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'Competitive Forces' Discussed by Kaysen

By Jack Chenoweth
and Chris Walker

"Is Enough Competition Enough?" was the topic of the annual Holmes Lectures delivered this year by Dr. Carl Kaysen, Director of the Institute for Advanced Study at Princeton University.

To the question posed in the title of his address, Dr. Kaysen offered an "academically qualified 'no'." Though we continue to promote competition as a cornerstone upon which some the best efforts of the economy are achieved, we have ceased to rely upon it in purely economic terms, Dr. Kaysen contended.

He pointed out that there has already been a strong infusion of government and professional regulation into those areas where the competitive mechanism has proven insufficient, demonstrating that there remains, at best, only an obscure relationship between competition and other goals of

(Continued on Page 2)

Ames Competition

Finalists Refuse Prize Money

By Roger Lowenstein

Perennial third year paper worries, accentuated by what members of the Marshall Club have termed an unsympathetic faculty response, came close last week to endangering the final round of the Ames competition. Instead of withdrawing from the competition, however, the club has decided "as a symbolic gesture" to refuse whatever prize money it might be awarded, according to Ron Defelice, 3L, the team captain. The winner of the final round receives \$500, the loser \$350.

The team's decision to turn down the prize money capped an unsuccessful effort to convince the faculty that academic pressure on third year Ames competitors is unfair. In particular the late date of the final argument, scheduled for April 9, and the eight credits which depend upon the third year paper were cited by the team as dampening the incentive to compete.

The suggestion was made to the faculty that the credits for the seminar and paper should be reduced to four, the remaining four being credit for final round Ames competition. "They didn't take us seriously," De-

(Continued on Page 15)



"The Jealous Mistress" premieres this weekend.

(See Story on Page 6)

Kaysen Analyzes Failure of Market Mechanism

economic policy, most notably the achievement of maximum return to resource input. In terms of the economic model, competition as a primary regulator remains the standard; its value as a component of social policy must be questioned.

"How much of the problem of competition," Dr. Kaysen asked, "lies in the fact that we cannot get enough of it?" He offered the judgment that there's room for even more competition than we now have, consistent with economic dictates of efficiency. No longer is competition a self-sustaining process, however, and some measure of governmental regulation will be necessary to maintain even that degree which we now have.

Dr. Kaysen, a highly regarded former member of the Harvard academic community, called attention to several areas where the market mechanism is unable to meet the problems that confront it.

Where costs are not re-

lated to control by the market mechanism, and hence not amenable to cure by it, the entrepreneur has found it more profitable to ignore these costs, passing the burden to the public. These ex-



Photo by Andy Levin

Dr. Carl Kaysen

ternal costs, plant relocation, skills retraining, and pollution, for example, are no longer unimportant.

Similarly, where a lack of understanding yields only an imperfect knowledge of consumer habits, the impact of modern technology itself generates new problems which the market mecha-

nism cannot solve. Such questions only make it more difficult to find reasons to rely upon the competitive market to the extent that we do.

Though the first non-lawyer to give the Holmes series in recent years, Dr. Kaysen offered an analysis which was not confined to economic theory. The lecturer noted that the present state of the law followed the view he expounded.

"It is legally desirable now to have as few restraints on competition as possible, including the restraint of creating new, large firms by merger," he observed. Ironically, as the Populist tradition which Dr. Kaysen sees as the basis of much of the present suspicion of big business declines in its effectiveness, the forces which support much of the anti-trust legislation will decline. The cause of the small businessman, in whose name much government initiative has been directed, would be seriously weakened.

How would the market mechanism, and the law, then respond? If we assign to business more tasks which the market could not reach, then the forces favoring competition would be weakened. But the unregulated power of business should not be allowed to grow at the expense of the society. Though we want to have as much competition as we could reasonably promote, that would simply not be enough. Some new kind of non-market mechanism would be desirable.

(Continued on Page 12)

The cartoon caption in the RECORD of February 23, 1968, contained the word



A Squid

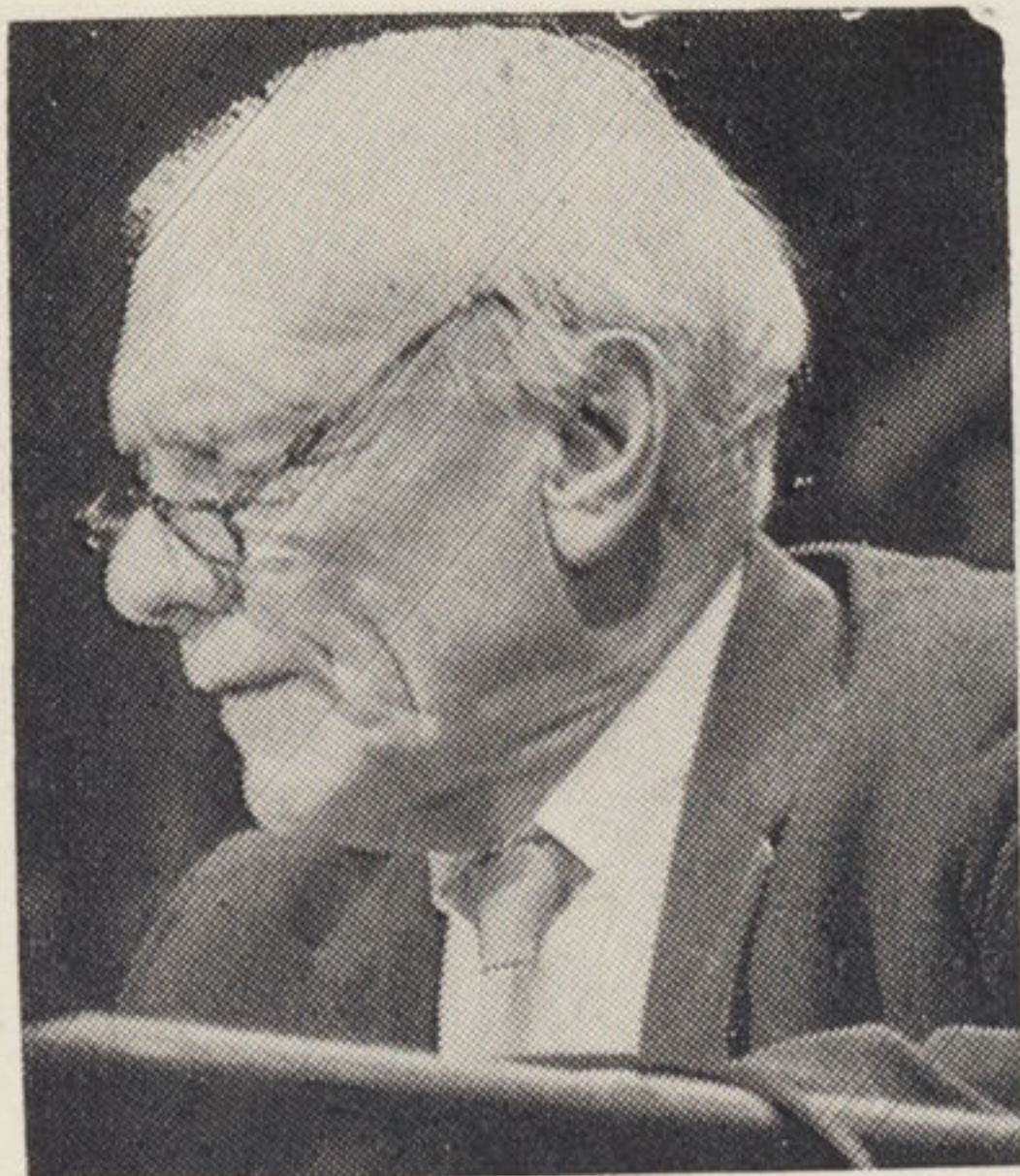
"squid" instead of the correct word, "squib." A squib is a short case abstract, ordinarily following a major case set out at length, included for contrast. A squid is a ten-armed cephalopod (especially the *Loligo*, *Ommastrephes* and related species) which squirts out clouds of ink when endangered.

