

Students Wage Petition Duel Over Vietnam

By Keith S. Watson

Debate about Vietnam erupted in the student body last week with a flurry of petitions and counter-petitions.

At least four documents graced various walls and doors around the Law School. One of them called for an immediate cease-fire in Vietnam, while another commended the Administration for its "vigorous prosecution" of the war.

The debate began with a petition supporting the "presence" of the United States in Vietnam in order to "halt the spread of Communist terrorism" and to "bring about self-determination of the South Vietnamese". The petition was sponsored by three members of the Law Republican Club's executive committee and two members of the Law Democratic Club. Its "bi-partisan" nature was stressed.

Meanwhile, the executive committee of the Law Democrats, which had earlier refused to support the "presence" petition, issued a public statement expressing its disapproval. Its document called for free elections supervised by the United Nations and stressed

(Continued on page 14)



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Cox Named to New Chair

Archibald Cox, who returned to the Faculty of Law this fall after more than four years as Solicitor General of the United States, has been elected the first Samuel Williston Professor of Law.

The new professorship, honoring the great Harvard contracts teacher, was made pos-

(Continued on page 7)

Selective Service Director Defends System And Vouches For Local Board Autonomy

By Paul M. Branzburg

Uniform administration of selective service regulations by the nation's draft boards is unnecessary, according to Lieutenant General Lewis B. Hershey, Director of the Selective Service System.

"It comes as pretty bad grace from the educational world to tell us about uniformity when the educational world has no uniformity," the draft program director told his Harvard Law School Forum audience on the evening of November 19 at Lowell Lecture Hall.

"You talk about democracy with one voice and talk about centralized administration in another voice. I think we ought to let the people make their own decisions."

Possibly thinking of the fact that decen-

(Continued on following page)



Lieut. General Lewis B. Hershey

General Hershey

(Continued from preceding page)

tralized administration of the Selective Service System relieves him of political pressure, Gen. Hershey said jokingly that local draft boards could "stew in their own juice." He added, however, that "local draft boards shouldn't be undergraded. They have heard every lie that you can dream of."

When Gen. Hershey referred briefly to the draft eligibility of undergraduates, some law students in the audience did not, at first, seem terribly concerned. "I have hoped," he said, "that we will not be driven back to standing in class and [nationally administered] tests" in determining the draft status of college students, but it will be done if student reclassification becomes necessary. "We want the colleges to clean their own stables."

The importance of these remarks for law students became apparent, however, when David S. Mortensen, 2L, questioned the general from the audience about a letter he had received from his draft board in Mercer, Pa. He had been informed that Selective Service System Operations Bulletin No. 47, Paragraph 3 decrees that "A student who is pursuing a course of instruction in a law school leading to his first law degree should be considered as an 'undergraduate student' under the student deferment program."

The practical effect of this regulation is that law students, unlike 'graduate students,' can lose their student deferment

either because of low rank in class or because of a low score on a federally administered test. Mortensen complained that while draft boards are currently disregarding the regulation, they may soon get desperate and start enforcing it.

Commented Gen. Hershey: "Leave it to the local draft board, and then appeal."

On the use of a baby as a means of avoiding the draft, Gen. Hershey noted sympathetically that "We had 554,000 [draft eligible] husbands three months ago. We drafted 300,000 of them." Of those remaining, "many have since become fathers. We look forward to a lot of activity in that area in the next few months."

Feigning a desire to avoid difficult questions from the audience, Gen. Hershey said "I don't believe the draft calls will go up much. I don't know anything about it . . . I don't know about escalation. I don't even know what the word means."

Also participating in the discussion were panelists Donald J. Irwin, Democratic Congressman from Connecticut and member of the House Armed Services Committee, and John Maher, regional director of research of Students for a Democratic Society. Professor Phillip E. Areeda moderated.

In a very brief speech, Rep. Irwin observed that both Adlai Stevenson, in his 1956 campaign, and Barry Goldwater ("the Great Loser"), in his 1964 campaign, suggested that the draft be done away with by forming a professional army.

John Maher argued that the "war in

(Continued on page 4)



Rep. Irwin



Prof. Areeda



Mr. Maher

Mississippi Newsman Tells of Dixie Police

By C. Richard D'Amato

"The greatest tragedy in the South today is not that civil rights workers came in numbers in 1964-65, but that so many of them have left. There is today a serious trailing off of voters registration drives, a loss of impetus at the very moment that the movement should be accelerating and the walls seem to be coming down." So spoke William Hodding Carter III, the young controversial editor of the Delta-Democrat Times of Greenville, Mississippi, to a Field Club luncheon on November 18.

Mr. Carter, who is holding a Neiman Journalism Fellowship at the University, centered his prepared talk on two themes: law enforcement agencies and the courtroom process. The "South" he referred to is "not the old states of the Confederacy, but what has come to be in the 1960's Mississippi, Alabama, parts of Louisiana and Georgia, and other odd pockets here and there."

The law enforcement question, Mr. Carter said, "has to be viewed from the problem of how policemen have been chosen in small and middle size towns, which are the population centers of the South." They were chosen "because they knew how to handle Negroes, because they knew how to rough them up if they got out of line, and to shoot them if necessary." Alleviation of this problem is virtually out of sight since the better people in these communities are leaving.

The very concept of "law enforcement" itself is radically different from the one which holds sway throughout most of the North. In the South, "there is no such thing as a concept of a police department having any kind of neutral professional standards. It is an agency for the maintenance and protection of a peculiar kind of status quo."

