

HARVARD LAW RECORD

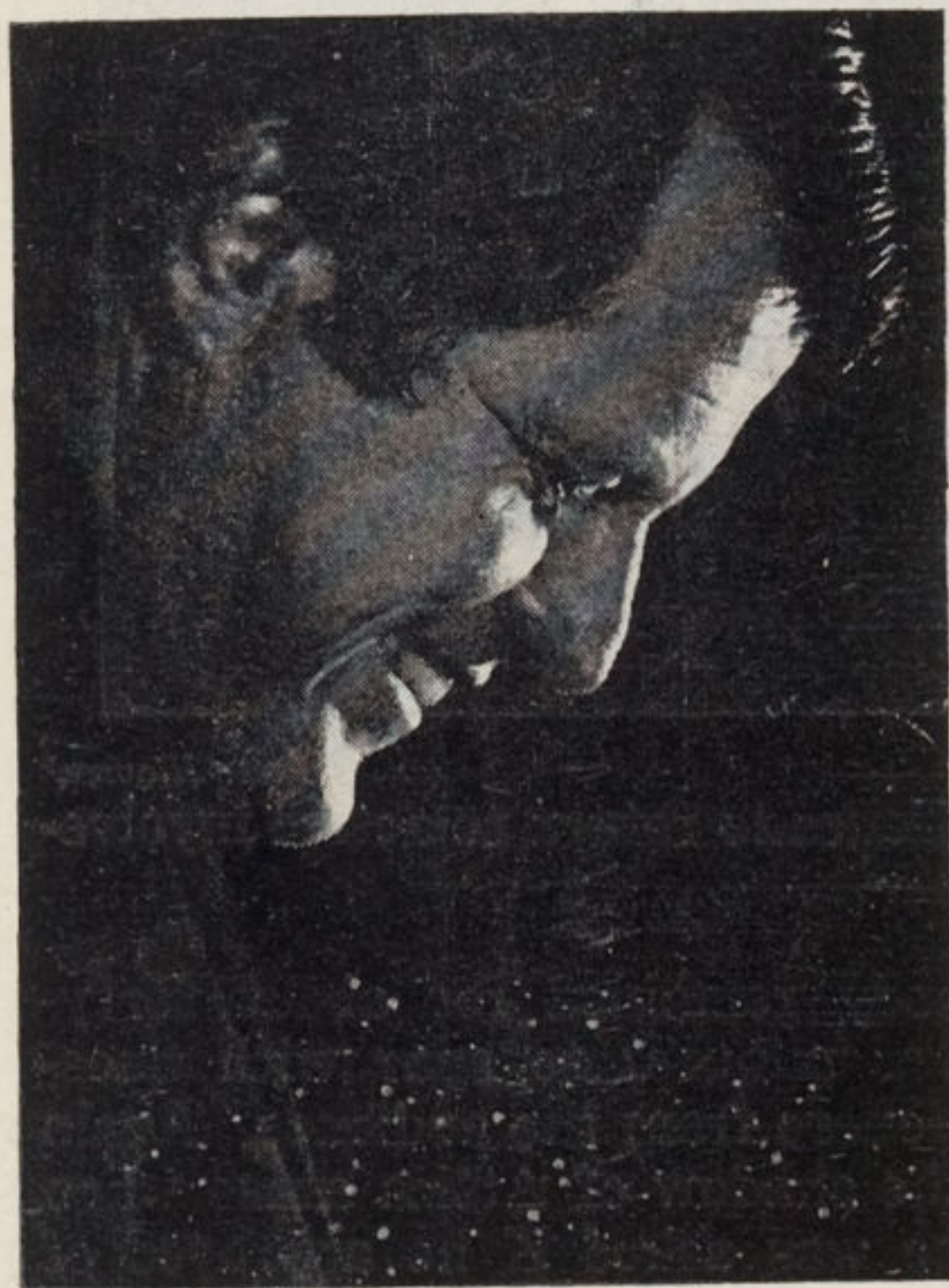
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Peter Hlavacek

**Senator Edward M. Kennedy at
Law School Forum Monday night.**

Kennedy Scolds Students; Says Apathy Elected Nixon

By Carol Plumb and
Alan Lederman

"You are the heirs of a legacy left to you by your older brothers and sisters who asked themselves what they could do for their country in the '60s," Senator Edward M. Kennedy reminded his audience at Rindge Tech Auditorium as he delivered the first speech of the 1971 Harvard Law Forum series on September 28, 1971.

Blaming Richard Nixon's 1968 victory on "people like you," he exhorted students to "stop sitting

on your hands" and return to active involvement in the "great struggle for social justice."

After cataloguing the various student movements of the last decade—the sit-ins, freedom rides, civil rights marches, peace demonstrations—Kennedy argued that present youth activism would be most effective as a "credible political force" in the form of registering, voting, organizing registration campaigns among working and ghetto youth, and presenting cohesive positions.

While admitting that these were "not very glamorous suggestions," Kennedy delivered a blunt warning of the consequences of continued student quiescence.

"Richard Nixon lives in a Skinner box," he said. "He responds only to rewards and punishments his senses can appreciate. Your silence . . . counts distinctly as pleasure."

"[Voting] may seem prosaic, but is nevertheless the path to power and progress," Kennedy told his predominantly youthful audience. "The passage of the 26th Amendment in itself changed nothing. It gives you bare rights which are empty if they are not exercised."

Kennedy scored the voting record of youthful voters. "Tradi-
(Continued on Page 2)

Local Legal Services Combined: CLAO and CLS Form CASLS

By Bob Hernandez

Legal services in the Cambridge community has undergone what may be the most dramatic transformation since its inception as a result of the merger of the two OEO-sponsored legal services programs in the city—the Law School's Community Legal Assistance Office (CLAO) and Cambridge Legal Services (CLS)—into Cambridge and Somerville Legal Services (CASLS) on July 1.

Because of an OEO fund squeeze, both offices were notified of the necessity for merger last October. Out of the disruption imposed by the order a new philosophy regarding the provision of legal services to the poor, a reordering of priorities which has angered some members of the poor and student communities, and Somerville's first legal services office have emerged.

In the near future the new corporation will also be losing the
(Continued on Page 4)

Kennedy Scolds Students for '68 Apathy

(Continued from Page 1)

tionally, the first-time voters, those 21 to 24 years old, have the worst registration and voting records of any age group. In each of the last three presidential elections about half of the potential 21- to 24-year-old voters did not vote while over two-thirds of those in all other age groups went to the polls."

Emphasizing the importance of individual votes, the Senator asserted that not only do Americans have an incumbent President who won by 313,000 votes while 5 1/2 million eligible voters stayed home, but "in the U.S. Senate we have at least a dozen men for whom a switch of fewer than 12,000 votes would have meant defeat. And yet, on issue after issue, one or two of these men make the difference on national policy." He mentioned several pieces of relevant legislation — the Cook Amendment to end the war, his own amendment to suspend the sugar quota to South Africa — which lost by one vote.

Kennedy, who was introduced as "a former assistant district attorney from Suffolk County" by Professor Roger Fisher, was fulsome in his criticism of the in-

