

HARVARD LAW RECORD

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TWENTY CENTS

Students Finish Discussions on Choice of Dean

By Jerry Snow

The Law School Committee on Governance met three times in recent weeks with President-elect Derek C. Bok and once with President Nathan M. Pusey to discuss its report of student views on the Law School deanship, submitted together with a list of 44 potential candidates for the office. [See RECORD, April 1, 1971.]

According to Governance Committee member Nathaniel H. Akerman, 2L, both men "went over every name, including Cesar Chavez," plus a few others not on the list as well. The result of the discussions was a considerable narrowing of the group of serious candidates.

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Protesters Halt Viet Teach-In

Nine individuals, at least eight of whom are Harvard students, were charged April 20 with violations of the Resolution of Rights and Responsibilities for disruption of a public meeting in Sanders Theater last month.

On Friday evening, March 26, a pro-Vietnam "counter teach-in" organized by the "Students for a Just Peace" was halted 45 minutes after it started because of disruption inside and outside Sanders Theater.

When requests to allow the meeting to continue in the interest of freedom of speech went unheeded by clapping and shouting demonstrators, Professor Archibald Cox directed the program's organizers to call off the meeting.

(Continued on Page 5)

Sex Discrimination Charge Leads to Firm's Suspension

By Richard J. McManus

The Committee on Placement has suspended a New York City law firm from the use of the Law School's placement facilities for a period of at least one year.

The sanction resulted from the investigation of a complaint made by Susan E. Carlson, 2L, that a representative of the firm of Parker, Chapin and Flattau made discriminatory statements in a fall interview.

The action was taken last week after the committee found the firm's response to the charge of discriminatory conduct toward women applicants to be unsatisfactory.

According to committee members, the firm failed to directly

answer an interrogatory concerning discriminatory statements allegedly made to Miss Carlson.

Miss Carlson complained to the committee that in reply to a question whether or not the firm hired women, the interviewer, an HLS alumnus, said that they employed neither women nor blacks because there was a senior partner who did not believe in hiring them.

A second woman student, Madeline F. Neese, 2L, corroborated Miss Carlson's statement.

A formal notice of complaint was subsequently sent to the firm and the interviewer denied that he had made the statement or that the firm practiced discrimination in any way.

Last month, the committee sent written interrogatories to the firm's Fifth Avenue office and discussed the complaint informally with a member of the firm before the replies were made.

A committee statement released last week said that "the firm's response to the interrogatories failed to provide complete answers to some questions and declined to furnish any answer to others."

One student member of the committee described most of the answers as "half-baked" and related that the questions as to exactly what was said during the interview were "totally ignored."

"It was in the nature of a confession by avoidance," he said.

Last week's committee statement did not mention the name of

(Continued on Page 6)



Charles Soberman

Professor Archibald Cox

Jessup Urges Changes in U. N. Court

By Carol Plumb

Tall, whitehaired, bushy eyebrows overhanging keen yet kindly blue eyes, aristocratic bearing, impeccably attired in three-piece navy suit complete with gold watchchain protruding from the vest, Philip E. Jessup looked the very picture of a distinguished judge as he rose to speak before the Harvard International Law Club in Harkness Meeting Room on March 4.

And indeed the gentleman has long merited the *Hon.* placed before his name for his record as American judge on the International Court of Justice, a position which he recently left. He had come to Harvard to advance several proposals for the development of the Court.

"The agony of multitudinous documents and repetitious arguments which presently infest the Court" was lamented by Judge

Jessup. He advocated many improvements in the Court's procedure.

"At present, parties file vast and irrelevant dossiers and then complain of the expense of litigation. There is no time limit for argumentation." Jessup feels that parties should be confined to a single pleading and one rebuttal and that arguments should be timed in a manner similar to the procedure of the United States Supreme Court.

Judge Jessup stressed that his proposals to improve the effectiveness of the Court were limited to procedures which could be adopted without amending the statute of the Court, which is the Charter of the United Nations. That requires the affirmative vote of the five permanent members of the Security Council.

"It is useless to talk about amendment because Russia is

firmly against all amendments to the Charter. They feel to pass one amendment would open Pandora's box."

Hopefully, Judge Jessup stated, the International Court will play an expanding role in giving advisory opinions. Last April, Secretary of State William Rogers was influential in getting the Security Council to request an advisory opinion of the Court for the first time in twenty-five years.

"These opinions could contribute to the development of international law principles and to the speedier resolution of many difficult world situations. If the Court were to spell out the general rule of international law — as for example, 'is there a right of passage through the Suez Canal?' — this would help the mediator or Secretary General to move on to the hazardous difficulties in entire situations."

The suggestion has been made that the General Assembly appoint a permanent Committee of Inquiry to ask the Court for advisory opinions under its powers in Articles 10, 11 and 13 of the Charter.

"Some rather special problems of the International Court which might be interesting for students interested in writing papers," suggested Jessup, "are the visit *in loco* and the use of assessors." The Court is authorized to use both, but the fine points of procedure have not been settled.

"If the Court were invited by South Africa to come and look at Southwest Africa (Namibia), what does the Court do? Interview people? Must they then be sworn in in order to speak to the Justices? Suppose some judges don't go; does the quorum rule apply? If 10 of the 15 judges make the trip, what do they then tell their colleagues and how do the others take these views?"

The Court has never used assessors, a procedure copied from the former British African colonies where assessors advised on points of local tribal law, but

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with

ROY C. HATTERSLEY

*Member of Parliament (Labour) for Birmingham, England;
former Minister of Defence (Administration), 1969-70;
former Under Secretary at the Department of Employment,
1967-69; and Fellow of the Institute of Politics*

Thursday, April 15 — Government Intervention in a Mixed Economy — the British Experience, 1964-70

Thursday, April 22 — Labour Relations in Great Britain During the Wilson Administration

Thursday, April 29 — The Relationship of the Election Manifesto to the Performance of the Labour Government

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Jessup suggested that such use would be a great boon to the Court in deciding technical questions. "At present, many specialized UN agencies are entitled to ask advisory opinions, but don't because they feel the Court will not understand the problem."

Judge Jessup mentioned the inherent difficulties of a Court composed of 15 judges of different languages, different customs and different backgrounds. "When the Justices of the International Court retire to deliberate, roundtable discussion is difficult."

He is often reminded, said the Judge, of Justice Story's letter to a friend after the number of Supreme Court Judges had been increased from 7 to 9 in 1837. "You may ask if we did less in the same time than I ever knew! Many men and many minds require a great deal of discussion. Verily, I believe if there were twelve justices, we should do no business at all!"

Before his ascension to the bench of the International Court, Jessup was Hamilton Fish Professor of International Law at Columbia University. He is presently with the Council of Foreign Relations in New York.