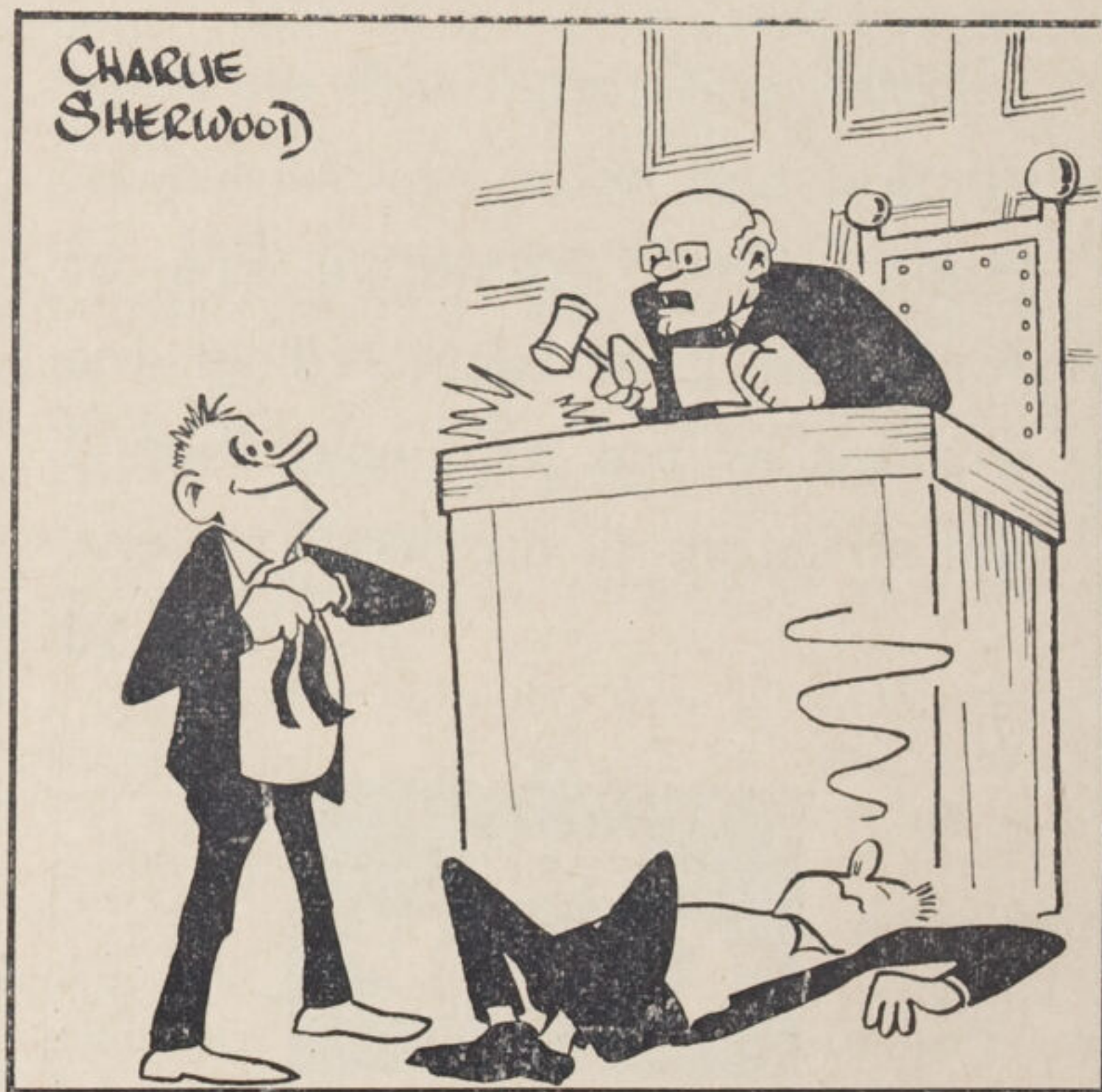
Are there promising signs for a significant change in this concept? Not really, says Carter. "The only meaningful factor in the small towns working to change this kind of law enforcement is the growing awareness of the business community leadership structure that this kind of law enforcement is bad for the image. There is not really a changing morality. It is more of an awareness that if you're going to operate that way you've got to be more discreet."

As far as the courts are concerned, "the obvious and continuing problem has little to do with passing more federal laws obligating the treating of Negroes as white. If anyone believes that you are changing the pattern of justice in the deep South by putting it into the courts, he only has to look at the record of convictions, which remains bad." The jury box in particular has "been an agency for the status quo."

The situation is "not going to be changed by passing more laws," said Carter. "People like Rev. King, who are calling for new civil rights acts, should go back through the South, having brought down the walls against voting, and engage in large personally-led voter registration drives."

"While this would have little effect on white attitudes, it would have an effect on white action." In fact, stressed Carter, "there has not been a sustained drive." The key to change is the implementation of the Voting Rights bill, rather than the passing of more, unused machinery. Presumably, then, the enforcement of that bill would bring pressure to bear from below for changes all along the spectrum. The "whole pattern in the South" has shown that as soon as Negro "voting strength gets to 33%, you

(Continued on page 6)



"Convincing to be sure, but hardly the sort of argument this court is accustomed to hearing!"

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By Justice William O. Douglas

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General Hershey

(Continued from page 2)

Vietnam is immoral because the means are immoral." SDS, he said, is "against the destruction of the Vietnamese people. The effect of the war will be the brutalization of both Americans and Vietnamese."

"This war may eventually subvert our country and destroy our democratic system," he asserted quietly. "It is not the war in Vietnam which is of fundamental importance. It is actually a testing ground of whether national liberation movements can succeed, particularly in Latin America."

"It seems that in any of these countries, revolution is the only way to achieve a decent life in our generation. We are going to have many Vietnams in our generation."

"The aim of SDS is to bring the truth to the American people," he said. "We find a good deal of sympathy in America for those seeking to avoid the draft because of distaste with the Vietnam war. The question is, 'Are they patriots?' I leave it to you."

Gen. Hershey's answer was that "our law does not permit individual citizens to decide what war they are going to serve in. I don't see how you can let individual citizens decide which wars they are going to fight in."

