

The Harvard Law School Record

VOL. 13 NO. 2

CAMBRIDGE, MASS., WEDNESDAY, OCTOBER 10, 1951

PRICE TEN CENTS

Sutherland & Field Vie In Moot Trial; Sweeney Presides

Prof. Arthur Sutherland will represent the plaintiff, and Prof. Richard Field will defend his client against the charge of assault, or in the alternative, negligence at the annual moot court trial tomorrow, staged by the Teaching Fellows in the courtroom of Langdell Hall at 7:30 p.m.

A member of the Federal District Court of Boston, Judge George C. Sweeney, will preside over the court which will have a jury of laymen and a teaching fellow as a clerk.

The suit will be brought in the Federal District Court of Ames; jurisdiction is based on diversity of citizenship. George Fowler, plaintiff, a psychologically ill veteran, alleges that while lying on a beach he was badly frightened and shocked when the defendant, Alan Swift, swooped down in his airplane, almost touching the plaintiff.

This incident seriously aggravated his nervous condition, he alleges, so that a contract he had with a local exclusive prep school, the Overwood Academy, was cancelled. As a consequence of the injuries the plaintiff has suffered, he demands \$3,500 in compensatory damages, and \$3,500 in punitive damages.

Appeal Will Be Taken

It has already been determined that an appeal will be taken from the trial court's decision and that the appeal will be held on Nov. 1. Dean Erwin Griswold will argue for the plaintiff and Prof. Covington Hardee will represent the defendant before a three-man court. Third-year students will prepare the briefs for counsel.

For the two weeks before the trial the first year group work sections have acquainted themselves with the various steps a lawyer must follow before a case is ready to be argued in court. This instruction has included questions of evidence, pleading, procedure, and to some extent, questions of substantive law.

Discussion of the trial will be the subject of the following week's meeting, while the last week of the four-week project is to be devoted to the problems raised by the appeal.

The trial and the appeal represent the climax of the project, which is an effort to have students see and understand the functioning of legal machinery.

Leighton '46, Victim's Counsel, Indicted After Cicero Mob Destroys Property

George N. Leighton, LL.B. '43, ('46) and member of the first editorial board of the Harvard Law School Record, was one of six indicted last month by a Cook County, Illinois, grand jury.

The grand jury was investigating the riots in Cicero July 10, 11, and 12, which resulted in the injury of 23 soldiers, policemen, and citizens, and the nearly total destruction of a modern 20-unit apartment building.



LEIGHTON

The disturbance began as a protest to the rental of an apartment in that "all-white" Chicago suburb to Harvey E. Clark, a Negro veteran and university graduate, and his family. This "protest" grew into an angry mob, estimated at from four to eight thousand in number, which proceeded to wreck the apartment and destroy the Clark's furniture and personal belongings.

When Sheriff John A. Babb of Cook County informed Governor Adlai Stevenson that Cicero's police had "turned their backs on the rioters" and that local officials could no longer maintain law and order, five companies of National Guardsmen were called to restore order with bayonets, barbed wire, and tear gas. 117 people were arrested at the scene of the melee and charged with assault, unlawful assembly, destruction of property, and inciting to riot.

Rioters Identified

All were later released despite the

fact that some were positively identified by "Life" and AP photographs, in the act of assaulting officers and destroying property. Instead of citing any of the rioters, the grand jury named the Chief of Police and five persons who aided the Clark family in their rental of the apartment and in their attempt to use it.

The bill charged the Chief with misconduct in office. It charged that the other five "on the thirteenth day of July . . . unlawfully, maliciously, and willfully . . . conspired . . . to injure the property of a large number of other persons . . . that is to say . . . to cause a depreciation in the market selling price . . . of said . . . property, by renting . . . to Harvey Clark . . . and encouraging said Harvey Clark . . . to move into said apartment . . . when certain persons in said town objected to said Harvey Clark . . . residing in said town. . . ."

Inciting to Riot

It also charged them with ". . . inciting . . . and encouraging a large number . . . riotously and tumultuously [sic] to assemble . . . for the purpose of disturbing the public peace and creating a riot . . . and . . . encouraging said rioters . . . to continue and re-

(Continued on page three)

Chafee Article Outlines The Problems In The Realm Of 'Protected Ideas'

The following article by University Professor Zechariah Chafee, Jr., originally appeared in the October Bulletin published by the American Academy of Arts & Sciences. Their permission to reprint this shortened version is gratefully acknowledged.

The problems of the law with respect to ideas fall roughly into two stages: (1) What is protected? (2) How and to what extent is protection given? This paper is concerned only with problems of the first sort. The law definitely recognizes five types of ideas as deserving protection, and two other types are in a dubious situation.

First, inventions are protected under the patent statutes for a fixed period,

now seventeen years. It is difficult to determine what ideas are within the range of valid patents. There is an upper limit beyond which lie scientific principles like those discovered by Oersted and Hertz. Although the patent clause of the Constitution says "Discoveries," the grammar-school distinction between "discoveries" and "inventions" is operative, and only "inventions" are patentable. And ideas of less generality than the basic scientific principles are also out of bounds. According to the United States Supreme Court, Morse was the first man who successfully combined electricity and magnetism so as to transmit intelligible signals to any distance,



PROF. ZECHARIAH CHAFEE, JR.

and yet the Court denied him a legal monopoly of doing so. His exclusive control was only over the particular device by which he accomplished this purpose. Consequently, other devices for achieving it, like the Wheatstone Bridge, did not infringe Morse's patent.

Should the law reward the discovery of a scientific principle in some different way? Obviously, Oersted or Hertz or Pasteur cannot be made a czar like a patentee, with power to keep his idea out of use for seventeen years, but perhaps he might be authorized to exact a royalty from whoever used it. The French have been eager to do something for the great discoverer, and the League

(Continued on page four)

Classical Concerts

Tomorrow evening at 7 the first recorded concert will be played on the fine phonograph and sound system given to the Wheeler Room by Zechariah Chafee, Jr., University Professor. These daily classical concerts, open to all graduate students and their guests, are scheduled from 4-5:30 p.m. Mon., Wed., and Fri.; 7-8:30 p.m. Tues., and Thurs.; and 3-5:30 p.m. Sundays. Thomas Mantel, 2L, will operate the machine.

Fairbank Explains Our China Policies

"By 1940, events had made the collapse of Chiang's government virtually inevitable," stated Prof. John K. Fairbank at last week's Coffee Hour.

Prof. Fairbank spoke on Oct 2 to a group of some 200 law and graduate students in Harkness Commons. His topic was "Our China Policy."

