

Rights Panel Inactive After Spirited Start

By Martin E. Robins

Attempting to forge an American Bar Association position paper on race relations by its Southern-weighted Special Committee for Civil Rights and Racial Unrest was like "bringing together leaders of the U.S. and the Soviet Union to discuss world problems," recalls committee-member Frederick G. Fisher Jr., LL.B. '48, of the Boston firm of Hale & Dorr.

Organized in the urgency of the racially tense summer of 1963, the 17-man special committee's immediate task was the presentation in August of that year of a report to be submitted to the ABA House of Delegates meeting in Chicago.

After sincerely wrangling over "almost every sentence," according to Mr. Fisher, the panel hammered out a moderate report, which made no mention of the proposed Civil Rights Bill. The report passed the House of Delegates with only one dissenting vote.

Since its vigorous start, the committee for the past one and a half years has been relegated to stand-by duty. Some observers attribute the panel's continued existence to the ABA's fear that its termination might be

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Books to Lawyers Abroad

A "lawyer-to-lawyer" program, by which books concerning the basic nature of the American judicial system will be placed in the hands of selected lawyers, jurists, teachers and law students in emerging nations, will benefit from the publicity and fund-raising efforts of five third-year law students early next week. The students are John A. Bross Jr., Karl R. Huber, John R.

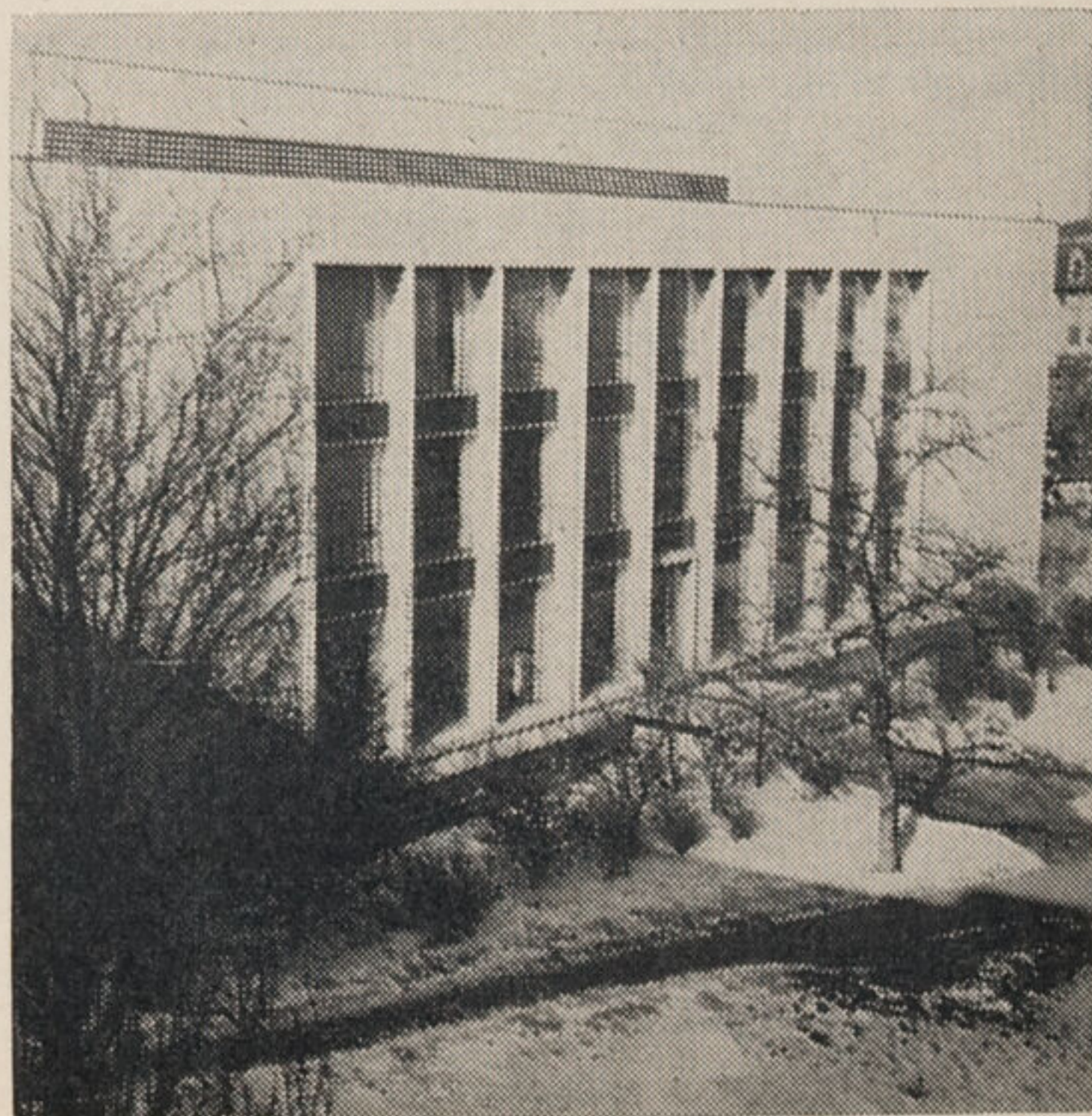
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Ford Grant to Endow ILS Chairs

The Harvard Law School International Legal Studies program will benefit from the \$12.5 million grant to Harvard University announced by the Ford Foundation last month. A portion of the Ford money, which was given generally to strengthen and coordinate a university-wide program of research in international studies, will be used to endow four new professorships in international legal studies and to provide additional student and research fellowships in the area.

The announcement came this week from Professor Milton Katz, Henry L. Stimson Professor of Law and Director of International Legal Studies in the Law School. Prof. Katz has been named by Harvard President Nathan M. Pusey to the five-man

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The International Legal Studies Wing

McDaniel Seeks to Silence Telephone Solicitations

By Thomas S. Johnson

Morey W. McDaniel, a Harvard LL.M. candidate, is responsible for what may soon become a major headache for America's telephone solicitors but a welcome relief for the countless telephone subscribers who have grown tired of being asked to give money, subscribe to magazines or learn to dance.

Nine months ago McDaniel, while still a student at Stanford University Law School, tired of the periodic telephone sales pitches and filed a complaint before the California Public Utilities Commission to require special phone listings for those who prefer protection against electronic invasions of privacy.

