



Harvard Law Record

Ten Years' Service to the Harvard Law School Community

VOL. 22. NO. 5

CAMBRIDGE, MASS., THURSDAY, MARCH 1, 1956

PRICE TEN CENTS

Unfair Competition Argument Is Subject of Ames Final

By WILLIAM D. HUTCHINSON

Presented with a record on appeal of 635 pages, the Scott and Morgan Clubs are preparing an unfair competition case for argument in the Ames final.

The argument, scheduled for April 10 at eight PM in the James Barr Ames Courtroom of Austin Hall, will be heard by a three-man court headed by Associate Justice John Marshall Harlan of the United States Supreme Court.

Acting as associate justices for the Ames Final round will be Sir Leslie Knox Munro, New Zealand ambassador to the United States, and former New Zealand representative to the United Nations, and Henry W. Edgerton, LL.B. '14, Chief Judge of the United States Court of Appeals for the District of Columbia.

Students will argue the case of *Mastercrafters Inc. v. Jaeger-LeCoultre Inc.* The facts and name of the case are borrowed from an unfair competition case recently decided in the Second Circuit per Frank, J., 221 F.2d 464; but were rewritten by Monroe H. Freedman, Faculty Assistant in charge of the Ames Competition, to include a jurisdictional issue and a problem of anticipatory pleading.

The action is by Mastercrafters for a declaratory judgment that it has not en-

Tax Suit Answer Filed By Griswold In District Court

Harvard University and Dean Erwin N. Griswold have filed an answer in the United States District Court for Massachusetts to the suit brought by Dr. J. Irizzary y Puente. In his complaint Dr. Puente asked for an injunction restraining Harvard from publishing the World Tax Series and sought \$1,000,000 compensatory damages and \$2,000,000 in punitive damages.

The defendants' answer first denies that the plaintiff's complaint states a cause of action. It further states "that there is not and never has been anything novel about the idea or plan of execution of the plaintiff's tax publications" referred to in his complaint, "all of which had been a matter of general knowledge and in use for many years prior to the plaintiff's use thereof; that the plaintiff's disclosure to the defendant Griswold contained nothing novel or original with the plaintiff and was in no respect secret or confidential, and the plaintiff himself made a general disclosure thereof both before and after his correspondence with the defendant Griswold."

Charges Denied

Continuing, the answer states that the defendants made no use, in connection with the Harvard Law School World Tax Series or in any other way, of any disclosure made by the plaintiff, and said World Tax Series is not similar to the plaintiff's publications; and that the preparation of said Series is a part of the International Program in Taxation conducted by the defendant Harvard University in carrying out its purposes of education and research in the field of International Legal Studies.

As alternative defenses, the answer denies the bulk of Dr. Puente's allegations and raises the defenses of the statute of limita-



Monroe H. Freedman

gaged in unfair competition with Jaeger-LeCoultre through the manufacture and marketing of an electric clock with a face design practically identical with that of the "Atmos" clock, a clock running on temperature changes and selling at a substantially higher price than Mastercrafters' electric clock. Jaeger-LeCoultre claims it is the sole distributor of the "Atmos" clock in this country.

Plaintiff also asks an injunction restraining defendant from harassing it through communication of its claim to plaintiff's distributors, and money damages for losses allegedly already caused by such communications. In addition the complaint asks defendant be enjoined from the prosecution of any action against its distributors based on such claim. Several actions against distributors of the electric clock had already been begun by defendant.

The jurisdictional issue arises under the Lanham Act, 60 Stat. 427, 15 U.S.C. 105 et seq. (1946). Defendant's motion to dismiss for lack of a federal question was denied by the District Court on the ground that the asserted jurisdiction was not frivolous.

On appeal the Court of Appeals decided that this motion should have been granted, and dismissed the case for this reason, despite the appearance of substantial federal questions during the trial. The court asserted that a consideration of the merits when the case should have been dismissed in the first place would be carrying the doctrine of trial convenience too far.

The jurisdictional issue is further complicated by the still largely undecided question of whether the nominal plaintiff in an action for a declaratory judgment can avoid the force of *Louisville & Nashville R. R.* (See AMES FINAL on page three)



Charles B. Rugg

tions, laches, and the University's immunity from tort liability as a charitable corporation.

The answer was filed for the defendants by Charles B. Rugg, LL.B. '14, and Oscar M. Shaw, LL.B. '29, of the Boston firm of Ropes, Gray, Best, Coolidge and Rugg. The Ropes, Gray firm is regular counsel for Harvard University.

Committeemen

Seven Law School faculty members have been appointed to committees of the Association of American Law Schools, AALS president Maurice T. Van Hecke has announced.

Dean Erwin N. Griswold was named to the committee on Academic Freedom and Tenure, and Associate Dean David F. Cavers and Professor Louis B. Sohn are members of the committee on International Law. Professor Arthur Von Mehren is on the Foreign Exchange Committee.

Professor Lon L. Fuller was appointed chief AALS representative to the joint conference on professional responsibility, Professor Charles Fairman was named to the Admissions Committee, and Professor Harold J. Berman will direct a study on the teaching of law in the liberal arts curriculum.

Keane Elected to Edit Review After Three Days of Balloting

Edward W. Keane, 2L of New Canaan, Conn., a 25-year old graduate of Harvard College, has been elected president of the *Harvard Law Review* for Volume 70. Mr. Keane was chosen at 5:15 Monday morning, on the third day of balloting for the *Review* presidency.

The 33 third-year editors of the *Review* first met Saturday afternoon to consider the 25 second-year editors who were eligible for the top position. That meeting lasted until 4 AM Sunday, and the men eliminated joined in the voting at the second session, which ran from 1 PM Sunday to the final ballot at dawn Monday.