Forum Without Form Panelists Take Off on 'Miniskirt Mentality'

By J. David Gernant

Question: When is a Forum not a forum? Answer: When it's a fun-for-all.

Question: When is a satirist not a satirist? Answer: When he has no bull's eye for the arrows in his quiver.



Malcolm Muggeridge

Restless Non-Native

And that is the short of what was right and what was wrong with the Harvard Law School Forum show last Saturday night.

Three bright lights of the witty-world met on the stage at Sanders Theater and exchanged gags. Malcolm Muggeridge. Henry Morgan. Al Capp. Oh, look. See them sit. Watch them be funny. Laugh, laugh, laugh. They are very funny. They are not enlightening. Wonder what they came for. Wonder what you came for. Wonder, wonder, wonder.

The topic assigned for the evening was "The Miniskirt

Mentality." That was the Forum's first mistake. As

Let Bobby have the Presidency . . . or he'll sulk

moderator A. James Casner said, "I was not aware that the miniskirt had risen to such heights." (He got a bigger laugh with his next line: "I wrote that joke myself.") It gave none of the panelists any sharply defined target to aim at. And since each man's "opening remarks" were limited to about thirty to sixty seconds, the problem then became one for the audience: what kind of questions should be asked?

How much, after all, could three learned gentlemen say about such a little topic? After Mr. Morgan observed that the miniskirt was "one of the wonderful reminders of places I've been," the subject was about covered (or uncovered). Students experienced difficulty in focusing the attention of the panel on any subject.

The president of the Forum, Mark J. Andrews, had said in his opening remarks that the talents and observations of three such satirists should not be wasted, like youth, on the young. The pity is that the Forum allowed them so to

dissipate their talents.

How much better it might have been had Mr. Muggeridge, say, delivered a biting twenty-or thirty-minute speech in praise, say, of the wonderfully human attributes and modest virtues of Lyndon Johnson — and then let the two others react, and left the audience their normal twenty or thirty minutes of questions. Regrettably, the program was left formless and amorphous, and the audience and the panel were unable to fill the gap.



Photos by John Harris

Henry Morgan

Deja Vu

Since there is nothing of substance to report, I append hereto some of the funnier one-liners:

Muggeridge, in his clipped British accent: "I feel at a tremendous disadvantage with these gentlemen here who are speaking their native language."

(Continued on Page 16)