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No Pass-Fail Review This Year

The Law School faculty voted unanimously last week not to review the first-year grading system this spring.

The faculty followed the recommendation of the majority faculty members of the Committee on Legal Education that a review was unwarranted so soon after the intensive 1969 study of pass-fail grading. The committee majority also stated that a review would interfere with work on other high priority educational reform efforts.

In a dissent issued with the majority statement, the three

student members of the committee reported widespread dissatisfaction with the current 1L grading system and argued for immediate reconsideration of it. (See RECORD, April 1, 1971.)

At the meeting the faculty, by a 24-8 margin, also passed a motion urging the dean to consider the faculty's discussion of student discontent and the relationship of the grading issue to other areas of legal education, "with specific reference to existing committee activities and plans and to whether further methods of inquiry are appropriate."

Marshall to Face Learned Hand

In semifinal rounds of Ames Competition last month Learned Hand Club and Marshall Club emerged victorious and will face each other in the final round next fall.

In a case concerning reservists' challenge to the Vietnam War, based on *Mottola v. Nixon*, 318 F. Supp. 538 (1970), H. Leonard Court and R. Brooke Jackson were the oralists for Learned Hand, facing Don Howarth and John M. Mazur of Kaplan. Don Howarth was selected best oralist.

Other club members participating on the brief for Learned Hand were: Michael L. Beatty, Daniel J. Hurson, Dale H. Oliver and Clyde D. Stoltenberg; for Kaplan: Peter L. Baumbush, Stuart Williston Settle, Jr., Ken-

neth S. Tune and Richard H. Williams.

Dawson Club's speakers Raymond Bragar, chosen best oralist, and John Cosier argued against Thomas E. Moseley and David C. Carrad of Marshall in a case challenging the constitutionality of the 1968 Safe Streets Act, which changed the *Miranda* decision and eyewitness rules.

Other Dawson Club members on the brief were: Thomas Manley, Alex Bransford, Fred McGavran and Charlynn Maniatis; Marshall Club: Edward F. Cox, Gregory S. C. Huffman, John W. Moscow and Robert G. Watson.

April Fool!

Profesors Paul A. Freund and Alan M. Dershowitz want to assure readers taken in by the first four "April Fool's Day" pages of the last RECORD that they are staying on the HLS faculty. Dershowitz reports declining a teaching post offered as a result of the hoax. Both received offers of bar committee chairmanships.

We regret to inform readers who found the rest of the issue equally amusing that the last twelve pages were not a joke.

Deanship Search Narrows

(Continued from Page 1)

The committee met first with former Dean Bok, on March 31 and April 2, at which time—in the absence of the faculty members of the committee—all the names were gone through once, with a view to elaborating those the students were serious about, in what proportion and for what reasons. Most of the names were clearly eliminated at that time by consensus, according to Dean Bok. Consideration was reduced to a group of about ten men.

There ensued a two-week interval, during which Bok conferred with certain faculty members and others outside the School. On April 14 he came together for a third time with the Governance Committee.

Bok disclosed that in this last meeting he had "indicated tentatively four or five people as the most serious candidates in my mind and discussion centered on these few," but other names were still brought up and discussed. "I was not prepared to come down for any one particular person, nor was there any group mobilization behind one person," he added.

Later the same day the Governance Committee met with President Pusey, and once again took up every name on the list, to the surprise of some committee members. "Pusey wanted to talk about all the individuals, not just the general recommendations, as some committee members expected," said Robert J. Dwyer, 2L. "I would say he intends to play a full role in the selection of the dean."

Student members of the Governance Committee contacted by the RECORD were uniformly impressed with the "receptivity," "awareness," "sincerity" and "candor" of both Pusey and Bok. "There was a real exchange going on, not just Dean Bok listening to our feelings," said Ellen V. Shaw, 3L. "We said something and he listened and reacted, and then he said something

and we reacted. I think he will take very much into account how students feel about the deanship."

Karen M. Nelson, 1L, spoke similarly. "Student opinion was definitely for some candidates and against others. Both men were very interested and sincere in listening to these views."

There was agreement as to President Pusey's vital involvement in the dean selection process and his awareness of Law School personalities and issues. "Pusey knew anecdotal tales about obscure Law School professors; he knew all the faculty candidates," related Dwyer. "He's really up on the issues, he has definite ideas of legal education and he sees the selection of a dean as a symbol if the Law School is to move in a certain way."

Miss Nelson agreed: "Pusey is very strongly involved in the decision-making process, and he has a reasonable grasp of the situation at the Law School. Our report stressed the sense of dissatisfaction at the School and he has taken notice of this."

Dwyer pointed out that Pusey has been very successful over the years in making appointments and in so doing has developed "some general rules of thumb in picking deans." He discussed his rules of thumb with the committee in appraising the various candidates. Before stepping down, Pusey expects to name a new dean to the School of Public Health as well as a law dean.

Speaking of the work of the Governance Committee, Bok stated that he "couldn't have been more pleased and satisfied. The whole experience has not discouraged me in any respect from using such a mechanism." While expressing a desire to become more familiar with other schools and faculties before implementing a similar procedure there for future appointments, he intimated that a student-faculty committee along Law School

lines would certainly receive very favorable consideration at the time.

Bok was anxious that students be aware of the extent to which their views and feelings were known and heeded, by himself and by the faculty, and in other matters of Law School administration besides the deanship search. "I would be distressed," he said, "if students felt that their concerns and attitudes weren't taken into account. They are at least as important as the faculty viewpoint, in my estimation. Of course, the faculty viewpoint reflects student views too to some degree."

"The one orienting principle that explains virtually all the changes that have been made in and around the Law School in the last five years—and there is a long list of them—is student sentiment," he continued. "Of course, the changes don't always come fast enough to please some. But student sentiment is the key."

The work of the Governance Committee is now officially terminated. However, Dean Bok stressed to committee members that they were free to see him further as individuals at any time, and he promised that if any new candidates came under serious consideration or there were some radical shift in thinking on the deanship, he would reconvene the committee.

The next step is for Bok and Pusey to get together. No date has been set yet for their meeting, according to Dean Bok, but it is expected to be very soon. He expressed the desire to have the announcement of a new dean made before the end of the school year, if at all possible.

As with all University appointments, the Board of Overseers must first approve President Pusey's choice. Their next meeting is on May 10 and 11 and no announcement can be forthcoming before then, according to the President's office. If the selection is not completed by then, it will have to wait until the following meeting of the Board of Overseers on June 16.

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Deadline for submission of proposals for
fall term 1971 study groups: May 3.

Cox Backs Free Speech Policy

By Kermit Kubitz

As a part of a general effort to educate the Harvard community about the importance of free speech, Professor Archibald Cox spoke to a luncheon audience in the Pound building April 1. Professor Cox, the University trouble-shooter, had on March 26 begged the audience of the now famous Sanders Theater teach-in to allow pro-war speakers to be heard. He began his talk by recalling the comment of the late Curtis Bok, Derek C. Bok's father, that free speech was man's greatest step toward freedom.