As his first official act, Mr. Keane chose the officers of the *Review* who will share responsibility for the eight issues to be published during the academic year 1956-57.

They are:
Note Editors: David L. Shapiro, 2L of Cambridge, and Thomas H. Hagoort, 2L of Cedar Grove, N.J. Both are graduates

of Harvard College.

Treasurer: Anthony Partridge, 2L of Fairlawn, N.J. (Harvard '50).

Case Editors: Verne W. Vance, Jr., 2L of Omaha, Neb. and Harvard College, and David Sachs, 2L of Paterson, N.J., a graduate of the Wharton School at the University of Pennsylvania.

Article Editors: Herbert B. Olsson, 2L of Cambridge, and Bruce J. Terris, 2L of San Francisco, Calif. Both men are graduates of Harvard College.

Developments Editor: Paul Bender, 2L of Cambridge, also a Harvard alumnus.

Book Review Editor: Howard I. Kalodner, 2L of Philadelphia, an alumnus of Haverford College.

Mr. Keane, who will succeed Paul M. Bator, 3L of New York City, was chosen after a series of votes and hours of debate extending from Saturday to Monday.

The third-year editors first eliminated from consideration about one-half of the editors from the Class of 1957. Then those who had been eliminated joined with the seniors to successively narrow the field until only Mr. Keane was left.

Served in Korea

As an undergraduate, the *Review's* new president was a ranking member of Harvard's Class of 1952. Also a member of the Army ROTC, he was commissioned a second lieutenant at graduation and served with the Eighth Army in Korea before returning to Cambridge in 1954 to enter the Law School.

He succeeds to an office which has been filled in years past by many distinguished leaders of the Bar and of American public life. Among the former *Review* presidents are the late Sen. Robert A. Taft, LL.B. '13, the late Secretary of War Robert Patterson, LL.B. '15, Associate Dean David Cavers, LL.B. '26, and Dean Erwin N. Griswold, LL.B. '28.

Under the direction of the this year's officers, the new editors will assume some responsibility for several of the issues still to be published this spring. They will take full charge in June.



Samuel P. Sears

Administrative office responsible directly to the Supreme Court. This move would leave intact such administrative powers as now exist in other courts, but would give to the Supreme Judicial Court general superintendence and direction of the administration of all courts in the Commonwealth.

The commission pointed out that at least 13 other states, plus Puerto Rico, the District of Columbia, and the federal government have such an administrative office, and five states are currently taking steps in that direction.

In support of its recommendations giving greater central control to the Supreme Court of the Commonwealth, the commission recommended that broad rule-making powers be given to the Supreme Judicial Court, reserving to the legislature the power to modify or repeal any rule after its adoption. The commission noted that the legislature cannot effectively deal with court reform due to its great burden of work, and indicated that such broad rule-

(See COURT REFORM on page four)

Committee Advocates Reform To Clear State Court Delays

A special committee of lawyers and laymen has recommended extensive court reform for Massachusetts. The Judicial Survey Commission was appointed in December 1954 by Governor Christian A. Herter to make a "study of the entire administration of justice in all the Courts of the Commonwealth." Judge Louis S. Cox served as chairman and Samuel P. Sears, LL.B. '21, was vice-chairman. The Commission's report was recently presented to Governor Herter.

Steady Rise Seen For Automotives

Automotive industry stocks are in for a period of steady and rapid growth for at least the next decade according to William C. Hammond Jr., partner and manager of the Boston office of White Weld & Co. Speaking before the Bull & Bear Club last Thursday at Harkness, Mr. Hammond itemized the bases of his prediction as follows:

1. Redistribution of wealth over the past two decades, which has created a mass market for automobiles;
2. Growth of consumer credit and the confidence to use it (about 60% of all new cars are bought on the installment plan);
3. Rapid growth in population and the trend toward suburban living. Between 1940 and 1950 suburban population increased 35 1/2%;
4. Increased emphasis on research which may yield such features as air-conditioning, aero-dynamic design, replacement of steering wheels with a small lever, electronic safety devices such as radar, indestructible finishes, and movable seats covered with new fabrics.

Rapid Obsolescence

With such drastic changes being made, obsolescence of present cars will be rapid and the car manufacturing firms will be engaged in a hotly competitive battle for the new markets. This will put a premium on top management and availability of large amounts of capital, Mr. Hammond said.

He then evaluated Chrysler, Ford, and General Motors Corporations and noted that their growth potential would soon be recognized by institutional investors, sending their prices up. Present high rates of dividends (4-5%) are accounted for by the fact that investors have heretofore regarded automotive stocks as unstable and subject to violent cyclical movement.

—Spira

Lacrosse Men Wanted

An informal Law School lacrosse team has a coach, Charles T. Albert, 3L of Fallston, Md. All it needs is some players.

Law School students who are interested in joining the team and playing the old Indian sport this spring are urged to contact Albert at EL-4-3612.

Dean Pound Talks On Thomas More

Sir Thomas More made great contributions to equity as well as to philosophy, Dean Emeritus Roscoe Pound told the St. Thomas More Society at a luncheon meeting Monday.

Describing Sir Thomas' career as Chancellor, Dean Pound said that lengthy pleadings based on the poverty, war record, or widowhood of the pleader were eliminated from bills in equity during Sir Thomas' term on the woolsack.

More, who is also known as the author of *Utopia*, was one of the Renaissance greats, Dean Pound said. He served under King Henry VIII as Chancellor, but fell from grace when he refused to attend the coronation of Anne Boleyn because he disapproved of the King's prior divorce from Catherine of Aragon.

Sir Thomas was forced to resign and subjected to false charges of bribery, Dean Pound stated. He was finally convicted of treason for having stated that Parliament had no power to make Henry VIII head of the church. More was executed in 1535 and canonized in 1935.

