Co.*, 72 F. Supp. 997 (D. C., S. D. W. Va., August 16, 1947).

Alumni Notes

Alumni are especially invited to forward contributions to this column to the RECORD office, Austin Hall, Cambridge (38), Mass.

Harry A. Bigelow, LL.B. '99, professor and dean emeritus of the University of Chicago Law School; John Kirkland Clark, LL.B. '02, New York lawyer; Murray Seabrook, LL.B. '03, Cincinnati lawyer and former mayor of that city; Henry L. Shattuck, LL.B. '04, Boston lawyer and member of the Massachusetts legislature; Henry Parkman, Jr., Ex. '18, Boston lawyer; and John Harlan Amen, LL.B. '22, New York lawyer who was an associate counsel for the U. S. at the Nuremberg Nazi war crime trials, are among the 20 members appointed to the Federal Employees Loyalty Review Board. Appointed by the President, they, as members of the Board, will pass upon all appealed cases in which employees in the United States public service have objected to the findings of the Civil Service Commission's Internal Review Board.

Present and future employees are to be subject to a loyalty check, and regional loyalty boards will consider any derogatory information. The employee will have the right to appeal to the central review board from the decision of the local board. The central board is expected to divide into three-member panels to expedite its work.

LL.B. '40—Edward T. Gignoux has resumed the private practice of law in Portland, Maine, with the firm of Verill, Dana, Walker, Philbrick & Whitehouse. Gignoux was recently appointed associate corporation counsel for the City of Portland.

LL.B. '41—The marriage of Miss Ann Carlin Borden and Ramon de Murias took place in Washington, D. C., on October 4. De Murias is now with Pan-American Grace Airways.

LL.B. '44 (47)—Carroll Dana Fearon, Jr. was married in September to Miss Shirley Jane Friar, of Larchmont, N. Y. Fearon is with the New York law firm of Chadbourne, Hunt, Jaekel & Brown.

NEWS BRIEFS —(Cont.)

New York Law Practice

On November 13, Mr. E. W. Debevoise, LL.B., '24, of the firm of Debevoise, Plimpton & McLean, and Mr. R. G. Zeller, LL.B., '42, of the firm of Cahill, Gordon, Zachry & Reindel, discussed the practice of law in New York City at a Langdell Courtroom meeting arranged for the Law School students by the Placement Office. Mr. Debevoise emphasized the wide variety of legal problems and major litigations encountered in New York practice as well as the cultural advantages of life in the city. Mr. Zeller, drawing on four years of personal experience in a large firm, refuted the charges that the law clerk in a New York firm is given no responsibility, works under "sweat shop" conditions, and is the victim of an over-emphasis on departmentalization. Both speakers stated that men above the lowest quarter of their class would generally be considered for New York employment at the average starting salary of \$3000 a year.

Prof. Katz Speaks to Guild

Professor Katz explored the legal framework surrounding the issue of Loyalty at an informal question and answer session of the Lawyers Guild on Friday at Kendall House. Although criticizing the procedures under the Presidential Loyalty Order, he pointed out that they are within the strict interpretation of the law to date under which government employment is not a matter of right. He discussed at length the basis upon which new law might be made; pointing out that excluding an individual from all government service withdraws from him a large proportion of economic opportunity, that with attendant publicity it amounts to defamation of his character, and that the Supreme Court might view dimly the failure to provide traditional protections under these circumstances. The constitutionality of Congressional loyalty investigations and statutes involve much the same issues.

Review Makes New Appointments

The Harvard Law Review has named to its staff Donald C. Alexander (Yale '42), and Joseph Barbash (Rutgers '41), sixth termers, both of whom were formerly on the Board of Student Advisers.

Law Club Picture Deadline Extended

The Yearbook will definitely run a Law Club section this year, and the last day clubs may notify the Yearbook that they intend to be included has been extended to Monday, November 24.