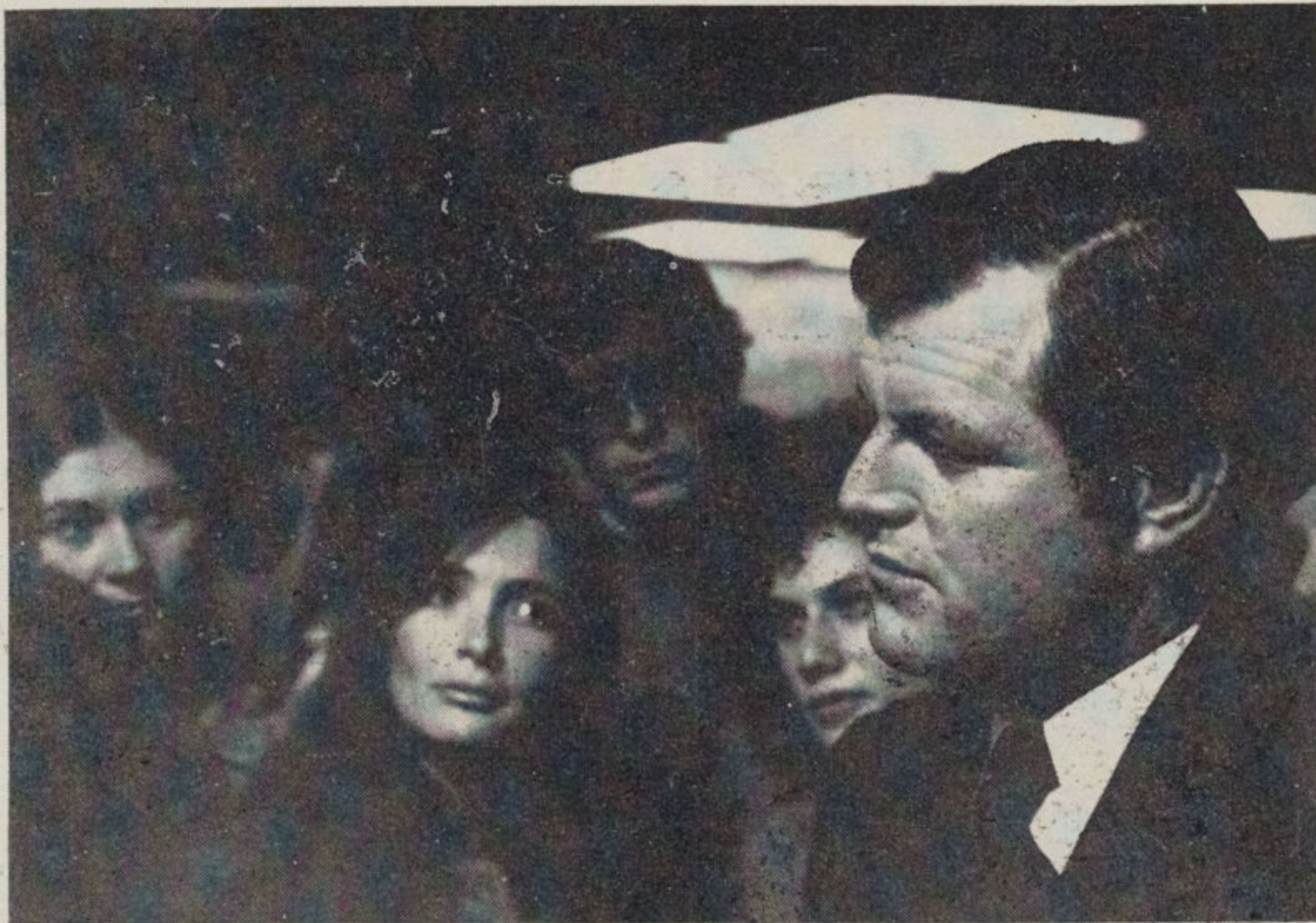
"Voting may seem prosaic, but is nevertheless the path to power and progress."

cumbent administration. He characterized Nixon as "the Commander-in-Chief who went out of his way to support both William Calley at My Lai and Nelson Rockefeller at Attica." However, he warned against "destructive violence and physical coercion" as tactics of change. He pointed out that the message of the Mayday demonstrations in Washington this spring was largely lost.

"No one even remembers what the issues or demands of the demonstrators were, because the substance of the event was swallowed up in the debate over the procedures. As expected, the author-

this died down and "prisons and jail conditions remained primitive."

After his speech, which was warmly applauded, Senator Ken-



Peter Hlavacek

Kennedy challenged youthful audience to return to active involvement in struggle for social justice.

ities were poorly prepared and their response produced massive violations of Constitutional mandates. Thus those of us who might have been spending our energies on the real issues had to invest our time and credibility in the complex issues of Mayday itself. The outcome was a draw at best."

Most of the great social traumas of the last few years have brought only "splashes of attention, symbolic responses, but no real action," Kennedy charged. Blue ribbon panels are appointed immediately after the crisis, but by the time the report is issued, the nation's attention has been directed to other problems and the warnings of the commission go largely unheeded.

The latest American tragedy, the Attica massacre, could have been avoided, Kennedy stated, if the omens from recent history had been heeded. A spate of prison riots in the 1950s focused concern for correctional reform, but

nedy remained for about forty-five minutes to spar with questioners from the audience. Again the shadow of Attica arose when he was asked if he approved of Governor Rockefeller's management of the prison uprising.

"I think the Governor should have gone and the solution that was utilized was wrong. I don't know how you could get a worse solution," Kennedy said.

A question as to whether he opposed or approved a volunteer United States Army brought forth one of Kennedy's most impassioned answers. "I just don't believe that rich men ought to have poor men fighting rich men's wars," he stated vehemently.

Kennedy was also critical of offering a \$6,000 bonus for combat arms on the grounds that this would lead to a disproportionate number of poor youths risking their lives. "Who's that \$6,000 going to attract, a law school graduate?" he asked.

Breakfast Rolled; Hark Tightens Belt

By David Cocke

Breakfast just isn't the same any more at the Harkness Commons Dining Hall. Beginning with this school term the traditional "hearty" morning meal has been replaced by a simpler continental breakfast. The change, according to Vice Dean William Bruce of the Law School, was prompted by low attendance at this meal and by an effort to eliminate the operating losses from the graduate dining hall.

The switch to a continental breakfast has not been universally acclaimed, however. A few students from the Law School dormitories have circulated a petition for the return of "a full hot breakfast . . . every weekday morning" at the Harkness Cafeteria. About twenty or thirty names have been attached to these petitions.

Dean Bruce reports that only two people have complained personally to him regarding the meal change, and neither of these two individuals were law students. One was identified as a law professor and the other as a member of the Law School's staff. "Breakfast sales have actually gone up as a result of the change," said Dean Bruce, implying that most students favor the new arrangement.

As part of the plan to erase the operating deficits of the cafeteria the prices for meal contracts were scheduled for an increase. That will now have to wait for an end to the "Wage-Price Freeze" imposed by President Nixon. Increases in prices of about eight per cent over last year's rates will soon be in effect.

Also new this year to Harkness is the issuance of special identity cards for holders of meal contracts. Each card includes a photograph of the student to prevent its use by another person and to speed up the process of identify-

HARKNESS COMMONS

DINING HALL

1971

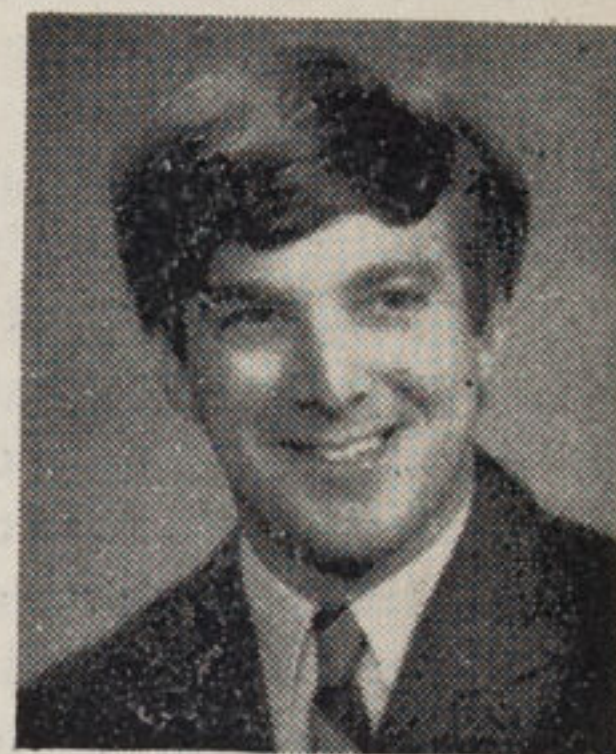
#54-17 MEALS

NAME

ROY ALVIN BLACK

SIGNATURE

Roy Alvin Black



Roy A. Black
Oberlin College
Bethesda, Maryland

Meal contract holders at Harkness this year need only flash their ID card, as above, to speed through meal lines.

ing contract users. This new process also allows contract holders to use the same serving line as those purchasing single meals. The extra serving line has been converted into one serving delicatessen-style foods.

"Hopefully, these changes will help to eliminate deficits that have been attributed to the cafeteria for a number of years," remarked Chester Kenbok, manager of the Harkness facility. "We intend to use the same game plan from last year with a few changes. Our goal is to increase sales and remain competitive with other eating places."

Mr. Kenbok is an employee of the Marriott Corporation which runs Harkness Commons as a concession. It is the only cafeteria in the Harvard system that is not handled directly by the Food Services Department of the University. Decisions about the Harkness Commons are made directly by the Harvard Law School which shares any losses or gains with the Graduate School of Arts and Sciences.

The cafeteria losses were attributed to high overhead expenses by Mr. Kenbok. "The University considers this a profit center and should offset expenses from non-income producing property," he said. Without including "Harvard allocated expenses" Harkness Commons would have broken even last year, according to the manager. These expenses include such items as support for the Food Services Director's office, fees to the Harvard accounting office and other capital costs. "These expenses are justified," said Mr. Kenbok, "and they should be included as part of the cafeteria's cost of operation."