Editorials

Criminal Appeals

Every year about 2000 petitions for review of criminal cases come to the Supreme Court, of which about 100 are normally granted. Thus, busy justices are compelled to dispose of these cases quickly with only a petition and perhaps some affidavits to guide them. Yet each case vitally affects the life or liberty of a human being.

Constitutional facts, like the original facts giving rise to liability, have to be tried and determined in many cases. This means a hearing with witnesses, examination, cross-examination, exhibits, documents, and arguments. There is no other realistic way of determining a thousand and one knotty questions of constitutional fact which surround a conviction—for example, the exclusion of Negroes from jury selection, the preparation of a correct trial record after the reporter's death, or the minimum effectiveness of counsel to insure representation of the defendant. Yet these constitutional facts can seldom be determined in the course of the trial itself, and are often unknown to the defendant until long after the trial.

Appellate review by state courts is not the answer, for most states have no effective means of determining constitutional facts in the bulk of criminal cases. Nor are the federal district and circuit courts, with their heavy dockets and limited personnel, equipped to do the job.

Suppose there were no tax court standing between the Internal Revenue Service and the federal courts. If revenue determinations could be attacked only by certiorari and the extraordinary writs, the results would be uncertain and chaotic. Constitutional provisions are only as strong as the machinery which enforces them in particular cases. Yet a criminal litigant seeking vindication of his constitutional rights must follow the slow process of shopping around without much chance of getting a definitive determination of the constitutional facts upon which his rights necessarily depend.

We recommend that lawyers and legislators consider the establishment of a federal court of criminal appeals on the same level as the circuit courts of appeals. It could be modeled after the Court of Patents and Customs Appeals, already set up to handle that technical phase of the law. The new court would determine or appoint special masters to determine the constitutional facts in all federal and state criminal cases coming before it by appeal, habeas corpus, or other existing legal avenues.

The very unity of a single court devoting all its time to criminal cases would tend to create a more uniform and definitive constitutional law as applied to crimes. The growing tendency to take all criminal cases to the Supreme Court on certiorari might well be halted. Moreover, whenever the Supreme Court does review a criminal case the justices would be greatly aided in their task by the presence of a specially determined record of the constitutional facts surrounding the conviction as well as the usual affidavits and lower court opinions.

Spite or Respite

Once again the Easter vacation has been scheduled so late as to be of little practical use as a respite from study. This year the Administration has set the week of April 16-22 as the Spring recess. This recess falls only five weeks before the start of final examinations, and is rapidly becoming known as a seven-day study period.

There are many reasons why the vacation should be the first week in April rather than the third. For one thing, Easter Sunday falls on April 1 and the Jewish Passover is on April 2. Harvard College and most other universities are off during Easter week, and family reunions are traditionally held at times when all members can be at home. Looking at the entire spring schedule, there are seventeen weeks of classes between Christmas and the current recess, with only seven weeks of classes and exams after the recess.

If it is the desire of the Law School to convert the Easter vacation into a study period, then that should be stated openly, and all students asked to stay in Cambridge. But if the week is meant as a vacation, it should be scheduled so that students may enjoy it.

Harvard Law Record

Published weekly on Thursday for twelve weeks of each term by *The Harvard Law School Record Corporation*, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and Editorial Offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone, Kirkland 7-7600, extension 447. Entered as second-class matter November 19, 1946 at the post office in Boston, Massachusetts, under the Act of March 3, 1879.

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Off the Record

Stephen Van Rensselaer III, the Good Patroon, was the owner in fee simple conditional of Blackacre, an estate in land. He subinfeudated to A, who is five years old and insane. A is the owner of horse Dobbin, cow Bessie, and Rose II of Aberlone—which graze on a section of Blackacre known as the Potrero.

B, an adverse possessor, has leased part of the property to three sharecroppers: Carolina Williams, Driver Robinson, and Cato English. Baldwin J. Gwynne, a man of financial responsibility residing in Cleveland, Ohio, is a creditor of the croppers, and seeks to levy on Rose II of Aberlone, believed to be a barren cow.

Mrs. Sibbach, A's guardian, refuses to allow Rose II of Aberlone to submit to a physical examination under a writ *de ventre inspiciendo*, as provided by Federal Rule 35. Thereupon, one Walter J. Gwynne, representing himself as Baldwin J. Gwynne, slaughters cow Bessie on the kitchen floor, mistakenly believing her to be Rose II. Mrs. Sibbach, upon her return from Mays Department Store, where she had been held for two hours as a suspected shoplifter, being released only after consenting to the importunities of the store manager, sees the cow with its throat slit, and being a corpulent woman with a paper-thin skull, suffers a miscarriage and a serious glandular imbalance.

A then writes the following letter to his sister, Mrs. Antillico Palsgraf, and deposits it in the old Oak Sapling:

Dear Sister Antillico,

Things have gone all to Pot here and if you will come and be like a daughter to me and care for me and refrain from drinking, smoking and card playing, in the interest of peace and harmony I will give you one dollar in hand paid.

Love,

A

In reliance on A's promise, Mrs. Palsgraf purchases a ticket to Blackacre from the Long Island Railroad. While waiting for her train she is struck by a lighted squib negligently thrown against her by a servant of the railroad off on a frolic of his own.

Mrs. Palsgraf receives injuries, which are further complicated when she is fed food containing a dead mouse. The food was prepared by a nurse named Jewel Carmen, and there is evidence tending to prove that her hands were dirty at the time.

What are rights of the parties?