Philosophizing about the university, Cox said, "Our commitment to search for truth rests on a belief that men are endowed with a divine capacity as rational beings to choose between good

and evil. The only way to use that capacity is to pursue the search while allowing others to pursue that same search."

Cox discussed the example of a physics department faculty member who felt it had been wrong to interrupt Dr. Edwin Land's lecture on color vision here but would have supported silencing the Polaroid Corporation president if he had spoken on Polaroid policy in South Africa, "because then it would all have been a pack of lies."

Cox commented, "If judgments as to who shall speak are based on what is truth and what is lies, you have no control over those tests."

Disciplinary action was necessary for two reasons, Cox explained. First, the University, if it desires to maintain its claim

to be a self-governing institution, must be prepared to act when its standards are broken. Otherwise, those who call meetings would be entitled to call for outside police protection. Second, if a moral principle like freedom of speech is asserted, there is an obligation to support the principle by disciplining those who violate it.

A student asked why, in view of the balancing test applied so often to constitutional questions, it was not hypocritical to hold to an absolute free speech standard.

Cox replied that there was a time when the "Supreme Court had departed from the approach of Holmes and Brandeis." But the argument that we have not lived up to our principles in the past, Cox continued, does not seem a good reason for disregarding them in the future.

Peter Baumbusch, 2L, mentioned the presence of a USIA film team as justification for the members of the audience who disrupted the teach-in and asked, why was the USIA there?

Cox responded that their presence was taken as a matter of course, like that of any other television crew, although he admitted that if the purpose of the teach-in was to use the university setting for propaganda purposes, a different view of the disruption had to be taken.

Cox continued that the hall was open to the public and that the "murderer" signs were appropriate in forcing the speakers to speak to that issue. On the issue of who the disrupters were, Cox repeated the comment of one faculty member that, "they were people you see around here all the time," and the reply of another, "Well, that doesn't make them our students."

Disrupters Drown Out Teach-In

(Continued from Page 1)

Criminal charges have been filed against three former Harvard students in connection with the incident. The University is continuing its own investigation. While additional charges may be filed, the total number is not expected to be large. Vern Countryman, professor of law, and Walter A. Reiser, director of the Law School's Legal Method program, have accepted the responsibility for presenting evidence upon the charges to the Committee on Rights and Responsibilities.

The incident has aroused much discussion throughout the University.

Over sixty members of the Law School faculty and staff, as individuals, signed a statement issued before spring vacation. The statement read:

The concerted acts of disruption that occurred at Sanders Theatre on March 26 must be of utmost concern to the Law School. The maintenance of an open society, where ideas can be freely expressed and exchanged, is a fundamental responsibility of

the legal order and is the indispensable basis of a vitally functioning University.

To destroy the freedom to speak and to hear, in the name of a deeply felt cause, is to betray the cause itself and threaten the liberty of each member of the community. It obscures the justice of the cause with the cloud of repressive tactics on its behalf; it undermines the moral entitlement of that cause to be freely espoused; and it invites a continual contest of force for the control of the public forum.

No one is obliged to give a false semblance of support to a speaker or a theme that is deeply offensive. As individuals we can show our feeling or repugnance by staying away, or by visible protest through picketing or symbolic garb, or by questioning the speaker. What we may not do is drown out communication, for that is to quench the very hope of a just and compassionate society.

Both Harvard President Nathan M. Pusey and President-elect Derek C. Bok issued statements supporting freedom of expression in the academic community.

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Firm Suspended for Violations

(Continued from Page 1)
the offending firm. It referred only to "a New York City law firm."

Committee members said that the name was deliberately withheld to avoid punishment by publicity. Several said that press publicity of the firm name would be in the nature of "overkill."

One student committee-member, Michael Wyatt, 2L, argued that release of the name would be "counter-productive" — the punishment would not persuade other firms to end discriminatory hiring practices but rather would deter them from interviewing at Harvard at all.

He also noted that it was the committee's first complaint and that members were hesitant "to shoot all our guns at once."

Another committee member said that he feared other law firms checking on the story with Parker, Chapin and Flattau might accept their version of the events and, consequently, might not be so cooperative with the Placement Office in the future.

The suspension will last until September 1, 1972. The firm's use of the placement facilities after that date will be conditioned on its demonstrating affirmative action to comply with Placement Office policies against discrimination.

Miss Carlson said that she may take her complaint to the New York or Massachusetts anti-discrimination commission before the six-month statutory deadline occurs in May.

Professor

By Carol Plumb

"The major comparison we'll be making in my course on the status of women will be with Sweden," says Ruth Bader Ginsberg, who will be teaching here next fall. "When I was in Sweden in 1962-63, that country was in just about the position the United States is now *vis-a-vis* feminism. The debate was just beginning. Now it's all finished. Not only is there no discrimination, but there is a real sharing of roles. You see many advertisements for part-time jobs for both females and males in the years when their children are young.

"Fourteen per cent of the Swedish parliament members are female," she continues in her quiet but persuasive way. "There are two women in the Cabinet." (One of them is Alva Myrdal, the mother-in-law of Harvard President-elect Derek Bok.)

Professor Ginsburg came to Harvard

Eight Faculty Appointments Announced

Appointments to the Law School faculty for 1971-72 provide expanded course offerings in clinical legal education, sex-based discrimination and computers and the law. Eight new members of the faculty have been announced so far.

Professor Gary Bellow, Yale '57, Harvard Law School '60, was deputy director of California Rural Legal Assistance from 1966 to 1968, and developed a clinical legal program at the University of Southern California. As a visiting professor, he will teach *The Lawyering Process* and *Criminal Trial Advocacy* in a clinical credit framework.

Professor Morris L. Cohen has been appointed Law School librarian and professor of law effective July 1, 1971. This year he is at the University of Pennsylvania Law School and is president of the American Association of Law Libraries. He graduated from the University of Chicago in 1947 and Columbia Law School in 1951.

As a lecturer on law, Professor Ruth B. Ginsburg, Cornell '54, Harvard Law School '56-'58, LL.B. Columbia '59, of the Rut-

gers Law School (Newark) will commute from New York to teach a course on *Sex-Based Discrimination and the Law*.

Professor William B. Gould, University of Rhode Island '58, Cornell '61, has been appointed visiting professor of law for 1971-72. He will teach *Collective Bargaining*, a seminar in *Employment Discrimination* and *Directed Reading in Labor Law*, a

Computer Law, Clinical Credits

subject on which he has written extensively.