Although Prof. Fairbank said that he believed we underestimated the threat of the Communists, he declared, "No reputable expert on Asia ever doubted that they were thorough, Moscow-in-doctrinated Reds."

He blamed the fall of Chiang on several factors: the efficient organization of the backwoods peasantry and of the students by the Reds; the concurrent failure of Chiang and the West to do the same; Chiang's persistence in saving face at the cost of whole armies and large quantities of supplies; "political myopia" on Chiang's part; and corruption in the Kuomintang.

In the question period following the talk, Prof. Fairbank vigorously defended the Institute of Pacific Relations of which he is a member, pointing to the large number of reputable corporate officials who are its trustees.

Having received a leave of absence from the University to teach in a Japanese University, Prof. Fairbank was denied a military permit to enter Japan by the Army Department. That Department said only that "under present policies and regulations, his application has been denied."

Optimistic Employment Future Shown By Recent Placement Office Report

In a recent report to the Dean's Office, Louis A. Toeper, Placement Director stated that by last June 1, more than one-half of the 1951 graduating class had been placed and established. This is considerably higher than normal for the same period.

Along with the placement prosperity enjoyed by the 1951 class, the financial picture also improved. Large law offices throughout the country have begun to offer \$4,000 per annum to top standing graduates and Federal agencies are offering \$3,825. Some corporate law departments have gone as high as \$7,500 for graduates with an engineering background. However, many opportunities, particularly in non-metropolitan sections, continue at the \$35 per week level.

While statistics are not yet available, Asst. Dean Toeper stated that the 1952 graduating class may be harder hit by military service than was previously expected. This would necessarily reduce the number of men in the job market and might place draft-exempt graduates at a premium.

Practically all of the 1950 graduates were placed by June, 1951 and Placement Office records show them located in 35 States, the District of Columbia, Hawaii, and three foreign countries.

While law practice continues to attract the largest percentage of graduates, it was noted that this figure is dropping slightly each year and the number entering government service is gradually rising. In 1947, 74.8 per cent of the class entered law offices and only 2.2 per cent entered government agencies. By 1950 those going into law offices

HLS Forum School For Law Students Begins Tomorrow

To acquaint students at the Law School and other students in this area with the problems they will face upon leaving the school, the Harvard Law School Forum is sponsoring its third biennial "School for Young Lawyers" beginning tomorrow afternoon and continuing all day Friday in Langdell Hall.

The various panel discussions which the Forum has planned will attempt to answer the question, "After Graduation, What?" posed on posters appearing on bulletin boards in the last weeks.

Since the whole program must be condensed into a single day, except for the introductory panel led by Dean Toefer tomorrow at 4 p.m. in Langdell South Middle on "How to Find a Law Job," the auditors will have to choose between four different panels during each session.

The first period Friday morning gives the student his choice between a discussion of Patent Law by Hector M. Holmes, LL.B. '09; Lawyers in Politics by George Fingold; Large Firm Practices by D. Nelson Adama, LL.B. '35; and Tort Practice by Joseph Schneider.

The second period will offer discussions of Small Firm Practice by Thomas Kaplan, LL.B. '41; Tax Practice by George R. Blodgett, LL.B. '21, and Allan H. W. Higgins, LL.B. '28; Starting on Your Own by Harris B. Steinberg, LL.B. '35; and Administrative Law by Samuel Horowitz.

After lunch the "school" will reconvene with panels on Small Town Practice led by Frank M. Coffin, LL.B. '43, ('47); Labor Law discussed by Albert L. Goldman, LL.B. '43, ('46), and Robert M. Segal, LL.B. '42; Government with James A. Durham; and Women in the Law, led by Jennie L. Barron, and Ines Di Persio.

The final session will consider Teaching Law discussed by Professor Wendell Grimes, LL.B. '41; Corporation Legal Staff led by Paul F. Hannah, and John Barker, Jr., LL.B. '30; Trial Practice by Joseph B. Abrams, LL.B. '27; and Estate Planning, led by James B. Ames, LL.B. '36.

Dean On Summer Visit Honored 'Down Under'

During his two month visit in New Zealand and Australia on the occasion of the 50th anniversary of the Commonwealth, Dean Erwin N. Griswold was honored with LL.D. degrees from the Universities of Sydney and Melbourne.

The Lord Chancellor and the Master of the Rolls from England and the chief judicial officers from several other Dominion governments represented their respective countries at the ceremonies.

Cody Fowler, retiring president of the American Bar Association, was the other American representative at meetings of the Australian Universities Law Schools Association and the Law Council (analogous to the ABA) of Australia. At the latter conclave Dean Griswold read a conflict of laws paper entitled "Divorce Jurisdiction and Recognition of Divorce Decrees—a Comparative

(Continued on page three)

Profs. Braucher, Sutherland Commend Final Approval of UCC By The ABA

"Monumental . . . the product of long and careful effort by experts . . . A great piece of work reflecting much thought, effort, and study . . ."

These words of praise from Professors Robert Braucher and Arthur Sutherland, Jr., respectively, are for the Uniform Commercial Code of the American Law Institute which the recent convention of the American Bar Association approved in a resolution urging adoption by state legislatures.

In a statement to the Section of Corporations, Banking and Business Law of the American Bar Association, Prof. Braucher recommends "that work be forward on a revision of the Code for enactment by Congress."

Prof. Braucher maintains that federal adoption of the Code would eliminate the confusion which might result if the Code were enacted by one state at a time over a 50-year period. The fear of such confusion is shared by Prof. Williston.

Discussing in his statement the further possibilities of federal legislation, Prof. Braucher said, "If it is thought desirable to restrict the application of the federally enacted Code, it could easily be confined to those interstate transactions which might raise problems in the conflict of laws. The Code is

not now ready for federal enactment, but to revise it for that purpose would be a simple project compared to the original preparation of the Code."

Agreeing that the main question right now is adoption of the Code, Prof. Sutherland points out that the Code, even if not adopted, is of extreme importance and similar, in this sense, to the Restatements.

Cited by Federal Court

The courts have begun to take notice of the Code. In a recent decision the Court of Appeals, Third Circuit noted, "We think provisions of the Uniform Commercial Code which do not conflict with statute or settled case law are entitled to as much respect and weight as courts have been inclined to give to the various Restatements. It, like the Restatements, has the stamp of approval of a large body of American scholarship." *Fairbanks, Morse and Co. v. Consolidated Fisheries Co.*, 190 F. 2d 817, 822 (3rd Cir. 1951.)

Whether the same results desired by the Code can be achieved with a little less drastic changing of existing statutes is a matter of judgment, according to Prof. Sutherland.