Princess' Gown May Be Copied

(Continued from page 1)

desperately competing, with style the chief element in sales appeal. Since access is easy to each other's dresses, design copying of popular styles is an obvious result. The firm which does its own designing may make 200 designs and have good response to 6. By the time it starts production of these 6, hundreds of copyists ("Design Pirates") as the copied dressmakers call them) will be offering almost identical models. Little wonder that firms which do their own designing have sought protection from the law.

The common law, however, offers no protection to the designer. A common law copyright entitles the author, artist or designer to exclusive enjoyment of his creation only until it is publicly exhibited. Once so published, the creator has lost his common law monopoly, and the general public has a right to copy. That is the reason for the strict secrecy of the Princess' gown. The published creation may, however, be kept out of the public domain by registration under some statute granting the registrant a limited extension of time for his monopoly. Article I, Section 8, of the U. S. Constitution provides for such an extension, but the patent and copyright statutes have not been applied to dress designs. They have been extended only to true innovations and not to the slight variations of old motifs which make up new dress designs.

Cheney v. Doris Co., 35 F (2d) 279 (1929) is the leading design piracy case. The defendant knowingly copied the most successful of plaintiff's silk print designs and sold them in competition with plaintiff. Judge Hand refused an injunction saying, "To exclude others from the enjoyment of a chattel is one thing; to prevent any imitation of it, to set up a monopoly in the plan of its structure, gives the author a power over his fellows vastly greater, a power which the Constitution allows only Congress to create."

Unable to find any property right on which to base their case, designers in a number of different fields have sued copyists on a tort theory of unfair competition. These suits have been uniformly unsuccessful. Under present unfair competition law, copying an unregistered published design is not actionable without special circumstances, such as: "secondary significance" so that the design has come to mean to the public a particular source of supply; copying of "non-functional" features unessential to performance; "passing off" of defendant's merchandise as that of plaintiff; or obtaining the design by deceit, coercion, or crime.

Unable to find in the common law's arsenal a weapon against the copyists, the "haute couture," or design-originating section of the trade, next tried to get Congressional legislation. More than thirty bills have been introduced since 1914. Besides opposition from garment retailers and from the copyists themselves, these bills have been opposed by automobile, glassware, pottery, tombstone, fashion magazine, furniture, and agricultural machinery interests.

None of the bills passed, and the designers decided to solve their problems by self-help. In 1931 they established the Fashion Originators' Guild. Manufacturing members of the Guild agreed not to copy each other's designs and not to sell to any stores which also bought from copyists. To be approved as a customer, a retailer had to agree to return to the manufacturer any dresses copied from Guild members' designs. An index of retailers with red cards for uncooperative ones was provided each Guild member. Retailers were policed by a large force of "shoppers," and an elaborate set of tribunals was established to determine when a copy was a copy. This industry or-

ganization was approved by the Circuit Court of Appeals, First Circuit, as a necessary and reasonable answer to the design piracy problem in *Filene's v. F. O. G.*, 90 F (2d) 556 (1937). Apparently the search for order in the ladies' garment industry was over.

Judge C. Clark of the Second Circuit, however, refused to follow this decision and held a similar Millinery Guild illegal on the ground that the law of unfair competition should not grant a greater monopoly to an idea which cannot be patented or copyrighted than is granted to ideas which are patented and copyrighted. He pointed out that the design piracy which Guild members found distasteful was recognized by the law as a desirable form of competition. *M.G. v. F.T.C.*, 109 F (2d) 175 (1940).

Next the Second Circuit made a Supreme Court appeal inevitable by directly contradicting the *Filene's* case in supporting a Federal Trade Commission order that the Fashion Originators' Guild be broken up. Referring to his own earlier *Cheney* opinion, Judge Learned Hand repeated that design piracy is not a common law tort and that the designer has no property right in the design once shown to the public. He therefore saw no justification for the combination of the Guild. *F. O. G. v. F. T. C.*, 114 F (2d) 80 (1940). The Supreme Court in 312 U.S. 460 supported Judge Hand, but they pointed out that the doctrine of the *Erie R. R. v. Tompkins* case has made unfair competition a matter of state law. Since almost all the recorded unfair competition cases have been in the Federal Courts, this leaves the tort open for redefinition. The long line of Federal decisions has lost weight as precedent, and there are practically no state decisions.