Skating Rink Ushers in Ice Age at Law School



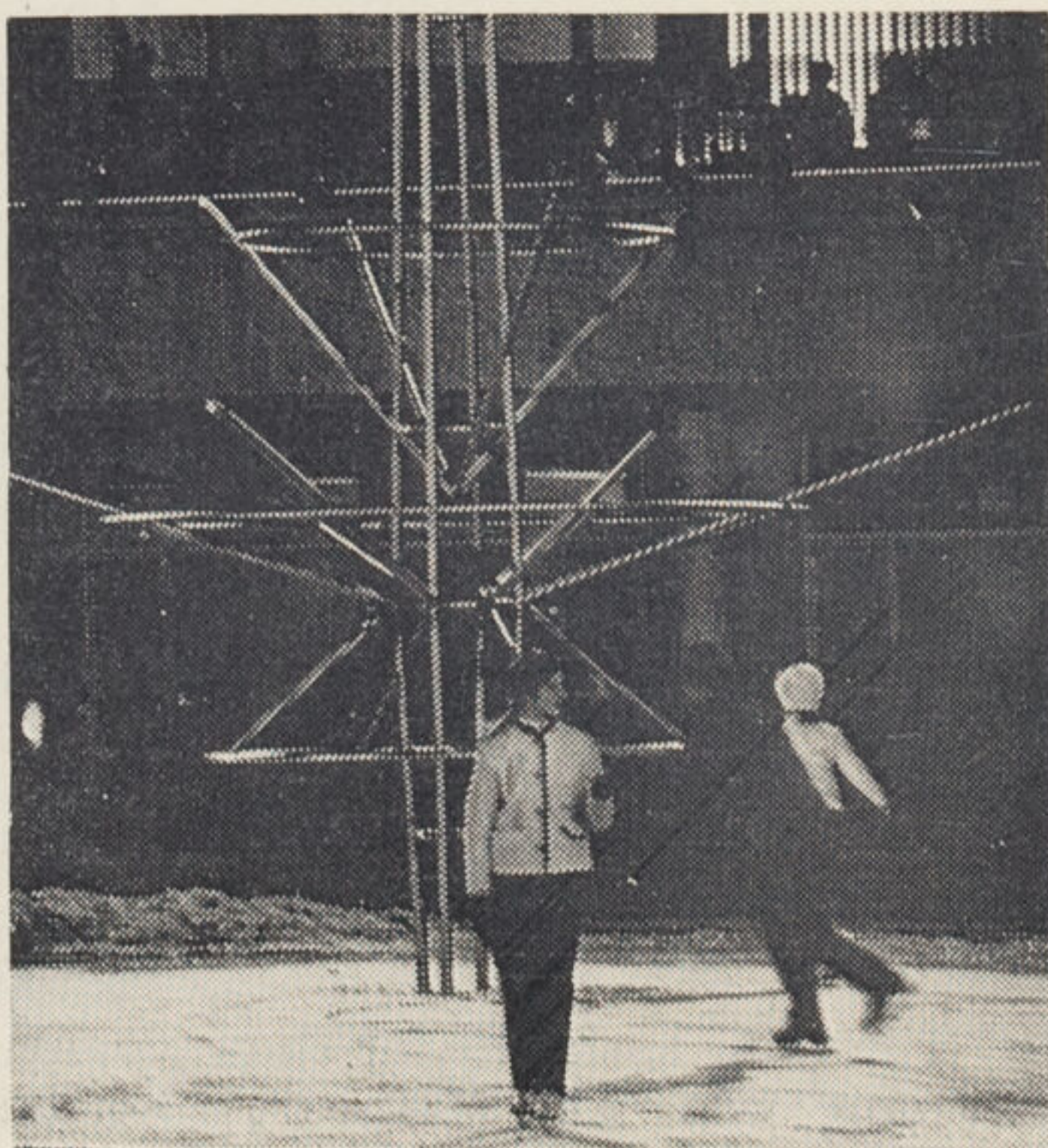
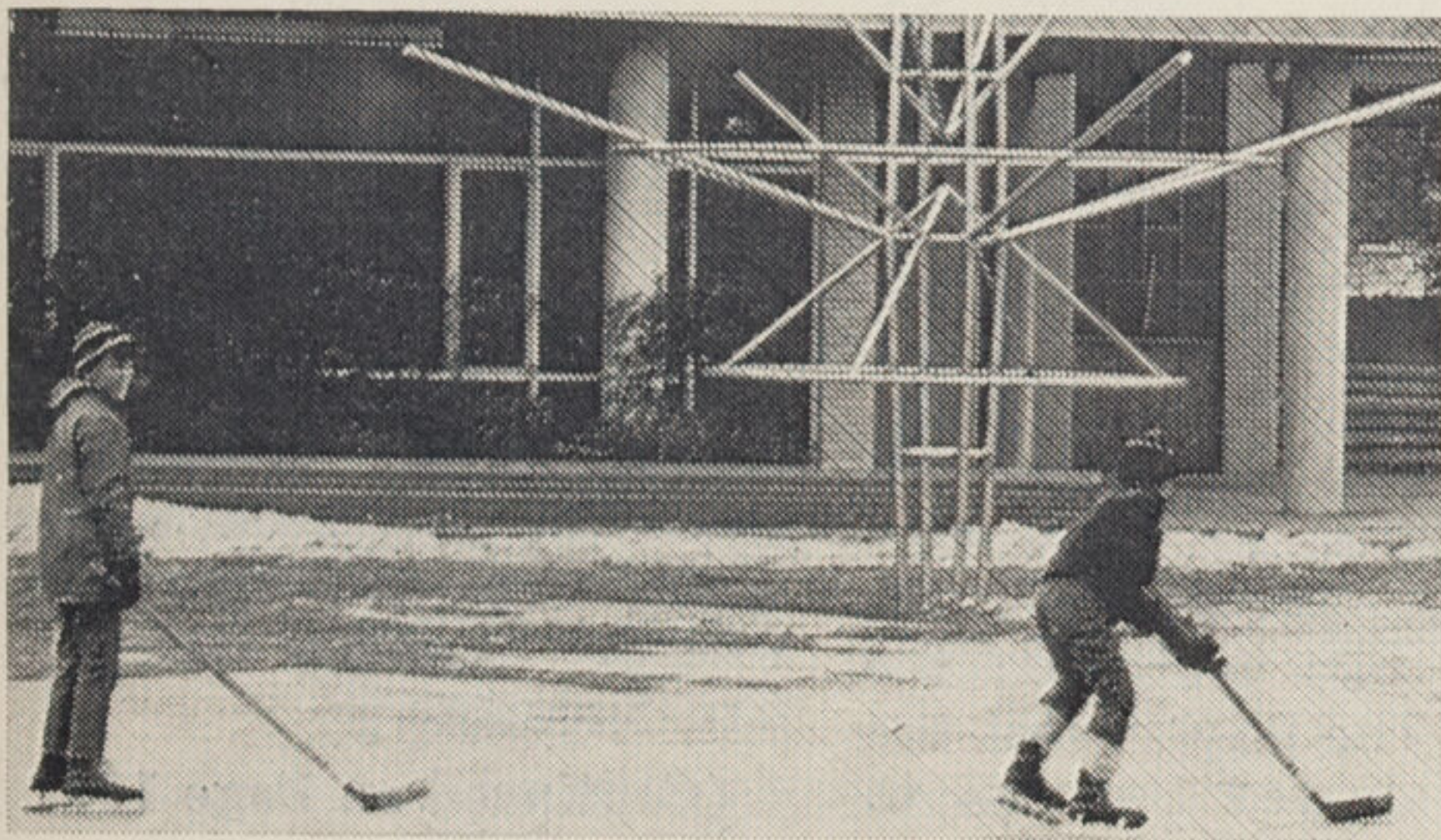
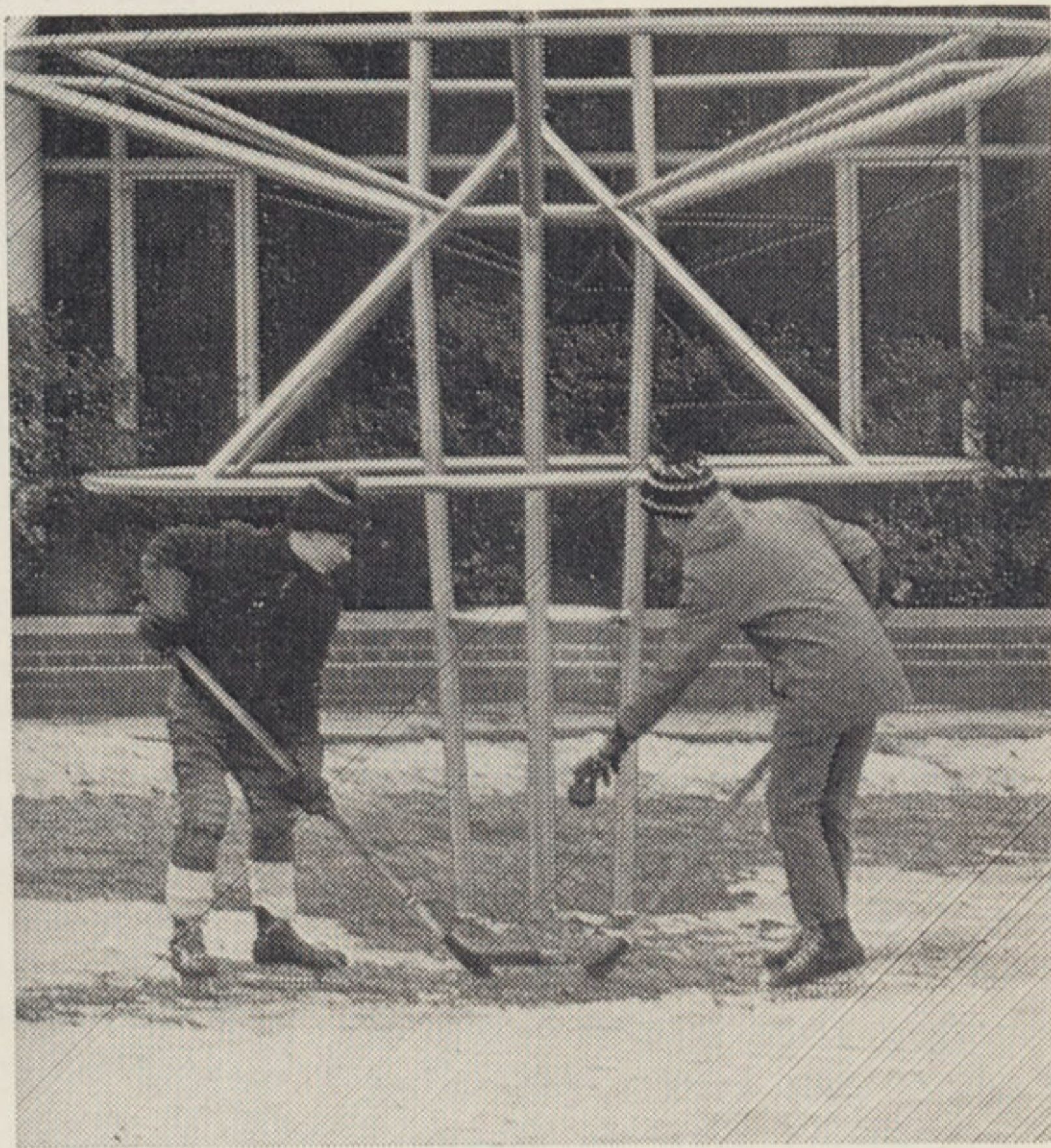
Night and Day
at the Rink

*Photos by John Harris
and Andy Levin*

ON VARIOUS OCCASIONS during the long, cold winter which Cambridge is accustomed to endure, the grassy turf beside the World Tree is flooded as the Administration attempts to grow a skating rink. Water gushes forth, splatters into the growing pond, and freezes to varying degrees of hardness. In recent weeks, there seems to have been an increase in use of the rink, which heretofore had all too often rested unused. Perhaps with the idea that winter is about to leave. Fat chance.

Setting up the rink is not the easiest task in the world. First, there must be a sustained period of sub-freezing. Second, there is a great deal of porosity in the earth by the world-tree. Which means that if the top one inch of water freezes and the supporting water is drained into the earth below, the skater will truly be skating on thin ice. And, of course, when a snowstorm descends, available labor is drained off to removing the white stuff.

But, for all these problems, it seems a cozier place for a skating rink than Langdell Library.



Students Testify at Mass. Legislative Hearing

What has been called the law school's closest link with "the real world," the Community Legal Assistance Office (CLAO), moved into the world of *realpolitik* for real last Thursday when three members of the group and a staff member climbed Beacon Hill to testify before the Massachusetts Court's joint committee on urban affairs.

The testimony concerned six bills which CLAO introduced last December, all

Proposals aid tenant groups

with regard to public housing in the Commonwealth. Previously CLAO members had appeared to speak for eight bills proposing public welfare legislation.