McDaniel proposes that each subscriber be given the opportunity to furnish notice to the solicitors that they should not call. This could be done by printing an asterisk, or some other symbol, beside the phone listings of those who request it, thereby accommodating both those who do and do not welcome the calls, *e.g.*,

*Thoreau, Henry D., 1 Walden Pond
..... * 868-7600.*

The asterisks, or perhaps double daggers, would indicate that uninvited phone solicitation is prohibited by company regulations.

The phone companies, who think the

efforts would be futile and expensive, opposed the action and were joined by six direct-phone soliciting firms who argued strenuously for their right to call anyone, stating that many people welcome their calls.

Phone solicitation is big business, McDaniel observes. He points to such firms as Communicator Network, Inc., which employs 15,000 solicitors in over 500 market areas. Another marketing group, Consumer Opinion Institute, employs 10,000 interviewers who made nearly 10,000,000 phone calls in 1963. The industry is also mechanized. Illinois Senator Paul H. Douglas has condemned a compact electronic device which reads phone numbers from programmed tapes, dials with metal fingers, delivers the pitch only if a voice answers, and will call back later if no one answers. Each such electronic robot can hold 50,000 numbers or can dial every number in an exchange if programmed properly—even the unlisted ones.

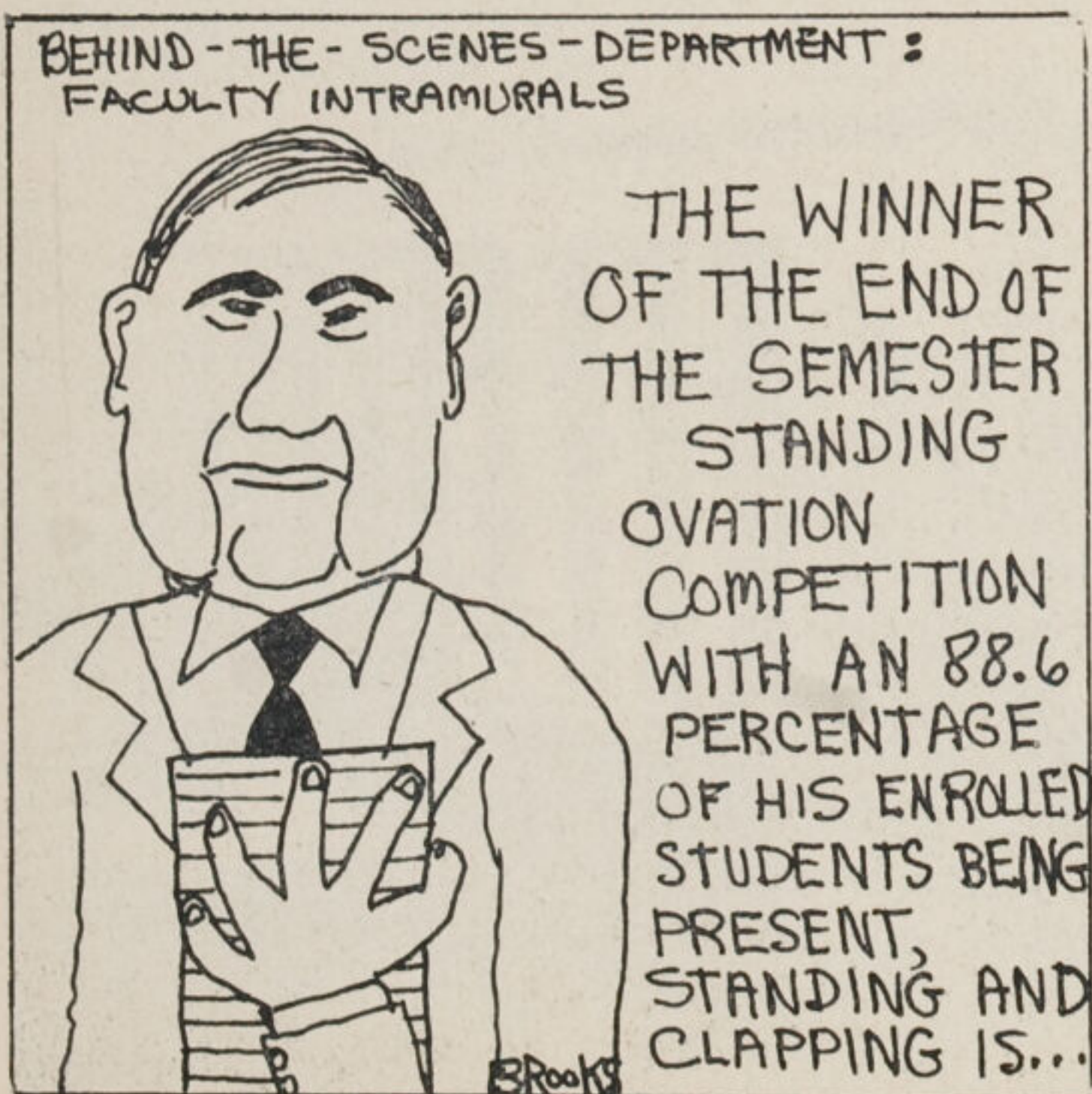
Sherry Lures Williston Prospects

Professor Robert Braucher spoke last week at a sherry hour to a group of second-year students interested in participating in this year's Williston competition. He explained that the competition was initiated in 1951 by faculty members who were disturbed by the lack of opportunity for students to learn legal drafting. The competition was named for the late Professor Samuel Williston in 1956.

Lawrence C. Browne, 3L, chairman of the Williston Committee, announced several improvements in the judging process. Each team will be able to meet with the practicing attorney who has judged its solution. Ordinarily the teams will meet with the judge at his office to discuss the problems, which this year will be set in nearby jurisdictions to facilitate the meetings.

Encouraging second-year students to enter the competition was David A. Self, 3L, who remarked that his own Williston experience was highly thought of by prospective employers in last fall's interviewing.

Registration for the qualifying round will continue until Monday, Feb. 15.



Library Policy Held Deficient in Ames Rush

By Frank R. Parker

Every year, as the winter-spring Ames ordeal begins and as 3L's enter the throes of third-year papers, the undertone of grumbling about conditions in the Law School library becomes more audible.