Duncan McL. Kennedy, a law clerk to Supreme Court Justice Potter Stewart, has been appointed assistant professor of law and will teach *Contracts* and *The Legal Process* next year. Kennedy graduated from Harvard College in 1964 and from Yale Law School, where he was an editor of the *Yale Law Journal*, in 1970.

Arthur R. Miller, University of Rochester '55, LL.B. Harvard

1958, a professor at the University of Michigan Law School, will teach a section of *Civil Procedure* and a spring seminar on *Computers and the Law*. Professor Miller is the author of a casebook on *Civil Procedure* and *The Assault on Privacy*.

Richard B. Stewart has been appointed assistant professor of law and will teach *Administrative Law and Corporations*. Stewart graduated from Yale in 1961 and received an A.B. from Oxford as a Rhodes Scholar in 1963. He graduated from Harvard Law School in 1966 and the following year clerked for Mr. Justice Stewart.

Roberto Mangabeira Unger has been appointed assistant professor to teach *Jurisprudence* and *Law and Development*. Born in 1947, he completed the five-year law course at the Faculdade de Direito of the Federal University of Rio de Janeiro, receiving his bachelors degree in 1961. He received his LL.M. from Harvard Law School in 1970 and is currently in residence as an S.J.D. candidate.

Describes Sex Discrimination Course

recently to meet with her future students in the fall 1971 two-hour seminar course entitled *Sex-based Discrimination and the Law*. Mrs. Ginsburg dispensed with any polemics and launched into a practical description of some of the projects completed by her students in a similar course at Rutgers University School of Law this year.

"There's the case against our own Rutgers University," she begins calmly as if it were commonplace for law professors to bite the paycheck that feeds them with a lawsuit. "It's the only state university which maintains separate male and female colleges and the women's college is only two-fifths the size of the men's school. Females have to be so much better to be admitted. That goes against equal protection."

Her students did not draft the complaint, but they did prepare a memorandum which will be used for the oral argument. "I hope to have projects here such as I've had at Rutgers," she goes on. "These will not actually be bringing suit, but I encourage the

students to work on something they're interested in. Class sessions will be discussion sessions; it's a little hard to imagine teaching this subject matter by the Socratic method."

Other projects with which Professor Ginsburg is currently associated include a case attacking school board regulations requiring pregnancy termination with no right of return and a proposed bill to add "sex" to all categories of New Jersey's anti-discrimination laws.

"This bill is also addressed to 'sexual orientation,' which shall mean 'choice of sex partner.' If it passes, it will be the first anti-discrimination law to protect homosexuals," she notes.

Perhaps Mrs. Ginsburg takes her precedent shattering appointment to the HLS faculty so calmly because she has been breaking the barriers of the feminine mystique for so long that her accomplishments no longer seem newsworthy to her. Back in 1956, long before the voice of Betty Friedan had been heard in the land, Ruth Ginsburg enrolled at Harvard Law School. As if that wasn't unusual enough for a woman in those unliberated days, she also married and had just recently given birth to her first child when she began the study of law.

"I got married after I graduated from Cornell in 1954 and we went to law school together," she says nostalgically. "We lived an ideal life; we divided the household chores between us and we switched every few weeks so they wouldn't get boring. We had a babysitter until 4 p.m. and then one or the other of us would be home."

Mrs. Ginsburg smiles faintly at present day complaints that the small number of female students causes women to feel alienated in law school. "There

were 9 girls in my entire class," she explains. Being outnumbered didn't stop her from getting outstanding grades and she became the third woman in HLS history to serve as a member of the Board of Editors of the *Law Review*.

In her third year, she transferred to Columbia, was an editor of its *Law Review* and received her LL.B. From 1959 until 1961 she was a law clerk to Judge Palmieri of the Federal District Court in New York.