One of the CLAO crew spoke on a bill which would prohibit housing authority agents and employees from conducting searches of tenants' premises. Most leases now include a provision allowing such searches.

Public housing authorities would be forced to show just cause for evictions, if a CLAO bill on which Andrew Loeb, 2L, testified is passed by the legislators. Current standard leases give the authorities generally an option to evict on 30 days' notice, which turns out, the CLAO man contended, to be little more than tenancy at will.

Bills advocated by CLAO assistant director Paul Garrity would require the housing units to publish eligibility requirements for public housing, to post lists of apartments and establish waiting lists on a first-come, first-served basis, and to prohibit the authorities from excluding certain classes of people from applying, namely: mothers of illegitimate children and persons convicted of crimes.

But the highlight of the 3 1/2 hour proceedings, according to Garrity, was the testimony in support of a CLAO bill to require the housing units to negotiate with representatives of tenants. The bill doesn't require binding arbitration (which is rare in this area), but it's intended to make the authorities grant some kind of formal recognition to the tenant groups.

Much of the testimony included legal reasons for acceptance of the bills, fact situations pointing up the need for legislation and extemporaneous comments by the CLAO members on the advantages of the proposals. Those present from CLAO felt the committee gained some new appreciation of the bitterness and frustration which result from inequities in public housing administration. According to Garrity, the bills have an excellent chance of passage.

Several members of a Somerville tenant union accompanied Joseph Jacobson, 2L, who works with the union, to the hearings last Thursday. Jacobson had prepared the bill, but the unusual presence of private citizens at hearings such as these apparently impressed the legislators, who heard actual experiences of public housing residents.

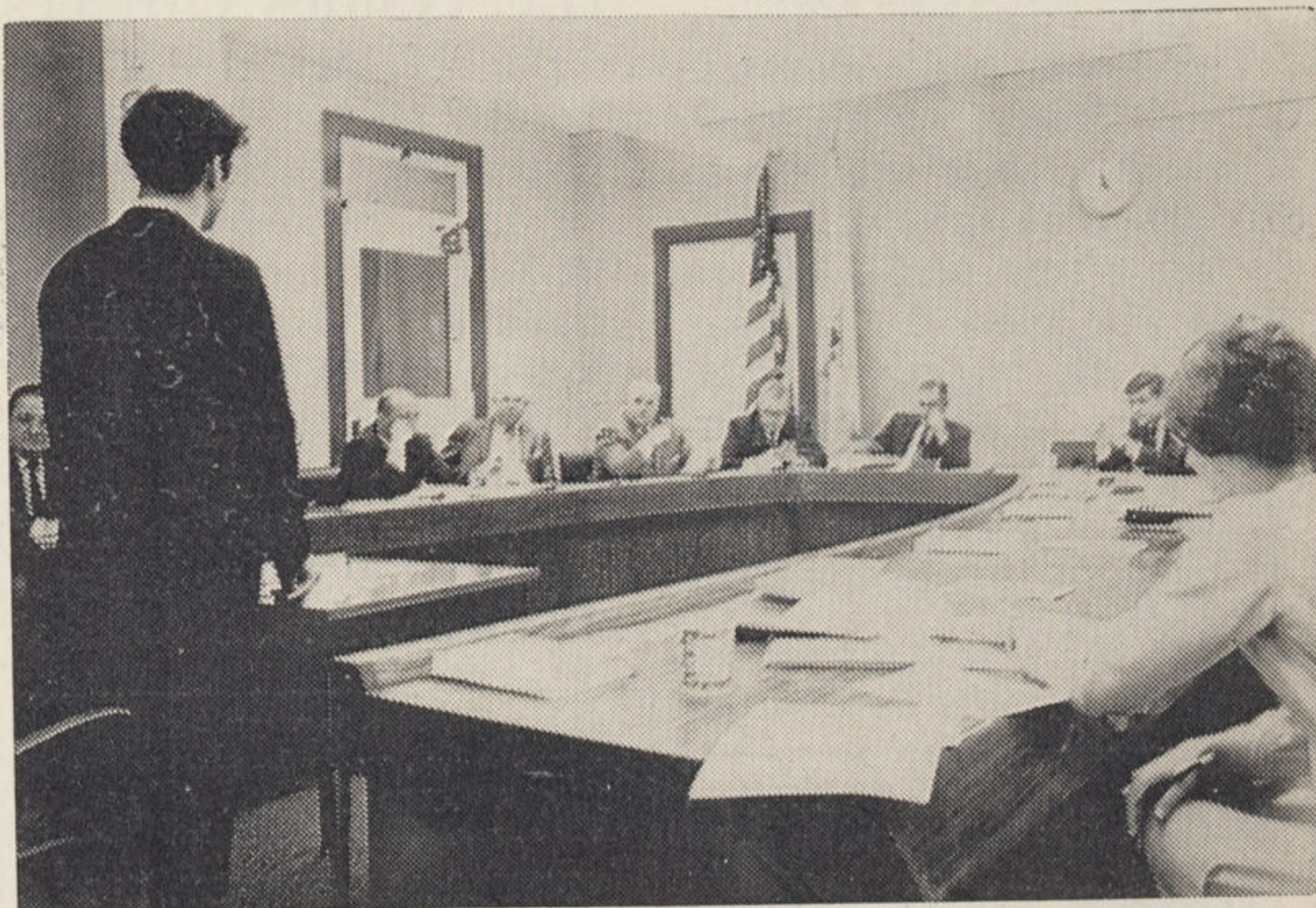


Photo by Alex Humphrey

In Support of CLAO Legislation

School Show Opens Saturday

This year's Law School Show, "The Jealous Mistress," will be presented Mar. 16, 17, 22 and 23 at 8:30 p.m. In a bow to the show's title, no doubt, all performances will be in Peabody Auditorium, located

Covington Reply To Wage Increase

The description in last week's RECORD of the present salary policy of Covington and Burlington in Washington was somewhat inaccurate. Covington intends to keep a bonus system but increase the salary component in the early years. This means that a member of the Class of 1968 entering practice immediately will start at an annual salary of \$12,500 and an automatic bonus sufficient to bring him to a total annual rate of compensation of \$14,000.

This rate will continue through December 31, 1969, at which time it will rise to \$15,000. The firm will offer the same rate of \$15,000 to those who clerk for a year making it effective when they come on duty and continuing through December 31, 1970. George Crawford, 3L, brought this to the RECORD's attention.

across from Radcliffe Yard.

With a cast of 32, the show deals with the machinations involved in the choice of a new dean.

Tickets for all performances are now on sale, priced at \$2 each, at the Langdell receptionist's desk, the Coop, and the Harkness newsstand. All seats are unre-served.

"The Jealous Mistress" is directed by Curt Von Kann, 2L, and produced by Ken Wolf, 3L. Jonathan Kantowitz and Kathy Imholz, 2L, co-authored the play and George Selden, 1L, supplied the music.

The presentation of "The Jealous Mistress" follows the very successful presentation last fall of Gilbert & Sullivan's "Trial by Jury," as presented by the M.I.T. Gilbert & Sullivan players, under the Drama Society's auspices.

ILC Names Officers

Dana T. Ackerly, 2L, was recently elected President of the International Law Club. He is a resident of New Canaan, Connecticut, and graduated from Williams College in 1965.

Also elected were David Laurence Jay, 1L, Secretary; and William Stoeve, 2L, Treasurer.

Events of Note

Bishop James A. Pike and Professor Harvey Cox of the Divinity School will discuss "Death After Life? One World at a Time" at 8:30 p.m. tomorrow in Sanders Theater. Professor John H. Mansfield will moderate the Harvard Law School Forum session.