Most of the complaints during this period are an outcome of the view the library staff holds of its administrative function. Head

This is the first of two articles on the Harvard Law library.

Librarian Earl C. Borgeson has expressed the dominant philosophy that the staff "does not want to inject the library between the student and the book."

In practical terms this means few rules, almost no enforcement mechanism, and maximum freedom for the individual student.

Few students would argue that a free rein in the library is not a cherishable ideal, but there is controversy over its implications in practice. Student grievances often center on the fact that reporters and law reviews in the reading room, and reserve books behind the circulation desk, are infrequently available when needed. Sometimes needed books are missing for days. Because research is an important part of a law student's training, and because materials must be available during key periods, the problem cannot be dismissed as insignificant.

Part of the problem can be traced to the fact that many students simply do not know what the library rules are. For example, they are ignorant of the restriction against removing reading-room volumes from the library during the day, and are similarly unaware that volumes may be checked out for overnight use. Library rules are given to all students at the beginning of their first year,

RECORD Smoker Today

The RECORD, in its continuing search for writers and photographers in the first- and second-year classes, will hold its annual second-semester smoker today at 4:30 p.m. in the Gray Room of Holmes Hall.

but, some students suggest, the library would do well to post its rules conspicuously in order to maintain the library's honor system.

For breaking other rules, which may be classified as *mala natura*, ignorance is no excuse. Particularly during the Ames periods, the combatants are tempted to gather up all the law reviews and reporters they hope to use during the day and fortify themselves with high walls of books. Though a majority of students do shelve their books after use, the deserted book-castles of the minority exacerbate normal Ames antagonisms by requiring prolonged searches for that crucial volume.

Not only is the student disadvantaged by this practice, but library employees suffer needlessly during the Ames period. Circulation desk workers, after a full evening's service, are frequently up to one and two o'clock in the morning re-shelving left-out books.

A more serious aspect of these student complaints is the matter of dormitory expropriations. This practice of unauthorized withdrawal from general circulation has reached alarming proportions. According to Librarian Borgeson, there are today over 150 volumes in dormitory rooms that probably will not be recovered until summer vacation.

Other reasons for books being missing are the abuse of stack privileges by those with passes (and those without), and outright theft. As to the former, faculty members usually check out stack books for use in their offices but students often do not bother with such formalities once they have gained admission to the inner recesses. As a result, extensive checks for missing books must be made of carrels and graduate student offices.

Although library authorities believe they have cut down on thefts by discouraging, through the use of bursar's cards in check-outs, use of the library by outsiders and students from other law schools, the practice still continues. Although an inventory system is being introduced, the library staff does not know exactly how many books are stolen

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Lawbooks

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Price, W. N. Harrell Smith, and Andrew R. Willing.

The need for such a program was expressed by Mr. Justice William O. Douglas in his observation that "As I traveled the farthest reaches of the world, I found practically no libraries of legal and political literature from which the new leaders could understand how to design a free society."

"Lawbooks U.S.A." was conceived within the last two years to meet this need—to spread to developing nations the story and principles of Western jurisprudence, forged from its centuries of common-law experience. The program is also said to be an effort to combat the rising inundation of non-Communist nations by books from the Soviet Union.

Lawyers to Correspond

The "Lawbooks" program encourages American law students, lawyers, and law firms to contribute sets of books to emerging nations' lawyers. An \$8 contribution will send a packet of eight paperback books, purchased from publishers at cost, along with the donor's name. The recipient will be encouraged to initiate a correspondence with his benefactor on a lawyer-to-lawyer basis.

Bross stressed that gifts in any amount are welcomed, and that those smaller than \$8 are aggregated to purchase a single packet.

Individual recipients who read English will be selected by the United States Information Agency. Involved in supplying lists of prospective recipients are the American Bar Association, particularly through its

World Peace Through Law Committee and its Junior Bar Conference, the Federal Bar Association, and American attorneys serving with the Peace Corps.

Enthusiastic responses have reportedly met packets already sent to Bangkok, Bogota, Bombay, Dar-el-Salaam, Djakarta, Karachi, Kuala Lumpur, New Delhi, and Tunis.

Bross was induced to publicize the program at Harvard by Erwin G. Krasnow, LL.B. '61, who is treasurer of the program's national committee. In charge of its coordination is another alumnus, Henry B. Keiser, LL.B. '50.

The program's honorary trustees include Dean Erwin N. Griswold and C. Clyde Ferguson, LL.B. '51, member, and general counsel for the U.S. Civil Rights Commission, respectively.

Half of the eight basic paperback books have a connection with Harvard Law School. They are *Talks on American Law; a Series of Broadcasts to Foreign Audiences by Members of the Harvard Law School Faculty*, Professor Harold J. Berman, editor; *The Spirit of Liberty*, by Learned Hand, LL.B. '96; *The American Jurisprudence Reader*, by Thomas A. Cowan, S.J.D. '32; and *The Brandeis Reader: the Life and Contributions of Mr. Justice Louis D. Brandeis* (LL.B. '77), by Ervin H. Pollack.

The packet also contains *The Nature of the Judicial Process*, by Benjamin N. Cardozo; *Equal Justice under Law: the American Legal System*, by Carroll C. Moreland; *The Freedom Reader: a Collection of Materials on Civil Rights and Civil Liberties in America*, Edwin S. Newman, editor; and *An American Constitutional Law Reader*, Robert B. McKay, editor.

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Magna Carta Attracts Scholarly Attention

Nearly 750 years ago, "in the meadow which is called Runnymede between Windsor and Staines" King John of England accepted the demands of his barons and Magna Carta was written.

Much scholarly activity is preceding the anniversary on June 15. Tomorrow, Visiting Professor Yale Kamisar will speak at The College of William and Mary on "Equal Justice in the Gatehouse and Mansions of American Criminal Procedure."

Following Prof. Kamisar on the podium will be Thurman W. Arnold, LL.B. '14, who will talk on "Trial by Jury Today." Each speaker will turn his speech into a monograph which will be published by the Magna Carta Commission of Virginia.

Already completed is a monograph concerning the reference in Magna Carta's first chapter to "the English Church" written by Professor Arthur E. Sutherland, LL.B. '25.

