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JUL 10 1972 TWENTY CENTS

Council to Replace Governance Board; Election Due Soon

Bator, Shapiro Named To Expanded Deanship

By David Cocke

The Law School Committee on Governance is about to go its way. In its place — if the Law School turns out in sufficient numbers to legitimize the proposed elections — will materialize the so-called Law School Council. The Governance Committee, established on an interim basis in 1969 to

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Professors Paul M. Bator and David L. Shapiro have been appointed associate deans of the Law School by Dean Albert M. Sacks. The appointments were decided upon earlier in the summer and were recently confirmed by the Harvard Corporation.

The Law School has customarily only had one associate dean.

Sacks, who was himself associate dean before becoming acting dean of the School last January, stated that "the combination of talent in two individuals will be stronger than any one person could supply. With two people working on it, and the job being self-generating to a certain degree, more will be done," he continued. "We will have a stronger administration."

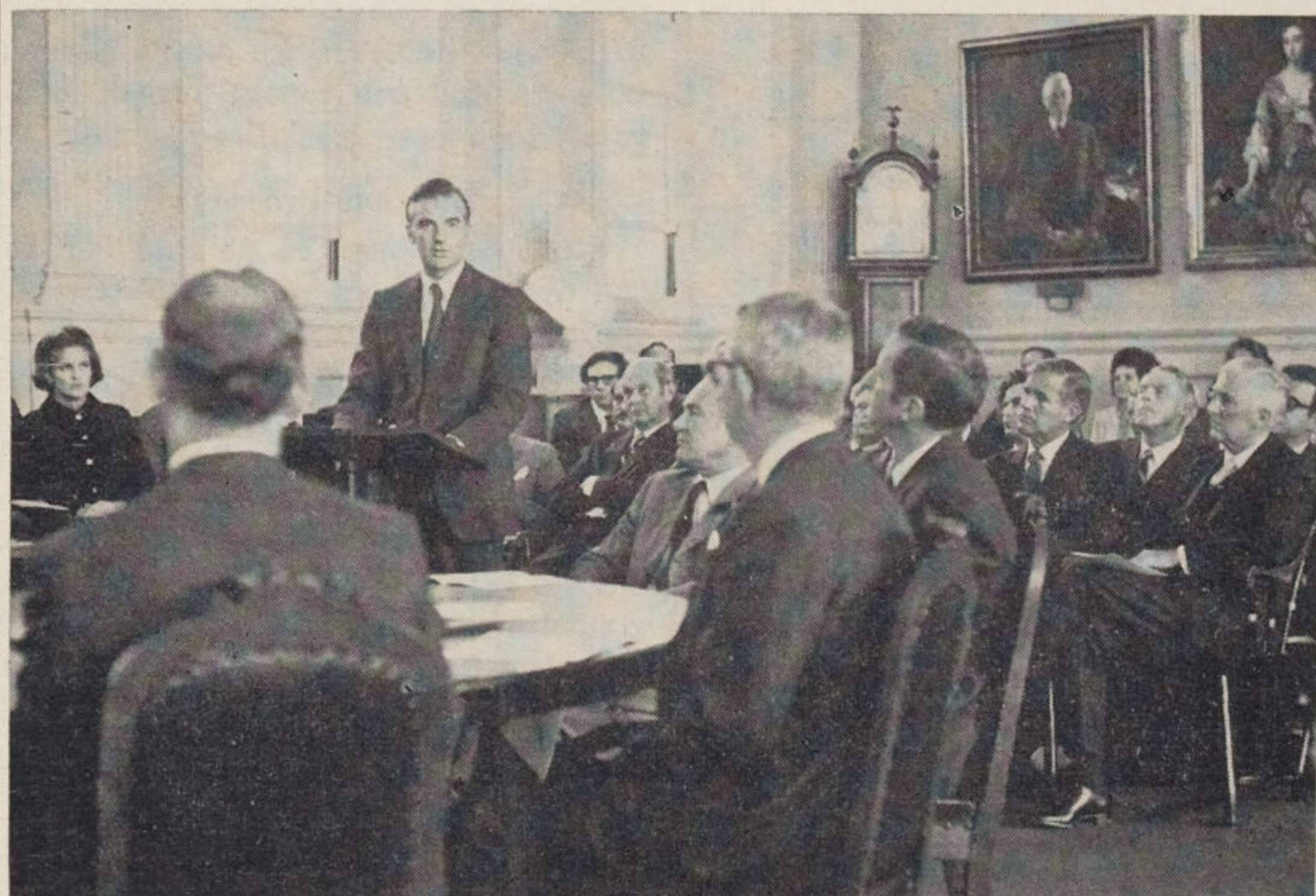
Sacks explained that the two new deans would assist him in policy planning at the academic level, in general tasks of academic administration, and through their advice and counsel.