* * *

America's Oldest Law School Literary Magazine is still accepting any and all contributions for the initial number. Send them to Roger Lowenstein, c/o The RECORD.

* * *

Confidential Guide To Conduct Survey

More than the usual number of confidence men are scheduled to haunt law school halls next week as they pass out questionnaires to garner information for the spring edition of their handbook, **The Confidential Guide to the Law School.**

This spring's guide will contain a new section on extracurricular activities, as well as a summary of opinion on curriculum change.

The guide, which will be on sale "well before" course change sheets have to be completed, should be somewhat smaller this time, but the price will also be cut.

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Probe Mysteries of Yugoslav Property Law

Yugoslavia, unlike other Marxist states, has no state-owned property, explained Tibor Varadi, a special student at the Law School from Yugoslavia, to an ILC informal dinner last week.

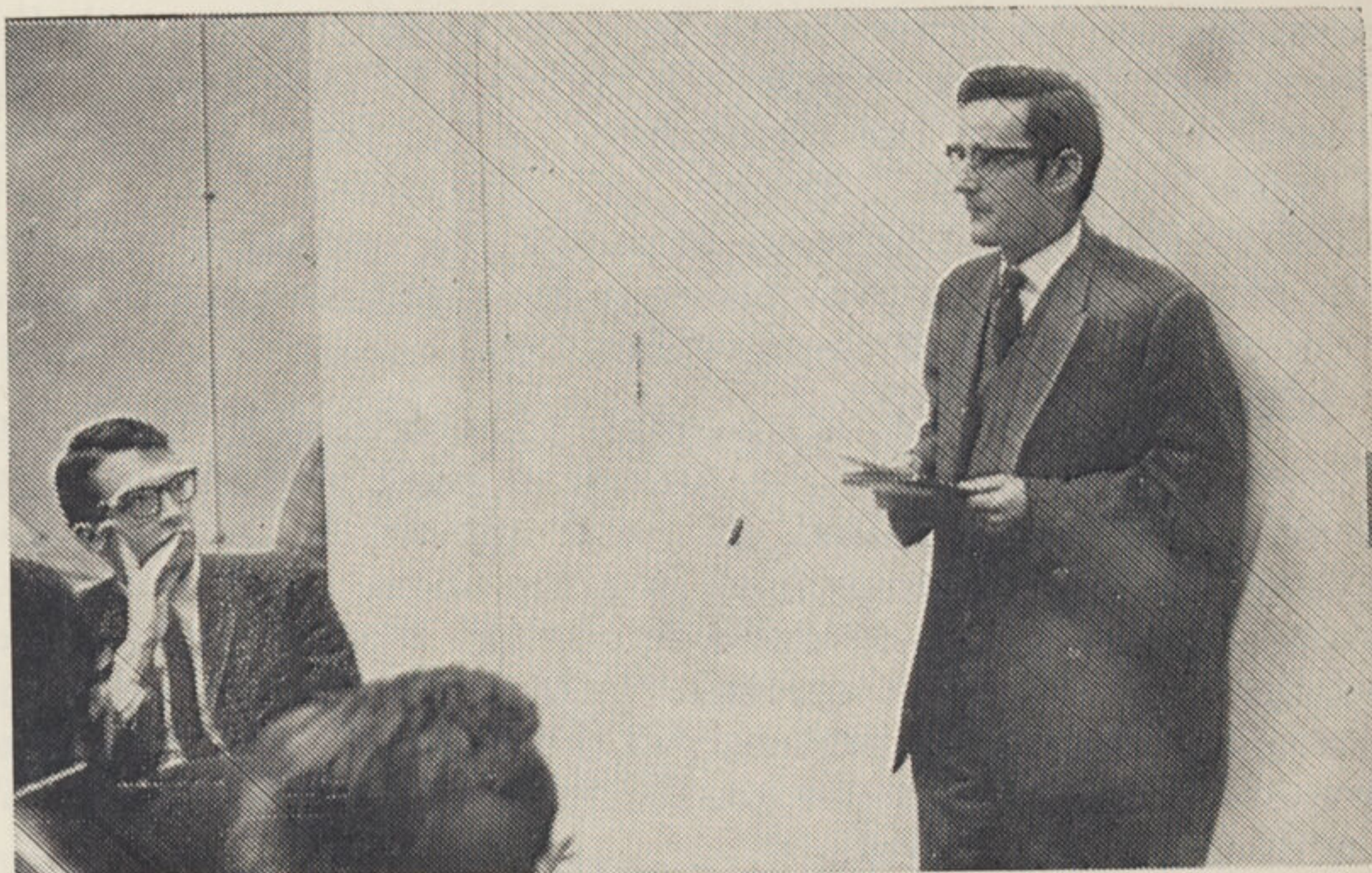
Instead, most means of production are classified as "social property," and are managed by a Workers' Council instead of through directives from a centralized planning office. The council, consisting of approximately 70 members, is elected by the workers in the particular factory.

Classic Marx

This new classification is rooted in Marxian doctrine, but is based not on his economic thought but on his anthropological theory of the alienation of the worker. According to Marx's early writings, alienation is caused by the workers' having no control over the means of production or the standard of living. State-owned property, said Mr. Varadi, does not lessen the individual's sense of alienation, since directives still originate in a distant central planning office.

While Yugoslavia does have an office of central planning, its decisions are not legally binding upon the individual industries. Instead, the government attempts to use various incentives, such as lower taxes or interest rates, for favored industries that do follow the plan.

One problem with the council is that the highly



Tibor Varadi Speaks to ILC Luncheon

complicated economic situations involved in coming to a decision may be beyond the understanding of the workers. Yugoslavia, he said, has therefore begun an extensive educational campaign, which, when coupled with the economic advice from the central planning office, may alleviate the problem.

Full Responsibility

One further problem with the system is that the council cannot assume full financial responsibility for the plant where its decisions prove wrong. In that case, while the plant may go bankrupt and the workers may lose their positions there, the workers do not lose any initial investment the way private owners do in capitalist countries.

To remedy this, some theoreticians have proposed that the members of the council be held financially responsible for the plant's failure, or that only those who vote in favor of the resolutions be held, just as

directors of corporations may be adjudged liable for malfeasance.

Finally, Mr. Varadi concluded, the human relationships within the council may prove an acute problem. For example, where there are only 5 vacant apartments but there are 20 families asking for them, a problem may arise since the council's decision may be partially based on these relationships rather than on objective criteria of need.

Personal and Private

Two other categories of property are recognized by Yugoslav law, Mr. Varadi explained, private property and personal property. In accord with Marxian thought, private property (that is, property used as a means of production which is privately owned) is labeled "bad," since it may lead to the exploitation of workers.

On the other hand, personal property, such as a house or a car, is not so

(Continued on Page 12)

Pecunia . . .

THE INCREASE IN STARTING SALARIES announced by a good number of firms (many in New York City, the emanation point for these ripples) is difficult to look askance at. Particularly given the significance of the jump (e.g., from \$10,500 to \$15,000). Money isn't everything, but it isn't nothing either. An increase in salary will undoubtedly make the struggle for survival easier in the early years for many young graduates with hungry families.

This development is of course consistent with the basic "free market" spirit of the American legal profession. The salaries are being raised, it would appear, to increase the attractiveness of employment in given spots. This, however, raises the question whether a flat salary increase is the sole or best way to increase such "attractiveness" to some or many of the students presently at the School. Ordinarily, one would suppose, the issues are fairly clear: a good day's pay for a good day's work.

However, the question should at least be raised whether other factors are of equal or greater significance than money to some students. The extent to which such other factors are important is as yet unclear. But articulation would clearly seem to be in the better interests of all parties concerned.

Women

C'MON, FELLAS, let 'em into the Inn!