The essays deal with what was said, and meant, by Magna Carta, and how such rights which are thought to be derived from Magna Carta are expressed and dealt with today. Prof. Sutherland spoke to the point that "the English Church shall be free and enjoy her rights in their integrity and her liberties untouched." In the context of 1215, the provision assumed the existence of an Established Church. Today, by contrast, "freedom of religion" in the United States means a strict separation of church and state.

ABA Sets Loan Program

The American Bar Association has inaugurated its student loan program by allocating more than \$2 million to student loan funds at 89 law schools.

Loans will be made to individual students on applications approved by the dean's office at each participating law school beginning with the second semester of the current school year.

Loans under the program will be limited to second- and third-year law students. The minimum loan will be \$400 and the maximum \$1,500 per year. Repayment need not begin until after the student has completed his law course.

Beginning from Magna Carta's Chapter 40 which reads, "To no one will We sell, to none will We deny or delay, right or justice," Prof. Kamisar drew upon the recent roundup of known criminals in Boston and the Wylie case in New York City to exemplify the contrast between justice in the police station (the "gatehouse") — where the suspect is a depersonalized "subject" and the "needs" of law enforcement are satisfied — with justice in the courtroom (the "mansion") — where the accused is re-personalized, even dignified, in a stirring ceremony in honor of individual freedom from law enforcement.

Professor Samuel E. Thorne presented a paper, "What Magna Carta Was," to the American Council of Learned Societies in New York City on Jan. 22. Introducing Prof. Thorne was Dean Erwin N. Griswold of the Law School.

Speaking the same day on "Magna Carta and Constitutionalism in the United States" was Chicago Law Professor Philip B. Kurland, LL.B. '44. The Council is expected to collect the four talks given before it into book form in the near future.

3 Continents -- 7 Wonders



"Safari '64": Gregory E. Good, Burr C. Hollister, David A. Copus (seated) and Robert D. Paul are the four second-year students casually passing the time in the hot North African sun. They will present an illustrated lecture on their 21,000-mile trip through three continents on Sunday, Feb. 14 at 7:30 p. m. in the Ames Court Room. The talk is free to the public and will feature the four Rover Boys in the native costume, as above. The camel driver (center) will be unable to appear.

Ford Grant

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university committee which will administer the grant.

In assessing the effects of the grant on the Law School's international research program, Prof. Katz observed that, "The Law School looks forward to a deepening and broadening of its efforts in international legal studies as a result of this generous Ford Foundation grant."

Prof. Katz said that the grant consists of three main components:

First, \$4.5 million will go toward the endowment of additional university professorships including the four in International Legal Studies.

Second, \$2.5 million is to be devoted to the construction of a central building for international and regional studies. According to present plans, this center, which will cost a total of \$5 million, will be located north of the Harvard Yard on the present site of Lawrence Hall. In selecting the site, the committee considered its proximity to Langdell Hall and the Littauer Graduate School of Public Administration.

Research and Student Fellowships

This new center is not to accommodate the ILS program, Prof. Katz indicated, because "the program always has been, and remains, an integral part of the Law School."

Third, the remaining \$5.5 million will finance a coordinated university program of research and student fellowships in international studies. Portions of this sum will be sub-allocated among several schools and departments by President Pusey's committee. This group includes the Law School International Legal Studies program.

While at this point it is impossible to detail the impact the Ford Foundation grant will have on the ILS area, it can be expected that international research efforts will be expanded in three basic fields: the role of law in economic development, the role of law in the settlement of international disputes, and Anglo-American legal history as an expression and example of the process of legal development.

FDA Workings Explained

Food and Drug Administrator George P. Larrick presented the annual Charles Wesley Dunn Lecture on Tuesday, Feb. 2. His topic was decision-making in the FDA.

The FDA is charged with administering five federal statutes, the most important of which is the 1938 Food, Drug and Cosmetic Act. The FDA is empowered thereunder to move by seizure, injunction, or prosecution to ensure that "ours is the cleanest, safest, most reliable food, drug and cosmetic supply in the world."

The FDA's main goal is "to bring about voluntary compliance" to the standards it sets. For the most part, American industry has been cooperative. When there is disagreement over an FDA standard, "the FDA always welcomes the opportunity to get the opinion of a court of law. Such decisions are, in the main, what will guide us in the future."

During the last year the FDA carried out some 1200 seizures, 22 injunctions, and 205 prosecutions.

When the FDA is concerned over a packaging or advertising trend, it publishes policy papers in the Federal Register to guide the industry.

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Lawyer and Legislator Dissect Rights Act

CORE Counsel Is Critical

By Frank R. Parker

Because of some "cute little gimmicks" in the 1964 Civil Rights Act, integration in the North will be more difficult to achieve.

The paradoxical forecast was made by Carl Rachlin, LL.B. '40 and general counsel to the Congress of Racial Equality (CORE), before a Civil Rights Committee audience on Feb. 4 in Harkness Commons.

"How does one interrupt seniority accumulated by white workers so as to give comparable job security to the Negroes who have not been victimized by discriminatory hiring practices?" Mr. Rachlin queried. Because of a history of discrimination in individual firms, Negroes now hired are at the bottom of the seniority ladder and are the first to be fired when automation is introduced. The Civil Rights Act, by protecting

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ABA Panel

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misconstrued by its own members and the public as a sign of the organized bar's disinterest in the ongoing civil rights crisis.

The special committee was convened by then ABA President Sylvester C. Smith Jr. of New Jersey in response to the late President Kennedy's plea to leaders of the bar for aid in improving racial relations at the local level.

The special committee's position-paper exhorted state and local bar associations to promote the establishment of bi-racial committees for discussion of grievances. It also declared a policy of nondiscrimination in bar association memberships.

The report's primary emphasis was on effecting the removal of demonstrations from the streets, obtaining cooperation from local officials, improving educational and employment opportunities for minorities and providing legal advice for defendants in unpopular causes.

Citing the 1964 Civil Rights Act, the committee's report for last year merely re-affirmed the ABA's adherence to the principles adopted the previous year.

Southern Solon Is Salutary

By Paul M. Branzburg

"The civil rights issue no longer ties the Southern delegation to the conservative coalition. The Civil Rights Act was a burial of the race issue as a legislative issue. So long as civil rights was a regional problem, Southern Congressmen have been hobbled by it. Civil rights is now a national problem and I think we shall see a different Southern Congressman."