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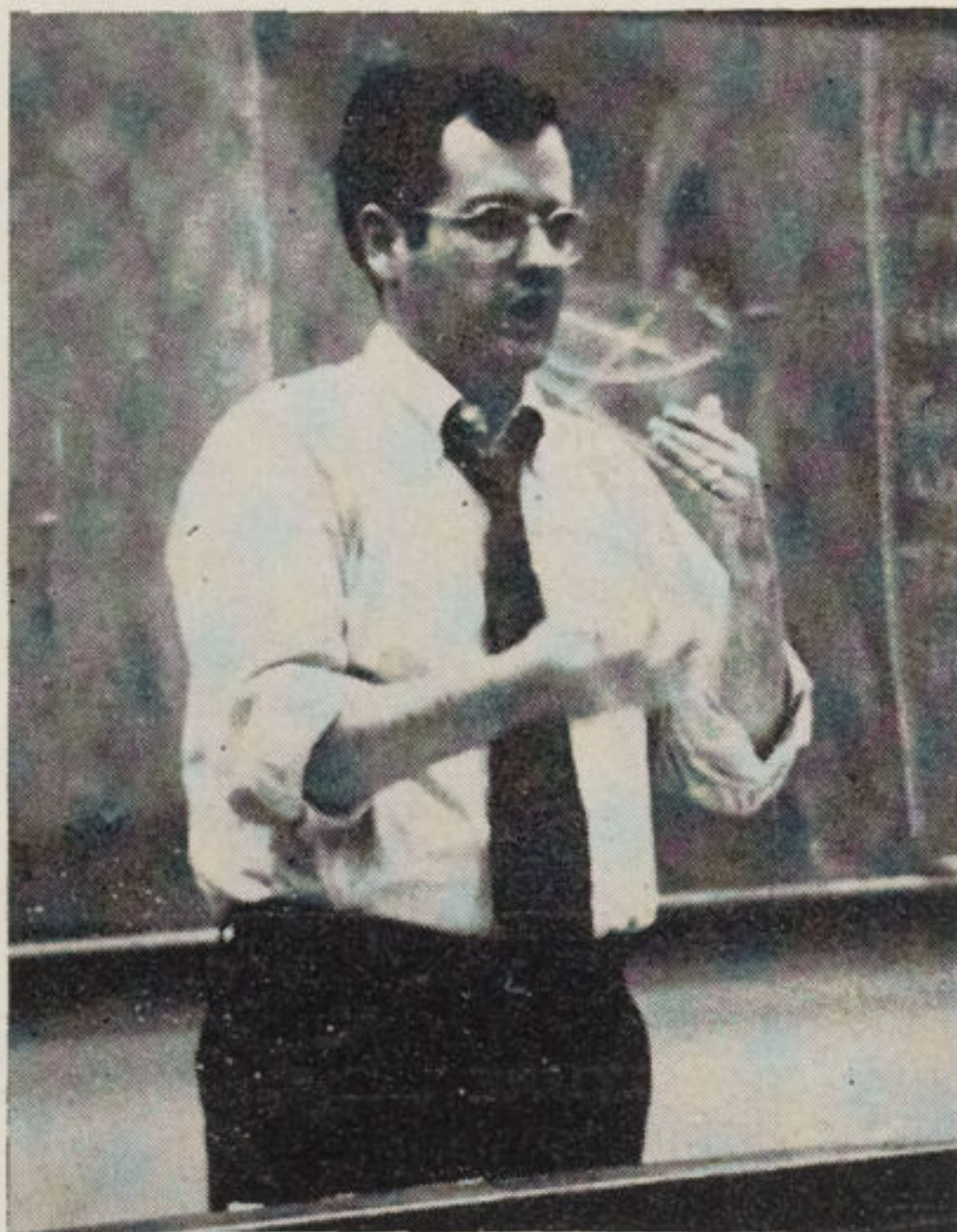
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leadership of former CLAO director A. Van C. Lanckton '67 and former CLS director Ronald L. Cheney '61, who is presently acting director of CASLS.

"The major impact of the merger on the offices was to cause introspection," said Lanckton. "It made both offices think about what they were really doing. And the most striking thing to emerge was the combined caseload of 1600 clients, and a rate of intake of around 100 clients a week. We were receiving more new cases each week than we were closing, so we had not only a high case load but an increasing one. It became clear that it was necessary to stabilize the case load if we were to provide genuinely effective legal representation for the poor."

One result of this analysis was the policy decision to limit case intake through an appointment system for new clients in place of the old system of accepting any person meeting the income requirements who might walk

into the office. This creates a certain amount of self-selection among potential clients, since the poor community



Charles Soberman

A. Van C. Lanckton, former CLAO director, is soon to leave CASLS for government service.

in general is not used to operating on an appointment basis.

Theoretically it is only the person with serious problems who will actually keep his appointment, and the office can better devote its energies to him. Nevertheless, the decision has drawn much criticism from students and community members who believe that it seriously limits the availability of adequate legal services for many members of the poor community.

Both Cheney and Lanckton feel, however, that the limitation of resources dictates such a response. Despite the number of students indicating a desire to participate in the program, the limited number of staff attorneys seriously impedes the office's ability to adequately handle the enormous caseload.

In fact, CASLS has actually cut back the number of student volunteers to one which might be adequately supervised by the staff attorneys. Last year approximately 160 students participated in both programs. CASLS now plans to use only 125 student volunteers. The number of Harvard students is limited to 108, those students enrolled in Gary Bellow's course on *The Lawyering Process*, the Law School's new clinical program and several returning CLAO members.

For the first time those students who are admitted to the program will be required to specialize in a particular field of poverty law, such as housing, welfare, consumer law or family law. Despite recurring criti-

Criminal Justice Center Begins Seminar on Correctional System

By Paul Weiner

The Center for Criminal Justice has announced a seminar which will stress the actions that lawyers can take to improve the correctional system. The non-credit seminar will meet five times, on Mondays at 7 p.m. every other week, beginning on October 4.

The seminar will be led by Larry Bershad, former commissioner of the Vermont Department of Corrections and now a criminal justice fellow at the Law School. He conceived of such a seminar before coming to Harvard this fall. The concern about corrections which many people here expressed to him in the wake of Attica and San Quentin convinced him of the importance of such a series.

Thirty-five people attended an introductory meeting at 6:30 p.m. in Pound 501 on September 23. At

the meeting, Sheriff John Buckley of Middlesex County invited the group to meet at a local prison.

About forty people have signed up for the seminar. Most of these are from the Law School, but some are from the Graduate School of Education. The enrollment in the seminar, Bershad believes, will help the Law School gauge the extent of student interest in this field.

Bershad is now drawing up a prospectus of the seminar. The first session will deal with correctional disturbances, including such aspects as the responses of correctional officials, the prisoner and collective bargaining, and the accommodation of political organization in prisons.

Proposed topics include judicial attempts to control prison conditions, the psychological effects of imprisonment, the presentencing report, pretrial detention, and halfway houses.

Strategic Attack on Poverty Problems

cism from students who feel that this decision limits their ability to gain a broader experience from the clinical law program, once again the decision reflects the new philosophy of the office to maximize the effectiveness of the students in representing the poor community.

"CLAO was an office with definite missions to educate students and provide legal services," said Lanckton. "This was complicated, but the two missions were generally found to be complementary."

"However, CASLS has clearly set its objectives differently. It is not to provide comprehensive legal services to everyone who can't afford a lawyer. We can't do that. Neither is it to provide law students with maximum

Objective

exposure to poverty law problems. Rather, it is to provide quality legal services to the poor community in such a way as to maximize our effectiveness in this area. By this decision we are increasingly ready to sacrifice the educational objectives, although we have never thought specifically in those terms."

Cheney explained that CASLS is ultimately a legal services office and

didn't have the lawyers to supervise effectively, students were thrown in to sink or swim, and most ended up floating.

"At the same time the community was losing," Cheney continued. "Although everyone who came in could be sure of seeing a lawyer, not very much more than that was guaranteed. Four different people might end up handling his case. And we recognize that a lot of bad legal work was being done.

"Now, instead of knee-jerk responses to the problems of the poor, we are

merger has already revealed certain specific problem areas upon which the new corporation must focus, particularly the conspicuous absence of blacks in the legal services program. Plans are presently being formulated to open an office to serve the needs of the black community, autonomous but part of CASLS.