A student in the audience was critical of a remark by Gen. Hershey which was printed in the Forum program: "A society that hasn't got the guts to make people do what they ought to do doesn't deserve to survive. A democracy has to make people do things for their own good — go to school, obey the law, respect the rights of others. The presumption is that a citizen is responsible for his government. That means defending it!"

Hershey answered the student with the observation that "merely because you live in a democracy doesn't mean you live in a chaotic world. In a democracy, the people decide, and then the people go along with the majority decision."

In an interview published in the *Village Voice* the day before the Forum speech, Gen. Hershey said: "You know, I like Decatur — he's not very popular these days, but I believe what he says: my country right or wrong. You just can't have democracy if you don't believe in it."

Bay State Senators Boost Vietnam Policy

By Theodore S. Curtis and Brian Sweeney



Senator Saltonstall

"We've got to go forward in Vietnam; we've got to support the integrity of our country's word," stated U.S. Senator Leverett Saltonstall (R-Mass.) to a Law School gathering recently.

Senator Edward Kennedy (D-Mass.), having just returned from a trip to the Far East, also approved the Johnson Administration's Vietnamese policy at a Cambridge hotel meeting which was attended by twenty or thirty interested law students.

Saltonstall had no criticism of the Vietnam peace protests in this country as long as the demonstrators stay within the law, but he objects "horribly to draft card burning." The senior Senator predicted that Vietnam, military pay hikes and a general reappraisal of Great Society legislation "hastily" enacted in 1965 would occupy Congress in its session beginning January.

The "waste, inefficiency, and bureaucratic administration" of the federal government received harsh criticism by Salton-

stall. He is a member of the select committee which analyzes the Central Intelligence Agency and stated that "the CIA does not make policy in any sense of the word; it does try to get the facts."

Saltonstall was the guest of the Harvard Law and Graduate Schools Republican Club and was introduced to the Harkness Commons gathering by Daniel "Mack" Armstrong, 3L, president of the club.

Senator Kennedy spoke to a hastily assembled but enthusiastic crowd in the Hotel Continental at a coffee sponsored by the Democratic State Committee. Kennedy had great praise for Cambridge Mayor Edward Crane and Congressman Thomas P. O'Neill, who introduced the Massachusetts junior Senator. Noting that political columnists have been referring to New York Mayor-elect John Lindsay as "a Republican Kennedy," the Senator wagged his finger in the familiar Kennedy style and said, "Let me tell you, there is no such thing as a Republican Kennedy."

As Senator Kennedy greeted students from the Harvard Law School, he remarked that "The only thing I remember about law school is *Pierson v. . . .* what is it?"

In his speech he defended the Administration policy toward Vietnam. "The distinguishing feature about the Kennedy and

(Continued on page 15)

Bruce-Berman Axis Wins

Two Law School politicians, Dean William L. Bruce and Professor Harold J. Berman, analyzed their recent Newton City elections in exclusive interviews this week.

Dean Bruce was re-elected to the Newton Board of Aldermen. This year his plurality was more than 3,000 votes, an impressive increase over his margin of 300 in the 1963 election.

Prof. Berman, an under-dog candidate for the Newton School Committee, fashioned an upset by polling 2,000 more votes than his nearest competitor. About 18,000 Newton citizens voted in the elections.

According to Prof. Berman, being a member of the Law School faculty made "a great difference" in his campaign. He is already serving on the Committee, having been appointed to fill a vacancy before his official term begins next January.

Dean Bruce attributed his success in the three-man race to several factors. "In the first," he reflected, "my name begins with the letter 'B'". Also, the other two candidates spent most of their time "in a battle between themselves."

Although he was quite vocal during the campaign, Dean Bruce announced that he would make no victory statement.



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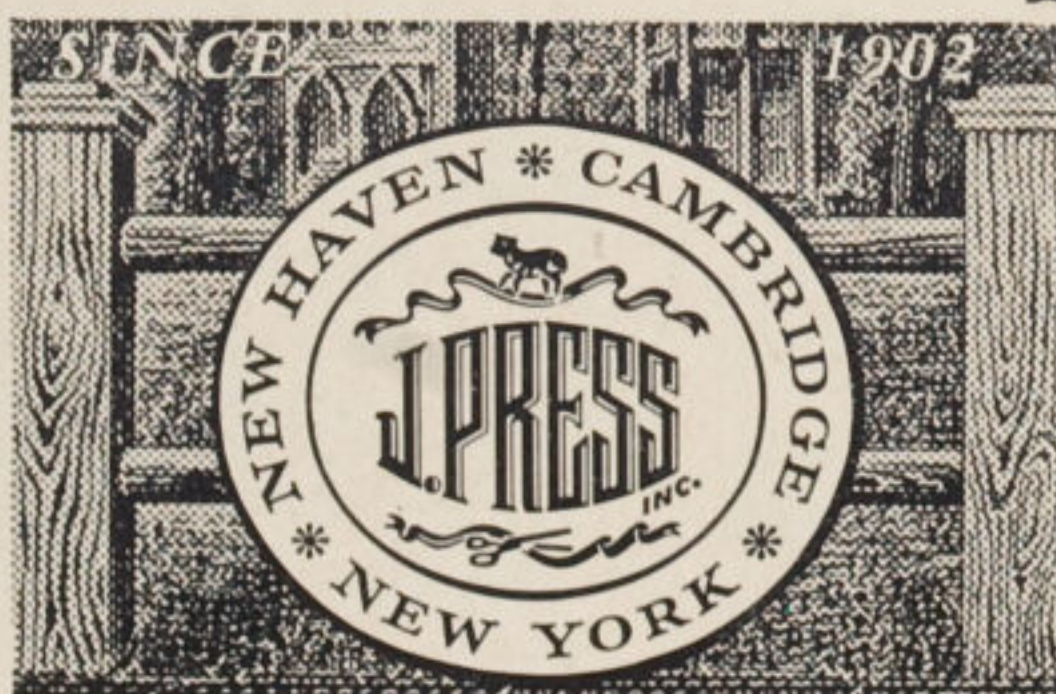
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Carter

(Continued from page 3)

start to see the changes." It would be utilizing the paramount factor in the South today — the potential power of the Negro to change the situation. "This depends, in turn, on how good the leadership is and how sustained the commitment to change is."