This was the thesis of a speech given by Representative Charles L. Weltner of Atlanta, Georgia, to the Harvard Law-Graduate School Democratic Club on Feb. 5 in Harkness Commons. The Democratic Congressman, now in his second term, received national attention when he voted for the final version of the Civil Rights Act of 1964.

Rep. Weltner illustrated his point by noting that the so-called Powell amendments, named for Representative Adam Clayton Powell of New York City and prohibiting discriminatory administration of federal aid, could no longer be tacked on to bills to prevent Southern support of federal welfare programs. The Civil Rights Act incorporates the "biggest Powell Amendment you've ever seen in your life!" Rep. Weltner exclaimed, referring to Title VI of the Act.

Congressmen can now vote for various aid programs without fear for their political lives, Rep. Weltner explained. "The Powell amendment is a *fait accompli*, and need never again becloud the issue or overshadow the needs reflected by the bill.

"Now we can welcome federal money from New York, Massachusetts, and Rhode Island into the South to build fine Georgia schools," quipped the Congressman.

Although Rep. Weltner's set speech was on civil rights, most of the subsequent question period was devoted to the role of the House Committee on Un-American Activities (HUAC) to which the Congressman has been appointed. As the hostile questions came one after another, Rep. Weltner declared at one point, "I'm not a great defender of the Committee — I haven't been on it but

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Aristotle on Civil Rights

Dean Griswold told the RECORD last week that "Civil rights is essentially a moral, not a legal question." The tone of his new book, *Law and Lawyers in the United States*, reinforces this view by repeated reminders in his chapter on civil rights that "delay and gradualism are inherent in the problem itself," that "we can eventually make some progress" by "slow changes in outlook and political leadership," and that "we should not expect too much too soon."

Implicit in the argument that the moral aspect of civil rights is "primary" is that the solution of the problem must await a "moral awakening" in the South and North—must await the acceptance by whites of Negroes as equals, at least before the law. And so we are exhorted to be patient. There are at least two serious deficiencies in this view. First, it implies no special responsibility on the part of the legal profession, as lawyers, to attempt to deal actively with the problem. The Dean in fact, nowhere in the book, takes what would have been an appropriate opportunity to condemn the American Bar Association's virtual inaction in the area of civil rights. The facts surrounding the ABA's "Special Committee for Civil Rights and Racial Unrest," reported herein (p. 1) by a member of that panel and alumnus of this School, speak for themselves. Its name suggests it was created to both support and suppress the same social ends, and its history of nonexistent achievements suggests it has discovered the only way to approach that goal. Dean Griswold's noticeable avoidance of the bar's responsibility may have been caused by a hesitancy to offend the new ABA President, Lewis F. Powell, LL.M. '32, who, as a past member of the State Board of Education of Virginia, may not share the Dean's zeal for civil rights, or our view of the ABA's obligation in the field.

President Kennedy recognized the critical role lawyers can, and must play in the civil rights movement. His Lawyers Committee for Civil Rights Under Law, led by Harrison Tweed and Bernard Segal, is, with the National Lawyers Guild, one of the few effective forces for the promotion of civil rights that has sprung from the legal profession itself.

But there is a more basic flaw in the view that civil rights is first a moral issue. And that is the psychological fact of life that one does not first learn moral virtue, and then practice it. It is to the contrary—he knows the meaning of moral virtue only after having lived virtuously. In the Nichomachean Ethics, Aristotle distinguished between intellectual and moral virtues. The former can be learned by instruction—the latter, only by habit. If the achievement of equal rights for Negroes involves a change in the moral climate in this country, it will only happen after legal and political changes make integration a fact, and that fact becomes accepted. We have never had a shortage of moral principle. But for the century during which Negroes were unable to protest their quasi-citizenship, we have been very short on moral *behavior*. To the world, this country is what it does—not what it professes. Morality is logically, psychologically and politically tied to action. This is the deepest meaning of the marchers' "Freedom Now!" and the Supreme Court's "a little less deliberation and a little more speed."

"Civil rights" are words with primarily legal meaning unless the Constitution is taken as a moral exhortation only. They mean that there exists a claim-right, which may be the basis for an action, and for which there is a correlative duty not to infringe that right. In this sense, civil rights is a legal problem with which lawyers must be concerned.

TONGUE 'N CHEEK

By Fenno

It's not that all holidays aren't treated fairly by the Law School. Rather it seems that there are some special days which get something more than judicial notice. Labor Day and July 14 are two holidays that seem to attract students, but there is no doubt what day of the year typifies Harvard to generations of prospective lawyers—Valentine's Day.

I remember so well the excitement last year as small groups of students huddled around Harkness tables gluing little paper hearts cut from abstract paper on beautiful blue brief binders.

Here and there you could hear snatches of romantic poetry being readied for favorite professors:

*I thought you'd like my heart
all free and clear*

*Since you've been carving it out
all through the year.*

Throughout the gay congested hallways the gallantry and chivalrous nature of young lawyers was at a peak. Young swains shyly tossed flower-bedecked copies of the Federal Rules of Civil Procedure into the attache cases of their female classmates. In the library, heart-shaped boxes of chocolate-covered chewies were on every table and Rogers and Hart songs were piped through the stacks all day. Discussions in class were appropriate to the occasion: the property right in engagement rings and crimes of passion.

I remember sitting with a visitor watching the afternoon dancing around the world tree.

"I never saw such a sentimental place—all this sweetness and light," he said, removing a delicate sugary concoction from the pastry tray that made up the contract meal for the day.

"Oh, you get used to it. It's a strain at first but after a while you realize it's all a part of the game," I replied. "After all, there's nothing like the law to bring out the romance in society."

Letter to the Editor

Ambiguity in Law Boards

To the Editor:

A recent perusal of sample questions from the law school admissions tests ("law boards") has confirmed the suspicion I had when I took the tests in 1958 that at least two out of the four "answers" to the questions on application of legal principles are in many instances equally valid. The prospective law student is asked to apply a given "legal" principle to various fact situations, and to choose one out of four answers as giving the correct solution to the problem on the basis of the information given in the test. Usually two answers can be eliminated quickly, but the choice between the two seems to me to depend on whether the examiner is looking for a superficial verbal connection between "legal principle" and "fact situation" or whether the "correct" answer is substantially the most logical and reasonable. The model questions and answers in the sample booklet mailed to prospective test applicants indicates that the first of these two alternatives is most often the one which is the "correct" answer.