This situation provides a final opportunity for the designers to get legal protection. By suing in the state courts (and especially by avoiding Judge Hand), they may be able to convince some court that the state common law or business necessity entitles them to a cause of action against design pirates. A judicial copyright will be far worse than a legislative one since no administrative organization can be provided to maintain a register of limited designs and the entire patent office function will have to be handled by litigation.

The Supreme Court in *I. N. S. v. A. P.*, 248 U. S. 215 (1918) held that one news service could enjoin another from copying its uncopyrighted published

dispatches. The opinion was based on moral indignation at "reaping where you have not sown" and a fuzzy concept of "quasi-property." Similar emotion and confusion might convince a state court that, freed from federal precedents by the careful Supreme Court hint in the *F. O. G. v. F. T. C.* case, it should impose new concepts of business law and morality on the ladies' garment industry.

Many of the advocates of such a change have only a shallow understanding of the business economics of their own industry. Above all else, the ladies' garment trade is a creature of the fashion cycle. Few higher-priced garments wear out—rather they are discarded as fashion sweeps the "New Look" from Dior's Parisian atelier to the "Klassy Klothes Korner" of Keokuk. In the long run the demand both for originals and for copies is far greater because of the acceleration of fashion change by imitation. Design copyists are found in every style trade and are recognized as legitimate business men. There are several reputable firms whose business function is to buy original models and display them to copyists at a salon charge of \$100 to \$150 per collection. Other firms wirephoto new trends from fashion centers all over the globe. Thus a complicated business mechanism is prepared to take *le dernier cri* from Westminster Abbey Thursday to less pretentious weddings throughout the world.

Of course, the royal dressmaker may feel cheated as his competitors reproduce Elizabeth's gown without so much as a word of thanks or credit. But in a capitalistic economy, suppression of competition leads almost inevitably to excessive monopoly prices and profits. In a democratic society, every bride is entitled to be dressed like a Princess.

E. G.

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Calendar

THE LEGAL WORLD

Law School Forum

Roger Baldwin, the director of the American Civil Liberties Union, John Saltonstall, Jr. and Prof. E. Merrick Dodd will discuss the question, *How Safe Are American Civil Rights?* at the Forum on Tuesday, November 25, at 8 p.m., at Rindge Technical Auditorium. Prof. Mark D. Howe will moderate.

Legal Research

The last lectures in the series on Legal Research will be given by Mr. Champlin of the West Publishing Co., on Wednesday, Thursday, and Friday, November 19 through 21, at 4 p.m. in the Courtroom.

Law and Medicine

Dr. Gaylord P. Coon will deliver a lecture on the *Medico-Legal Aspects of Lunacy*, part of the series on *The Relationships Between Law and Medicine*, today at 4 p.m. in Langdell South Middle.

King's Bench

A dinner-dance Thursday, December 4, at the Hotel Continental will highlight the King's Bench social season. An assessment will be made on members and guests.

Course in Opera

The second lesson in the course on the enjoyment of opera, sponsored by the Law Wives, will be given at Kendall House at 7:45 p.m., Thursday evening, November 20, by Benjamin Kimball. *La Boheme* will be played. Subscriptions will be sold for \$1.25 for the remaining five lessons, and there is a charge of 35 cents for a single lesson. All students are invited.

Lawyers Guild

Open Meeting: Tuesday, November 25 at 2 p.m. in Langdell South Middle. At 2:30 p.m. talks will be delivered on the subject of "Drafting, Passing and Administering a State F.E.P.C. Statute." Attorney Henry Silberman, who headed the joint group of organizations that backed the bill, will discuss its drafting and passage. Commissioner Elwood McConney, of the Massachusetts F.E.P.C. Commission, will discuss the problems of its administration. All students are invited to attend either or both parts of the meeting.