Indicating that Prof. Williston has criticized the uniform sales section

(Continued on page three)

The Harvard Law School Record

Published weekly on Wednesdays 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 \$.10 each at the Law School; \$.15 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone Kirkland 7-7600, extension 447.

OFFICERS

JOSEPH J. THALHOFFER.....President
MARTIN L. BARR.....Editorial Manager
ARNOLD M. LEIBOWITZ.....Business Manager

EDITORIAL BOARD

STANLEY L. GOLDEN.....Associate Editor
JOSEPH B. MANELLO.....News Editor
MATTHEW FONER.....Copy Editor
MURRAY E. WEINSTEIN.....Advertising Manager

DEPARTMENT EDITORS

Dan Sklar.....Features
Samuel L. Hack.....Current Case
Israel Stein.....Treasurer
Alan B. Ives.....Gallery
Albert Sennett.....Alumni
William A. Scheurich, Jr. Articles

STAFF

Bernard Bernstein, Alvin N. Biener, Leon Birnbaum, Edgar H. Booth, Donald Conley, Milton J. Crystal, Charles H. Harper, Jr., Brian Harvey, Richard S. Kaplan, William P. Kennedy, Herb Klein, Seymour Levine, David Lubell, Jonathan Lubell, Ruth I. Marshall, Carolyn McTear, Lester Nelson, David Sanderson, Norman Schoenfeld, John Sexton, Arthur Sherman, Arne Siegel, Julian Singman.

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

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.

Books Return To Austin

We are happy to report what many know already—the National Reporter System is being returned to the walls of Austin reading room. This step was taken with some misgivings on the part of the librarian and the school administration. Economy dictated the elimination of attendants at the desk in Austin and it is feared that losses may be considerable. For that reason the law reviews and treatises are available only in Langdell.

Since we of the RECORD are partially responsible for this turn of affairs, we hope and trust that our fellow students will cooperate in preventing abuses such as "borrowing." And if users of the volumes will return them promptly to their proper places on the shelves the reading room should function smoothly without attendants.

Student Government

Election of members and officers of the Dormitory Council reminds us of a project which seems to evoke little response at Harvard Law School. With the inauguration of the Graduate Center last year a need was felt for some sort of student government for those living in the dormitories. Experience of the past year has apparently proved the worth of the Dorm Council. It has assumed a large part of the burden of conducting Social activities and has handled discipline well in the dorms.

We wonder why the entire student body has never been integrated within a governing council of some kind? It seems to us that either a separate organization or an expanded and renamed Dormitory Council could serve generally an analogous function in other areas as well. There are times undoubtedly when the Administration would like to know what the student body is thinking on a particular subject.

There is a feeling among the students that the school runs the student. While this is as it should be—up to a point—there should also be a feeling that the students help to run the School.

Letters to the Editor

To the Editor of the RECORD:

"Now the Dreadnought's a-howlin' 'cross the Banks of Newfoundland
Where the water's all shallow and the bottom's all sand.
Sez all the little fishes that swim to and fro;
'She's the Liverpool packet—oh Lord—let her go!"

Now what can a poor Maine, rock-cod do when skipper Henry B. Ely, '32 hauls him up out of the nice, cool, green, quiet water in your issue of May 2, 1951 and installs him as pilot on the Dreadnought's bridge? Nothing, I guess, except try to acclimate himself to his strange surroundings and accept the compliment—to which he has no right whatever—on behalf of the Harvard Law School and our Mistress, the Law.

GEORGE K. GARDNER
PROFESSOR OF LAW

Gallery

JUDSON ADAMS CRANE
Law Professor



Forty two years is a long time in the field of law, but Judson Adams Crane has served the profession with great distinction as professor, dean, author, and practicing attorney over this period. In 36 years as a professor he has taught more than 2,500 students in nearly all phases of the law.

Born May 7, 1884, in Shelburn Falls, Massachusetts, young Crane left his home state to enter Brown University, where he was elected to Phi Beta Kappa, and took final honors in mathematics at graduation in 1905. He did not enter Law School immediately, but spent six months in the mortgage department of Title Guaranty and Trust Company in New York City and six more months as a mathematics teacher at Black Hall School in Lyme, Conn.

In 1906 he matriculated at Harvard Law School, and during the school year earned part of his expenses by serving as a conductor on the Boston Electric Street Railway on weekends and during vacations. Langdell Hall was under construction while he was at Harvard.

Teaching in China

Upon receiving his LL.B. from the Law School in 1909, Dean Crane entered practice with the firm of Warner, Warner and Stackpole in Boston, working there for two years. It was at this time that he was chosen by Professor Joseph Beale to succeed Warren A. Seavey as Professor of Anglo-American Law at Pei Yang University, Tientsin, China. He took advantage of this opportunity because, "I was still young and wanted to travel; sort of an itching to see the world."

He spent three years in China, from 1911 to 1914, and while there satisfied his "itch" by traveling extensively in China, Japan and Korea. During this time he tried cases in the United States Court for China and also in the British Consular Court.

In 1914, Dean Crane returned to the United States to take a year of graduate work at Harvard, where he did research on the Uniform Partnership Act with Professor J. D. Brannan. He received his S.J.D. in 1915.

Dr. Crane, who had never taught any law prior to his professorship at Pei Yang University, found that he enjoyed teaching, and so became a professor at George Washington Law School. It was there he began the career in which he is still very active. During these years, 1915-17, he not only taught, but was a member of the District of Columbia Bar as well.

Judson Crane became a member of the faculty of the University of Pittsburgh in 1917, where he has remained until the present time. He was then Professor of Law, the first full-time member of the faculty. In over 30 years he taught all the law courses except those dealing in real property. Having been granted a one-year leave of absence in 1928, he went to the University of Southern California.

In the years between 1917 and 1951, Dr. Crane has authored many books and articles. In collaboration with Professor Calvert Magruder in 1924 he edited *Cases on Partnership* and has recently completed a second edition. He also prepared a casebook on Damages, of which a second edition was published in 1940, and a Partnership handbook in 1938 now in revision.

Worked on Restatement

He served as advisor under Prof. Warren Seavey in preparation of the chapter on Damages for the *Restatement of the Law of Torts*. The compilation of Pennsylvania annotations for the *Restatements of the Law of Agency, Contracts, and Security* has been another of Dr. Crane's contributions to legal literature.

In 1942 Dr. Crane became Dean of the University of Pittsburgh Law School and served in that capacity until 1949 when he was appointed Dean Emeritus, continuing, however, as Professor of Law. During World War II he became associated with the firm of Moorhead and Knox in Pittsburgh and has continued with them to the present.