I had been puzzled about this ambiguity when I took the tests in 1958, but I chalked up my puzzlement to lack of experience or simple mental inadequacy. But if my intervening education at the law school means anything, I should be in a slightly better position now to get the "correct" answer on these tests than I was in 1958. Yet my confusion remains. No matter how long I study the fact situation and the legal principle, I still come out, on many of the questions, with a genuine dilemma as to what could possibly be the "correct" answer between two equal candidates. I am now advising my students not to think too hard when taking these exams, and to pick the superficially correct answer rather

than the one which makes more sense; at least one student whom I know followed my advice did far better on the most recent examination than her classmates of comparable ability.

I wonder if some of the professors at the Law School might not get the same impression I received if they examine these tests which determine admission to the Law School.

... I am aware of the excellent correlation between test scores and performance in law school. If the correlation is so good, why wonder about what's in the tests? I now believe that a possible answer to this question is that despite the high correlation, it is still possible that individual students of extraordinarily high calibre are being turned down by Harvard simply because they thought deeply about the questions on the admissions tests. By not being accepted, these people are

"unknown" to the statistical correlations. This may result in weeding out students whom Harvard might really want to have. A second argument, much less weighty to my mind than the first, is that an admissions test might not be doing a perfect job even between law school grades and admissions test scores, for there are some students who tend to think profoundly about subjects which interest them but whose averages at the law school suffer because of disinterest in certain courses. It is conceivable that the Law School might nevertheless want to have such students on the ground that they may very well make a more significant contribution to the legal profession in later years than the verbally adept all-around performers.

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Events of Note at the Law School

Rep. William Kastenmeier (D-Wis.) will speak today on "The Need for a New Voting Rights Statute." The talk is sponsored by the Law-Graduate Democratic Club and will begin at 4:00 p.m. in the Harkness Meeting Room.

* * *

The Harvard Law and Graduate Schools Republican Club will present a speech by Gov. George Romney of Michigan tomorrow, Friday, at 4:00 p.m. in Langdell North Middle.

'Neighborhood' Project Staffed

Nine second-year students and three third-year students have been chosen to participate in the Neighborhood Law Office Internship Program (See RECORD Feb. 4). The students will assist the Boston Legal Aid Society in several neighborhoods in Boston. Second-year students selected are Stephen R. Bing, John C. Blew, Julie E. Goldberg, Michael L. C. Henderson, Lowell Johnson, Bernard Kabak, James M. Russell, Philip W. Stichter and Lester Yassky. Third-year students are Edwin S. Kahn, Jonathan M. Landers and Sheldon Nahmod.

A Valentine Mixer is scheduled for Friday, Feb. 12, 8-12 p.m. in Harkness Commons. There will be two bands and refreshments. Admission price is \$1.00 for men — for ladies, free.

* * *

On Saturday, Feb. 13, the Harvard Law Wives will sponsor a "Mardi Gras" Faculty-Student Cocktail Party in Harkness Commons. Festivities begin at 5 p.m. and will last for two hours. Married couples only. \$1.00 for members.

* * *

Williston Drafting Competition registration closes Monday, Feb. 15.

* * *

A lecture entitled "Project ACCION In Venezuela" will be given at 8 p.m., Feb. 17, by the International Student Association at 33 Garden Street.

* * *

Mid-term examination grades then available will be distributed on Monday, Mar. 1, at 3 p.m. in Langdell South Middle. A list of those courses for which grades will be distributed will be posted a few days earlier.

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Recent Book

Game Theory and the Judicial Process

Elements of Judicial Strategy. By Walter F. Murphy. University of Chicago Press, 1964. Pp. 249. \$7.50.

By Gary Schwartz

Ordinary politicians twist arms, scheme, negotiate, bargain. We expect them to do so. For that matter, we confer our admiration upon those politicians who achieve large results by imaginative use of their limited power resources. Judges, too, are politicians, including those who sit on the Supreme Court. What tactics and strategies are available to a Supreme Court Justice? Should he hesitate, on principle, to use those that are available to him?

These are the two immensely provocative questions posed with never so much clarity as in Walter Murphy's new book. Professor Murphy, who teaches at Princeton, sees the individual Justice as participating in a "mixed-motive game" with his colleagues, his own interests in the long run neither wholly coinciding with nor wholly diverging from the interests of any of the others. Finding himself possessed of two ultimate tactics, his vote and his opinion, for him "bargaining is a simple fact of life." And other tactics, either simpler or more complex, may at a given moment seem expedient. What are they, and how good are they?

The book consists of two species of material: there is an elucidation in the abstract of those tactics which may be within reach of a Justice; and there are dozens of true stories about the Court. Most of these are drawn from the private papers—memos and correspondences—of eight Justices (including Taft, Hughes, and Stone, and all of them now dead) to which the author fortunately had access. Prof. Murphy presents these stories, however, in a

kind of nudity; they recount the acts of judges which were likely to influence others in certain ways (we seldom know their actual effect), and which might have been motivated by a desire so to influence (we seldom know their actual motivation). Murphy offers them rather to illustrate than to prove, and to illustrate only the limited point that certain tactics are not impossible to carry out in practice. Some of his stories are thankfully somewhat *ultra vires*, and do actually show that Justices have in the past executed ploys, and that the ploys have been at times successful. Thus we witness a remarkable two-phased maneuver by Justice Jackson, working Justice Murphy into a thoroughly embarrassed corner and compelling him to muffle a screaming dissent in a search-and-seizure case down to a deferential whimper.* Other of the true stories, though denuded of much significance to the author's theses, stand on their own just as entertainingly good stories.

*We also learn from Justice Frankfurter's own memo, what spurred him to compile his stupendous dissenting opinion in *U.S. v. Harris*: "a powerful dissent in a case like this is found to have a powerful effect upon lower courts as well as upon officers of the law . . ."

How charming to read Frankfurter's inscription on the back of a draft of Justice Stone's opinion in *Darby v. U.S.*: "This is a grand plum pudding. There are so many luscious plums in it that it's invidious to select . . ."