EDWARD T. POLLACK, 1L

Letters to the Editor

TO THE EDITOR OF THE RECORD:

Referring to the article on Capital Punishment in the RECORD issue of February 24, 1956, I note your quotation from my comment on the efficacy of severe penalties in criminal law taken from my book "Criminal Justice in America." I still adhere to the general proposition with respect to severe penalties there expressed. But as to the particular matter of capital punishment, may I suggest a reference to the case of *State v. Sawtelle*, 66 N.H. 488, 32 A. 831.

In that case Sawtelle determined to kill his brother, Hiram. Out of abundant caution he planned to do the act across the state border in Maine where capital punishment did not obtain. He succeeded in burying the body in Maine, but by mistake seems to have committed the murder on the New Hampshire side of the line. See 66 N.H. 490. I remember very well the general excitement in New England at the time of the murder in 1890 as I was a student in the Law School at that time. For a long time it was not clear whether the crime had been committed in New Hampshire or in Maine. I suggest that the circumstance that Isaac went out of his way to do the act as he thought in Maine bears upon the efficacy of the death penalty.

ROSCOE POUND

TO THE EDITOR OF THE RECORD:

Your excellent feature on the merits of Capital Punishment is most timely. At a time when the English Parliament has taken formal steps to outlaw the death penalty it is desirable that we Americans take a second glance at the role of the death penalty in our society.

... Yet the feature neglects one argument that is at once moral and practical. Virtually every execution contains at least a scintilla of doubt as to the guilt of the condemned person (even in cases where confessions are freely given, psychologists can show us that there may be motives for such a confession other than criminal guilt itself). In most cases, fortunately, this doubt is minimal and society is forever assured that the guilty person was punished. Yet, in some cases there will be new evidence uncovered several years after punishment has been imposed that tends to show the innocence of the executed person. If there is the slightest doubt that a condemned man is guilty can we justify his execution?

MATTHEW C. KESSLER, 3L

TO THE EDITOR OF THE RECORD:

I have noted that the December 1, 1955 issue of THE HARVARD LAW SCHOOL RECORD contains an article entitled "Harvard Publishes Periodicals Index." This article refers to the Editor of the *Index to Legal Periodicals*, Miss Dorothea A. Flaherty, and the Assistant Editor, Mrs. Fanna M. Lovinger, as Harvard Law Library staff members.

I wish to call your attention to the fact that while the Harvard Law School generously provides office space and equipment for the Editors of the *Index* in return for periodicals turned over to the Harvard Law Library, the *Index* is published by the American Association of Law Libraries. The American Association of Law Libraries employs and pays the salaries of Miss Flaherty and Mrs. Lovinger and controls all editorial policies. The actual publication of the *Index to Legal Periodicals* is done by the H. W. Wilson Company, which serves as its Business Manager under a contract with the American Association of Law Libraries.

FORREST S. DRUMMOND, Chairman
Committee on the Index to Legal Periodicals
American Association of Law Libraries

Current Case

Can a defendant in a criminal action in a state court enjoin a federal agent from introducing or allowing to be introduced in evidence property seized in an illegal search by federal agents and from giving testimony based on the illegal search and seizure? A sharply divided Supreme Court answered in the affirmative in *Rea v. U.S.*, 76 S. Ct. 292 (Jan. 16, 1956). Defendant was originally indicted in a Federal District Court for possession of marihuana. He moved to suppress the evidence on the ground that the search warrant under which the evidence was seized was improperly issued. The District Court granted defendant's motion and later, on the Government's motion, dismissed the indictment.

Then a federal narcotics agent swore to a complaint before a New Mexico judge, and defendant was in due course indicted by New Mexico. Defendant sought in a U.S. District Court to restrain the agent from testifying in the New Mexico court with respect to the results of the illegal search and from introducing the marihuana seized or allowing it to be introduced in the state court. Defendant was turned down in the District Court and in the Court of Appeals.

Earlier Decisions Distinguished

The majority opinion, by Mr. Justice Douglas, distinguished *Wolf v. Colorado*, 338 U.S. 25 (1949), and *Stefanelli v. Minard*, 342 U.S. 117 (1951), which held that the Fourteenth Amendment does not forbid use of illegally obtained evidence in state courts, by noting that here an injunction is sought against a federal agent, while in *Wolf* the defendant has already been convicted and in *Stefanelli* an injunction was sought against state officials and agents. This case raises a question, in the majority's view, concerning the federal courts' "supervisory powers over federal law enforcement agencies." (p. 294)

"A federal agent has violated the federal rules governing searches and seizures. . . . The power of the federal courts extends to policing those requirements and making certain that they are observed. . . ."

"... To enjoin the federal agent from testifying is merely to enforce the federal rules against those owing obedience to them."

"The command of the federal rules is in no way affected by anything that happens in a state court. They are designed as standards for federal agents. The fact that their violation may be condoned by state practice has no relevancy to our problem. . . . They are designed to protect the privacy of the citizen, unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruits of his unlawful act either in federal or state proceedings." (p. 294)

Dissent Adheres to Prior Decisions

Four justices dissented, through an opinion by Mr. Justice Harlan in which he first took issue with Justice Douglas's assertion that the federal courts have supervisory powers over federal law enforcement agencies. Such powers belong exclusively to the executive branch of the Government, in Justice Harlan's opinion. He quotes *McNabb v. U.S.* (1943), 318 U.S. 332, 347, "We are not concerned with law enforcement practices except in so far as courts themselves become instruments of law enforcement."