Mr. Carter, who is studying Southern history and politics, and is also auditing a range of other courses, from Archibald Cox's course on Current Constitutional Issues to the Poet in America, graduated from the Woodrow Wilson school at Princeton in 1957. In 1961 he won the Sigma Delta Chi national award for editorial writing for a series he did on racial issues. He is currently working on a biography of Theodore Bilbo, Senator from Mississippi and a leading racist before he died in 1946.

In response to questions after his talk, Mr. Carter theorized that the reason white aristocrats in the South "are shutting up about the civil rights issues can be found in the presidential election of 1964. "On the day 87% of Mississippi's voters went one way and 67% of the country's voters went the other way, the last great illusion was shattered. These leaders had fooled themselves that the great white backlash was a reality." It has been only since the Southern aristocracy stopped vocalizing about the situation that the Ku Klux Klan has begun taking matters into its own hands, he said.

Writing Program

Applications for the Second Year Writing Program are now available at the receptionist's desk in Langdell Hall and must be submitted to Professor Herwitz's secretary by 2 p.m. on December 10.

A description of this year's program is attached to the application form.

How to Answer the Firm Whose Job Offer You Wish to Decline (or, The Worm Turns)

(Check as appropriate)

Dear Mr.:

- ☐ I was delighted to receive your offer.
- ☐ Thank you for your offer.
- ☐ Your offer arrived today.
- ☐ In the hope that it will assist you in making your own plans, I am writing to advise you that it now appears unlikely that I shall be able to accept a position with you upon graduation from law school. If this situation changes in the next month or so, I shall so advise you. In the meantime, I should like to thank you for the interest which you have shown in me, and wish you the best of luck in your recruiting efforts.
- ☐ My present plans permit me to consider further only a handful of the firms interviewed. I regret that I will not be able to submit an acceptance to you. I am confident that you will find an associate elsewhere who will meet your requirements.
- ☐ I have finally had an opportunity to coordinate the results of my Boston interviewing with opportunities in other cities, and on the basis of the present outlook as to my job needs for next year, and the availability of firms to fill those needs, I am sorry to say that it does not look as if I will be in a position to pursue with you further the possibility of becoming associated with your firm.
- ☐ Thank you for the interest which you have shown in hiring me. I enjoyed meeting with you in Cambridge. There is no question that your firm has fine qualifications and that you make a very desirable prospect for a law student. However, as you must know, the number of career choices that I can explore is substantially less than the large number of firms who have expressed interest, and I must therefore regretfully limit my choices. After careful consideration, it does not appear that I will be in a position to join your firm at this time. If I can be of any help to you, please call on me.

- ☐ As of this writing, I think that I have to report that I cannot give you any encouragement for the prospects of association with me. This has been a difficult decision for me to make, but quite frankly the advantages of
 - ☐ a more pleasant practice
 - ☐ a more active practice
 - ☐ a more reputable practiceand of working for
 - ☐ a firm offering more generous compensation
 - ☐ a firm with more sensible personnel policies
 - ☐ an equal opportunity employer
 - ☐ a firm with a reputation for developing associates rather than exploiting themhave tipped the balance and induced me to accept employment elsewhere.

Very truly yours,
(Sign your name)

.....

Prof. Cox to New Chair

(Continued from page 1)

sible through the bequest of Mrs. Jessie R. Buckner, the widow of the late Edward Buckner, LL.B. '22.

Mrs. Buckner's will established the Edward and Jessie R. Buckner Memorial Fund, and from this the Samuel Williston Professorship was created. Mr. Buckner was a student of Prof. Williston, and greatly admired him.

Prof. Cox, a leading authority on labor law, had been Royall Professor of Law at Harvard when, on January 23, 1961, he became Solicitor General. Before returning to the Law School this fall, Prof. Cox resigned from Harvard's Board of Overseers, to which he had been elected for a six-year term in 1962.

A native of Plainfield, N. J., he received the A.B. ('34) and LL.B. ('37) from Harvard. He then spent a year as law clerk to Judge Learned Hand.

The Murky Depths

The mysterious workings of the Selective Service System have become a topic of major interest at the Law School this year. Be they hawks, doves, or confused, most students here must carefully consider possible recruitment by General Hershey's office while making their career plans.

Of course, the chances of being called for military service depend upon the developing character of the war in Vietnam and the uncertainties of future diplomatic maneuvering, but no convincing reasons have been offered for the present anachronistic hocus-pocus administration of the national conscription program. Under the present "system" the local boards are given enormous discretion in meeting their assigned quotas and are often guided only by "suggestions" from Washington.

Perhaps there really are valid reasons today for this decentralization of a vastly important function of the central government; General Hershey has implied that it can be justified by references to the needs of local democracy and national politics, and it is true that historically it was the responsibility of the states and localities to raise armies for the national defense. But even if someone can think of good reasons for different boards to apply different standards, there is no justification for the failure of these local boards to clearly inform their constituency of the standards presently being applied.

Several law students have already been notified that they will lose their student deferments at the end of this academic year. Many others are going through the Kafkaesque ritual of seeking to discover what (if anything) their local board thinks about drafting married men, graduate students, judicial law clerks, and people with a particular physical disability. These students are not "cowardly pinko draft-dodgers" working against the national interest and seeking to give and comfort to Uncle Ho. Rather, they are people with a wide range of viewpoints about Vietnam, who are trying, often in vain, to discover what they will be doing six months from now.