Not only has Dr. Crane been active in the Pennsylvania Bar Association and the Allegheny County Bar Association, but loyalty to his undergraduate school has kept him active in the Brown Alumni Association of Pittsburgh. He is now serving his second term as president of that group.

Vacation time has not always been a time of recreation for the pedagogue. In summers he has taught at Cornell, Wisconsin, Stanford and George Washington Law Schools. He does, however, find time from his many activities to play golf at the Oakmont Country Club, and to cultivate vegetables and flowers at his summer home in Plymouth, Massachusetts.

Forty-two years is a long time in the practice of law, but Dean Crane is still fresh, and a man of great vitality. His students, and they are many, still say that he is the best teacher they have ever had.

W. SWANSON, 2L

Sub Judice

SHOOT FOR DOUBLE

Robert worked nights in his father's restaurant and sometimes took it upon himself to entertain the customers. One night he did so by showing them that if a single cartridge was left in a revolver and the cylinder was spun, the cartridge would invariably end up on the top.

The next night one of the customers returned and the two decided to make a game of the newly acquired knowledge. This was accomplished by placing the barrel to their heads, firing, after removing all but one cartridge, spinning the cylinder. The customer testified: "That is the way you play 'Russian Roulette' according to the rules of the game and according to my understanding of the way you play."

Robert removed all but one cartridge, spun the cylinder, and offered the customer the chance. This the customer refused, so Robert put the gun to his own head.

After Robert's death his mother brought action against the insurance company on an insurance policy claiming double indemnity "accidental death." The lower court directed a verdict for the company and the mother brought a bill of exceptions.

Held: Bill dismissed.

Although agreeing that an injury caused a voluntary act could be an accident where it was a slip or mishap in the performance, court said, "One engaging in such a bizarre pastime with a lethal weapon, if he be competent, knows he is courting death or serious injury, and will be held to have intended obvious and well known results, if he is killed injured." *Thompson v. Prudential Ins. Co. of America*, 66 S.E., 2d 119 (June 28, 1951).

MY PARTY RIGHT OR WRONG

Mary H. Mairs was a duly registered elector of the Republican Party in Dade County, Fla. but had broken party integrity by voting candidates of both parties in the 1948 election. She sought to qualify in the 1950 primary as a Republican candidate for the office of school board member.

She fulfilled all the requirements except filing of a candidate's oath as required by statute. She could not execute the oath because of the following parts: "... that he did not vote for any nominee of any other party, national, state or county, at the last general election; ... and that he pledges himself to vote for all nominees of such party ... at the succeeding election. ..."

She brought this suit against the County Commissioners to obtain a declaratory decree to the constitutional validity of this requirement. The lower court decided against the plaintiff, feeling that the right of suffrage is not one of the necessary privileges of U. S. citizenship but was derived from the State.

Held: Decree affirmed.

The court felt that the party loyalty requirement was a reasonable regulation based on the state's power to set standards for the nomination of candidates. The plaintiff's loss of freedom in participating in elections was vindicated on the grounds that, "Absolute freedom disorders and breeds chaos. It is by virtue of law, however, that we attain orderly government and in the end secure order and justice between one another."

To further justify their conclusions the court went on to say:

"Courts generally have held such acts of nature a valid exercise of the police power, also to the functioning of a popular free government."

"Conceding, as any student of free government must, that the party system is essential to our political life, we can well understand how short lived the party would be unless some means were afforded to maintain party integrity."

"Those who will not maintain their party through pride or loyalty may be restrained by law from destroying the system they have utilized to advance their political fortunes." *Mairs v. Peters et al*, 52 S. 2d. 793 (May 25, 1951)

Off the Record

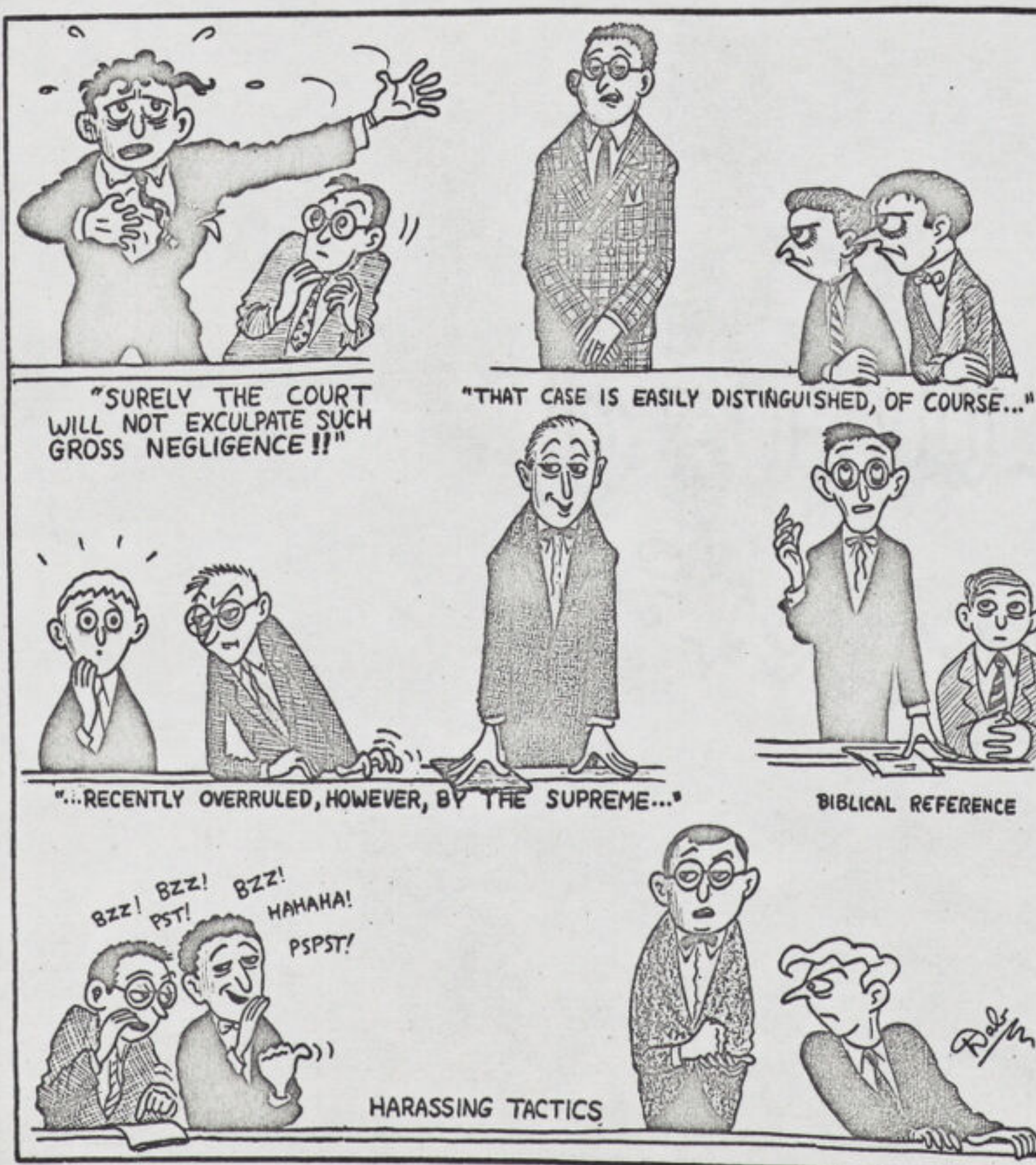
LAW IS A SEAMLESS WEB DEPT.