Secondly, Justice Harlan dismisses the distinguishing of the *Stefanelli* case by the majority: "... this (distinction between federal and state agents) seems to me illusory, for as the Court recognizes the State's case against petitioners appears to depend wholly on the evidence in question; the injunction will operate quite as effectively, albeit indirectly, to stultify the state prosecution as if it had been issued directly against New Mexico or its officials." (p. 295)

Lastly, Justice Harlan feels that since by force of the *Wolf* decision a conviction gained in a state court by use of the evidence in question would not be disturbed by the Supreme Court, the evidence should not be suppressed by federal court injunction before it is used by the state: "... To say that federal interference is nevertheless justified at this point in the proceedings whenever the state has not yet obtained the evidence seems to me to make the matter simply a race between a state prosecution and a federal injunction proceeding. I do not believe that a rule dependent on the fortuitous circumstance of winning that race is a sound one in this important field of federal-state relations." (p. 296)

Implications of Decision

Since this is a 5-4 decision, we cannot say that a new rule has been established; we must wait to see whether this decision will be followed in the future by the Supreme Court. The rule of this case would prevent to a large extent the current practice of "cooperation" between federal and state agents (in a state whose courts do admit illegally obtained evidence) so as to nullify in effect the protection afforded the citizenry by the Fourth Amendment against unreasonable search and seizure by federal agents, which was made effective by *Weeks v. U.S.* 232 U.S. 383 (1914) (holding illegally obtained evidence inadmissible against a defendant in a federal criminal action).

—Friedman



"I think Howard takes Law School a little too seriously"

"The Wall Street Lawyer"

A biting and revealing commentary on the doings, morality, and organization of America's most powerful group of attorneys appeared in the January and February issues of *Harper's Magazine* in an article written by Martin Mayer entitled, "The Wall Street Lawyer; The Elite Corps of American Business."

More than twenty law firms with no fewer than fifteen partners are today listed in the Martindale-Hubbell law directory, Mr. Mayer declares, with all but two located in the Wall Street Area. These firms, with twenty to fifty "associates," young lawyers who are employees rather than members of the firm, will have an aggregate staff of up to two hundred persons. To meet such a payroll, the firm must have an annual income of at least one million dollars—with two and three times this amount as the average.

The giant law partnership is a relatively new phenomenon on the American scene. Prior to 1900 the average law firm was either an individual enterprise or an association of two or three independent attorneys. These men did all the work themselves with aid from clerks, men who received next to nothing for their services, "and the work they did was usually worth little more than it cost," Mr. Mayer comments. At the turn of the century, however, several New York law firms announced that henceforth they would hire only graduates of accredited law schools and would pay them a salary—\$600 per year.

Growth of Law Firms

At this time great changes were taking place in American business which eventually led to the present-day dependency of industry on the legal profession. The Sherman Anti-Trust Act and the Bankruptcy Act brought "cases of unprecedented complexity, which would take several years in processing, and which demanded the services of teams of lawyers rather than individuals," Mr. Mayer explains. With these cases and the school-trained clerks, the great law firms grew. With the managerial revolution in American business, and the increasing complexities of individual industrial giants, the lawyer became an indispensable part of the team running the business. "In many cases," the article says, "a partner of the law firm sits on the company's board of directors, and in almost every case the law firm is regarded as part of the company's permanent secretariat."

As a result, no stock or bond issue is floated; no important decision affecting the future of the business is made, without consultation with the corporation's law firm. The lawyer is asked to give his opinion not only as to the legal effects of any particular course of action, but also to guess, intelligently, as to how the interested governmental agency will react. In order to give this advice, the lawyer must know as much about the management and peculiar difficulties of the business as any of the top management officials.

Complicated Contracts

The day-to-day work of these firms, Mr. Mayer points out, has a certain element of the routine. This work includes the making of contracts and possible direct negotiations with the government, the military, or the AEC. "Contracts," Mr. Mayer says, "in which the placement and composition of every bolt must be specified—as well as a formula for possible renegotiation, or even cancellation" have to be made out with the greatest accuracy and knowledge. These complicated contracts reflect all the "touchy human attitudes subsumed under the heading 'labor contracts,' or all the statutory trap-doors cut by a wise old Congress beside the narrow path which leads to the sale of stocks and bonds."

The quality of the young men hired into the big firm as associates will determine not only the quality of the staff work behind the partners, but the eventual quality of the partnership itself. "Where law firms fall down," Mr. Mayer quotes a senior partner as saying, "is in their failure to get the best graduates from the law schools." The entrants into the Wall Street firm by the young aspirant is described by Mr. Mayer in these words: Family and social connections are always nice to have, but any young man who does well enough at

college to win admission to Harvard, Columbia, or Yale Law School, and well enough at law school to rank in the top 5 per cent of his class will find himself welcome on Wall Street. Ordinarily he will not have to look for a job; the job will come up to school scouting for him, well before he graduates. If all goes as planned, the bright young law student will journey down to Wall Street during his senior year for interviews with the "hiring partners" of several firms. He will start work in September, with 100 to 130 like him at a salary that will run somewhere between \$4000 and \$4800 a year.

One Chance in Seven

From this base his salary will rise in annual bursts of \$500 to \$1000, and unless the year has been disastrous there will be a Christmas bonus, as little as \$100 in some firms, as much as \$1000 in others.

The problem facing this young law school graduate, according to Mr. Mayer, is not to decide upon the firm, but about the kind of work he will have to do—and his chances of becoming a partner. "This chance varies from one in seven to one in fifteen, depending on the firm and the year in which he joins the firm." Where the partners specialize in clients, the firm tends to regard its young lawyers as a "legal pool," similar to the "secretarial pool": whoever isn't busy at the moment gets called in to help, and then sent back to the pool when the individual job is done. "Where the partners are each concerned exclusively with one narrow field, they tend to demand the same specialization from their assistants—without necessarily asking whether this bright law-school graduate is best suited to a life of drawing wills," Mr. Mayer reports.