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TONGUE 'N CHEEK

By Fenno

Yesterday the Head of STUPID (STUdents for Purification of the ID) informed us that he wanted to give a press interview. Naturally I was assigned to the job. The STUPID leader himself showed me around his headquarters.

"Welcome to STUPID, Mr. Fenno. I'm sure you will feel right at home here."

"Thank you," I replied.

"The reason I wanted to talk to a reporter, Mr. Fenno, is that STUPID is staging a big protest demonstration next week, and of course we want plenty of publicity."

"Of course," I said. "What are you demonstrating against?"

"We haven't decided that yet; but don't worry, something will turn up. The important thing is to show that we rebel against our adult rulers."

"Very idealistic," I muttered.

"Well anyway," continued the STUPID leader, "I wanted to show you how our STUPID operation works. Now here are some of our STUPID signs."

In the corner was a huge pile of posters that read "Fight for Peace," "Join STUPID to Get Smart", and "Yea Smersh!"

"Over here," he continued, "we have five thousand pairs of dirty sneakers. STUPID people wear these in marches to add to the atmosphere. We also have a large selection of false beards and sideburns for STUPID marchers who are too young to grow their own."

"What do you do with all that coffee?" I asked.

"We sprinkle a little finely ground coffee behind each demonstrator's ears in case he forgot and washed the morning of the march. It keeps up the image, don't you think.."

"Well," I said, turning to go, "I hope your march is successful."

"Successful! Good Grief, Mr. Fenno, if we ever succeeded everything would be ruined. We'd turn into a lot of stodgy old liberals!" I guess he has a point.

Letters to the Editor

Congressman Defines His Views On Vietnam Policy

To the Editor:

Many thanks for your good write up about my appearance before the Harvard Young Democrats on October 8.

In one of the circulars announcing my speech it was said that I was one of the seven who voted against funds for Vietnam. This is a factual error which seems to have been carried over into the article. I've had reservations about some aspects of U.S. policy in Vietnam but these would not add up to "staunch opposition to stepped-up military operations." As a matter of fact I prefer stepped-up military operations to an inadequate military presence which only prolongs the agonies of that war.

In addition, I would be more enthusiastic about our total involvement in Vietnam if I could see more clearly the possibility of really building a better future for the people of South Vietnam.

With best wishes,

Donald M. Fraser

Member of Congress

5th District, Minnesota

Film Star Rants and Raves, Threatens Legal Action. . .

To the Editor:

I have just returned from Aca-pulco and read your outrageous article about me of November 18th, for which I demand an apology and a printed retraction.

The lawsuit so imprecisely described by the inept Mr. D'Amato did not in any sense "expose" me; it was a trivial matter concerning a trick photography scene which a bunch of lawyers turned into an overblown display of their own pettifoggery. In no way did it concern my most daring exploits in *Son of the Midway*, such as the triple somersault.

You have authorized a gross misrepresentation, and unless the retraction and apology follow im-

mediately, I shall consult my attorney as to further action.

Yours, etc.,

Craig Bilder

Hillcrest Farm

Gray, Ames 00001

Editor's note: Craig Bilder, star of the recent film Son of the Midway, was a witness in Press v. Aircraft Pictures which was tried before a jury in the Ames Courtroom on November 10. See you in court, Mr. Bilder.

. . . And Professor Fried Is 'Appalled' and 'Disheartened'

To the Editor:

I was disheartened that a student in this institution should have had the poor judgment to write and publish Mr. Branzburg's story on his experiences with the Boston Police Department, but I was appalled at the sheer moral imperiousness of his reply to a justified and under the circumstances mild reproof.

Let us hope that a third-year law student would know that it would be the grossest abuse of professional ethics to reveal statements arising out of a professional relationship to the prejudice of the person who made the statements in reliance on their confidentiality. But this item of legal ethics is, after all, only a special instance of the general precept of decent, civilized conduct that when you win a person's confidence and he therefore makes revelations which he would never wish to have generally published, you do not at the first opportunity publish them, and particularly not when you can be sure they will be embarrassing or humiliating to that person. There is, of course, no profession where this elemental precept is more consistently violated than in journalism. The journalistic trick of using fictitious names changes nothing, for it is at best a poor shield against possible legal liability. The essential matter is the justified sense of having been put upon which the

particular members of the police force referred to and their superiors, who authorized this excursion, must be experiencing.

Charles Fried

Professor of Law

Crime Commission Attorney Lauds Roxbury Police Story

To the Editor:

I read with interest your article in the November 4, 1965, edition of the Harvard Law RECORD describing your night riding with the Boston Police. Our Commission is presently studying among other things the general operation of our Police Department and the problems it faces.

Your article gave a very keen insight into and a good description of what might be described as a typical night of police activity. It reminds me very much of a night I spent riding with the Atlanta police.

If you have any further thoughts or experiences in this general area, I would certainly appreciate your giving us the benefit of them. I would also like to get five more copies of the November 4, 1965, issue of the Harvard Law RECORD for distribution to some of our Commission members.

Again, I want to congratulate you on a very fine article.

Sincerely,

Hugh Peterson Jr., LL.B. '60

Associate General Counsel

Atlanta Commission On

Crime and Juvenile Delinquency

Chicago Lawyer Sends Kudos On RECORD Police Article

To the Editor:

As an oldtimer, I submit a brief comment on Mr. Branzburg's [November 4] report of a Saturday night's tour of a section of Roxbury as a guest of police officers in their patrol cars.

I found the article as interesting and informative as any I have
(Continued on following page)

Letters to the Editor

(Continued from preceding page) read in the RECORD in recent years. In my opinion, Mr. Cook, 2L in his letter appearing in your issue of November 12 has rather adequately indicated its salient points of value. Before we can come to a sound judgment on the pros and cons of our social problems, we must know the basic everyday facts out of which they arise. Otherwise we are merely engaged in idealistic speculation in a factual vacuum, which may lead to ill-advised conduct with harmful results. On more than one occasion I have read in the RECORD what seemed to me evidence of such activities.