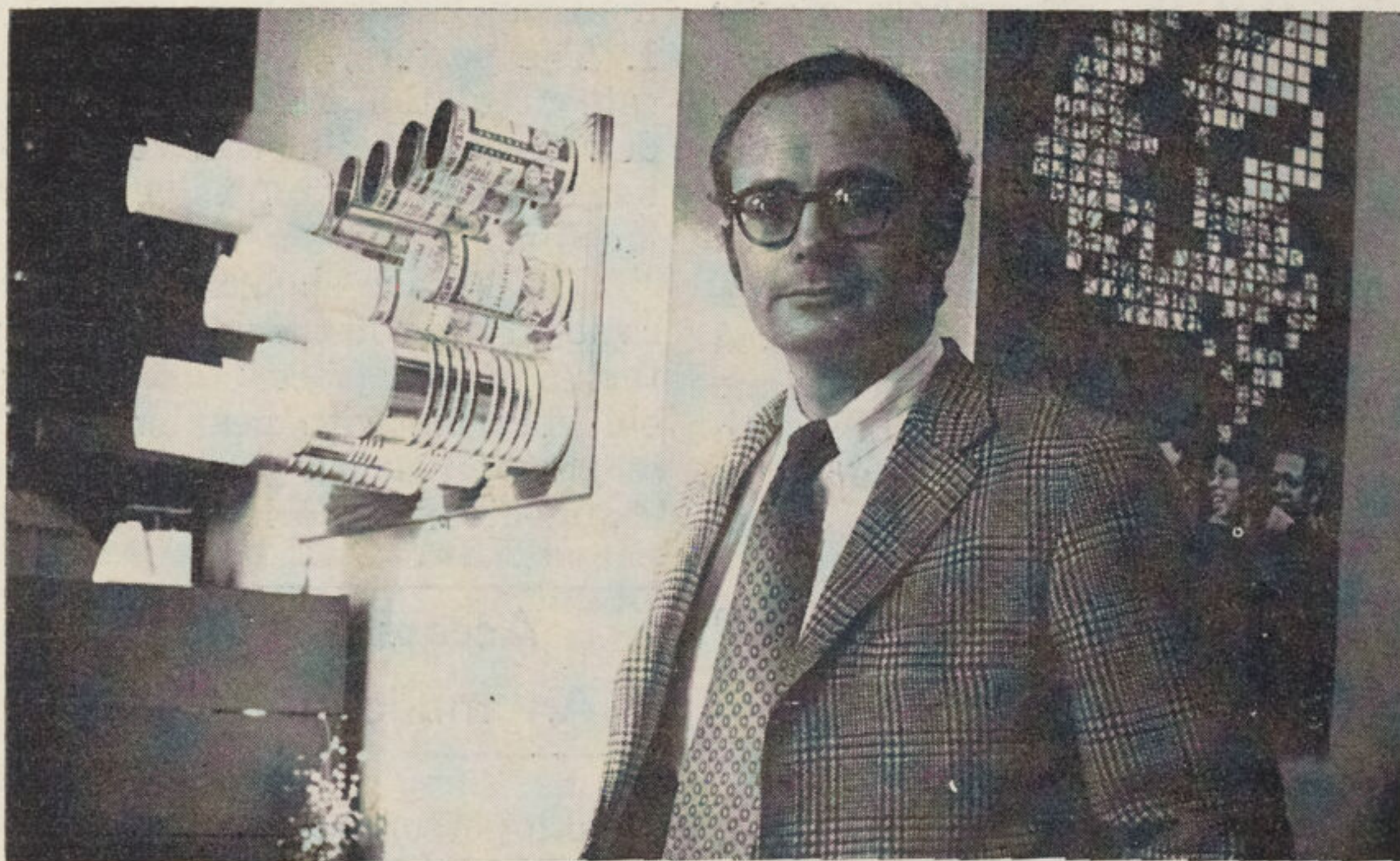
During the merger, the leadership has also recognized the need for "new blood" in leadership positions to allow the corporation to develop to its full potential. Acting Director Cheney, who has directed CLS since 1969, hopes that a new director will be appointed in the near future.

"It's very discouraging because of the lack of commitment on the part of society and the lack of resources," he said. "One gets very tired in this position. What we need is new blood, somebody to bring a lot of BTU's to this organization."

Cheney intends to leave CASLS in the spring, although he plans to return to legal services.

Lanckton will be leaving CASLS at the end of October to accept the position of deputy general counsel of the Office of Human Services, one of the ten new cabinet offices created in the Massachusetts executive reorganization. His duties there will continue to involve poverty law, since the cabinet office includes control over the welfare, public health and youth services agencies.

Recognizing the difficulty of the tasks involved in transforming legal services under CASLS, Cheney remains confident that the poor community will benefit from the merger. "We are committed to providing legal services to poor people, and we are not going to overpromise and underproduce. We have had to make calculated, selective, harsh and cruel decisions, but we are using the resources in the best way we can for poor people."



Ronald L. Cheney of CLS has assumed acting directorship of CASLS until the spring.

not a course. "This is not CLAO, and it is not an activity of the Law School. It is a community-controlled organization, and one of its ideas is to empower, to enfranchise poor people, and to give them the ability to deal with their own problems.

"Our paramount objective is to get to them, not to the middle class. We must make our society respond to them as it hasn't in the past. And in this objective we are different than the previous offices. We are here not to perpetuate the need for white middle class involvement, but to provide the poor with the power to do what they need for themselves."

But the new philosophy and priorities in no way indicate a sacrifice of educational benefits for the participating student. In trying to be all things for all people, CLAO and CLS often failed to provide the student with the type of supervision necessary to make participation a truly full learning experience.

"Students were inadequately supervised, leading to inadequate preparation and the development of sloppy habits," said Cheney. "Because we

asking how to strategically attack those problems. We have the procedures to develop maximized efficiency. We can finally find out how many students we can use to have the most impact on the problems, and with the participation of community organizations, we can know which problems deserve our greatest attention," Cheney concluded.

The introspection caused by the

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Freaks Foster Fraternity

By Bert Halprin

About 30 1Ls calling themselves Freaked Out Friends held their second meeting of the year last week. They were advised to organize early, if they wished to accomplish any changes in the Law School, by students who had themselves tried to solve the problems now facing the newly entering class.

Prime concerns of the first-year students were an improved and extended pass-fail system, alternatives to the Ames Competition and to all competition in academics, and increased opportunities for clinical and other practical work experience.

"We almost got a *real* pass-fail system in last year," said one of the veterans of that struggle, "but we got started too late and there just wasn't enough time to get over the final hurdle."

The general consensus of the meeting seemed to be that the issues had to be further clarified before any specific recommendations for change could be adopted.

A small informal committee was formed to prepare for distribution throughout the student body a working draft discussing alternative proposals. This will be followed by issue-based organization.

The Friends repeatedly emphasized the need to build a spirit of cooperation among students, feeling that the atmosphere of the Law School discourages such a spirit. The already-alienated were told that the School would probably be initiating a new counseling program shortly.

Eschewing any formal organization for the time being, Freaked Out Friends do plan to continue meeting regularly, hopefully with an expanding membership. To this end, they plan to improve their communications system—a system that left much of the target constituency with no chance to attend their first few meetings. They want all students interested in improving the education offered at the Law School and making it easier to survive here to join with them.

Cohen, Law

By Daniel M. Taubman

Three large pop art posters, with letters "C", "R" and "I" are propped against a set of bookshelves in a large office in Langdell. The posters, as well as the office's occupant, Professor Morris L. Cohen, are new to the Law School.

Cohen, professor of law and law librarian, has been here since July 1. The posters, designed to indicate circulation, reference, and index areas, are illustrative of Cohen's brand of "offensive librarianship."

"The library should be an educational force in the school, rather than a passive place," the 44-year-old librarian with near shoulder-length hair and a graying goatee commented. "My orientation is to-

Access to Books An Inalienable Right

ward a personal sort of librarianship."

Cohen, who came to Harvard after eight years at the University of Pennsylvania School of Law library, believes this goal can be achieved through lectures and a greater service orientation.

He explained that beginning October 18, he will present a series of five lectures on legal bibliography for first-year law students. Cassette tapes and accompanying books will be available as supplementary material.

Cohen has also expanded reference service to include a reference librarian evenings and Sundays. For the first time, this year's members of the Board of Student Advisers will serve as volunteer reference assistants during the first-year Ames competition.

In his efforts to make the library more service-oriented, Cohen has increased the library's new materials acquisition rate from 10 to 15 per cent. The remaining 85 per cent of acquisitions are "continuations" of supplements, periodicals, and loose-

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leaf services which the library is obligated to purchase.