A major effect of this book is to challenge the image of the judicial process generated by the recent exchange of articles between Professor Hart and Judge Arnold. The former seemed to conceive of the ideal Court as a seminar of judges in which "the wisdom of all, if successfully pooled, will usually transcend the wisdom of any." But by Judge Arnold's lights, a court of several judges necessarily consists of separate willful individuals who harvest their decisions within the invincible subjectivity of their private chambers, and who, when they come to conference, only clash and harden in their views. Prof. Murphy's book, in a new view, offers a picture of nine fluid performers who manipulate, ingratiate, dissemble, game theorize, and congeal into blocs the very existence of which they attempt, for tactical reasons, to conceal. Perhaps this image is not so much the contradiction of the alternative imagery of Hart and Arnold as it is a look at the obverse of

(Continued on page 13)

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Library Policies

(Continued from page 3)

each year by future members of the legal profession.

When an inquiry or a request for a book is met with "I'm sorry, but we just don't know where it is. It's not here and it's not checked out," students have blamed both fellow students and the library. Violations of the few restrictions on student use seem to be so open and widespread, it is argued, that the excuse of preserving the so-called honor system only condones by inaction the flagrant abuses. Some complaints may be satisfied by simply hiring or re-allocating more personnel to, for example, shelve books at hourly intervals during the Ames period. Others suggest more drastic changes.

To curb the unauthorized flow of books out of the library, some students have argued for a check-out system for reporters and law reviews coupled with strict surveillance at exits. Students may be insulted by having their attache cases gone through (this is done at the Harvard College and Yale Law School libraries). But a recently developed electronic system might be introduced which sounds an alarm when a plate in the jacket of books has not been de-magnetized in the checking-out process.

For overdue long-term books, of which there are many, and for overnight reserve books not promptly returned, students advocate that a system of fines should be introduced requiring prompt, on-the-spot payment. The additional burdens on the library staff of maintaining such a system, they argue, will be outweighed by convenience to the students in getting more easily books for which there is heavy demand.

If it ever becomes necessary to inject more of the library between the student and the book, it appears that it will have to be done to displace the unreasonable fellow student who has himself slipped into that position.

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Tactics of Compromise on the High Court

(Continued from page 11)

the same collegial reality. Perhaps, the original debate having achieved a kind of stalemate, it is well to move on to issues which may be deemed novel. Perhaps. But the reader may be obliged to confess to the dispersion of a certain naivete in his understanding of how the Court decides. Its processes will no longer seem quite so reasonable as they were when described by Hart, nor as principled as when pictured by Arnold. His professors—former clerks—must have known all along; the reader is probably the wiser.

It should be observed that most of the tactics the author uncovers are of a tame character, less treacherous and less devious than we often find in the black arts of politics. Friendship, for example, is seen as a prime tactical asset. All of us, however, would oppose its banishment from the judicial kingdom, not only because it is itself a good thing but also because it serves as a lubricant for right reasoning and fruitful discussion. Other of the tactics, however, are of more equivocal stature: secret bloc meetings; invoking one judge's dislike of another; threatening to malign a colleague in public. Merely to mention a few of these is sure to disturb some scruples. A concluding chapter of this book is devoted to "Ethics and Strategy." The concept of "ethics" does not, I feel,

quite aptly touch the source of one's concern. The problem is really one of propriety. Is it proper for a judge, however convinced he is of the rightness of his position, to go about winning votes by a range of devices? Here the author's discussion is not adequate. After limiting himself to a single issue—the "ethics" of compromising one's position—his conclusion is only that in a collegiate court which has rejected the practice of *seriatim* opinions, compromise must in principle be proper. But this is to miss registering the variety of motives which might induce the generic tactic of compromise. To compromise one's position in the belief that a coherent law cannot tolerate an overly great splintering of opinion is assuredly proper. But is a Justice to be commended who deserts a deeply felt dissent in the hope that grateful members of the Court will later support him? It may be true that such a tactic differs only in explicitness and effectiveness from that of judicial "logrolling"—I'll vote with you this case if you'll vote for me next—a tactic which few would be ready to condone.

And even an analysis which brands individual tactics as unbefitting a judge is perhaps not broad enough. A more general question, more or less inevitably arrived at, is this: is any tactic—other than that of reasoned persuasion—suitable for a judge?

To the extent that "reason is the life of the law" (Prof. Hart), is that life threatened when a judge, even in the cause of reason as he perceives it, succeeds in convincing a colleague, not by reasoned argumentation, but by psychological pressures, tacit threats, or appeals to the irrational? Prof. Murphy himself, interestingly enough, confesses: "My own preference in behavior styles, were I giving advice, is for that of the blunt, straightforward soldier over that of the suave, shrewd, carefully controlled professional diplomat." There is a tone of bravado in this "preference" which may not be quite sincere; or perhaps this is "advice" on how to lead the good life, not necessarily on how to judge well.

Under Prof. Murphy's analysis, a Justice is involved in three relationships within which he might wish to bargain or otherwise act politically. These three are his relationships with others on the Court, with the judicial "bureaucracy" as a whole, and with the legislature and executive. Though the author expends approximately equal space on each of these three, I have hitherto limited this review to a comment upon what he has to say about the first: the intra-court dealings. My reason for this choice is that most of the tactics employable in the second and third relationships are rather nonjudicial in character; that is,

(Continued on page 14)

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Recent Book

(Continued from page 13)

they flow, not from the fact that X is a Justice, but from the more general fact that he holds a respected government post. Thus, a Justice may be listened to if he lobbies in Congress and may have access to the inner ear of the President. These nonjudicial tactics may not be of special interest to the law student. Truth to tell, though the author overlooks them, peculiarly judicial tactics do exist appropriate particularly to the second relationship. Thus, adoption by the Supreme Court of a *per se* rule in place of a totality-of-the-circumstances test not only serves to give prelitigation notice to private parties, but also moves the power of decision within the judicial hierarchy upward from a lower level to the pinnacle. So may rulings upon the reviewability of findings of facts and of applications of standards to facts.