Sincerely yours,

Walter I. Deffenbaugh,
LL.B. 1915

Pope, Ballard, Uriell, Kennedy, Shepard & Fowle
Chicago, Illinois

RECORD Editors Cautioned On Use of Split Infinitives

To the Editor:

I do not think that Harvard Law School should consider awarding the J.D. instead of the LL.B. until the editors of the Harvard

Law RECORD refrain from splitting infinitives.

Very truly yours,

Courtney Shands, Jr.,
LL.B. '54

Editor's note: Mr. Shands refers to a sentence in the editorial of November 12: "It is time for the Harvard Law School to seriously consider awarding the J.D. instead of the LL.B."

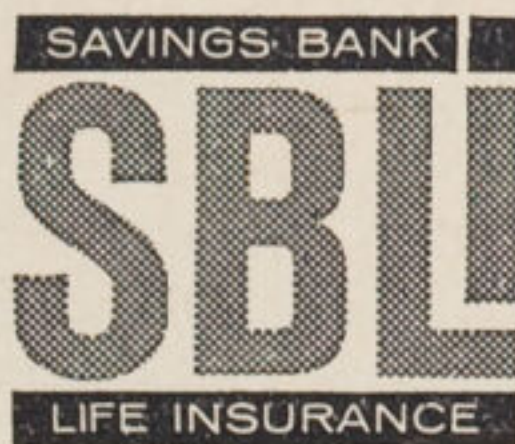
"The notion that it is a grammatical mistake to place a word between to and the simple form of a verb, as in to quietly walk away, is responsible for a great deal of bad writing by people who are trying to write well. Actually, the rule against "splitting an infinitive" contradicts the principles of English grammar and the practice of our best writers."

"The construction is a relatively new one, but it is found in the writings of Sir Philip Sidney, Sir Thomas Browne, Donne, Pepys, Defoe, Samuel Johnson, Burns, Wordsworth, Coleridge, Lamb, Byron, De Quincey, Macaulay, Holmes, Whittier, George Eliot, Carlyle, Browning, Arnold, Pater, Ruskin, Henry James, Hardy, Meredith, Galsworthy, Conan Doyle, Kipling, Shaw — and Benjamin Franklin, Abraham Lincoln, Theodore Roosevelt, Woodrow Wilson, and Herbert Hoover." Bergen Evans and Cornelia Evans, A Dictionary of Contemporary American Usage.

Nevertheless, the editors of the RECORD will promise to consider seriously Mr. Shands' letter if the Law School agrees to consider seriously the J.D.

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Recent Book

Ruby's Trial and the Strategy of Defeat

The Trial of Jack Ruby. By John Kaplan and Jon R. Waltz. New York: Macmillan, 1965. Pp. 392. \$7.95.

By Jerome H. Skolnick

It would have been so easy to write a bad book about this trial, or even a mediocre one. It could have been a book that too heavily emphasized the colorful characters involved in the trial. Or it could have been a pedantic exercise that not only lost the flavor of the proceedings, but failed to use them to illuminate the meaning of the courtroom strategies taken by the defense and prosecution. As the book develops, however, it becomes increasingly clear that the authors have done an extraordinary job of combining "color" with perceptive and detailed legal analysis to achieve both a masterpiece of interpretive writing, and a lively introduction to criminal trial procedure.

Emergence of Belli

The subject of the book is not Jack Ruby, but the *trial* of Jack Ruby. Although he contributed toward his own defense, he did so only slightly and his passivity or "absence" pervades the story of the trial. A succession of attorneys was chosen by his family, sometimes in consultation with family friends, and it was Ruby's family that finally settled on the man who emerges as the central figure in the trial—Melvin Belli.

Belli was chosen as trial attorney over Tom Howard, a veteran Dallas criminal lawyer, who had been called in by Ruby's business partner immediately after the shooting. Although Ruby's family

had nothing against Tom Howard, they felt he lacked sufficient "class" for such an important case as this. Howard had tried twenty-five other capital cases and in each his client had escaped the death penalty. Nevertheless, they felt that this was too big a case for a local lawyer who defends "whores and pimps."

A Wiser Strategy

What they failed to realize, however, was that Howard defended his clients very well; that small cases are often harder to defend than big cases in which the character of the deceased, always on trial in a capital case, is less than salutary; and most important of all, that considering the case as a "big one" might entail a strategy that could, and indeed did, prove disastrous.

Tom Howard's defense would be based on the idea that Ruby's crime was murder without malice, which carries a maximum five year sentence, and one could confidently expect, if Howard was correct, that Ruby would spend not more than a year or two actually behind bars. Howard's de-

fense was also based on the idea that the case would be tried "among us Dallasites" with Oswald as the only "outsider." By assuming that the case was a big case, Ruby's family directly contradicted the assumptions of Howard's strategy, and introduced a strategy, the authors argue, that was bound to fail.

The principal theme of the book is that Melvin Belli's defense strategy was wrong, not because Belli was stupid or incompetent but because his position as the "bigtime" outside lawyer demanded that he make a distinctive contribution. He could not employ Tom Howard's "among us Dallasites" strategy, which some criminal lawyers call a "slow plea of guilty" to a lesser offense. It was incumbent upon Melvin Belli to make a dramatic contribution, and the one

(Continued on following page)

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Prof. Skolnick is a Carnegie Fellow in law and sociology on leave from Berkeley. He is author of *Justice Without Trial*, a study of law enforcement, in press with John Wiley & Sons.

Jack Ruby

(Continued from preceding page)
that suggested itself to him was one that was capable of revealing Belli's knowledge of medicine—he would introduce modern "science" into the bucolic halls of Texas justice by setting out a defense strategy that aimed to have Jack Ruby acquitted by reason of insanity.