"I would like to emphasize that I consider these to be roving assignments and not specific," he said. "The nature of the job will depend on the personalities and interests of the two men."

In general, Shapiro is expected to continue his activities in the area of curriculum development. He is presently serving as chairman of the Committee on Legal Education. Commenting on his appointment, he foresaw no dramatic change in the role he is already fulfilling, his task as associate dean being in large measure but an extension of his work on the Legal Education Committee.

Professor Bator, on the other hand, is expected to focus his attention on the area of research and scholarships. "There will be overlaps," remarked Dean Sacks, "but we're not trying to divide

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IN A SIMPLE CEREMONY, Derek C. Bok, former dean of the Law School, was installed last Monday as Harvard University's 25th president. Numerous dignitaries, including Governor Francis W. Sargent, the mayors of Boston and Cambridge, and Harvard's 24th president, Nathan M. Pusey (seated far right), attended the historic occasion held in the Faculty Room of University Hall. Here, Bok accepts the office symbolically conferred upon him by C. Douglas Dillon, president of the Board of Overseers.

Law School Council Elections Scheduled

(Continued from Page 1)

find long-range solutions to the problem of student participation in formulation of Law School policy, will have done its work.

The election of council representatives is to take place by class and has been scheduled for the week of October 25-29, with possible primaries during the preceding week. The faculty will have five representatives on the council; five will come from each of the three Law School classes; graduate students will have one representative; and one teaching fellow will be appointed as a representative. In addition, the then-constituted council may appoint up to eight more student representatives to ensure representativeness.

In all, six members of the council will represent faculty and teaching fellows, and up to twenty-four members will represent students. The council's predecessor, the Governance Committee, has been composed of three faculty and ten student members.

One of the council's important functions will be to select student members of Law School commit-

tees. According to the Governance Committee report of last June, five of the council's student members will regularly attend faculty meetings. Five additional student representatives to faculty meetings will be chosen from among those students selected by the council to serve on Law School committees. These ten student representatives to faculty meetings—designated directly or indirectly by the council—will be full participants in the meeting except that they will have no vote.

Five further students will be chosen at random from among those interested in attending a particular faculty meeting, but these five will be observers only. Preference will be given to those

who have not previously attended a meeting in that year. Past practice has been to admit up to 15 students at random who signed up on a sheet at the Langdell receptionist's desk, but this arrangement was deemed not to have "served very effectively as a

vehicle of publicity and accountability to the student body at large." Students who are interested in running for the council are to sign a list for that purpose at the receptionist's desk no later than 4:00 p.m. on Friday, October 15. Election will require at least a 25% turnout of the relevant constituency. Further information on the council is obtainable also at the receptionist's desk.

A statement circulated recently throughout the Law School by the Governance Committee, which explains the powers and purposes of the council and the mechanics of the election procedure, is set out below:

Law School Council Representatives To be Elected Week of October 25-29

Law School Council Elections

The general functions of the Council are as follows:

The Council may direct its attention to any matter of Law School policy or practice touching the interest of students, and shall serve as a forum for the expression of student views and concerns on such matters.

The Council will keep itself informed of the work of Law School Committees, may suggest matters for consideration by any committee, and may make recommendations to a committee about matters under consideration. It may, as appropriate, take measures to inform the Law School community about the work of the committees and proposals being developed by them.

The Council may make reports and recommendations to the faculty on any matter pending before the faculty or

on any other within the scope of the Council's concerns. Any such recommendation will be placed on the agenda of a faculty meeting with the status of a motion made and seconded.

It will be the responsibility of the Council to develop communications within the Law School on issues of

Each Law School Class to Have Five Representatives on Council

general interest. It will have the right and duty to convene open meetings of the entire Law School when appropriate.