Lex is lex and sex is sex,
And the two shall ne'er be one;
Tho' lex isn't sexy,
Some sex is sexy
Like kissing a maid you've not won.

LEGAL PROBLEM OF THE WEEK

The Harvard Voluntary Defenders are struggling over this one: A female client is charged with having committed incest with her husband. It is suspected that the defendant is pregnant. Should a boy be born, the question arises, will he be her son or her half-cousin?

AMES COMPETITION



Alumni Notes

LL.B. '11—John H. Ray, having retired as Vice-President and General Counsel of American Telephone and Telegraph, has resumed the general practice of law. His address is 1 William St., N. Y. City.

LL.B. '16—William Harper Annat, formerly Assistant Attorney General of Ohio in charge of tax litigation and formerly Chief Counsel in the office of the Attorney General of Ohio has resumed the general practice of law in Wooster, Ohio.

LL.B. '34—William J. Madden is now a partner in the firm of Bayley, Fite, Westberg, Madden and Goodin. The firm is located in the Henry Building, Seattle, Wash.

LL.B. '34—Stuart T. Saunders has been appointed General Counsel of the Norfolk and Western Railway with offices in Roanoke, Va.

LL.B. '42—Laurence R. Sperber announces that he is now practicing law in Beverly Hills, Cal.

LL.B. '44—Joseph R. Creighton announces the opening of his office for the general practice of law in Oakland, Calif.

LL.B. '47—John Cancian has left his position as Associate Professor of Law at Northeastern Law School to become head of the Land Department of Ford, Bacon and Davis. Louis Lusky announces his association with George Braden for the general practice of law in Louisville.

LL.B. '48—Philip J. Lawrence is now associated with the firm of Buist and Buist, practicing law in Charleston, S. C.

LL.B. '49 Mark Schefer is now associated with the firm of Radner, Zito, Komener and Fort of Washington, D. C.

COMMISSIONS

There are still a few positions open on the advertising staff of the RECORD. This is a chance to make money and work on your paper at the same time. Leave your name with the secretary at the RECORD office, third floor, Austin Hall.

NEWS IN BRIEF

CONANT AT NEXT COFFEE HOUR

At the next Coffee Hour, Oct. 16, at 1:30 p.m., President James Bryant Conant will speak on "The Road Out of the Atomic Age." He will be introduced by Dean Griswold.

AMES COMPETITION

First year—Rounds 1 and 2: Docket posted Thursday. Facts issued Saturday, Facts Conference, next Monday.
Second year—Rounds 1 and 2: Docket posted next Monday, rounds 3 and 4, Docket posted October 16.

ST. THOMAS MORE SOCIETY

The St. Thomas More Society will sponsor a "Get Acquainted" Mixer in Harkness Commons Friday evening from 8 to 12 for its members. George Graham's orchestra will furnish the music.

MRS. GRISWOLD TO SPEAK

Mrs. Erwin N. Griswold will open this year's Law Wives' activities with an informal tea in Harkness Commons on next Tuesday from 4:30 to 6:30 p.m. The tea is given annually to welcome the wives of law students.

Women law students, law wives, and wives of faculty members are expected to attend. The faculty wives and wives of second and third year students will assist as hostesses.

The first meeting of the Harvard Law Wives will be held Oct. 17, at 8 p.m., in Harkness Commons.

Officers for the current year are: President, Mrs. John R. Cotter, Jr.; Program Chairman, Mrs. Floyd Wilkins, Jr.; Recording Secretary, Mrs. Herman I. Merinoff; Corresponding Secretary, Mrs. Arthur London; Treasurer, Mrs. Emanuel Zimmer; Social Chairman, Mrs. Oliver S. Oldman; Hospitality Chairman, Mrs. Joseph M. Wells; Public Relations Officer, Mrs. Joseph B. Carney.

LEIGHTON—(Continued)

peat said rioting in case said . . . Clark . . . were permitted to reside . . .

Leighton's "crime," more specifically, was to act as Clark's attorney in negotiating the rental and in representing him in court. Clark had previously (in June) been forcibly ejected from the same apartment by the Cicero police force. Leighton filed a \$200,000 damage suit against the city for his client and also obtained a court order from the U.S. District Court enjoining the police from interfering with Mr. Clark's occupation of his apartment and directing them to protect the Clark family.

The other four who aided the Clarks and were also indicted included the owner of the building, the former owner, the rental agent, and a man who passed out leaflets (allegedly Communist) deploring the action of the Cicero mobs.

Record Comment

These facts are brought to the attention of our readers to illustrate the danger such action presents to our ideals of individual freedom and the threat posed to the law and the legal profession itself by this perversion of criminal procedure.

Unfair and Unwarranted

That the indictment is unfair and unwarranted is patent. Those indicted are charged with conspiring and inciting to riot on July 13. The riots were over on the night of July 12. Certainly nothing could have been farther from the minds of the owner of the building and of Clark's attorney than to cause extensive damage to the building and total destruction of all the Clark's belongings.

They are charged with inciting and encouraging the rioters to assemble and refuse to disband. The facts are that Sheriff Babb was quoted in the Chicago Tribune (July 14) as saying, "No Negroes were involved in the rioting." Indeed no Negro would have been safe in the area. Leighton was fifteen miles from the site of the disturbance. Clark, in an effort to restore order, announced at the peak of the rioting that he was abandoning his plans to move in. Though this announcement was made from a loud-speaker sound truck, the riots continued.

Were this indictment to stand, any real-estate dealer who suggested the rental or sale to a Negro of property in a community not entirely Negro, or indeed, the Justices of the Supreme Court, who ruled that restrictive covenants are unenforceable, could be indicted for conspiring to depreciate the value of property. No attorney could feel free to help a Negro client who was aggrieved by the actions of his white neighbors.