The argument of the authors—well supported by the facts of the trial—was that it could not be done under the substantive and procedural rules of Texas criminal law, especially the M'Naughten test of insanity prevailing in that jurisdiction.

Even if Jack Ruby was emotionally unstable (he was), suffered from organic brain damage (he very likely did), was afflicted by psychomotor epilepsy (conflicting testimony) it would, with the burden of proof shifting to the defense to prove insanity, have been extremely difficult to prove that Ruby was in a "fugue state" when he shot Oswald.

In short, even if the defense could have proved that Jack Ruby was a "psychomotor variant epileptic" that proof in itself does not meet the strict cognitive requirements of the M'Naughten rule.

There may have been another prong to Belli's strategy, which was to subject the outcome of the trial to appellate review. Kaplan and Waltz, however, clearly analyze the problems inherent in this approach, and it must be said to Belli's credit that it was not explicitly adopted by the defense.

Perhaps the strongest argument to be made for Belli's strategy, and against the author's criticism of it, is the concern they show in one part of the book for whether Jack Ruby would be sentenced to death, while at the conclusion of the book they acknowledge that even though Ruby was sentenced to death, it is extremely unlikely that Ruby would ever be executed. (District Attorney Wade has indicated his willingness to recommend life imprisonment, *New York Times*, Nov. 5)

If there is a flaw in the authors' analysis, it is in not giving sufficient thought to the forest for the trees. They are brilliant when assessing the tactics of the trial, meaning of particular questions, even bodily movements made by counsel. But they fail to deal adequately with the question, "Suppose Belli's strategy had been successful, what would have been the consequences for his client as compared to the consequences of Tom Howard's strategy?"

One such consequence they do note. During the trial, Ruby was stripped of any self-respect or illusions he may have held about himself. He was described by his own defense attorney as the village clown, analyzed by psychiatrists as brain-damaged and a latent homosexual, damningly quoted by police in whose reflected prestige he had been happy to bask, and forced to sit as a passive witness. One newsman remarked that, "It would have been kinder to stone him to death."

(Continued on page 16)

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Rights Group Hears of Race and Rhodesia

By Frank R. Parker

"Internationalism and Civil Rights, Target: B Rhodesia" was the announced topic of Dr. Martin Kilson's discussion at a Civil Rights Committee meeting on Monday, Nov. 22. But his talk was primarily devoted to a lecture on international Pan-Africanism, followed by a question and answer period about the Rhodesian crisis.

Mr. Kilson, who is a lecturer in government at Harvard College, first developed "Negro-American internationalism" as a tension between the "elitist" tendencies of W.E.B. DuBois, the N.A.A.C.P. founder and "secular rationalist," and the more "flamboyant, irrational" claims of Marcus Aurelius Garvey, self-styled African king.

DuBois founded the Pan-African World Congress in London in 1900, the speaker noted, to "make an inventory of the status of Negro communities caught up in white control." Though he eventually became a Communist at the age of 90, DuBois never had mass sympathy or appeal.

On the other hand, Garvey and his Universal Negro Improvement Association, a movement "pure in its blackness", did succeed in catching the imagination of the Negro masses. His organization collapsed however, said Mr. Kilson, when its leader was deported for mail fraud.

These early attempts at internationalism were short-lived, Mr. Kilson pointed out, but the symbols of early Negro protests have been retained and internationalized, as exemplified by Ghana's use of Garvey's black star.

The speaker himself termed Britain's response to racial problems generally "civilized" and did not blame the British government for its position. Rather, he noted that

it would have been "difficult for Labour to survive if it had used the hammer against Rhodesia."

Asked about the possibilities of violent resistance to white minority rule by the black Rhodesian majority, the speaker responded that he was not optimistic. All the middle-class, European-educated black Rhodesians he had met, Mr. Kilson related, had fallen victim to the submissive "Sambo syndrome."

However, he ventured, the African "urban subculture" in some of the larger cities might have an opportunity to utilize varied "skills" in violence should a spontaneous uprising occur.

Ames Finalists Selected

By Keith S. Watson

Morgan-Brown and Griswold Equity will be the contestants in the Ames Competition finals next spring. The two third-year clubs earned the right to appear before the distinguished finals bench, which traditionally includes a member of the Supreme Court, as a result of recent semi-final victories.

Griswold Equity bested the Kaplan club in a November 23rd argument. The case concerned a wrongful death action in the Massachusetts district court resulting from the Bay State crash of a chartered plane on an international flight. The oralists for the winners were Daniel M. Armstrong and Barbara M. Jacobs.

Morgan-Brown gained its victory over the Story Law club on November 16. There, Constitutional issues were raised when police took a "drunkometer" breath test while the accused was unconscious and found incriminating evidence after overhearing a conversation between the accused and his counsel. Alan I. Baron and Martin A. Kasindorf represented Morgan-Brown on the oral.

In the Morgan-Brown — Story Law argument two Massachusetts state judges were represented, Jacob J. Spiegel of the Supreme Judicial Court and Frederick S. Pillsbury of the Superior Court. Completing the bench was Harris Steinberg, a criminal law attorney from New York.

In Memoriam

Frederic M. Dean, 1L, died on November 22, after a long illness. A native of Boston, Mr. Dean graduated from the University of Utah in 1965 and was a member of the Story Club at the Law School.

Vietnam Petitions

(Continued from page 1)

that U.S. policy should be "pro-democratic, not solely anti-communistic." It also requested the Administration to give the American people "more facts" about the present course and future goals of its Vietnamese policies.

Perhaps most surprising was the part of the Democratic statement expressing support for last Saturday's protest march in Washington. The stated goals of the march demanded a reappraisal of policy and a willingness to engage in negotiations with the Viet Cong. This section of the resolution passed the committee by a 5-4 vote.