He noted that approximately 30,000 judicial decisions and some 10,000 pages of new statutes are added annually to the library's corpus of 3 million Anglo-American decisions. In addition, 25,000 volumes are added each year to the library's 1,200,000 volumes.

Speaking with pride of the law library, Cohen noted that it is more than twice as large as any other university law library in the world. "This is the best library of English law in the world, better than any in England," he commented. He also praised the numerous collections of rare books here.

Working with an annual budget of nearly \$800,000, Cohen must balance need for research and service. "How can you decide whether to buy 10 more copies of Prosser for undergraduates, or an obscure treatise on anthropological law?" Cohen pondered. "If five professors and 50 students are in one area, one copy for that area is not enough," he said.

To increase his flexibility regarding new acquisitions, Cohen plans to organize a Friends of the Harvard Law Library group. Such a group would specifically earmark donations for library expenditures.

Cohen added that Dean Albert M. Sacks "has been very sympathetic to library needs."

Receiving the Master of Library Science degree in 1959 following seven years of legal practice, Cohen later became sufficiently interested in books and legal bibliography to put his thoughts onto paper. The result, *Legal Research in a Nutshell*, is a primer on legal bibliography which will be recommended reading for Cohen's upcoming lectures.

He is currently working on a bibliography of American law to 1860, a long-term project he expects to finish in several years.

In addition, Cohen has written an article entitled "Reading Law in Prison," in which he discusses

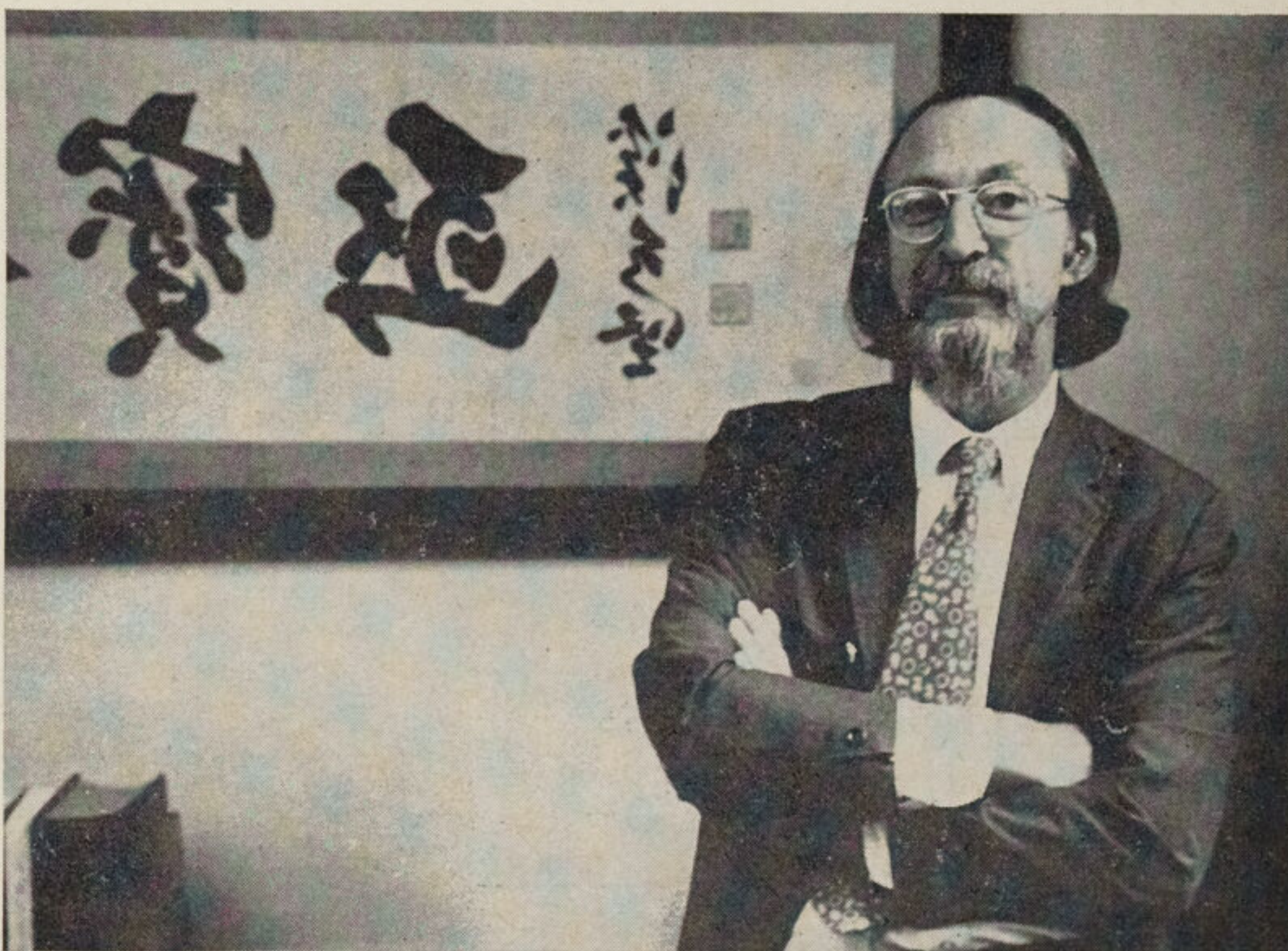
the need for prison reform relating to access to reading materials. He also establishes guidelines for a "Minimum Law Collection for Prison Libraries."

In the article, Cohen points out that "nowhere more than in prison is the right to read the law so eagerly sought and so thoroughly repressed."

Discussing his interest in prison libraries, Cohen maintained

Cohen has also worked actively for the American Civil Liberties Union in Philadelphia. While there he wrote a pamphlet entitled "Your Right to Dissent in a Time of Crisis." He also helped draw up a code of rights for high school students in Philadelphia.

In addition to his interests in prison libraries and civil liberties, Cohen has spent the last four summers in Israel. While there



Charles Soberman

Professor Morris L. Cohen, new Langdell Librarian.

that "access to reading matter is an inalienable right." While conceding that many prisoners could not understand legal literature, others, he said, could comprehend enough to prepare their own legal petitions.

Cohen, who has been collaborating with Professor Herman Schwartz of the University of Buffalo on the establishment of a prison library system in New York, complained that "legal services are not as available to prisoners as they should be." He conceded that prison censorship of recreational reading material is usually at "a fairly low level."

While at Pennsylvania, Cohen visited the Lewisburg federal prison which, he said, is supposed to be better than most prisons. Even there, however, "the law library was pretty miserable."

he helped move the Hebrew University Library to Mount Scopus.

"Israel has a lot to teach those who want to maximize popular participation in government," Cohen explained. He noted that the kibbutzim are communistic societies that work, where real decision-making is a vital part of daily life.

"The Middle East political and military situation prevents Israel from doing things it could be doing," Cohen lamented. Nevertheless, Israel is an exciting physical place to him.

Cohen, who grew up in the Crown Heights section of Brooklyn, reminisced on the changes that have occurred there since his youth. He noted that the area has changed from a middle-class to a poverty neighborhood. "I always

(Continued on Page 14)

Justice Black: Dedicated to Principle,

By Arthur E. Sutherland

Hugo Lafayette Black: 1886 - 1971

The rule of law in America is the better because of the work of the late Justice Hugo Black. Wisdom, compassion, dedication to principle as he saw it, these were his talents and he spent them generously. Now that he is gone, life seems thinner and less interesting.

Black's early life tells of America as it once was, and as it will never be again. He was born on a farm in Clay County, Alabama. His father ran a country store to help keep the family fed and clad, and his mother was postmistress of the town of Harlan. Young Black went to a local seminary named Ashland College and studied medicine for a year at Birmingham Medical College. Turning instead to law at the University of Alabama, at the age of 20 he became a member of that state's bar.

*"Now that he is
gone, life seems
thinner and less
interesting."*

Ashland, Alabama, was not a thriving community for anybody. Black spent a year trying to practice law there, but the building where he had his office burned down. In 1907 he wisely started over again in Birmingham. That city was a large industrial and railroading center, with the mixture of prosperity and misery that seems inevitable. Black made a living at the law, and four years later became Police Court judge. The sad procession of defendants that passed through the twenty-five year old magistrate's court made an impression on him that lasted the rest of his life.

Moves up to County Solicitor

In 1914 he moved up to the post of county solicitor, the prosecutor for Jefferson County, and in that office he spent three highly educational years. Black noticed that a disproportionate number of confessions came from a Birmingham suburb called Bessemer and discovered that its police were operating the old-fashioned type of third-degree. He obtained a grand jury report criticizing that system, which drew down on him some unpleasant heckling.