To those who smugly maintain that "it couldn't happen here," we commend the following from an editorial in the New York Herald Tribune for July 14, 1951: "Cicero is only one speck on Illinois or the nation, but the same set of circumstances could produce the same results in any other Cicero."

Our advertisers appreciate your mentioning the RECORD when you patronize them.

Prof. Chafee Publishes Equity Cases, Lectures

Zechariah Chafee, Jr., University Professor, has recently had published three works dealing with subjects he teaches in the Law School and the College.

Some Problems of Equity, the compilation of a series of lectures, was published by the University of Michigan Press. It contains three chapters concerning the equitable doctrine of "clean hands" as well as discussion on "Does Equity Follow the Law of Torts?"; "Bills of Peace and Multiple Suits"; "Representative Suits"; and "Lack of Power and Mistake in the Use of Power." This book was reviewed by Edmund M. Morgan, Royall Professor of Law, Emeritus, in 64 Harvard Law Review 1215 (1951).

The third edition of Chafee and Simpson, Cases on Equity, edited by Chafee, Simpson, and Maloney, was issued this fall by the Foundation Press. The 1400-page book contains 30 illustrations, mostly old prints of judges and courtrooms. Although not used by Professor Chafee in his course on Equitable Remedies, numerous other law schools throughout the country do make use of it.

In his role of University Professor, which enables him to teach anywhere in the University, Professor Chafee has written Documents on Fundamental Human Rights, published this past Monday by the Harvard University Press. Professor Chafee plans to use this book in his Social Sciences 120 course in the College.

GRISWOLD—(Continued)

Study." This paper will be published in the Harvard Law Review for December.

On his trip Dean Griswold was accompanied by his daughter, Hope, who attends Oberlin College in Ohio. They spent three weeks in New Zealand visiting law schools which were in their winter term. Dean Griswold also met for the first time a "pen pal" of 30 years who moved from England to New Zealand about 1924.

In Sydney, Dean Griswold had lunch with Governor Thomas E. Dewey of New York, who was on his Korean trip at the time. Other notables present were the prime ministers of New Zealand and Australia and the judges of the High Court of Australia.

EXETER EXETER & NEWBURY STS. BOSTON KE 4-7067

THE J. ARTHUR RANK ORGANIZATION PRESENTS
DEREK BOND • SUSAN SHAW
DAVID TOMLINSON
MARRY ME!
also LEO GENN in
the wooden horse

SQUASH RACKETS
Largest Variety in New England
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE
Opp. Lowell House — TR 6-5417

UCC—(Continued)

of the Code in a recent article in the Harvard Law Review, Prof. Sutherland explains, "Nobody agrees with it completely . . . As between throwing it away or using it, I would use it."

Code Fully Discussed

In speaking generally about the Code, Prof. Braucher declares, "It has been thoroughly considered at numerous meetings of the sponsoring organizations. There has been full opportunity for participation and comment by representatives of interested groups, and many such representatives have taken advantage of the opportunity."

"The sponsors have considered with fair and open minds innumerable suggestions and objections, and have made revision after revision to meet them. . . . The Code represents the best accommodation of conflicting views that is likely to be obtained. In my view, on balance, it would greatly improve the law if generally adopted," said Prof. Braucher.

Six Voted To Positions On Coffee Hour Board

Replacing the informal composition of last year's Coffee Hour group, the current members have elected a permanent board of officers to manage this year's program.

Tom Pearlman, 3L (Amherst '49) of Providence, R. I., was chosen chairman. The other officers are: Andy Vance, 3L (Harvard '48) of Washington, D. C., and Howard Levitt, 3L (N. Y. U. '49) of New York City, vice chairmen; Myles Backman, 2L (Brown '50) of Providence, treasurer; Roberta Good, 2L (Wellesley '50) of Shaker Heights, Ohio, as secretary; and the new publicity chairman is J. Dave Silvers, 3L (N. Y. U. '49) of New York City.

The chairman declared his interest in continuing the Coffee Hour along the successful lines on which it was run in 1950-51, the first year of operation.

HARVARD SEA GRILLE

(WHERE THE LAW STUDENTS GATHER)
1680 MASS. AVE.

COMPLETE
LUNCHEONS 60c - 75c
DINNERS 99c
Excellent Meals Moderate Prices
Open Every Nite—1:30 A. M.

Open 24 Hours
Every Day

SWANNY'S
35 Boylston St.
Harvard Sq.

TOURS-CRUISES

Airline-train Reservations
UNIVERSITY TRAVEL CO.
18 Brattle St. KI 7-1650

Enjoy Luncheon or Dinner at the HOTEL CONTINENTAL

"One of New England's Best Hotels"

in our COLONIAL DINING ROOM or
PICCADILLY INN

On Chauncy Street only one block west from Graduate Center

Full Course Luncheons \$.95 up

Full Course Dinners \$1.60 up

Excellent Function Facilities for Law Clubs and Parties of All Sizes

CHAUNCEY DEPEW STEELE, JR., General Manager

29 Garden Street Tel. KI 7-6100

OCTOBER IS STATE INSPECTION AND STICKER MONTH

Elbery Motor Co., Inc.

FRANK ELBERY, YOUR FORD DEALER

Sales **FORD** Service

FAST EFFICIENT SERVICE — EXPERT MECHANICS
BODY PAINT & FENDER WORK — WHEEL ALIGNMENT

GUARANTEED USED CARS @ ATTRACTIVE PRICES

DRIVE YOUR CAR TO US — WE'LL GET YOU BACK

360 RIVER ST., CAMBRIDGE
Tel. Kirkland 7-3820 - 21 - 22

(Just off Memorial Drive
at River Street Bridge)

CLEANWAY

LAUNDRY
and
DRY CLEANING
SERVICES

Shirts Washed and Ironed 16c

Suits Cleaned and Pressed 85c

4-DAY AND SAME DAY SERVICES

Self Service Laundry

9 LBS. WASHED AND DRIED—55c

One-Hour Service

104 OXFORD STREET

Just a few minutes from the Law School

\$1,000 REWARD



Sample Rates: Extra-Ordinary Life Plan

Age Nearest Birthday	Monthly Premium	Amount of Insurance	Cash Value 20-Years
20	\$5.67	\$3,959	\$1,000
30	5.80	3,049	1,000
40	6.35	2,402	1,000

The Extra-Ordinary plan offers sizable benefits to your family if you die — cash values to you if you live. Ask for free folder that tells exact rate for your age.

CAMBRIDGE SAVINGS BANK

Right in Harvard Square

Open Mon. thru Fri., 8:30 to 3

Tel. TR 6-0675

SAVINGS BANK LIFE INSURANCE

If you are age 20
and pay a monthly
premium of \$5.67
under the new

EXTRA-ORDINARY
LIFE PLAN

We will give you \$1,000 CASH
in 20 years, if you live;
If you die, we will give your
family \$3,959.