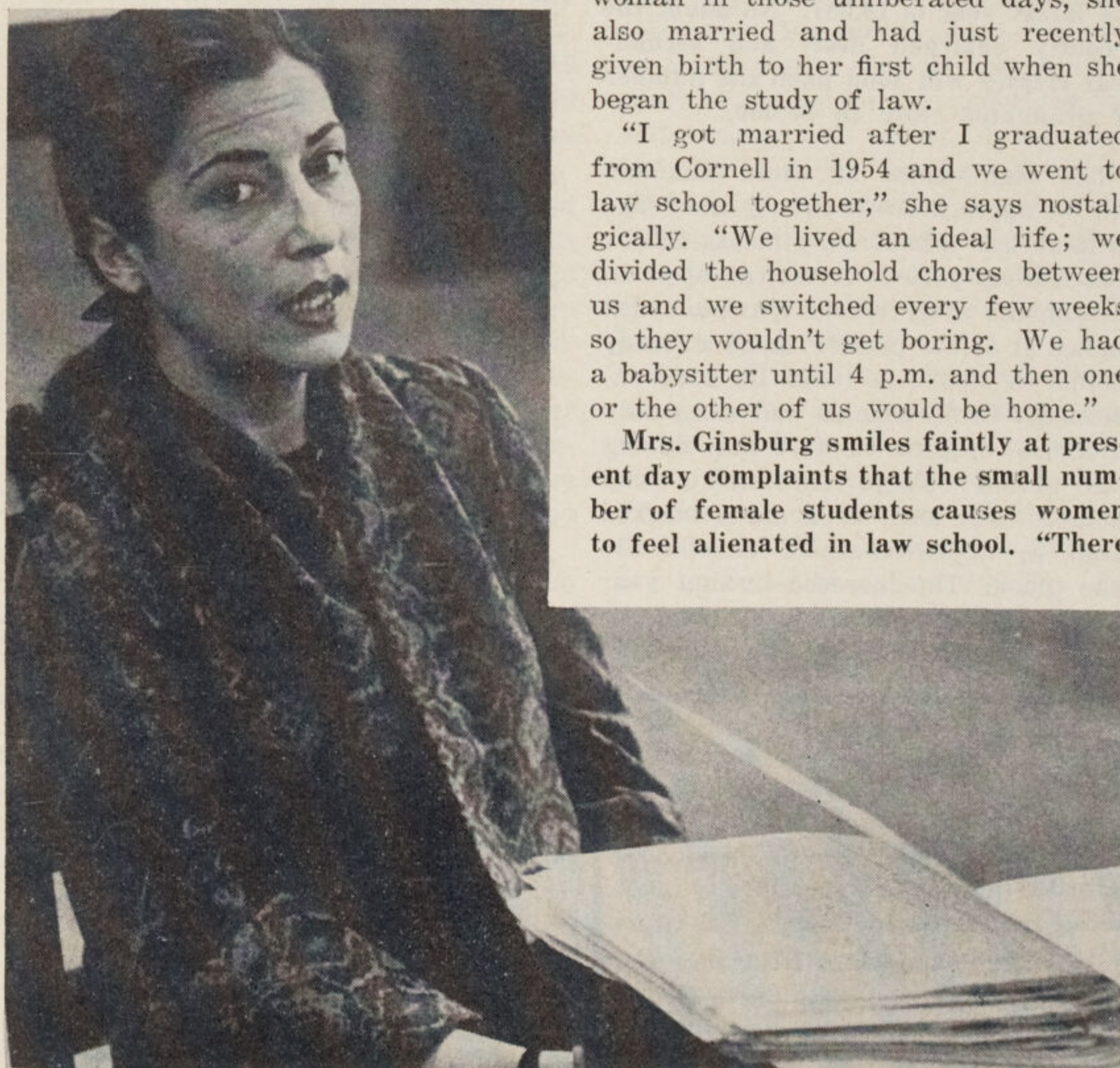
Woman Defends Bachelor's Rights

In Scandinavia she was the associate director of the Columbia Law School Project on International Procedure. From the results of her study, she co-authored a book on Swedish Civil Procedure. In 1969 she was honored with an LL.D. from Lund University in Sweden in recognition of her work.

For the last eight years Mrs. Ginsburg has been that *rara avis*, a full-time woman law professor. She has taught *Civil Procedure* and *Conflicts* at Rutgers and only last year, in response to the times, added a women's rights course to her schedule. Next fall she will commute weekly from New York, combining a full teaching schedule at Rutgers with one day here and with being a homemaker for her husband and two children, Jane, 15, and James, 5.

Her husband, Martin, is now in private practice in New York and teaches in NYU's tax program. "He'll be lecturing at Harvard in Professor Westfall's class on April 23," she notes proudly. The Ginsburgs still collaborate on legal matters, and playing no favorites in the sex-discrimination field, they are currently upholding the right of a bachelor who was denied a tax deduction granted to single women for the care of an aged parent.

In her quiet but determined manner, Mrs. Ginsburg makes things happen. "We had a consciousness raising session at Rutgers last year on the subject of women. Not one of my male colleagues showed up. So this year," she continues demurely, "we rescheduled it and sent subpoenas to all the male faculty. This time most of them came."



Charles Soberman

Professor Ruth B. Ginsburg discusses her course on sex-based discrimination.

Law School Enrollments Boom, Applications

By David F. Cavers

*Fessenden Professor of Law, Emeritus
President, Council on
Law-Related Studies*

Law school enrollments are booming. To be sure, there has been no runaway escalation, but, given the stability of enrollments in law since the Korean War, the leap of 25 per cent that has occurred in the past two years is startling. It raises questions as to the legal profession's future dimensions.

For the statistically minded, law

increase of more than 5,000 over the previous year's first-year class. Moreover, despite attrition common to first-year classes, their contribution to the total enrollment will, of course, have an impact on the enrollments for the next two years. Even if next year's first-year class showed no gain, the schools' total enrollment would go up.

It will come as no surprise that the number of women enrolled has been increasing at an even faster pace than that of their male classmates. In the fall of 1968, 3,704 women students were enrolled in all approved schools. In 1970, their number came to 6,937, almost double the 1968 level. Moreover, in 1968 only 1,742 women were admitted as first-year students, whereas their number in 1970 reached 3,542, over twice the 1968 figure.

The translation of law school enrollments into law school degrees yields less impressive increases since, of course, enrollments reflect the more recent developments. In 1968 a total of 16,959 LL.B. and J.D. degrees were awarded by both approved and unapproved schools. This number for the latest year is 18,087. No doubt the recently enlarged first- and second-year classes will soon push the number of graduates close to 20,000.

The significance of these numbers can be appreciated better if one looks back at law school enrollments in the post-Korean period. After the boom in enrollments after World War II, which peaked at 57,759 in 1949, came a steady decline to 39,339 in 1953. By 1960 enrollments in all schools had risen only to 43,695, despite the fact that during this period college enrollments had zoomed. Not until 1962 did a marked jump in approved-school enrollments take place. The increase in that year was about 3,500. Thereafter total enrollments continued to rise until, in

1967, they reached 64,406 in approved schools and 70,332 in all schools. In 1968 came a light drop, probably inspired by the draft, and the current jump of 25 per cent took off from there.

Where did the increases occur? One thing is clear: Harvard's contribution falls considerably below the overall rate of growth. The Harvard Law School enrollment stood at 1,694 in 1968 and 1,784 in 1970, an increase of a little over 5 per cent, due largely to an unexpected bulge in acceptances in 1969. In the same two-year period, our first-year class dropped by 68.

The Harvard data led me to wonder how other schools with national student bodies and substantial tuition rates had fared. I added nine other such schools, selected without reference to their enrollment figures. The 1968 enrollments of the ten compared with those of 1970 as indicated in Table A.

In this two-year period the ten schools increased enrollments by only 12.4 per cent. Moreover, their first-year classes showed virtually no expansion. The total first-year enrollment in the ten schools stood at 2,248 in 1968 and at 2,261 in 1970, for an increase of 0.56 per cent.

State universities do not have the barrier of high tuition, but most of them are now able to be selective in admissions. How did their performance compare with the private institutions?

State Law Schools Now More Selective

With this question in view, I sampled ten such universities (California at Berkeley, UCLA, Florida, Michigan, Minnesota, SUNY at Buffalo, Ohio State, Texas, Virginia and Washington) and found that in 1968 their total enrollment was 7,133 and in 1970, 8,666. This increase of a little over 1,500 represented a percentage increase of 21.5 per cent. However, looking at their first-year classes, I found that they had risen from 2,825 in 1968 to only 3,248 in 1970, or just about 15 per cent, in line with the national average.

These findings led me to look next at some of the large urban schools that maintain both day and evening classes, namely, Brooklyn, Cleveland-

1970 Enrollment Up 25% Over 1968

school enrollment watching is not a demanding occupation like keeping up with batting averages or yards gained on the ground. Indeed, enrollment statistics appear only once a year in a publication entitled *Review of Legal Education*, published by the ABA's Section of Legal Education and Admission to the Bar. Ordinarily, this comes out in the fall of the year, but the 1970 *Review* was delayed.

The total enrollment for all law schools, ABA-approved and non-ABA-approved, in the fall of 1970 came to 86,028, of whom all but 3,987 were enrolled in the 146 approved law schools. The increase in 1970 over 1969 (19.9 per cent in approved, and 9.4 per cent in unapproved, schools) was larger than the increase between 1968 and 1969. However, the 1969 increase had been substantially enough to bring the two-year increase to the 25 per cent figure noted above. Moreover, the increase in approved school enrollments in those two years exceeded 30 per cent, reflecting in part a number of new approvals.