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TONGUE 'N CHEEK

By Fenno

Grandstands had been set up in the Main Reading Room and crepe paper swooped from wall to wall — only a few of the signs to indicate that the annual 24-hour Third Year Paper Writing Contest was about to begin.

Although fairness to the contestants dictated that the faculty would not be allowed to witness the spectacle, Dean Bok did appear briefly to laud the virtue of thinking under pressure.

"Scree!" blew the starting whistle and the arena was thrown into a flurry of scrambling law students, screaming karate yells to build up mental fortitude for the ordeal which was to follow: 24 hours of gut thought on redemption plans, stock options, leasebacks or any other miscellaneous legal area which might sustain the 30-page minimum.

Anxious fiancées in the grandstands each cheered her favorite, knowing that failure today would spell academic disaster and the end of any marriage plans. Most of these girls could be complimented for the fine shape the contestants were in today, having given kind words of encouragement to their beaux during the arduous training days with wrist squeegees used to reduce the possibility of writer's cramp.

Fights were breaking out here and there over certain hornbooks. As there was a shortage of referees today most of the disputes were settled summarily to the satisfaction of all the parties involved except the library staff by tearing the book in half.

Time passed quickly in the heat of competition. When it was all over in the early hours of the next morning, cheers arose for the victor John Eksapet who had transformed 33 pages of Fletcher on Corporations from active to passive sentences.

Letters to the Editor of the RECORD

'03 LL.B. Was A Freshman J.D.

To the Editor:

Apropos of the discussion relative to the granting of the degree of J.D. in lieu of the current and long established LL.B., I am reminded that in my class of 1903 there was a graduate of a well-known Western law school, who boasted the degree of J.D. Nevertheless, he entered Harvard Law School as a freshman . . .

In my judgment degrees are meaningless. Merely to be dubbed a doctor signifies nothing. Podia-

trists, mechano-therapists, and even physical culturists sometimes boast the doctorate. When our universities begin to bestow the doctorate upon graduates of schools of business administration and students completing graduate courses in mechanical and electrical engineering, then we may consider the advisability of calling law school graduates J.D.'s instead of LL.B.'s.

Alfred A. Benesch, '03
Cleveland, Ohio

(Ed. note: Howard University School of Law has recently joined

the ranks of schools giving the J.D. The J.D. suffered a setback at Columbia, where the directors of the alumni association passed a resolution "firmly standing" behind the LL.B.)

Viet Course Casebook Sought

To the Editor:

The idea for a course on the Vietnam War (HARVARD LAW RECORD, February 1, 1968) is an excellent one. If the materials to be used in the course are suitable, it might also be useful to assemble them in a form, loose-leaf or otherwise, in which they could be purchased by friends and alumni of the law school. I, for one, would purchase such a volume immediately.

Robert W. Doty, '67
Houston, Texas

Asks 'Phantoms' To Prove Strength

To the Editor:

On February 20th an anonymous literary offering mysteriously appeared on the HLS bulletin boards. Somehow, the faceless authors were torn from their "more worthwhile" studies to the patriotic task of closing the shocking "credibility gap" that has been opened here at the cradle of principled legal reasoning. The "Phantoms of Langdell Hall" have now exposed for us all (1) the lie that most HLS students oppose the Vietnam War, (2) the appalling lack of integrity of faculty members who supported the *Wall Street Journal* petition effort, and (3) the dangerous (subversive?) motives of the signers of that petition. In fact, everything about the petition was bravely assaulted — except its contents.

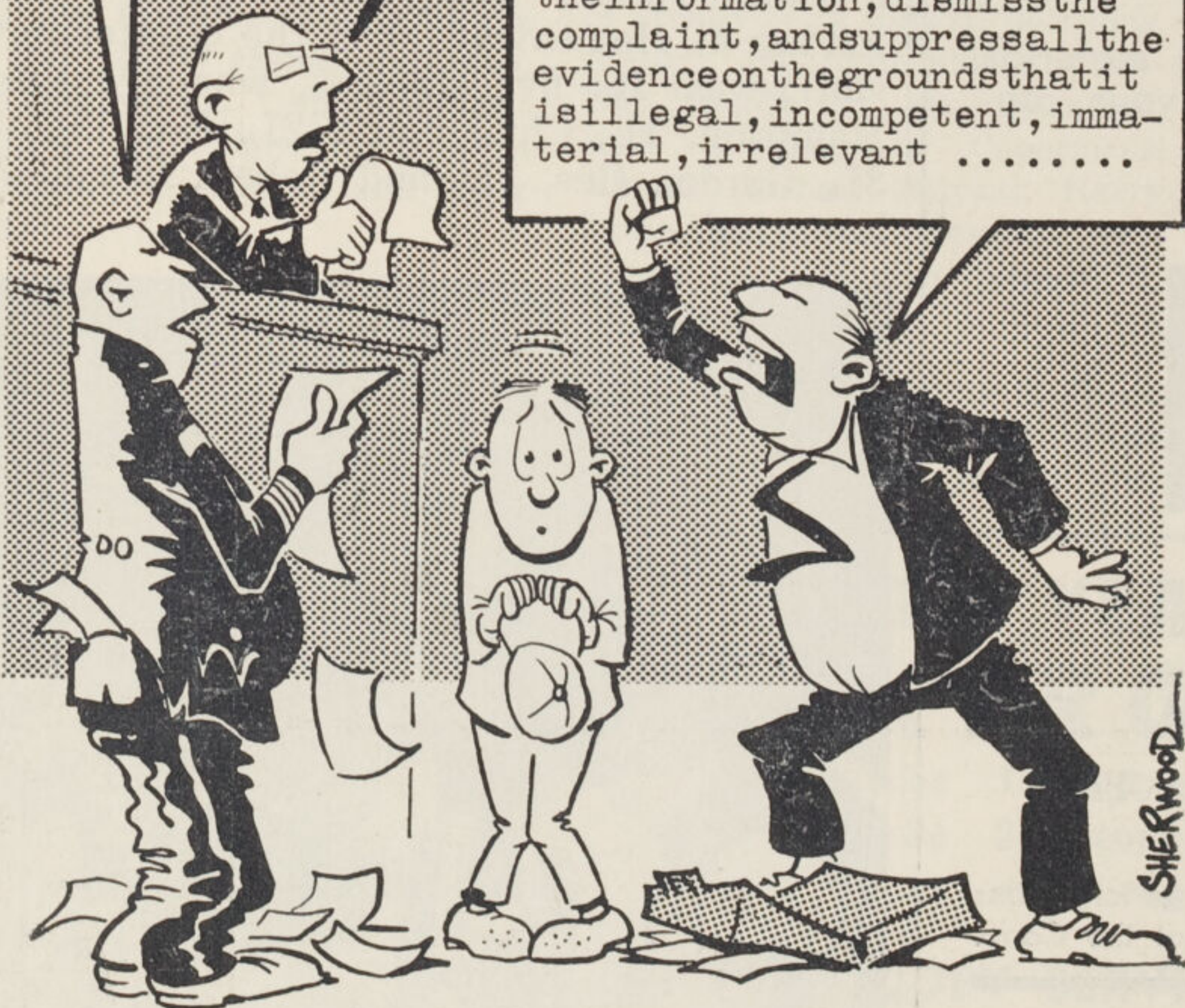
The Phantoms advanced the intriguing proposition that everyone at HLS who did not sign and return this mildly-worded petition must be counted thereby among the hawks. . . . It is amazing that

(Continued on Page 15)

Case 4321, Commonwealth against Henry Smith. Henry Smith the Commonwealth charges you with disorderly conduct in that you did on or about last week loiter on or about a public sidewalk purporting to wait for a bus. How do you plead?

Before accepting your plea of guilty I must ascertain that you have been advised of your right to a speedy trial by an impartial jury with assistance of counsel, that you enter this plea knowingly, intelligently, and . . .