You don't have to die to win.
With this plan you win either
way.

CHAFEE—(Continued)

of Nations Committee of Intellectual Cooperation worked on the subject without reaching any conclusion. The pioneer of science, it may be surmised, will have to get his recompense from fame, academic promotion, and perhaps a Nobel Prize, not from the law.

Patentability Test

There is also a lower limit to patentability. Bright ideas, like putting an eraser on the end of a lead-pencil for the first time, received no protection. The courts say that what could be done by any mechanic skilled in the particular field of activity is not validly patentable, but how do these bookish lawyers know the capacities of skilled workmen? Ten years ago, the Supreme Court undertook to raise the lower limit. Justice Douglas, in a case of an electric cigarette lighter for automobiles, said that, to be patentable, the new device must reveal "the flash of creative genius." Inventors and other patent-owners were aghast, maintaining that this phrase was inappropriate to the thinking and labors which have brought many great inventions into the world. Subsequently the Court has dropped this "flash of genius" test. More satisfactory is Justice Frankfurter's statement, "The real question is how significant a jump is the new disclosure from the old knowledge."

Holmes' Copyright View

Second, literary and artistic creations are protected by the copyright statutes. But does the law protect only the tangible thing deposited in the Library of Congress, e.g., a piece of sheet music? If so, it is hard to say that this is infringed by a phonograph record of the same music, which looks nothing like the deposited paper and ink and is wholly unreadable. Justice Holmes took a broader view, that the purpose of copyright is to reward a person who "had invented some new collocation of visible or audible points—of lines, colors, sounds, or words." Therefore, the collocation of sounds we call music should be protected according to its "essence" by a monopoly of every means which enables that collocation of sounds to be reproduced, whether by a human performer on the piano or by a machine. Holmes' conception is now embodied in the Copyright Act and canned music must pay royalties.

What is protected by the copyright of a book is more than the actual words. For instance, a translation infringes, though about every word is different. Yet some original things in the book are open to everybody. When Einstein copyrighted his first account of relativity, other writers could freely expound his principles so long as they did not reproduce Einstein's presentation of

those principles—what may be called the "pattern" of his book.

Unpublished Material

Third, protection analogous to copyright is, in this country, given by the courts without any statute to unpublished literary and artistic material. For example, a scientist can get an injunction to prevent the unauthorized printing or other use of his manuscript notes of his inventions. This doctrine is extended by the courts to private letters, even when as usual they possess no literary merit. The recipient owns the paper and ink, but the expression of ideas in a letter still belongs to the sender or, if he be dead, to his family.

This rule of law is a trap for a biographer. Letters from the man whose life he is writing are an almost indispensable portion of an adequate account of the man, and yet the biographer cannot safely print them without getting permission from the family. Moreover, although copyright runs for only 56 years at most in the United States, judges say that the common-law right in unpublished manuscripts and letters lives forever.

Thus publication is a decisive dividing line in the rights of the creator. Before he publishes, he receives considerable protection from the non-statutory law. After he publishes, he must get his protection under the statutes by copyright; otherwise he has no rights whatever. Nevertheless, the word "publication" must not be taken literally. It certainly includes printing for sale or for widespread free distribution. Yet how about a lecture delivered to a large audience? The material is thereby given to a wide public, especially when no admission is charged. Yet the law does not consider this to be publication, and it takes the same attitude toward the performance of an unprinted play in the theatre. In neither case does the creator lose his legal rights, so long as the public cannot obtain the material in book form.

Fourth, trade secrets have somewhat the same relation to patents as unpublished literary property to copyrights. It often happens that the owner of a chemical process or ingenious machine keeps it secret and does not patent it. Perhaps he is not the inventor, or thinks it not patentable for lack of sufficient novelty, or fears expensive patent litigation. He wants to use the idea in his own business without disclosing it to the world as a patent does. The courts, without any statute, consider that the improvement of the trade secret in producing goods is sufficiently valuable to the public to make its owner deserve some legal protection. Obviously, he is unlikely to make any use of his secret if he has to keep it to himself alone. He needs to communicate it to trusted employees in order to get any good out

New Dorm Council Expands Activities

Mixer Dances every other Saturday night and three semi-formal dances during the year mark the initial projects planned by the newly elected Dormitory Council in attempting to expand the activities initiated last year.

Formation of the Building and Grounds Committee, Dining Room and Grill Room Committee, and the Judiciary Committee of the Council will be completed by next week.

Two further matters are scheduled to be taken up by the body. The first question involves the possibility of obtaining a television set for the dorms. Secondly, the Council plans to take parietal rules under consideration to determine what changes, if any, can be made.

Officers of the Harvard Law School Dormitory Council are: President, Seymour Levine, 3L (C. C. N. Y. '49) of Brooklyn; Vice-President, Stanley Rothberg, 2L (N. Y. U. '50) of Brooklyn; Secretary, Fred Herberich, 3L (Harvard '49) of Akron; and Treasurer, Russell Pearson, 3L (Harvard '47) of St. Paul, Minn.

Council Representatives

Elected as Dormitory Council representatives for the year are: Joseph Cortese, 3L (Ohio State '49) of Youngstown, Ohio; Sheldon Goodman, 3L (N. Y. U. '49) of New York City; Charles Harff, 1L (Colgate '51) of Cambridge, N. Y.; Charles Harper, 1L (U. of Va. '51) of Baltimore.

Harvey Krieger, 2L (U. C. L. A. '50) of Los Angeles; David Melamed, 1L (Harvard '51) of Elizabeth, N. J.; Don Mintz, 1L (U. of Chicago '50) of East Orange, N. J.; Allan Newmark, 3L (Harvard '49) of New York City; Austin Noble, 2L (Harvard '50) of So. Royalton, Vt.; Jack Olive, 1L (La. Poly. Inst. '51) of Rustin, La.

Stanley Ostrow, 3L (Yale '49) of Pittsburgh; Robert Persky, 3L (N. Y. U. '49) of Jersey City; George Roumell, Jr., 1L (U. of Mich. '51) of Grosse Pointe Park, Mich.; Jerome Shelby, 2L (N. Y. U. '50) of New York City; William Watts, 2L (Harvard '50) of Saukville, Wis.; Sheldon Witt, 1L (N. Y. U. '50) of Bayonne, N. J.; and Norman Yoffee, 1L (Bucknell '51) of Harrisburg, Pa.

of it. If these employees violate the confidence placed in them, the courts will enjoin them from making any use of the secret or from disclosing it to competitors. Also competitors who purchase the secret from an employee will be prevented from making use of it, if they had notice of the breach of confidence.