A fourth and very interesting relationship, germane to the power of the Court, the author largely ignores, *i.e.* the Court's relationship to the people. The Court's usable power, it is universally agreed, is in some measure a function of the esteem in which it

is held by the people—more grossly stated, a function of its popular image. The Court is thus willy-nilly neck-deep in public relations, in the business of cultivating that image of itself which, even if "mythical" in some of its dimensions, nevertheless provides those vitamins which sustain it institutionally. Other politicians, whose authority derives from mystique (e.g. deGaulle), are not above deploying their energy and imagination in sponsorship of that mystique. In simply adhering to the paraphernalia of its tradition—robes, an aloof privacy of person—the Court has a ready-made way to sustain its image. And the Court will duly consider the tactic of avoiding decisions on sensitive issues, such as religion and miscegenation, when decision itself might work embarrassment in its public relations. Prof. Murphy might have asked whether there are more creative ways in which the Court can reinforce its public relations. Could it not space its decisions evenly throughout the year to accustom the public to the regular thump of judicial decision? Why not shield a possibly unpopular decision by announcing it on the same day as another decision which will predictably be both popular and sensational? These tactics pose, of course, problems of propriety, but ones no more grave than those raised in other chapters.

Prof. Murphy believes that his analysis pertains mainly to the behavior of those Justices who are what he calls "policy-oriented,"—a label apparently synonymous

with the perhaps more familiar tag, "result-oriented." But, as his own stories amply verify, "strategy" is usable whenever there is a division of opinion within the Court, regardless of whether caused by different policy preferences, conflicting views as to activism and restraint, merely a different reading of the precedents, or any other of the myriad considerations which rend Justices apart. Given such a division, and given a Justice who cares enough about winning, or enjoys enough the exertion of his influence, to make it worth his while to formulate and execute strategy, Prof. Murphy's analysis comes into play. Elsewhere, the author's framework is shaky at other joints and contains some superfluous timber. A quite unfortunate discussion of the case-or-controversy requirement manages, for example, in successive sentences to imply that the requirement is non-Constitutional and to explain that a "case" must involve the violation of a federal right. An application to the Court of the so-called "paradox of cyclical majorities" is mistaken coming and going. And what can one make of the distinction drawn between Sources of, and Instruments of Judicial Power, when (Professor Black's) "legitimation process" is classified as the former and the authority to decide cases is subsumed under the latter? But such lapses don't detract much. This is a good book, which breaks fresh ground, and uncovers deep problems of theory and practice.

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Carl Rachlin

(Continued from page 7)

existing systems from interference, maintains this "immoral seniority," the CORE representative charged.

Although the Civil Rights Act prevents the NLRB from setting aside a contract providing for accumulated seniority, the CORE lawyer suggested as a possible solution the de-certification of unions who fail to give Negroes preferential treatment.

In addition, the omission of a private fair housing provision from the 1964 Act "encourages" *de facto* segregation in northern schools, according to the speaker. By outlawing racially preferential treatment, "the civil rights law does nothing for civil rights progress in the North."

The speaker argued for preferential treatment for Negroes with an analogy to personal property law. If B steals personal property from A and holds it for 20 years, A or his successor can recover the article even after that long period. Similarly, there is nothing sacrosanct about an established seniority system from which Negroes have been systematically excluded. Because he has knowingly accepted the benefits of his immoral position, the white worker should be forced to give up his seniority in favor of the Negro's right to equivalent seniority, Mr. Rachlin contended.

The CORE counsel bluntly asserted that the answer might be money. Workers with seniority may have to be bought off with early retirement incentives to make way for the Negro worker.

That the civil rights problem in the North is not as simple as it is in the South was a recurrent theme of the talk. As an example

of the contradictions northern civil rights leaders must face, Mr. Rachlin referred to his own experience. New York State education authorities had adopted for future planning the concept of "educational parks" which were to serve large segments of the urban community. Encouraged by the acceptance of this concept, known as the Allen Plan, Mr. Rachlin submitted to New York City authorities a program calling for the immediate elimination of school zones as a step toward its implementation. But his suggestion, a half-way measure, was, according to the speaker, rejected by school authorities as too "extreme" though they were in theory committed to the even more comprehensive Allen Plan.

Rep. Weltner

(Continued from page 7)

three weeks."

He suggested, however, that HUAC be "turned to a proper and worthwhile purpose to serve the country." Noting that Congress has an "informing obligation," Rep. Weltner said HUAC "is failing in its duty in not investigating the Ku Klux Klan."

Rep. Weltner alleged that "Southerners live in fear of the Klan because they don't know who the Klansmen are. They don't know whether to call the Sheriff when they need him because they aren't certain if he is going to come in his hood or in his police uniform. HUAC could help end this fear."

Questioners argued that this plan was unacceptable because it attempted to dignify one of the most objectionable aspects of the committee's work: public exposure of an individual's activities without judicial safeguards.

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Third-Year Class Will Elect Officers

The Ad Hoc Committee of the Class of '65, whose function is to review and approve class election procedures and draft a class charter, began this week by choosing Dennis O. Cawthorne, 3L, Dormitory Council President, to be its chairman, and Edward A. Tomlinson, 3L, St. Thomas More Club President, to be its vice chairman.

These immediate actions were necessitated by the resignation from the Ad Hoc Committee of its temporary chairman, William Reilly, 3L, chairman of the Law

School Phillips Brooks House Committee, on the grounds that he will seek the office of Class Secretary.

At a later meeting the Ad Hoc Committee approved a class charter draft and scheduled elections for Thursday, Mar. 4. Voting will take place in Business Planning classes and, for those not taking that course, at the receptionist's desk in Langdell Hall.

Nominating petitions are available today at the receptionist's desk. Twenty signatures will assure a hopeful candidate of a spot on the ballot. Petitions must be submitted on or before Feb. 23.

Copies of the proposed charter and election rules will be available at the receptionist's desk.

The Ad Hoc Committee, which is formed each year at the request of the Law School adminis-

tration by the Phillips Brooks House Committee which Reilly chairs, is composed of students who head a number of student organizations. Other members are: Stewart D. Davis (RECORD), Joseph L. Delafield III (Legal Aid), Matthew Nimetz (Law Review), Reade H. Ryan Jr. (Lincoln's Inn), Richard Siegler (Bull and Bear), Marsha Swiss (representing women students), and Thomas A. Welch (Voluntary Defenders).

The Election Process Subcommittee will determine, on the basis of past class elections, when, where and under what circumstances nominating petitions will be due, and ballots will be distributed and voted. The Charter Subcommittee will, on the basis of past class charters, draft a document which will generally deal with class officers, the class committee, and their election.

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