In addition to handling broad student concerns, the Council will establish a committee of its own members consisting of one student and one faculty member to handle grievances, complaints and requests of students with respect to the administration of the School.

The Council is also charged with selecting student members of Law School Committees, and five Council members will serve as regular student representatives to the faculty meetings.

Additional information on the Council may be obtained at the Receptionist's desk in Langdell Hall where there will be available copies of the Governance Committee's report providing for the establishment of the Council.

Election Procedure

Students interested in running for the Council should register by signing the list at the Receptionist's desk no later than 4:00 p.m. on October 15th. Representatives from the second and third year class will be elected at large. From the first year class there will be one student elected at large and one elected from each section. A first year student may sign up to run for both the at-large and section positions, but whoever wins the at-large position will be precluded from then running as a section representative. No one shall be elected to the Council unless at least 25% of the relevant constituency shall have voted in the election, but if any election shall fail on this account, another election may be held.

Second and Third Year:

The election for representatives from be held Tuesday, October 26th. If there are more than 15 candidates for

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Fred Harris Seeks Populist Coalition

By Daniel M. Taubman

Senator Fred R. Harris (D-Okla.), in his first major speech since announcing his candidacy for the Democratic presidential nomination, appealed to Law School students on Friday, October 1, to support him in his bid to form a "new populist coalition."

Addressing more than 1000 students in Sanders Theater, Harris called for the creation of a progressive majority to "bring this country back together again."

In a wide-ranging speech, the former Democratic National Committee chairman attacked President Nixon's economic policies,

Candidate Attacks Nixon, Monopolies

demanding an end to military aid for the Thieu regime in South Vietnam, and proposed an end to shared monopolies to promote a redistribution of wealth.

"Why are we interested in full employment only in even-numbered years?" Harris asked, in an allusion to Nixon's announced goal to reduce unemployment in 1972, an election year. The United States is the only rich industrial nation with 25 1/2 million poor, he said.

In addition to a termination of aid to South Vietnam, Harris demanded an end to military aid to the military governments of Pakistan, Greece, and Brazil. He also proposed amnesty and repatriation of draft dodgers who have left the United States because of their opposition to the war in Vietnam.

Harris said "shared monopolies" should be broken up with resulting gains distributed among consumers. The inordinate economic power in shared monopolies always leads to inordinate political power, Harris explained.

Commenting on the desirability of a redistribution of income, Harris noted, "Nobody's talked about cutting a larger pie." The

upper 40 per cent of the population earns 70 per cent of national income, while the lower 60 per cent earns only 30 per cent of income, he said.

"The poor live in decimated cities that look like bombed-out Berlin," Harris commented in deploring the rat-infested garbage-strewn housing conditions in a Bronx slum district.

Harris, a member of the President's National Advisory Commission on Civil Disorders (Kerner Commission) noted that hopelessness, not rebellion, pervades ghetto youth. But this hopelessness is not limited to the 41st precinct of the Bronx, he said.

"I find the hallmark of the American political scene is that most people don't think things will change with the political process.

"I think most people in America know you can rail against disorders, lay on more guards at Attica, and people still aren't satisfied with the quality of life," the Oklahoma senator continued.

Referring to the recent prison riot at Attica, Harris maintained that "we ought to be worried about our society and the kind of

people it exemplifies" when such massacres occur. He suggested that half of the prisoners in Attica should be treated in hospitals.