Trademarks

Fifth, the last kind of recognition is given to trademarks. Here the thought-element is rather limited, but considerable ingenuity is often exercised in devising pictures or artificial words or in distorting common words from their natural meaning, in order to get something which will stick in the minds of consumers as the symbol of a particular brand of goods. When this is established in the public mind as pointing toward the plaintiff's product, then any imitator of the trademark is virtually telling a

lie by saying that the goods come from the well-known owner of the mark whereas in fact they come from the imitator.

According to the older law, a valid trademark must be rather artificial, and not describe the goods or state the place of manufacture or the name of the maker. Nevertheless, the inclination of those who devise trademarks is to insert in them some fragment of information which makes it easier for the consumer to learn something about the nature or purpose of the product. For example, a liquid preparation for dyeing and shining leather puttees during the First World War was named Dyanshine.

Furthermore, a word which was not originally intended to be a trademark sometimes becomes closely associated with a given product through long use. Thus "Waltham Watches" came to mean watches made at a particular plant and not just a watch made anywhere in the city of Waltham. The courts have, with some unwillingness, gradually extended to such situations the protection which is readily given to artificial words and to pictorial marks.

Misappropriation of News

Alongside these five recognized types of protection, there are two situations where legal protection has been sought with much more uncertainty of success.

One such situation has already been indicated, the appropriation of ideas which fall within the general range of patents of the patent law or the copyright law, where in fact there has been no compliance with the statutory requirements. About thirty-five years ago, the Associated Press objected because the Hearst news agency was obtaining information about the war in Europe from headlines and bulletin boards of AP newspapers in the East and sending this news by telegraph to the Pacific Coast, where the enterprising Hearst papers were thus often able to publish the account of a battle before it appeared in the AP newspapers in Los Angeles or San Francisco. The Supreme Court granted an injunction, saying that the Hearst papers were reaping where they had not sown.

If this general principle were logically applied, it would stop an enormous amount of imitation of unpatented and uncopyrighted ideas. For example, the Cheney designers put out each year many novel patterns in silk goods. Some of these do not prove pleasing to the public, while others have a great success. A fly-by-night competitor watched the stores carefully, spotted the Cheney patterns which were going well, and then diligently copied them on his own goods. Since he thus avoided all designing expenses and saved the cost of making unsuccessful patterns, he was able to undersell Cheney. In the result-

ing injunction suit, Judge Learned Hand recognized that the rival was reaping where he had not sown, but nevertheless denied relief and insisted on confining the Associated Press case to the narrow situation of misappropriation of news.

Business Schemes

The other controversial group of ideas consists of business schemes. For instance, a man had a new idea for selling automobiles on the installment plan and wrote to Henry Ford about it. Ford made no promise to pay for the idea and not to use it himself. Soon afterwards Ford started his own scheme for selling automobiles on an installment plan which was somewhat different from the other man's but still may have derived something from the suggestions in the letter. The court gave no relief against Ford. Other cases involved the District man who thought of advertising on the walls of railroad stations or a man who made a new plan for selling life insurance to the man who went to a wealthy capitalist with a scheme for merging lead companies. The courts are steadfastly reluctant to do anything for the originator of this sort of idea.

Interest in Open Competition

In conclusion, it is important to serve that in many of the various cases described in this paper, the court looked beyond the ethical conduct of the particular defendant. If he alone were considered, his bad behavior might lead to be judged so reprehensible that he ought to be enjoined or forced to pay damages. Nevertheless, courts must also consider the interest in open competition, which would be gravely impeded if rivals were narrowly confined when they wanted to borrow bright ideas.

The judges must also think of the interest of consumers, who may often gain more in the end if monopolies are kept within well-marked and rather small areas. Still another factor is the convenient administration of justice. Typewritten courts may get into trouble if they seek to punish bad men for conduct which is incapable of a sharp definition. A final consideration is that sometimes it is wisest yet to entrust the control of business practices to a governmental body like the Federal Trade Commission, which can survey the whole field of an industry instead of allowing regulation by isolated and sporadic private suits.

STUDENTS!

Laundry Doesn't HAVE To Be Expensive

THE HUDSON

Self Service Laundry

WHERE YOU GET A CLEAN WASH AS A 5 HUDSON ST. :: CAMBRIDGE OFF 1672 Mass. Ave. EL 4-9899

CLASSIFIED SECTION

Want to sell your car?
Looking for an apartment?
Would you like to type Ames Briefs?
It Pays to Advertise in the RECORD
Special Student Rates Available

AMES BRIEFS TYPED

By An Experienced Legal Typist
Make Your Appointment Early

Miss Dawson 31 Sheppard St.
TR 6-3825

HOTEL COMMANDER

Across the Common from Harvard

Private Dining Rooms
for Luncheons, Club Reunions, and Meetings
Grill, Snack Bar, Dining Room
Garden Street, Cambridge
KI 7-4800

HOTEL COMMANDER

BARBER SHOP

HAIR CUTTING EXPERTLY DONE
16 GARDEN ST.
Open Daily Tel. KI 7-4800

Oxford Shirts

White with Button-down Collar

\$3.35

3 for \$10

A real value in our opinion

The COOP

CONCENTRATE YOUR BUYING—BUILD YOUR PATRONAGE REFUND

Rackets Restrung

One Day Service \$3.50 to \$9.50
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE
Opp. Lowell House — TR 6-5417

Three Brothers

SHOE REPAIRING

LUGGAGE
LUGGAGE REPAIRING
FINE LEATHER BRIEF CASES

Two Convenient Locations

1644 MASS. AVE. EL 4-4818
Opp. Law School

2 BOYLSTON ST. EL 4-8717
In Harvard Sq.

PIZZA

at the

CAMPUS DEL

2 blocks north of Grad Center
1686 Mass. Ave.

Armenian, American and
Italian Specialties

JIM'S PLACE

30 DUNSTER STREET

FAMOUS FOR CHOPS
STEAKS, SEA FOOD

Full Line of Liquors and Beers

Complete Dinners .50 - 2.00

Porterhouse Steak for 2 \$4.00

THE MISSES
LITTLEFIELD

HARVARD SQUARE

PROFESSIONAL TYPISTS

4 Brattle Street TR. 6-7495
Harvard Square

DALTON-ELCOCK
BAR REVIEW

This review, preparing candidates for the Massachusetts Bar Examination, is given twice a year; September through December, evenings; and in June, days.

For information write or call:

Dalton-Elcock Bar Review
10 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS
HAncock 6-2850