MEMORIAL—(Continued)

War I Memorial alcove, necessitating the removal of several rows of pews on the floor of the Church. Alternative possibilities mentioned in the report were the student-indorsed Activities Center, and a Medical Center. Financial estimate for the Student Activities Center, which would include a large auditorium seating at least 1500 persons and a number of "meeting" rooms, has been cut from an original \$6,000,000 to somewhat over \$2,000,000.

The Committee's partial departure from the idea of an utilitarian memorial has aroused considerable opposition among the student body. Led by Richard G. Axt, Jr., '46, the lone dissenter on the official selection committee, and Edric A. Weld, Jr., '46, Student Council President, efforts to forestall choice of the \$200,000 combined plaque and statue have been organized on an University-wide basis. A Committee has been formed representing all parts of the University, with Julius A. Leetham, 3L, Chairman of the P. B. H. Social Committee, representing the Law School. This group feels particularly hostile to the announced "first choice" in view of the results of a poll conducted last year among the undergraduates which indicated almost unanimous support of an utilitarian memorial, and specifically, the Student Activities Center.

CROQUIS PAR DAUMIER



—Votre client est un gredin qui a assassiné six femmes et vous comptez sur des circonstances atténuantes
—Parbleu! . . . le jury n'est composé que d'hommes mariés.

(—Your client has murdered six women and still you expect the jury to find extenuating circumstances?
—Certainly. . . . Aren't all the jurymen married men?)

PLACEMENT—(Continued)

turning over some of their work to newcomers; firms have given up the immediate hope of more office space and have accepted new employees in spite of the cramped quarters; the extensive campaign by Dean Griswold and others to interest employers in hiring the new crop of veterans is meeting cooperative response. Local voluntary placement committees are now operating effectively and an increasing number of firms are making it a practice to come to Cambridge to interview interested students. Between now and Christmas, there will be at least one interviewer at the School each week.

The salary level for starting positions is slightly higher than in the past; \$250 a month is a rough average. "Dream positions" are scarce and most of the opportunities are of the apprenticeship type.

There are limited opportunities in government for men who have already passed a state bar. For example, the Civil Aeronautics Board has at present two openings at \$3397 per year. Moreover, the New York City local placement office, a unit of the Harvard Law School Association, situated in Rockefeller Center, has enlarged its facilities. Its director, Mr. John Ready of Engel, Judge & Miller, has hired two recent graduates, Mr. Louis Kunin and Mr. Lester H. Prenskey, who are engaged in an extensive canvass of New York's medium and small-sized firms to find job-openings. They are also investigating corporate and governmental opportunities in this area.

At the Cambridge office the needs of banks, insurance and trust companies, as well as possibilities in city and state administrative units, have had special attention recently. In addition, efforts are being made to improve connections with non-metropolitan areas.

AMES—(Continued)

Robert MacCrate, Alan Palwick, Robert M. Raymer and Alan T. Wohlsetter.

Chief Justice for the fourth argument will be the Honorable Lewis Goldberg, Justice of the Superior Court of Massachusetts. His colleagues will be two Boston lawyers, John T. Noonan (LL.B. '22) and Carl J. Gilbert (LL.B. '31). The question in the case at bar is whether corporate organizers and directors, who have satisfied a judgment in a representative suit by the plaintiff to recover secret promoters' profits are further liable to the plaintiff who now brings a personal action as a stockholder under the Securities Act of 1933.

Burton M. Blum and Raymond M. Torkildson of the Hughes Club will deliver the oral argument for the organizers and directors. Of counsel for the brief are Jack C. Briscoe, George W. Foley, Louis T. Hindenlang, Ernest Rusconi, James M. Sullivan and Seymour S. Sussman. Oral counsel for the Morgan Club are Richard H. Millen and Rudolph Janata, Jr. Collaborators on the brief are Walter T. Carpenter, Jr., Joel Cohen, Walter J. Myskowski, Carter L. Refo, Frederick H. Hilton, Jr., and Haskell H. Grodberg.



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