Amoebae and Boilerplate

He goes on to describe two phases of research work which are usually given the new associate. They are, "examining the amoebae," and the preparation of "boilerplate." Most of the law firms represent banks that act as transfer agents when a corporation's stock is bought or sold. The bank may be liable for mistakes in transferring stock ownership. Many times persons claiming to have an owner's power of attorney or to be a trustee of a decedent's estate wish to sell or transfer the stock. Since the stock certificates themselves are not countersigned by the owner of record, the suspect stock is shipped up to the law firm for an opinion on whether the trustee had a legal right to sell. "He almost always did," Mr. Mayer indicates, "which makes the work of verification about as dull as any work can be."

The "boilerplate" is the equally tedious job of preparing documents for new security issues. Firms which do a great deal of this work, Mr. Mayer claims, "are unpopular with the younger men," because, "they always have a high ratio of salaried lawyers to partners. During his first year, especially, the young lawyer will work nights; later the pressure will slacken, but a night a week remains customary up to and often including old age." Tax work,

"the newest and most rapidly growing specialty within the law," constitutes an equally large percentage of the large law firm's time.

Almost never, Mr. Mayer points out, will the firm represent the client in court. For this, litigating specialists—outside consultants—are retained. "Criminal law," Mr. Mayer says, "is frankly a separate specialty and one which does not interest the corporate lawyers, though they will very occasionally undertake a defense in an unpopular cause celebre: Debevoise, Plimpton & McLean appeared for Alger Hiss; Winthrop, Stinson, Putnam & Roberts for William Remington."

Law and Intelligentsia

The partners themselves, Mr. Mayer observes, form an integral part of the New York intelligentsia: "Their infiltration into the societies of the learned and artistic is continuous and in some cases overwhelming." Their associations cut across international boundaries and they have acquaintances and associations with similar groups in Europe—especially the Inns of London.

Mr. Mayer's article concluded with an evaluation of the moral position these firms have taken as members of the profession (with their consequent public responsibilities to justice and fair play) and their integrated position in American business life. He cites the example of the various Wall Street scandals—of the 1920's and the uranium bond market of today—which would, and could not have flourished without the active aid of the corporation lawyer. Mr. Mayer records a statement made on this problem by Mr. Justice Harlan Fiske Stone, who himself had been a partner in two Wall Street firms before he went on the bench. "The successful lawyer of our day," Justice Stone said, "more often than not is the proprietor or general manager of a new type of factory. More and more he must look for his rewards to the material satisfaction derived from profit as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest. . . . At its best this changed system has brought to the command of the business world loyalty and a superb proficiency and technical skill. At its worst it has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the market place in its most anti-social manifestations."

Mr. Mayer evidenced sympathy for this analysis when he commented, "There is, no doubt, a large element of hypocrisy in the purist's claim that the lawyer stands first for the law and second for his client—but this is the kind of hypocrisy that makes possible the rational organization of society."

—Chazen



Richard H. Field

Field Requests Jury Trial Fee

A recommendation that Massachusetts courts charge a fee for trial by jury in civil cases has been made by Professor Richard H. Field, Harvard's specialist in judicial administration.

Writing in the 1955 *Annual Survey of Massachusetts Law*, a book which will make its appearance in April, Mr. Field has endorsed one of the most controversial proposals in the recent report of Gov. Christian Herter's Judicial Survey Commission.

Mr. Field insists that the proposed reforms would have two beneficial results. For one thing, it would expedite litigation. It also would save money for the taxpayers, who now very often pick up the tab for cases "where the amount at stake between the litigants is substantially less than the cost of the trial to the state."

This will be true even more often in the future if the Massachusetts Legislature adopts another of the recommendations of the Judicial Survey Commission, viz, that jurors' fees be increased to \$15 a day.

Pennsylvania Law Cited

Professor Field points to Pennsylvania as a state where a reform of the type he recommends has been put into effect with good results. "A recent statute of that state provides," he writes, "that courts may adopt a rule requiring arbitration of all cases in which less than \$1,000 is in controversy except where the title to real estate is involved."

"The members of the bar who are chosen as arbitrators are paid by the county in the first instance, but any party dissatisfied with the result of the arbitration must, as a condition precedent to a jury trial, reimburse the county for the arbitrators' fees. Moreover, these fees are not taxed as costs or otherwise recoverable if the party wins before the jury."

"This procedure has been upheld by the Supreme Court of Pennsylvania against the challenge that it violated the 14th Amendment of the Constitution of the United States and the Pennsylvania constitutional guarantee of jury trial."

AMES FINAL

(Continued from page one)

v. Motley 211 U.S. 149, 29 S.Ct. 42 (1908), by pleading, in support of its prayer for declaratory judgment, facts which introduce a federal question into the case; but which, in an action for coercive relief, would be set up by the defendant (here plaintiff) as a defense in such coercive suit.

While reversing, on the jurisdictional issue, the District Court which had found for Mastercrafters, the Court of Appeals went on to state that the similarity in appearance of the electric clocks would mislead persons seeing it in the homes or business establishments of acquaintances, making them believe it was the "Atmos" clock and thus damaging plaintiff.

This was the basis on which Judge Frank had based his decision in the case on which the Ames record is based. Plaintiff contends this dictum presents an important issue of substantive law since it is a departure from previous decisions indicating that a party complaining of unfair competition by means of an imitation of his product must show that actual purchasers would be misled.

The District Court had ruled for defendant despite the fact it found it "incredible" to believe that the face design of the electric clock was anything but a conscious imitation of that of the "Atmos" clock.

Design Not Patented

In so doing it followed what it thought to be the law in view of the fact that the electric cord and other accoutrements of the electric clock would prevent the misleading of any actual purchasers. The design itself was not patented although the name "Atmos" is a registered trademark.

Oralists for the Scott Club are Richard F. Newell, 3L of Berkeley, Mich., and Hal F. Reynolds, 3L of Brecksville, Ohio. Appearing for the Morgan Law Club will be Roger A. Moore, 3L of Sherborn, Mass., and Michael C. Van Beuren, 3L of Newport, R. I.