Black was probably pleased to go off to a 1917 training camp and earn a field artillery commission. At the close of 1918 he returned to civilian life, took up the law again, and developed an active practice in negligence cases.

In 1926, the year he reached forty, Black was elected to the Senate. In 1932, the year Roosevelt took the New Deal to Washington, he was reelected.

Heart and Soul for New Deal

Senator Black was heart and soul for that program. Indeed, Black's advocacy of a thirty-hour week went beyond anything Roosevelt urged. Black sat in the Senate in 1935 and 1936 when the Supreme Court struck down a number of New Deal measures. All the rest of his life he felt that reckless use of due process clauses as general licenses for judicial nullification of novel economic regulation called for strict construction of those clauses.

However, Black was by instinct and by experience dedicated to freedom of speech and press, to fair trials, to scrupulous separation of Church and State, none of which the Fourteenth Amendment expressly protects against state transgression. He needed to evolve a philosophy which would construe that amendment so as to restrict any state which might transgress against these guarantees while permitting the state full power of economic regulation. He needed to find an unexpressed equal protection clause in the due process clause of the Fifth Amendment. But in 1936, all this lay far ahead as the Supreme Court divided four justices to four on New Deal legislation with Owen J. Roberts uneasily casting a deciding vote to erect a majority of five, one way or another.

Supports "Court-Packing"

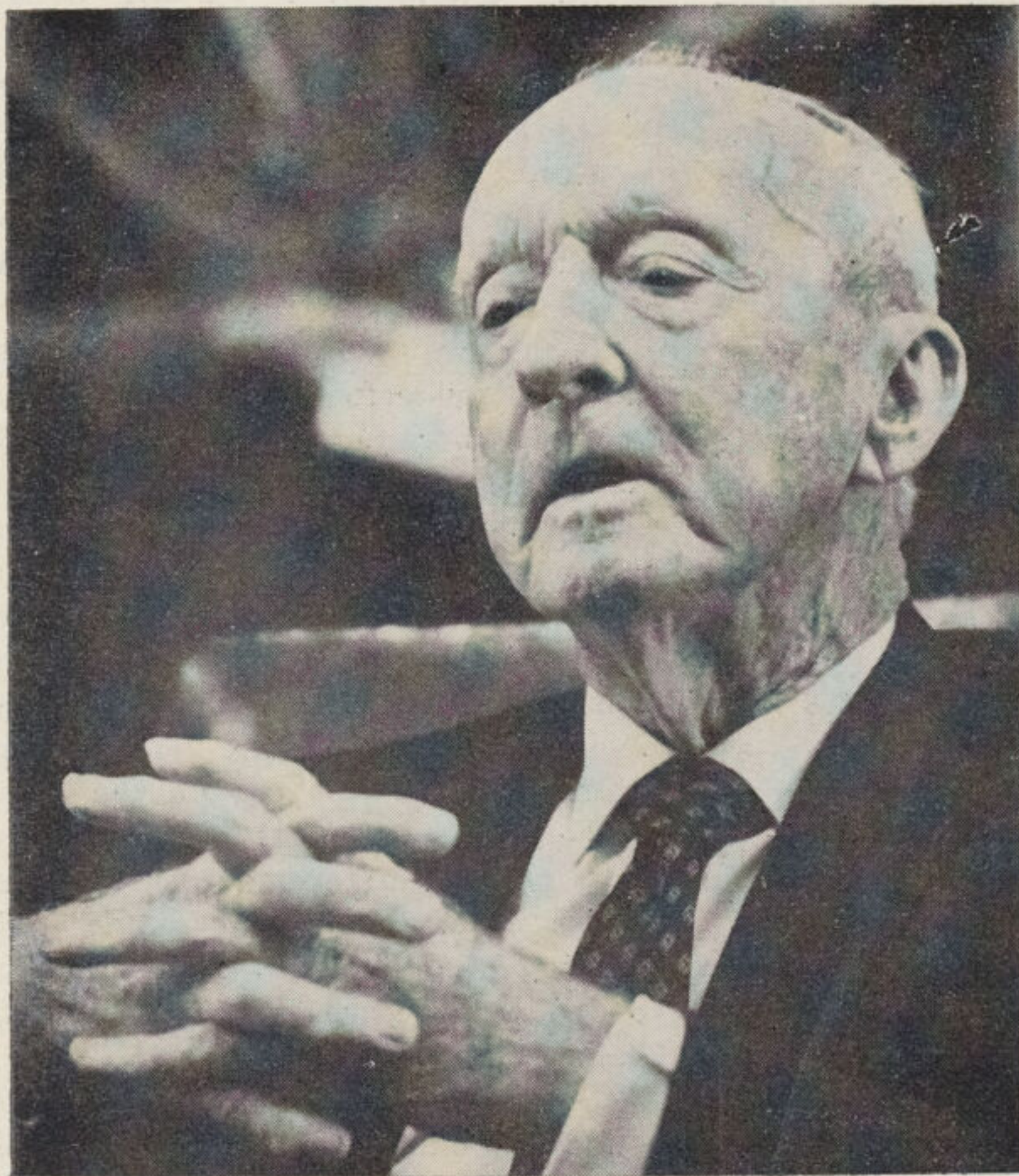
On February 5, 1937, President Roosevelt proposed a plan to reorganize the federal judiciary by legislation authorizing appointment of additional justices to the Supreme Court whenever incumbent justices reached retirement age but failed to retire or resign. Senator Black supported the plan. While this "court packing" bill, as opponents called it, was pending, the Court on April 12, 1937, upheld the New Deal National Labor Relations Act, Justice Roberts casting the swing vote. However, the president still urged his court bill; the one-man majority was too slight for safety.

Then, in June 1937, one of the "conservative" group of justices, Willis Van Devanter, who had sat since 1910, resigned his seat. President Roosevelt shocked the conventional minded by appointing Senator Black in his place. Although the court-reorganizing bill eventually died in the Senate, Roosevelt got his safe majority by ordinary attrition of older justices and appointment of more open-minded younger men. He appointed eight justices in all, four of them between 1937 and 1939. Only Justice William O. Douglas, appointed in 1939, now remains on the Court.

In August 1937 the Senate consented to Black's appointment by a vote of 63 to 16. The new Justice and Mrs. Black journeyed off to Europe. In September, while they were still abroad, a Pittsburgh

Individual Freedom in Life on Court

newspaper printed a series of stories — long before published in California papers — that Black had been a Ku Klux Klan member before 1926 and that after his primary victory in that year, the Klan sent him a "Grand Passport."



Associated Press

Supreme Court Justice Hugo Black, a member of the court for 34 years, resigned September 17 and died 10 days later.

Explains Klan Membership

The Pittsburgh articles won a Pulitzer Prize for their author and stirred up much criticism of Black. When he returned to the United States, he made a radio statement on October 1 to which perhaps fifty million people listened. He said that he had been a Klan member in his early days at the Alabama Bar, but had dropped his membership before he became a Senator. He had never solicited the "card" sent him; he had neither used it nor kept it. Black never again made a public statement on the subject.

Neither before nor after that time did Black ever show by actions or words the bigotry or racial hatred with which the Klan was associated. His membership was unfortunate, the sort of thing a young Alabama lawyer-politician, trying jury cases and hoping for votes, could do. The furor quieted down and Black on the bench came to be the target of abuse by those who shared the Klan's objective.

Wrote 783 Opinions

A review of Justice Black's votes at thirty-five terms of the Supreme Court is beyond the possibilities of this short essay. In 1967 Chief Justice Warren, writing for the *UCLA Law Review* in

honor of Black's thirtieth year on the Court, found that in his tenure on the Court Black had written 783 opinions — 442 for the Court, 64 concurrences, 18 other separate opinions, and 241 dissents.

At most there is here time and space for a review of his constitutional philosophy. Perhaps he set it forth most clearly in an exchange with Justice Felix Frankfurter during a series of antiphonal opinions on the rights of men charged with crimes.

In 1947 the Supreme Court heard the case of a man named Admiral Dewey Adamson, who had been convicted in a California state court of atrociously murdering an elderly woman in order to steal her jewelry. The California law allowed comment on the failure of an accused to take the witness stand and explain the evidence against him. Adamson sat silent and the prosecutor, summing up, made the most of this before the jury, thus eliminating practically all of Adamson's theoretical privilege against self-incrimination.