This year's first-year class in approved schools came to 34,289, an

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Marshall, Denver, Fordham, George Washington, Georgetown, John Marshall, Loyola, Suffolk and Temple. Day classes in these schools had risen from 4,487 in 1968 to 5,482 in 1970 for a percentage increase of 22.2 per cent. The picture in the evening courses was essentially the same, 22.6 per cent, the total in 1970 standing at 5,304. How-

career prospects for holders of graduate degrees in the natural and social sciences and the humanities. Route 128 and its counterparts have unemployment problems, and many universities and colleges are experiencing job freezes and budget cuts. As yet, there seems no parallel to this in law.

I suspect that still another fact is

physical facilities, and these, of course, are usually hard to expand. Spaces may be limited by the size of a faculty, but faculties in law schools not dependent on appropriations can be expanded rapidly and profitably too. (Walter A. Reiser, Jr., director of the Legal Method Program, reports that this year's quiet teacher market has recently perked up.) In certain schools the constraint is the judgment of faculties that their student bodies should grow no larger, a constraint that sometimes may be harder to remove than any of the others.

Since the total number of students entering law schools in any year is a small fraction of the horde of young men and women receiving bachelor degrees in that year, the rising tide of applications may overflow the dikes of "spaces available." In a very few years, we may well see total law school enrollments rising well over 100,000 and degrees awarded, over 25,000.

What will this do to the legal profession, now numbering about 300,000? This may depend on whether the profession can organize to deliver its services to meet the unfilled needs of the lower middle-income and "legally indigent" segments of the population. If it fails to do this, one can foresee a large number of doctors of law engaged in the selling of real estate and insurance.

Table A. National Law School Enrollments

School	1968	1970
University of Chicago	457	495
Columbia University	941	1,078
Cornell University	405	475
Duke University	313	391
Harvard University	1,694	1,784
Northwestern University	511	550
University of Pennsylvania	531	617
Stanford University	442	545
Vanderbilt University	359	438
Yale University	553	611
Total	6,206	6,984

ever, whereas the increase in their first-year evening students was only 19.9 per cent, the number of their first-year day students had jumped by 34.9 per cent from 1968 to 1970. The total increase in first-year classes in the ten schools was 28.4 per cent.

The foregoing figures do not explain the sources of the expanding enrollments. Apparently they have been distributed rather widely and somewhat unevenly among the many smaller law schools in our legal educational system. But without further inquiry into the location of the increases, one might speculate about the reasons for the trend. One can no longer ascribe it to the draft.

Assistant Dean Russell Simpson, whom I have consulted, is a more reliable source of explanations than I. He attributes the increase chiefly to two factors. He sees a new attraction toward the legal profession in the activities of the public-interest law firms. Law careers now appear to be beckoning to champions of the public weal as well as to guardians of private enterprise. Moreover, the young lawyers in their storefront offices have been glamorously exhibited by the media. The OEO offices have done the same on a more realistic basis.

A second factor noted by Dean Simpson is a growing doubt on the part of college juniors and seniors as to the

operative. Dean Louis A. Toepfer of Case Western Reserve, who once presided over Harvard's admissions, used to observe that law is the graduate study of choice for the undecided. The wide range of career options that training for the profession of law offers may be exerting an important influence in attracting college graduates to the law schools as other doors appear to be closing or to be revealing less inviting vistas.

We shall have to watch whether an attraction having these bases for many students will be reflected in more drop-outs. However, the upswing in applications is continuing. Registrations for the LSAT examinations this year are expected to exceed 100,000. Last year the number taking the examination was about 75,000. Moreover, the new Law School Data Assembling Service, to which 109 schools subscribe, expects, I understand, to have about 50,000 registrants this year.

How many more students will law schools be able to admit? In the 1970 *Review of Legal Education*, the ABA-approved schools were reported to have only 353 "spaces available" in their day programs and 306 in their evening programs; unapproved schools, about 400 spaces in both programs. But how rigid a constraint is availability of space?

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Free Speech at Harvard

In response to recent incidents involving political protests, many individuals and groups within the Harvard community have issued strong declarations in support of freedom of speech. Many Law School professors individually signed a statement of their concern about the March 26 Sanders Theater disruption and defended the maintenance of a society open to the free expression and exchange of ideas.

While we sympathize with the opponents of war and of racism and we acknowledge their right to protest offensive policies and personalities, we reject the idea that freedom of speech creates an absolute privilege to drown out a speaker or to reduce public discussion to cacophony.

The right to express an opinion or belief must not depend on its popularity or righteousness. The University is obliged to recognize and to protect freedom of speech in the academic community.

In its investigations and disciplinary proceedings the University is attempting to fulfill this obligation. The principle of freedom of speech will be served only if the University's procedures are fair and if its decisions reveal consideration for the difficult question of the defendants' freedom of expression. We hope that members of the Law School community will assist in clarifying the issues raised in the University-wide discussion of the current cases.

Both the statements issued in support of freedom of speech and the preliminary conduct of disciplinary actions indicate that Harvard values highly the freedom of speech of its visitors and guests. We expect the same protective concern will be shown for the First Amendment rights of members of the University community.

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Fenno

"I can see why you've stayed on past your third year, Fenno," said the 1L as he gazed through the exciting, fun 1971-72 catalog. "There are so many interesting courses to take."

"Don't believe anything that you read in there," I instructed, ripping the book to shreds. "Read this:"

ACCOUNTING (and its role in social justice). This course will include the history and development of accounting and its role in the development of social and economic institutions in Western Civilization. Students will be required to write a paper and take the final exam, as well as view the professor's slides of his vacation in Yellowstone.

Lectures in this most important course will be held every day, including holidays, and they will be held whether or not anyone registers for the course. (Herwitz, 2 hours in the Fall semester.)

CONSTITUTIONAL LITIGATION B. A non-precise history of all important decisions in the area of Constitutional Law in anecdotal form. Professor Boudin's lectures will include an analysis of justice, truth and the American way; Professors Nesson and Dershowitz will also attend.

Prerequisites are *Advanced Constitutional Litigation A* or substantial experience in subversive activities.

SEMINAR: MENTAL ABNORMALITY AND THE LAW. (Course description omitted to protect the private lives of Dr. Stone's patients, whose most intimate secrets will be discussed in detail throughout the course. Lectures will include slides, demonstrations and French postcards.)

CORPORATIONS. Through careful editing of the text, Professor Loss will lead the student through the jungles of corporate law and Wall Street fashions. The examination will include an oral presentation in which the student will be graded solely on his pronunciation and working knowledge of Latin derivatives.

WELFARE LAW. A survey of current issues in the field of public welfare for armchair liberals and schizoid poverty lawyers. Lectures will include periodic monologues from students experienced in the field. Field work will include examination of real live poor people in their natural habitat. (Sander, 2 hours in the Fall semester, 1 hour in the Spring semester.)