Of counsel on the brief for the Scott Club are Scribner L. Fauver of Elyria, Ohio; James A. Foltz of Memphis, Tenn.; Frank C. Gardner of Miami, Fla.; Bengt Kjellgren of Chagrin Falls, Ohio; Karl C. Lemp of Oak Park, Ill.; and Arthur W. Mudge of Hebron, N. H. All are third year students.

Preparing the brief for the Morgan Club are John F. Bohman of York, Me.; Craig Emerson of Milwaukee, Wis.; Howard M. Fry of Wyomissing, Pa.; Charles Kannel of New York City; and William E. Wiggins of Wilmington, Del.; also all 3L.

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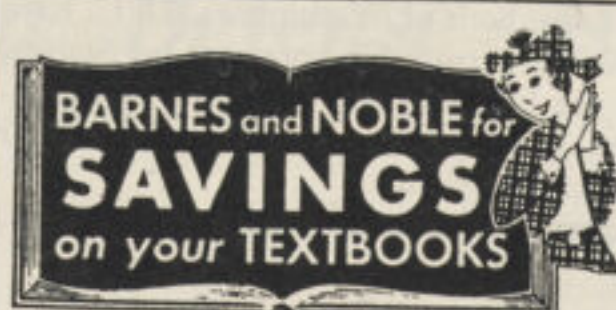
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Secretary to Dean Pound Not Yet Planning to Retire

Wondering what a lifetime of hard work looks like from the other end, we went around the other day to talk with Miss May McCarthy, a sprightly, efficient, and altogether genial lady who has put in nearly half of her 78 years working as secretary, factotum, and general manager for Dean Emeritus Roscoe Pound.

We approached the Dean's office circuitously through the stacks of Langdell Hall, hoping to catch Miss McCarthy alone and thus avoid disturbing a working routine which we assumed to be well-established as well as productive. Luck was with us—the Law School's famed dean was just leaving his office for a short breather.

"I think," he said, as we lurked behind some stacks in one of the best-equipped law libraries in the world, "I'll go out and see if I can find a book."

Never being ones for missing an opportunity, we found ourselves in conversation with Miss McCarthy some moments later. "No pictures, please," she said, when we had explained ourselves. "In fact you shouldn't be taking the time to write about me at all. I assist—just help out with the little jobs to make things easier for the Dean."

Years of Service

The fact remains, however, that Miss McCarthy is eminently worth talking about, not only because of the years she has devoted to Harvard and its service, but also because of the attitude which has grown out of that service.

A New Englander through and through, she was born in Boston in 1877. Like many native Bostonians, she has ordered her life in terms of the hardy combination of optimism, pioneer spirit, and sense of tradition which is her birthright.

Her early education was at Girl's High and Latin School—then one institution, but long since become two—and to this she added professional training at the Hickox Secretarial School.

Worked for Thayer

"That was a long time ago," said Miss McCarthy, almost seeming to peer back over the last forty-odd years "I finished Secretarial School and came to work at Harvard in 1910." The first person for whom "that new Miss McCarthy" went to work was Prof. Ezra Ripley Thayer, then an active member of the Faculty and still one of the outstanding figures in the annals of the Law School.

It was not long, however, before she got a new employer. The 20th Century was still in its teens when she went to work for Dean Pound and thus began an association that was to prove both rewarding and long-lasting. "I was with Dr. Pound for the twenty years that he was Dean," she said, picking up a pencil that had fallen near the desk, "and for the next ten years, when he was a University Professor."

"Retirement"

"We both 'retired' in 1947," she remembers, "from the University, at any rate." But Dean Pound, too much involved with the law to be able to lay it aside, continued his labors, and Miss McCarthy stayed at his side.

"That's why I live in Boston," she explained. "For the first thirty years or so I lived in Cambridge, but after 1947 Dean Pound served for some time as Editor of the NACCA Law Journal. Its offices are in Boston, so I moved into the Bellevue to be nearer work."

"Then we came back to Cambridge,"

she recalled, "but I somehow haven't managed to get the time to move back here. I suppose I'll get around to it one of these days."

Wondering about the rush-hour rigors of travel via the MTA, we asked Miss McCarthy how she got to work in the morning. "Subway," she said, in a tone that indicated the question had been a silly one. "Every morning. It never is held up much by bad weather."

Travels of Dean Pound

"Travel," she said, still about one jump ahead of us. "Dean Pound used to travel quite a lot, both before and after he retired. Many times I've kept the office open while he's been halfway around the world somewhere, visiting such places as China, India, Sweden, or California."

Retirement plans? "None to speak of," she said. "Right now Dean Pound is working on a new book on Jurisprudence, and that should be enough to keep us both busy for two years or more. Then, maybe, there will be time to think about retiring."

Fearing we might be overstaying our time, we put on our coats and asked Miss McCarthy if she would like to make any general comments on the long record of faithful service she has compiled at Harvard. "No pronouncements to make," she demurred. "Just say I've enjoyed every minute of it." Then we asked just what it was that had made her feel happy at devoting her life to the school as she has.

Brilliant Bosses

She was silent for a minute, as she pressed some books firmly back into place on the desk near where we stood. "Well," she said, "you might say this. I feel I've been very lucky here at Harvard—I've always had brilliant men to work for."

As we left the office we heard a movement in the stacks behind us, and the sound of footsteps entering the office. "Well," said a familiar voice, "I found one."

Feeling that we had been lucky enough to hear a genuine pronouncement we collected scarves, gloves, and the like, thanked the genial lady for what had been a very pleasant time, and took our leave.

—Coy

Alumni Notes

LL.B. '51—Joe M. Kyle has moved his law office to the Citizens Building and Loan Association Building, 12 South Perry Street, Rockville, Maryland.