Decries "Natural Law" Due Process

The Supreme Court affirmed Adamson's conviction although on a federal indictment and trial, under the Fifth Amendment, the result would have been the opposite. Black dissented, protesting what he described as a theory "that this Court is endowed by the Constitution with boundless power under 'natural law' periodically to expand and contract constitutional standards, to conform to the Court's conception of what at a particular time constitutes 'civilized decency' and 'fundamental liberty and justice.'"

In place of this flexible standard, in which he saw lurking the danger of "economic due process," Black proposed the theory that the Fourteenth Amendment "incorporated" *sub silentio* the first eight amendments *literatim*. Here Black found what for him was a solid rock of constitutional literalism on which to stand. Content, he was able in most cases to reach results which satisfied American liberals.

Justice Frankfurter in 1952 stated the converse proposition in *Rochin v. California*. Saying, "The vague contours of the Due Process Clause do not leave judges at large," Frankfurter still could not quite find words to say what fenced them in. He wrote:

"To believe that this judicial exercise of judgment could be avoided by freezing 'due process of law' at some fixed stage of time or thought is to suggest that the most important aspect of constitutional adjudication is a function for inanimate machines and not for judges. . . ."

The judicial work of many judges demonstrates that differing formulas of philosophy do not necessarily bring about different decisional results.

Stood for Individual Freedom

In his long life on the bench, through a series of
(Continued on Page 15)

Law School in Perspective

The Law School is three weeks into the 1971-72 school year. Each passing day sees the Placement Office filled with an increasing number of students — frowning, intent and harassed. Langdell Reading Room has been crowded since the opening day of classes. Harvard Law School is settling down in earnest to the work of the year, it seems.

Yet laudable as the pursuit of academic excellence and expedient as the quest for employment may be, a word of warning is needed. The drop-out rate for 1Ls so far this year is alarmingly high. Nor are 1Ls by any means the only ones who suffer psychological intimidation at HLS. There is a tendency among most of us here to become so caught up in the pursuit of excellence and distinction and so hung up in the quest for prestigious and competitive employment positions that we begin to lose sight of more fundamental notions.

Everyone at this Law School is first and last a human being, with a range of human and emotional needs far broader than is catered to by a purely academic environment. Each individual has sufficient inherent worth that all the gains and losses of three years at HLS can but little affect it.

Law school is not, therefore, nor ought it to be, a threat to anyone. However, its experience may have a decisive impact on the unfoldment or entombment of that basic worth and hence it is crucial how law school is perceived. Only when a person is sure enough of himself and confident of his worth has he the strength to adapt his environment without qualms to his own needs and desires, however unconventional such adaptation may be. Harvard Law School, the Placement Office and the *Law Review* do not define success; only the individual can do that for himself.

If there is a moral, it is this: don't take law school so seriously that it robs you of your initiative, shrinks your perspective, burdens your days and nights, and dictates your future. Rather, make the time spent here work for you. Not cynically, but realistically. As a point of fact, law school can be enjoyable. After all, Harvard Law School was made for its students, not students for the Law School.

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Fenno

Langdell Library was full of humanity. Most seats were occupied and the hard-backed Law Reviews were strewn all over the long wooden tables, to the consternation of the library staff.

It was the evening and the morning of the second day.

"Gee, I never thought people would be in the Library so soon," a bespectacled 1L said to a classmate. "We only started classes two days ago."

"Which way does that cut?" asked the other tenderfoot, placing his fingertips together judiciously. "It might mean that people are either already far behind in their work, or trying to accumulate a reserve for the ski season; or, on the other hand, that they are in fact attempting to convincingly crush their colleagues underfoot with a determined year-long effort. The answer does not appear on the face."

The first tenderfoot blinked in admiration and amazement. "You certainly seem to be at home with thinking like a lawyer. And according to the *Guide for Entering Students*, that's what we're here for."

"Oh, I don't know," the other responded modestly. "However, I did try to whip myself into shape over the summer by reading *Bok: A Book* three times. It gave me the needed perspective."

"I'm still trying to figure out whether Mrs. Sibbach can constitutionally be undressed. I asked a second-year student but he didn't get an A+ in *Civil Procedure* so he didn't know."

"Well, don't lose sleep over it. In the immortal words of Louis Loss, 'The Law is not logical because Life is not.'"

"That may be true but it doesn't help me face Mr. Field when he calls on me. I need some constructive help."

"How about this one: the law is a seamless web."

"That's not constructive."

"I know, but it sounds good."

"I'm confused. The classbooks could be written in Sanskrit, for all the difference it makes to me. And I don't understand class discussion. Somehow I feel the problem is that the coursework is not relevant."

"Do you think that would make the difference?"

"I'm sure of it."

"How do you know?"

"Bob Hernandez says so."

Law Notes

[The following letter from Congressman Michael J. Harrington, D-Mass., was among several similar letters received from members of Congress in response to the Law School petition for an investigation of the Attica prison tragedy.]

Thank you for including me on the list of those to whom you sent your petition on Attica. I have taken the liberty of inserting it in the *Congressional Record*, with the accompanying statement.

I assure you that I do intend to press for action along the lines you suggest.

Michael J. Harrington '61

The Law School has announced the appointment of six college teachers as fellows in law for 1971-72. They are: Alona E. Evans, Kendall professor of political science at Wellesley College; David H. Flaherty, assistant professor of history at the University of Virginia; Stanley K. Schultz, assistant professor of history at the University of Wisconsin; Erwin O. Smigel, professor of sociology at New York University; Jon N. Sutherland, associate professor of history at San Diego State College; and Dr. June Tapp, Psychologist at the American Bar Foundation in Chicago.

The fellows attend regular Law School classes, and also participate in a special seminar.

* * *

Subject to the whims of the Buildings and Grounds crew, access to the Law School and the Langdell Law Library will be available only through the main front door of Langdell and the main door of ILS. The doors at the two ends of the main Langdell Reading Room will be closed on Saturday and Sunday.

The following regular hours have been established for the library:

Monday-Friday

8:30 a.m. to 12 midnight

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Boudin Plans Seminar

Attorney Leonard B. Boudin, famed civil rights lawyer, will conduct an open seminar Tuesday, October 5, at 7:30 p.m. in Room 101 of the Pound Building.

Entitled "The Federal Grand Jury System: Constitutional and Policy Problems Arising from its Current Operations," the seminar will be the first in a series of five to be presented by Boudin under the sponsorship of the Law School's Center for Criminal Justice.

Last year Boudin taught *Advanced Constitutional Litigation* at the Law School as a visiting professor. He is currently chief counsel in the Harrisburg conspiracy trial, and for Daniel Ellsberg, who is facing charges in connection with his distribution of the Pentagon Papers.

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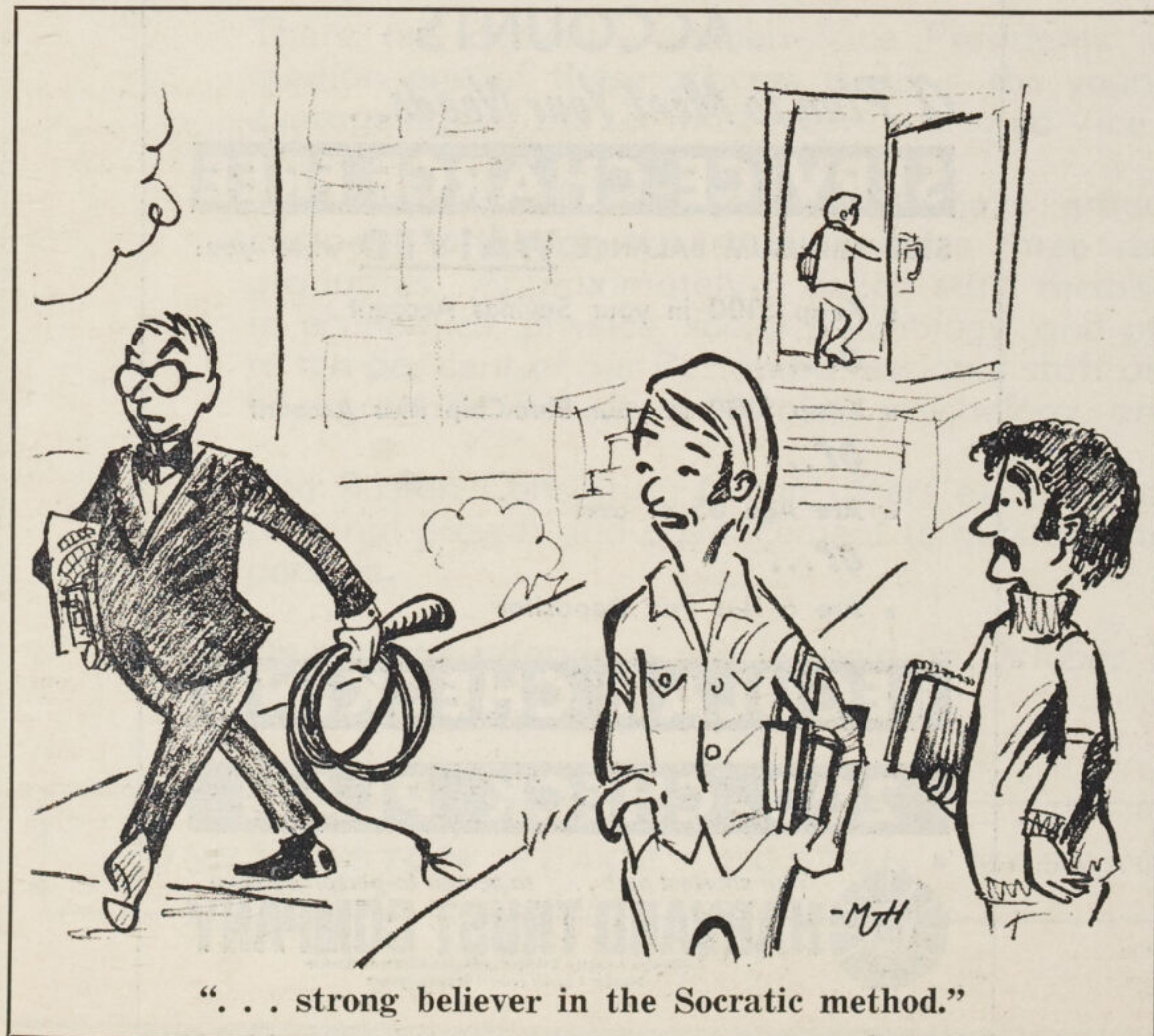
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"Fortune and Men's Eyes": L'Art for Law's Sake