Letters to the Editor of the RECORD

Guffaws Greet Harvard Policy

To the Editor:

Your April Fool's issue was too far out. I really cracked up over that stuff: profit maximization as the University's highest goal . . . application of the reasonably prudent man doctrine to My Lai . . . attorney Richard Nixon as the very analytical man. . . And that fantastic Deanship list! Please print some more from those wonderful folks who are bringing us the legal education of a lifetime.

Alexandra D. Dawson '66

Swinging Singles Need Pass-Fail

To the Editor:

I have read of the current debate respecting the pass-fail grading system as opposed to the more precise numerical grading system, and wish to add the following:

The numerical precise grading system is unrealistic and inaccurate as it measures a student's performance at a given time during his life under the circumstances prevailing then.

Student A during his stay at law school might be highly motivated and well adjusted, having achieved a high degree of personality development and maturity before entering, perhaps having married, completed his military service, and acquired some practical experience outside of the womb of education.

Student B, on the other hand, coming straight from college, may lack specific motivation toward the legal profession. Perhaps not married, he may play the necessary, but time consuming and distracting, "dating game." He may be very unsure about his goals, purposes, and personal identity. Such a student, bogged down with these problems, will not do as well in law school as without them.

Assuming A and B to be of equal ability, they will perform very differently grade-wise, and the opportunities open to A upon graduation will be much greater than those open to B, although in another ten years B may be every bit as good a lawyer as A, having resolved his problems, settled down, and matured.

Obviously if a student with sufficient ability to gain admission is so lacking in direction that he fails, he should not be "loosed" upon the legal profession

and the unsuspecting world in general, but if a "pass" means that a student has undertaken the rigor and challenge of the Harvard Law School intellectual experience and competently mastered it, that should be enough for any employer.

Thomas R. Kellogg '62

Replace Reservists With Volunteers

To the Editor:

The article by Mr. McManus on page 3 of the February 11 Law School RECORD emphasizes why the United States cannot afford not to return immediately to the policy which existed prior to 1940 of raising its armed forces entirely on a volunteer basis except during periods of declared war when total mobilization is necessary.

It is quite obvious that the existence of a so-called "reserve" whose members have no desire to serve their country and are affirmatively engaged in weakening the national defense is a detriment rather than an asset to the national defense.

No matter what the cost in money or in reduction of our present commitments, we should return as soon as possible to a volunteer system which will have the following benefits:

1. A given level of defense can be obtained with probably half or less of the present total manpower if all active duty personnel are enlisted or commissioned for terms of five or six years since the present two- or three-year term of active duty means that half of a man's service is spent in being trained before he becomes fit for first-line combat duty and a very large

percentage of those on active duty are diverted from constructive missions to conduct that training.

2. The reserve establishments would be much more efficient on a man-for-man basis since they would contain only those who believed in and voluntarily accepted the concept of it being every citizen's duty to prepare to defend his country, who found the necessary discipline inherent in military or naval life acceptable and who were either apolitical or in sympathy with the foreign policy of the existing administration. This, of course, is because those who found the way of life unacceptable or were unable to perform within its limitations would either not join the reserves in the first place or be weeded out by their superiors as their unsuitability became apparent.

This problem will not disappear with our withdrawal from Southeast Asia because an examination of our history shows only too clearly that one man's "criminal war" has ever been and will ever be his neighbor's crusade.

Franklin N. Cunningham '48

ILC Forum: Kangaroo Court?

To the Editor:

The International Law Club recently sponsored a well-publicized kangaroo court as "Westmoreland and Yamashita: Is There a Parallel?" In their search for scapegoats to assuage the national conscience for the morass of the Indo-China conflict, the panel implicated Westmoreland, Abrams, and President Johnson (among others) *in absentia* as war criminals under the Geneva Conventions, under the theory that they "knew or should have known" of incidents such as My Lai.

(Continued on Page 12)

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LETTERS

(Continued from Page 11)

To lend the prestige of professors from Harvard's well-funded International Legal Studies program to, such a sham is bad enough, but in light of the real contributions which the program could be making, this misdirected effort is a tragic waste.

If our tenured "experts on the law of war" are genuinely concerned about achieving international acceptance and application of the Geneva Conventions, they might well start with the direct and flagrant violations of that Convention which are making life a living hell for the 450 known American pilots who have been interned virtually incommunicado in North Vietnam (many for over five years). This is the type of direct abuse which the Geneva Conventions were designed to prevent.

The Geneva Conventions signed by Hanoi in 1957 apply clear minimum standards for the treatment of prisoners of any armed conflict. Paramount

among these is a provision for inspection of prisoner camps by the International Red Cross, without which all the other provisions (regular flow of mail, release of sick and wounded, humane treatment) are meaningless. Hanoi has refused to recognize any of these obligations, yet we hear not a word of protest about this from our new International Legal Studies building.

It is difficult for those of us in the academic community to relate to these forgotten American pilots. Personal courage takes many forms. To many,

it is the courage to stand up against a war they cannot believe in and face prosecution rather than induction. Personal courage to others meant flying daily into the guns, missiles and Migs facing them over North Vietnam.

Instead of twisting the Geneva Conventions in an attempt to make war criminals out of our national leaders, should we not instead be concerned with achieving the protection of those Conventions for our own people who are prisoners-of-war?

Peter G. Pfendler, 1L

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Kahn Defends Victory in Vietnam

Kermit R. Kubitz

Herman Kahn, director of the Hudson Institute, outlined a strategy to win the war in Vietnam, March 16 in the Ames Courtroom. Three years ago, he said, was the last time he was at Harvard, as a guest of SDS. "They were more communicative then."

Kahn asked the audience to raise their hands if they objected strongly to the idea of the U. S. as a world policeman, commenting, "I think very much of the U. S. as a world policeman." When one-third of the audience indicated opposition, Kahn hypothesized Japanese and West German development of nuclear weapons and then asked how many in the audience would oppose that consequence of American abandonment of its police role.

While it was difficult in the 1960's to write plausible scenarios of a nuclear war, the possibility of the United States entering such a war in the 1970's seems greater, Kahn remarked. "Partly as a result of misreading the lessons of Vietnam, the world will be considerably more dangerous in the next decade," he said.

Kahn felt that the critical point in escalation of the Vietnam war was President John F. Kennedy's decision to increase the number of American advisers there from a few hundred to 14,000. Although Kahn rejected the argument that the war had been a useful venture, he recognized that that idea was valid enough to be considered.

Today in Southeast Asia, so the argument goes, there is a feeling of relative stability and development. The morale of the communist movement throughout the world is at a low point. Kahn cited articles in Eastern European magazines suggesting the un-credibility of Soviet defensive guarantees. There is opposition to the war in the North because one-half of the young men 17-24 years of age have been wiped out.