In response to the Democratic position, Robert Doty, 2L, a member of the Democratic Club and one of the sponsors of the "presence" petition, condemned the Democrats' disapproval of his petition. Doty said that the two resolutions were not necessarily in conflict and that he agreed "with many points" of the Democrats' document. He also stressed that the sponsors of the "presence" petition were from both parties so that it could justly be called a "bipartisan" effort.

The other member of the Democratic Club to sponsor the "presence" petition was Craig Bamberger, 3L, a member of the Club's executive committee. Doty is from Houston, Texas, and Bamberger is from Selma, Alabama.

As a result of a week-long campaign, more than 375 law students signed the "presence" petition. On Monday the sponsors presented the document to Senator Saltonstall (R-Mass.). The Senator said that he was "delighted to receive" the petition and announced that he would take it to President Johnson.

A petition appealing to "hawks", whose sponsor was not revealed, expressed complete satisfaction with the Administration's conduct of the war. The document said that its signers were willing to fight in Vietnam and it asked them to indicate their draft board address so that their attitudes could be made known to the board. A spot check of petition locations indicated that few students had answered the call.

The resolution of the "doves", also under anonymous sponsorship, was not much more successful. Few signed its appeal to the Administration for a ceasefire.

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Law Students Drink From Varied Founts

By Jack B. Jacobs

For some time the Law School has encouraged third-year students to cross-register in courses outside the Law School. This year about 85 third-year students have heeded the call, taking courses in the Graduate School, the Business School, and even in other universities.

The range of courses taken is broad, contrary to the expectation that students would take courses with subject matter closely related to law. Although many students did register for courses in economics, government, business, and sociology, a surprising number registered in philosophy, history, anthropology, and sociology. Some are taking Italian, Slavic Language and Literature. One student is registered for Akkadian.

Although one would expect that students would cross-register to obtain research background for the third-year paper, or for a particular specialty, this was not so. "A course in personality theory (Soc Rel 153) is no preparation for Wall Street or SEC regulation," said Neal Johnston, 3L, "but the resulting insights into character motivation and sources of social deviation are useful in themselves." Johnston added that, although

the course was useful in his work in Voluntary Defenders, his reasons for taking it were to satisfy a curiosity about the subject acquired in college.

James Corcoran, 3L, registered in History 134 (History of the Enlightenment in Europe), also mentioned that his motivation for cross-registering was purely intellectual, and not related to law school courses or professional practice.

Scott Lowden, 3L, registered at MIT in a course dealing with "Transfer of Technology to Underdeveloped Countries," said that his reason for taking the course was that it was refreshing to get outside the Law School and its casebook approach.

All of the students interviewed claimed that they enjoyed the outside courses, although one found it hard to readjust to a lecture method of learning. Sandra Bennett, 3L, registered in Philosophy 171, thought that two years of the Socratic method gives a student a sense of participation in the learning process which is hard to obtain by listening to a professor lecture.

The consensus was that the changed approach was profitable, and that all students did well to cross-register at least once during their three years here.



Senator Edward Kennedy

Ted Kennedy on Vietnam

(Continued from page 5)

Johnson years," he said, "has been a concern for the quality of life throughout the United States . . . The fundamental question today is whether we also care about the people of South Vietnam.

"The Communists are counting on us to grow tired of our commitment. Asians are noted for their patience, and they believe they can outlast us. As President Kennedy said, "Unless we are prepared to show our concern for these people, no one else will."

Quoting Thomas Jefferson, the Senator declared that he "would rather dream dreams of the future than read histories of the past." He also said that a knowledge of recent Vietnamese history leads to a greater sympathy for the instability of its present government.

Ruby's Trial

(Continued from page 12)

More general questions, however, arise out of the meaning of the alternative labels "criminal" on the one hand, and "acquitted by reason of insanity" on the other. Is the former actually a more stigmatic designation than the latter? Even if it is, wouldn't Jack Ruby have been better off spending a year or two, or even ten, in jail as the impulsive assassin of Lee Harvey Oswald, than the remainder of his life as a homicidally "insane" inmate of a State mental hospital?

And doesn't the answer to this question itself turn upon the nature of the "treatment" or likelihood of "cure" that an exculpated but "insane" former defendant can find in the institution to which he may be committed? I wish the authors had also considered such questions as thoughtfully and perceptively as they do the question of whether the trial of Jack Ruby was fair.

Events of Note at the Law School

Dr. Mary Bunting will speak at a meeting of the Society of Harvard Law Dames today at 8 p.m. in Harkness. The topic will be "To Washington and Back."

* * *

The Barrister's Ball, sponsored by the Law Wives, will be held this Sat. from 8-12 p.m. in Harkness. Admission is \$2.50 and dress is semi-formal. All students at the Law School are welcome.

* * *

Mr. Lewis D. Gilbert, minority stockholder extraordinaire, will speak to the Bull and Bear Club on Monday, December 6, at 7:30 p.m. in Austin North.

* * *

The Asia-Africa Public Service Fellowship Program of Syracuse University is inviting applications for fellowships in 1966-67.

Successful applicants are assigned to working positions within the governments of a number of

East African and Asian countries for a one-year term, in some cases renewable for a second year. Applicants who are planning careers in public service are preferred.

The closing date for applications is December 15. Mr. Joseph E. Leininger, Secretary of International Legal Studies, will be glad to talk with interested third-year students at his office in the International Legal Studies Wing.

* * *

The Dames' Christmas Dance will be held at the home of President and Mrs. Nathaniel Pusey on Dec. 10, from 8:30 to 12 p.m. Tickets are \$3.00 a couple and may be obtained at the Dames' general meeting on Dec. 2. Only 100 tickets will be sold.

* * *

The RECORD has been informed that nine out of the ten Harvard Law School men taking the Ohio Bar Exam. last July have passed.

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