By Joel Seligman

The lawyers tried Dreyfus first. Lawyers found Dreyfus guilty, incarcerated him, denied his appeals.

The writers tried Dreyfus next. The worst propagandists argued more effectively than the best lawyers and Dreyfus' case became not one of law but one of justice.

It was France that judged Dreyfus innocent and France that set Dreyfus free. And the men and women of France who marched for Dreyfus and overturned a government for Dreyfus knew not one wit of law nor cared at all for law if law prevented their Dreyfus from being free.

The lawyers came first to Attica; first to view George Jackson's corpse. Lawyers come first to all our tragedies and prevent not a few from happening again.

But what of the times lawyers fail? What of the times Law has done all it can and still has not done enough?

The motion picture, *Fortune and Men's Eyes*, is very much concerned with a question such as this. Its advertisements argue, "What goes on in prison should be a crime." In fact, this film believes life in prison is a series of crimes that brutalize, demean and transform men.

Now a lawyer could see *Fortune and Men's Eyes* and question its facts. Conditions are bad, a lawyer might argue, but not *that* bad. Not all prisoners are homosexuals, not all good men corrupted, not all white. A judge might remand this film back to MGM for greater factual accuracy if he did not throw the film's case out altogether.

But *Fortune* was not filmed by lawyers, nor for lawyers. It was made by a man who, instead of visiting San Quentin and asking, "What are the facts?", threw up. Director Hart is an artist who put the penal system on trial and tried our prisons with his anger, not his reason.

Poetic license is skillfully used here, for the film is propaganda intended to be factual enough so you'll believe it and persuasive enough so you'll leave the cinema not asking, "Are conditions really like this?" but rather, "Why am I not doing anything about this?"

And that's a damned good question. I've never spoken to anyone who defends our penal system. It is widely believed that our prisons fail to rehabilitate, are understaffed, and, conceptually, are antediluvian. Nellie Bly wrote this sixty years ago; Pierre Salinger nearly won a Pulitzer Prize for writing this fifteen years ago and little important change has been made in between.

Next to inmates and prison administrators, lawyers know prisons best. And lawyers, apparent-

ly, can acquiesce to prison iniquities better than anyone.

The men and women who made *Fortune and Men's Eyes* think law has failed. They feel this so strongly that they have taken their emotional case to the public and scream for justice.

Their scream is failing. Even in the wake of Attica, Americans don't seem terribly concerned about injustice to incarcerated Americans. Lawyers should be. It is their garden, and just now it stinks. If this isn't absolutely clear after seeing this film, it will be after visiting a prison or even a city jail. Conditions are much cleaner now; the food is better; the health standards, superior; but recidivism is at an all time high. *Fortune and Men's Eyes* offers some good clues why.

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On-campus interviews will be held on October 13, 1971.

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Women Urge Female Justice

[The following is the text of a petition telegraphed to President Nixon last week by the Women's Law Association at the Law School. The petition was signed by ninety-seven women, both students and teaching fellows at the Law School.]

The women of Harvard Law School urge you to nominate a woman to the Supreme Court of the United States.

Women have distinguished themselves in the legal profession, not only as lawyers in

practice, but as judges and law professors. These attainments are remarkable in view of prejudice overcome, but they also stand on their own merits as work of the highest value to our society.

If sex alone, male or female, is no qualification for public service, the time has come when sex alone can no longer be a *disqualification* for the highest court. We urge you to name to the Supreme Court of the United States one of this nation's distinguished women jurists.

Cohen Colloquy

(Continued from Page 7)

thought Brooklyn was the cultural center of the universe," he affirmed.

Cohen compared Harvard with his former location at the University of Pennsylvania. There was a "more relaxed atmosphere" at Penn, he said, while here the faculty are very busy and the "students seem very busy." Penn is also smaller and less competitive.

Cohen confessed that he finds his new job challenging. Because of a mix of administrative, scholarly, and teaching functions, there is never any lack of things to do. "My desk is a mess," Cohen admitted as he glanced toward his desk and then towards the three pop art posters which will soon be placed in the Langdell Reading Room.

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Justice Black, Dedicated to Individual Freedom

(Continued from Page 9)

cases on criminal justice, racial equality, religious freedom and free expression, Black's judgments stood for individual freedom and against the tyrannical exercise of governmental power.

On his last day in the courtroom, Justice Black wrote an opinion in which Justice Douglas joined, concurring with the Court's *per curiam* refusal to enjoin the *New York Times* and the *Washington Post* from publishing the Viet Nam papers. He wrote:

"I believe that every moment's continuance of the injunctions against these

newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment. . . . It is unfortunate that some of my Brethren are apparently willing to hold that the publication of news may sometimes be enjoined. . . ."

Black discovered ways to find the spirit in the letter. He will be much missed.

[Arthur E. Sutherland is Bussey Professor of Law, Emeritus. He retired last June after twenty-one years on the Harvard Law School faculty. He is the author of numerous publications, including *The Law at Harvard, a history of the Law School.*]

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Ames Competition Alternatives Grow

By A. W. Finch

The Board of Student Advisers has remade the Ames competition in response to criticisms of the program in previous years. This fall, some 50-60 1Ls will have the opportunity of by-passing Ames by doing legal research for voluntary organizations.

William A. Anderson, 3L, chairman of the board, explained that several organizations such as Civil Rights-Civil Liberties Law Review, Civil Rights-Civil Liberties Research Committee, and the Environmental Law Society have agreed to work with the board in supervising the 1Ls who elect the research program.

In discussing the differences and advantages of Ames and the Ames alternate, Anderson felt that "the traditional Ames format affords first-year students a unique opportunity to engage in appellate advocacy."

The Ames alternate, while not providing an adversary framework, nonetheless has students working directly on issues relating to pending litigation or publishable research.

The board has re-done its training scheme for legal research. The West series in legal bibliography will be scrapped; librarian Morris

Cohen will deliver five lectures on "Introduction to Library and Legal Bibliography," "Judicial Reports," "Case Finding," "Statutory Materials and Statute Finding," and "Secondary Materials," beginning in mid-October. There will be, for each Legal Methods class, both a seminar on Cohen's lectures and a step-by-step tour of the Library. *Case in Point*, an old Ames standby film, will still be shown as well.

Further refinements include the introduction of tape cassettes, prepared by Cohen and available in the library, discussing the uses of some 40 legal reference works. Members of the board will undertake two to four hour shifts in the library during the peak of the Ames season to provide assistance to Ames researchers.

Anderson sees that the new program will eliminate a lot of wasted motion for Ames participants. The board expects the new cases to be more topical in nature in a newly developing area of law. The issues will be more sharply defined and there will be a better balance between the positions of appellee and appellant.

Since the Board expects the Ames alternate to be over-subscribed, those allowed the alternate will be chosen by lot.

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