LL.B. '52—Samuel A. Stern and Harvey A. Leve, both of Washington, D. C. have formed a partnership known as Ivy Stables, for the breeding and racing of thoroughbred horses. The stables are located at Bowie, Maryland.

COURT REFORM

(Continued from page one)

making powers have already been granted to the highest courts of about half of the states.

Tackling the problem of congestion, the commission remarked that "The worst congestion in trial of jury cases in state courts in the entire United States is found in the Superior Court of the Commonwealth of Massachusetts."

Reardon Commended

Although the commission commended Chief Justice Paul C. Reardon of the Superior Court for efforts he has already made toward solving this problem, the commission offered several recommendations of its own. Most important are those for the restoration of pre-trial conference procedures, adoption of a policy which would prevent unnecessary adjournments and continuances of cases once they are on the trial list, and elimination of undue delay in judicial decision.

As for reform in district courts, the commission recommended that all judges in these courts be required to serve full time and be prohibited from practicing law on the side. A sub-committee noted the haphazard organization of these courts, and remarked that "until conditions are changed, the mass of attorneys will continue to have little confidence in these courts as forums for disposing of matters of consequence."

Judges are Judge-Lawyers

The most important source of lack of confidence in these courts lies in the fact that the majority of the judges are cast in the role of judge-lawyers: "A private attorney cannot be blamed for feeling at a disadvantage in court when opposing counsel is a district court judge."

With regard to the Probate Courts, the commission found that lack of supervisory power in any of their judges has resulted in such variety of forms and practices that lawyers sometime find it almost impossible to practice in the probate courts of any county but their own. Therefore, the commission recommends "that the Administrative Committee of the Probate Courts powers be given power to prescribe and enforce uniform practices and procedures among all the probate courts."

Incomprehensible Contradictions

And because "incomprehensible contradictions" occur within a single probate court when judges disagree on administrative matters, the commission recommends that "a judge in each county having more than one probate judge be made the chief judge of that county and be given responsibility for the administration of his court."

The commission found that "the administration of criminal justice in the Commonwealth has, on the whole, been well handled. It made two recommendations, however: that district attorneys not visit judges in chambers without being accompanied by defendant's counsel; and that some review of the status of probationers be instituted by the courts, "with the view that exemplarily conduct of a probationer may warrant reduction of the period of probation."

—Jacobs

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Bar Group Votes to Endorse Compulsory Social Security

A resolution calling for extension of the Social Security program to include all self-employed lawyers was carried to a smashing victory in the House of Delegates of the American Bar Association last week.

By a vote of 100-25, the ABA's top policy-making body formally endorsed a bill now pending before the Senate Finance Committee which would achieve precisely that objective.

The Senate measure, which already has passed the House of Representatives by a wide margin, would effect a broad overhaul in the Federal Social Security program.

Schedule to be Liberalized

In addition to its provisions concerning lawyers, the bill would extend coverage to many other groups and would liberalize the schedule of benefits in many important respects.

By voting as it did last week at Chicago, the ABA's House of Delegates went further in support of Social Security for the Bar than it ever did before. Last summer it endorsed voluntary coverage for lawyers. This time it backed a Senate bill which, if adopted, will make the coverage compulsory.

The action of the Delegates was interpreted in most quarters as a reflection of the ABA's current drive to double its membership and to enroll the younger lawyers who, by and large, have ignored the organization in recent years.

Grass Roots Support

Earl Morris of Columbus, Ohio, told the Delegates that the proposal for compulsory Social Security coverage has "grass roots" support throughout the country. It was endorsed by 27 of the 34 state bar associations which responded to an ABA poll on the matter.

That is not to say the Delegates acted without a voice being raised in opposition. The resolution met a blistering attack on the floor from Karl C. Williams, of Rockford, Ill., leader of what the New York Times characterized as the "old school" of the ABA.

Passage of an Era?

Mr. Williams said the decision of the Delegates to vote for the Social Security resolution "marked the passage of an era." The real issue involved, he contended, was the independence of the Bar. The ABA should resist, he said, all forms of compulsion of lawyers.

The Delegates also acted on several other matters. They approved a proposed model code of disciplinary procedures for the legal

profession. They endorsed some proposed changes to the anti-trust laws and condemned others. They also adopted resolutions:

(1) Favoring legislation to amend the United States Criminal Code to provide for review of sentences in the appellate courts.

(2) Condemning the "reprehensible practice" of offering military service as an alternative to prosecution or imprisonment for criminal offenses.

—Schumacher

Committee Chosen For Class of 1956

A Temporary Committee for the Class of 1956 has been appointed. The committee, which was chosen by the PBH Chairman, is composed of the presidents of various student organizations, such as the honorary societies, the publications, and the eating clubs. The Committee will draft the 1956 Class Charter and conduct the first election of class officers and the permanent class committee.

Assistant Dean William L. Bruce, LL.B. '51, special advisor to the Temporary Committee, spoke at the opening session. A chief topic of discussion was the improvement of the 1956 Charter over those of previous classes.

It is expected that class elections will be held in about five weeks. Nomination will be by petition, with details to be announced later. As is customary, the members of the Temporary Committee have disqualified themselves from being candidates in the first elections.

The committee members are Sheldon J. Berens, Kew Gardens, N. Y. (Coffee Hour); Alan D. Hakes, Longmeadow (Board of Student Advisers); Herbert H. Hershfang, New York City (PBH Committee); Robert L. Larson, Rockford, Ill. (Chancery Club); Michael J. McNulty, Niagara Falls, N. Y. (Dorm Council); Frank A. Olson, La Grange, Ill. (The Record); and Nancy Webb, Milton (member at large).

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