Kahn feels that this argument does not justify the cost of the war. His scenario for the ultimate

solution is that the North Vietnamese will continue to send a few thousand men south each year. The best that can be hoped for is an Arab-Israeli situation. The U. S. will keep fifty to one hundred thousand men in Vietnam for the foreseeable future. American casualties will be below 100 a year, and the cost will be three to four billion dollars a year.

Kahn feels that this policy should be expressed in terms of "winning the war." The lower middle class does not understand why, if we are "pulling out," we do not just get it over with. The truth is that our policy is not de-Americanization, Kahn said, but true Vietnamization.

Analyzing U. S. conduct of the war, Kahn repeated a view heard originally at a Pentagon briefing: "It took Lincoln three-and-a-half years to find generals who could win the war. Johnson hasn't

started looking." Vietnam is not a hard war to win, he claimed. There are six or seven acceptable ways to win the war, two or three unacceptable ways to win it, and one way to lose it, which the U. S. found.

Expanding his point about the ease with which the war might have been won, Kahn pointed to Latin American revolutionaries in the middle 1960's and claimed that "most Latin American countries have sent people to our [jungle warfare] school in Panama. There are no more rural insurgencies in Latin America."

Kahn made the point, which was attacked during questioning, that "if the Vietnamese have to choose between continuing the war and VC domination, they will choose to continue the war." He said anti-American feeling today was engendered by American withdrawal, and that "the VC look like losers, and in that country, they have no sympathy for losers."



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Course Schedule Assailed

[The following was discovered, torn and mutilated, in a pile of discarded yellow and blue registration forms.]

In a time of student unrest, it is comforting to note that the Law School continues to meet student needs and respond to their desires, without the prompting of agitation, petitions, demonstrations and strikes. The 1971-72 Schedule of Courses, recently published, demonstrates clearly that HLS recognizes the paramount interest of students in matters of scheduling classes.

As usual, however, skeptics and cynics are claiming that students have been sold out. Norm Conquest, 3L, spokesman for HLBLT, described the schedule as having "the consistency of peanut butter and the odor of bologna." Proponents of the plan vastly outnumber the detractors, however. A brief look at the schedule indicates why.

Criticism has focused on the conflict between Chadbourn's *Evidence and Loss* Securities Regulation, which makes it impossible for students to take both of these courses, traditionally

among the most popular choices of 3Ls. A source high in the administration reported that efforts were made to avoid the conflict, "but when there are only nine hours a day and five days a week in the teaching week, some con-

3 Year Law School: Road to Dinosaurs?

flict is inevitable, and the needs of 250 students just have to be sacrificed. It was a hard choice, but the only alternative was to have *Securities Regulation* meet at the same time as Nesson's *Civil Liberties*, which would have caused even more trouble. You just have to draw the line somewhere."

Peter Moss, 2L, described the slotting of Countryman's *Commercial Transactions* in the fall MTW 4:30-6:00 period as "the work of a sado-masochistic killer. I'll have a heart attack if Stern Vern doesn't nail me before October." Many other students recognized the benefits of this scheduling gem. "I've been over-

weight for years," said Ethel Palpitte, 1L, "and Vern the Butcher will get me so upset that I won't be able to eat dinner on Monday, Tuesday, or Wednesday, and maybe even all of Christmas vacation."

Seminars received much criticism. "I wanted to write a good third-year paper," complained T. P. Chickafoose, 2L, "but the only topic I could use in those seminars is 'Attempts at Legal Humor: The Relevant Years.'" Many students praised the seminar offerings, however. Some sample comments:

"*Management of Natural Resources: Oil and Gas will provide an opportunity to explore means of dealing with polluters and despoilers of Nature.*" — Getty S. O. "Tex" Shell, 2L.

"The revisionist dogs will wither and die, and their children's children will have the head of the toad and the body of the snake." — Lin Dao Ho, 2L, commenting on *Legal Process in Yugoslavia*.

"Bleep, bleep, blurp, blurp, burp." — 179-28-6457, Program: *Computers and the Law*.

(Continued on Page 16)

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The Law Student Division is a national association of law students and student bar associations all across the country including Puerto Rico. Currently, 147 law schools are represented. Being a student organization the LSD naturally is ACTION oriented.

ACTION—which has helped pass the MODEL COURT RULE allowing third year law students to represent indigents in court in more than 30 states and still working toward passage in the other 20!

ACTION—by sharing information on student bar programs between the various schools, enhancing legal education with additional ideas on extra-curricular and co-curricular activities.

ACTION—in working together as concerned law students, trying to improve our communities, our law schools, universities, university cities, and improve the legal profession from school to bench.

ACTION—within the legal profession by participation in programs of the local, state and national bar associations.

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Course Schedule

(Continued from Page 14)

"*Roles for Law in Conflict Resolution: The Middle East* will provide the most exciting course in the Law School next year. I'm only sorry that my rabbi won't let me take it." — Moshe Meir Ben-Gurion, 1L.

Criticism also focused on the increasing social relevance of the course offerings of the Law School. "All I wanted to do was go back and work with my daddy, and his daddy, and his daddy in the family corporations, tax, and estate planning firm in Cedar Rapids," said Wilson H. S. Farmer, IV, 2L, "but I've had so many schedule conflicts this year and next that I'll have to go into legal services in a big city. Take a look at next year. I'll be taking *Welfare Law, Comparison of Soviet and American Law, Law and Poverty, Race, Racism and American Law, United Nations Law,*

Law and Social Change in Africa, and Tax Reform in Developing Countries, with my seminar in *Mental Abnormality and the Law.* What can I do with that in Cedar Rapids, or even in Dubuque?"

A groundswell of enthusiastic support for the schedule has nearly silenced the voices of the few who, as usual, are protesting merely to protest. A veteran Langdellologist, who now focuses his attention on the Faculty Office Building, indicates that he has detected a perceptible indication that a major structural change in legal education is about to occur.

"When Areeda limits his Antitrust to 2Ls," said Harley Davison '30, "you know that the three-year law school, and legal education as we know it, is on its way to join the other great institutional dinosaurs: the Roman Empire, the Yankees, and Western Civilization. A new day is about

to dawn. We are present at the creation. The new schedule will make us free men, free at last. The spirits of Holmes, Greenleaf, Langdell and Ames will infuse our new creature, and we will reach the next stage of consciousness. *Vae victis.*"

Law Notes

The following additional judicial clerkships have been announced: United States Court of Appeals, 3d Circuit: John J. Osborn '70; United States District Court, 3d Circuit: Charles M. Delbaum, 3L; Massachusetts Superior Court, Boston: Jean A. Morse, 3L.

* * *

Cambridge attorney needs volunteer law students to help wrap up trial resulting from *Sohm v. Fowler*, 365 F2d 915 (1966), within the next 30 days. This is a leading non-criminal military due process case.

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