Your Honor, the defendant moves to quash the indictment, squash the information, dismiss the complaint, and suppress all the evidence on the ground that it is illegal, incompetent, immaterial, irrelevant . . .



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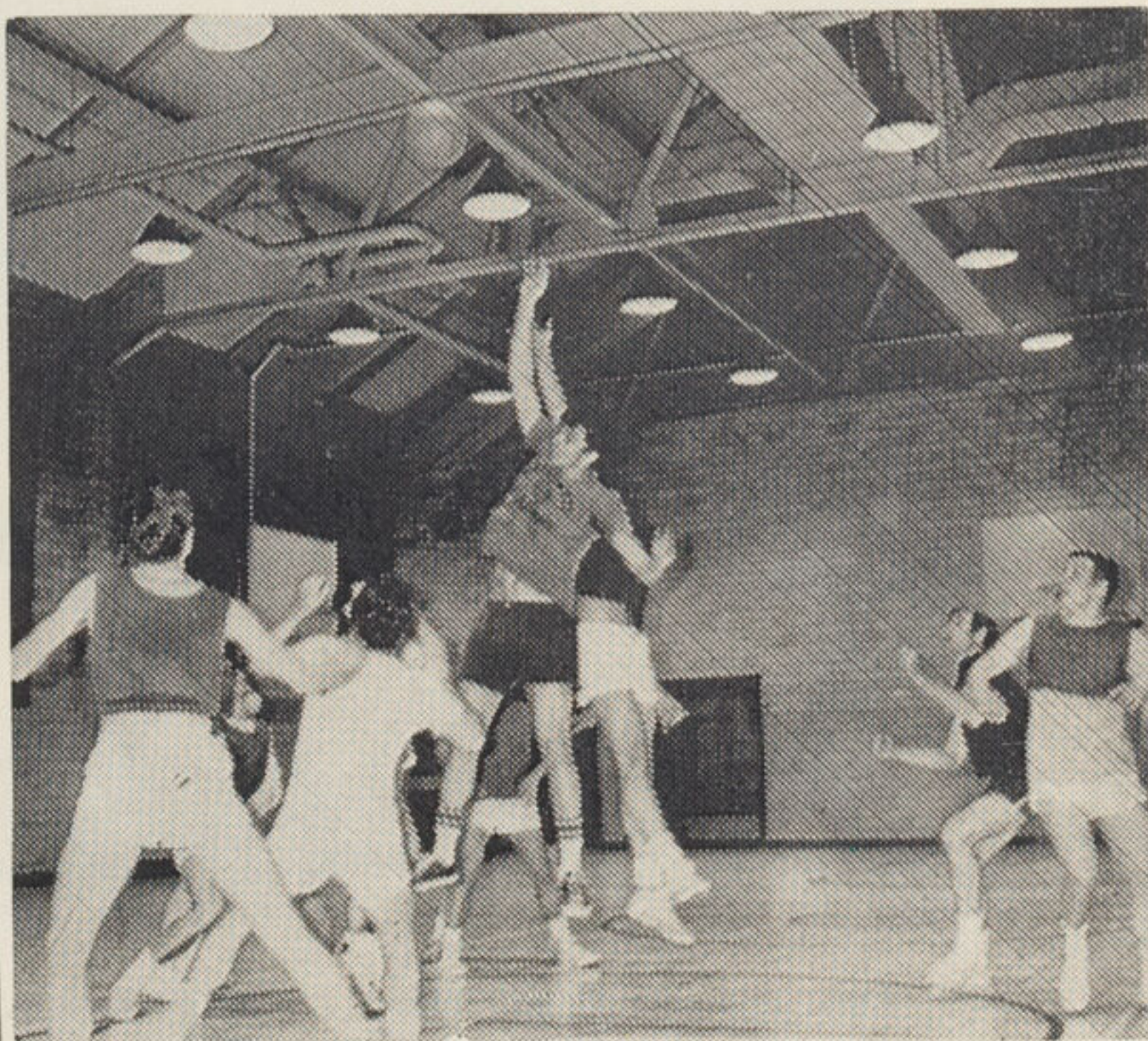
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Nameless Cage Kings

The
Nameless
Ones



Reigning supreme atop the Law School's intramural basketball world are the Nameless Ones, who won the championship with a 74-59 victory over the Armadillos last Friday at Hemenway. But the quintet now can reveal its five starters, who are Russ Hamilton, 1L, Chris Neils, 2L, Ken Pigott, 3L, Gordon Gee, 1L, and Robert Bowditch, law grad.



Photos by John Harris

Recent Book

On Justice and the Individual Talent

On Law and Justice. By Paul A. Freund. 259 pages, including index. Cambridge: The Belknap Press of Harvard University Press, 1968. \$4.95.

By Thomas Geisler

This volume is an extraordinarily rich collection of fourteen essays, drawn from diverse sources, most from the immediate past, and all with the brilliance of language and thought which one has come to expect of Professor Freund's writings.

There are three major categories into which the essays are divided. "The Court and the Constitution" essays deal with attitudes in Constitutional law and the role of the Supreme Court. "The Pursuit of Justice" combines three fascinating essays on the general theme of justice. The last section, "Appreciations: A Gallery of Judges" holds seven portraits of judges and their ideas.

Mr. Freund's craftsmanship in the English language is so well established that it might be thought superfluous to mention it here again. But the precision and

eloquence which speak out so strongly from every page prevent a reviewer from remaining silent on the subject. His use of balanced phrases, softly alliterative speech, and other elements of the Mandarin style are extremely effective, at least partially because these tools are always held under mature control. One sentence (the first sentence from the first essay) will suffice to suggest these virtues: "Anniversaries are a time for retrospect and prospect, looking into the murky past and peering into the misty future."

Another characteristic exhibited in these essays is Mr. Freund's ability to draw allusions and conclusions from the arts and sciences, always in a natural manner and never to the extent of overburdening the analogy. For example, in the space of two pages, speaking about the role of creativity in judicial decisions, literary and mathematical-scientific innovation are discussed, with allusions to Copernicus, Kepler, Michael Polyani, Harry Levin, and a most germane quotation from *Hamlet* (pages 72, 73).

Of course, the ability to speak well is sometimes possessed by those with little to say or (far

worse) with precisely the wrong things, which is perhaps one reason the human race has periodically followed pied pipers into bloodbaths. Happily, Mr. Freund's eloquence is united with insight of high order.

One of the most impressive of the essays is "Rationality in Judicial Decisions," which explores in depth that faculty upon which Mr. Freund comments in another essay: "The world's ills are hardly to be ascribed to an oversupply of rationality." Perhaps so, but his analysis lessens the undersupply.

Mr. Freund first addresses himself to relative degrees of rationality in the common law and civil law systems. He suggests that rationality of the common law as a whole may be enhanced by a self-conscious employment of a "less rigorous element" (e.g., the jury) at a given stage.

He then passes to an analysis of the elements in legal decisions, inspecting from the standpoint of rationality the elements of Cardozo's framework in *The Nature of the Judicial Process*: logic, history, social utility, and precedent. In speaking of logic, for

(Continued on Page 14)

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Federal Regulatory Agencies Lack Flexibility

(Continued from Page 2)

able if the market mechanism further declined.

In his second lecture, Prof. Kaysen discussed the federal agencies charged with regulating private business. The agencies have a life cycle of their own, he explained, since sooner or later they become sympathetic to the industry they were designed to regulate. Furthermore, they cannot compete for personnel with the business world, and often lack the flexibility and knowledge to initiate action.

Prof. Kaysen also said that the legal cards are always stacked against the agencies since the changing conditions of technology and the market tend to give busi-

ness a head-start. Regulation, moreover, only comes through the laborious procedure of the political process, which is extremely time-consuming.

Quasi-governmental bodies, he noted, are not the answer either. "If anything, governmental monopolies have been even less sensitive to social demand than private ones."

He suggested that American business develop a professional guild to judge itself on its social consciousness. This would involve having qualified people criticize business practices in a semi-public way. "The price for this," he said, "is a smaller degree of competition in some industries."

Private industries should be allowed to reinvest profits in socially useful projects. He noted that Ford, for example, could more usefully put profits into employment programs for displaced workers than giving the money to the Ford Foundation for relocation studies.

Yugoslav Law . . .

(Continued from Page 7)

labeled, since it cannot be used as the basis of exploitation. The difference between the two is a purely functional one, he noted, so that a car owned by a factory worker is "personal" property while the same car in a privately-owned taxicab fleet is "private" property.

(WICKS)

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Nesson Examines U.S. Negroes' Objectives

It's a lot harder to carry on a successful revolution in Harlem than it was in Algeria, observed Professor Charles Nesson at a recent Dershowitz Club lunch.

In the usual colonial situation, where the native populace is ruled by foreigners, he explained, the first step is to drive them out. Only at that point, do the revolutionaries have to "make a political construct for their society."

In the United States, on the other hand, there is no hope of evicting the white man since he constitutes a majority. For this reason, Prof. Nesson speculated, some black nationalists, such as Elijah Mohammed and Malcolm X, advocated setting up a separate Negro

state. This would change the situation here into the usual colonialist pattern.

The objective of the Negroes in the South, on the other hand, is to organize within the existing structure, thus skipping the first Algerian step, he noted. The only violence that takes place there is of the defensive rather than the offensive variety, and groups such as the Deacons are conceived of primarily as a type of "police force" to protect the Negro community.

The situation in the North, he observed is very different, since the Negro community and the white liberals have not been able to articulate meaningful objectives.

"Before you reject the notion of a separate independent state, as of course you must, you have to realize the advantages which may accompany it," he noted. The state could evade the commerce clause and be protectionist, to enable its industries to be developed.

In the present situation, he said it's hard for Negro

enterprises to compete with the streamlined industries of the whites. Continually competing, therefore, may prove very frustrating.

Moreover, there would be a tremendous psychological advantage in having the white man far away. "A good part of the nationalist feeling," he noted, "is the will not to be dominated." Whites would come onto black territory only on the Negro's terms and this would help to restore self-respect.

Community control, Prof. Nesson explained, may be a "less well thought out version of the separate state." As more and more whites flee to the suburbs, the Negroes are left with the cities and with the existing outmoded political machinery. It is at this point that the Law School and lawyers can make their greatest contribution, he said, by creating a new viable political organizational framework. They may also be helpful in forming new organizations and institutions to accomplish the objectives of the people remaining in the "core" city.

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Slipping Memoranda Under Brandeis' Door

(Continued from Page 11)

example, he illustrates the limited usefulness of the principle of transitivity by referring to circular priorities involved with federal tax liens.

Mr. Freund describes three factors which limit a judge: "general rules" already established; the scope of the trial which he hears; and the limits on the types of judgments and decrees which he can make (the limits at law being greater than those in equity).

Creativity and Bias

Creativity and bias are two major problems which are next treated. One major point in the discussion on creativity is that "insight may outrun foresight," that law sometimes presses forward in the correct direction before the reason for doing so can be fully articulated by formal doctrine. *Rylands v. Fletcher* is cited in this regard. On bias, Mr. Freund stresses the distinction between legitimate and illegitimate biases constant and vexatious problems of trying consciously to offset one's own

illegitimate biases.

Rounding out the essay is a discussion of *Sinclair Refining Co. v. Atkinson*, 360 U.S. 195 (1962), which provides an example of many of the factors previously discussed in practical operation.

Rewarding Picture

Equally rewarding is the portrait of Mr. Justice Brandeis, to whom Mr. Freund was clerk in 1932-1933. As might be anticipated, the portrait is alive with personal detail of Justice Brandeis.

There is, for example, a description of the Justice's rules for working: putting in heavy hours before breakfast, but not touching legal matters after nightfall (on the second part of this schedule, Mr. Freund adds: "it was a rule, I should add, that he did not enforce on his law clerks"). And there is the magnificent story of the "bleary-eyed" law clerk, in the hushed hours before dawn, slipping a memorandum under the Justice's apartment door and feeling it being picked up on the other side.

Mr. Freund also discusses the major elements of the Justice's philosophy and thought. Particularly emphasized is responsibility, a refusal to remove responsibility from human beings and hang it instead upon inhuman waves of history, be they old or new.

Self-Limitation

Justice Brandeis was also acutely aware of his human self-limitation (this in a man whose career has few rivals). In this vein, he opposed placing the Supreme Court in a great "marble palace," for he feared it would make the duty to retain their humility more difficult for the Justices.

Books like this make life difficult for critics, for there is little to criticize. All one can say is that this is a book which should not only be read, but also re-read.

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Letters

(Continued from Page 9)

the Phantoms failed to acknowledge (1) that a less than 100% response factor is inherent in any mail campaign, (2) that even at this institution some persons might be so indifferent as to have no determined position as to the validity or wisdom of the war, (3) that some persons though opposed to the war by this time have become impervious to appeals for "yet another petition", and (4) that some persons strongly opposed to the war might reject a "mildly-worded" petition as being no longer an effective mode of protest. Further, there is good reason to believe that many students (I have spoken personally to several who gave this reason) felt, with or without good reason, that their precarious positions vis-a-vis their draft boards make discretion the better part of valor in the land of freedom these days.

It would seem that the burden

of persuasion is now upon the proponents of the inverse hypothesis. Perhaps the Phantoms will now circulate by mail a "mildly-worded" petition in support of the war. A signed response of nearly 60% would lend some credibility to the charge of a "credibility gap". I'm sure there would be innumerable students eager to help from among those 900 (or is it 1000?) supporting the war, and if there should be any difficulty financing the project, Mr. John Bailey of Washington, D.C., undoubtedly would be most happy to give aid. In fact, leftover serially-numbered pledge cards from New Hampshire might be modified for this purpose. Perhaps signed returned cards could be forwarded to draft boards to aid them in their difficult deliberations. (For those who fail to respond, well) Who knows but that under such conditions there might be an even greater than 60% response, demonstrating conclusively the perfidity of the original petition-gatherers and their faculty fellow-travelers.

...

Herbert G. Johnson, 3L

Ames . . .

(Continued from Page 1)
felice complained. "The argument that other teams have managed in the past is little excuse for maintaining the status quo when the same problem arises each year."

Sanford Krieger, 3L, a member of the Board of Student Advisers, commented that "there is a great deal of merit in their complaint." Another member of the Board was heard to comment that the money will not be wasted. "We could have quite a party," he said. And you can quote me on that." Peter C. Williams, 3L, a member of the opposing Learned Hand team, expressed empathy with the complaints, but said that "it is too bad that this is the form the protest had to take."

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Muggeridge: Wives Don't Fold Up in Three

(Continued from Page 3)

Capp, apropos of his feud with Joan Baez: "I'd send her flowers tonight . . . if I knew what jail she was in."

Muggeridge, apropos of not much of anything (it was that kind of evening): "King George the Third thought he was pregnant; a courtier advised him, 'A priori, it's impossible, but a posteriori—you never know.'"

At one point, they got off on the presidential business. Capp: "I say let Bobby have



Al Capp
Where Would All
The Flowers Go?

it . . . or he'll sulk." Morgan thought he'd try a game of mentioning some names and let the other two come up with thumbnail sketches. It didn't work. Muggeridge claimed never to have heard of Percy or Stassen, and was unsure of Johnson: "He's the present incumbent, isn't he?"

On the effects on young men of looking at *Playboy* magazine, Muggeridge said: "When they get married, they're absolutely amazed to find their wives don't fold up in three."

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