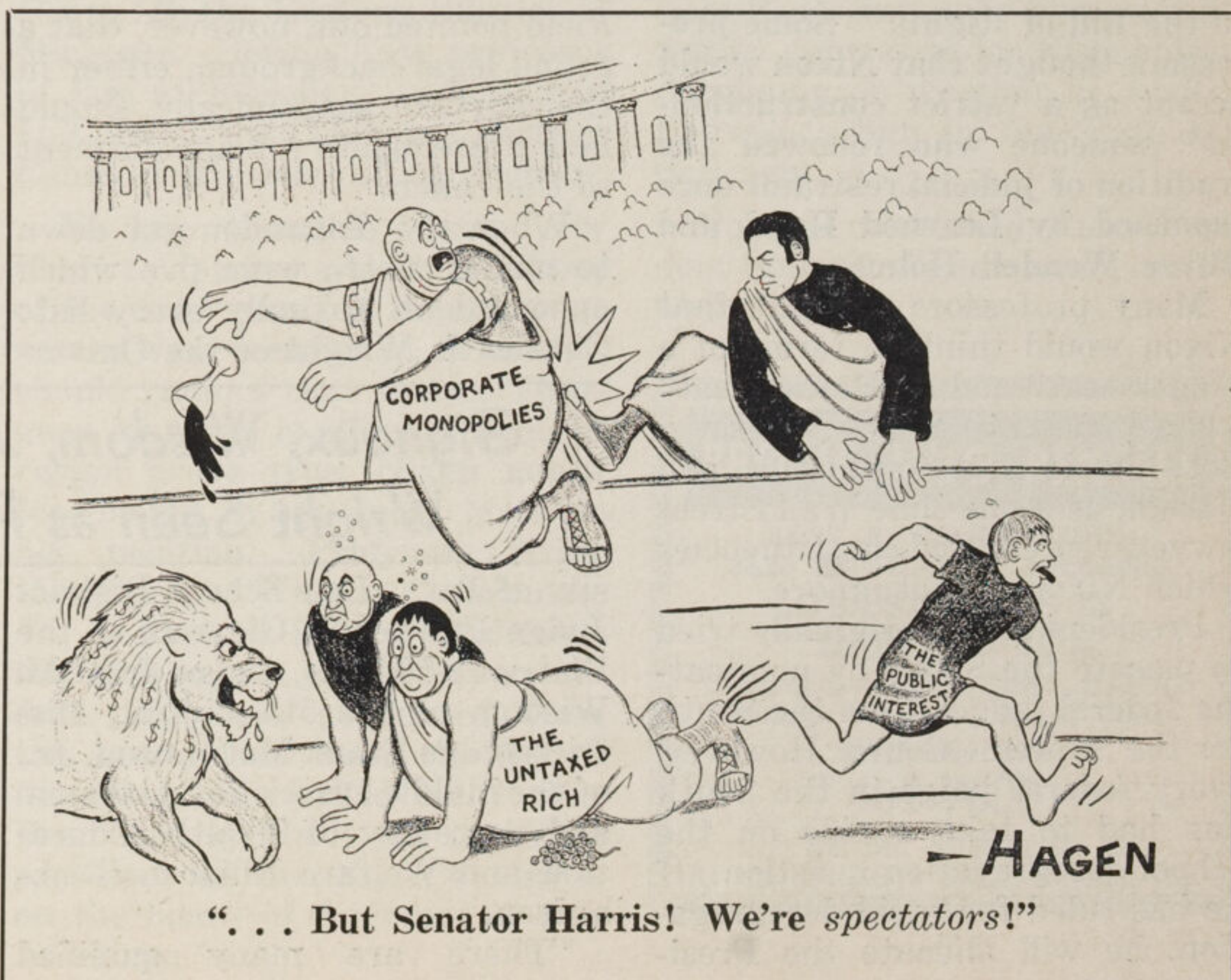
Harris also criticized prisons as places where homosexuals and heroin addicts predominate and rehabilitation is an ideal and not a reality.

Answering a question from the floor, Harris agreed that his co-chairmanship of the 1968 Humphrey-Muskie campaign could hurt his credibility. However, he maintained that he had sought to distinguish Humphrey's position on the war from that of Lyndon Johnson.

Harris advocated a cut in the defense budget this year to \$60 billion and a cut in the nation's armed forces to 1.5 million.

Asked whether he would support a black as his running mate for vice president, Harris replied, "Yes I would." He said a ticket with a black candidate would be "electable" and cited the election of Wilson Riles in California as state superintendent of public education as proof that blacks could win high political office.

Discussing that position in
(Continued on Page 12)



Law School Professors Ponder

By Paul Weiner

Professors at the Law School seem at least as puzzled as the general public about whom President Nixon will appoint to fill the two vacancies on the Supreme Court created by the retirement of Justice John M. Harlan and the retirement and subsequent death of Justice Hugo L. Black.

dent's Southern supporters; if he has opposed desegregation, his nomination will be stalled and possibly blocked by the Senate. This may be one of the lessons of the Poff withdrawal, though Poff himself was a congressman and not a judge. Thus, the President's new strategy may call for the nomination of a law professor or lawyer-

Southerners whose names rarely appear on lists," said Visiting Professor Arthur R. Miller, speaking of President Nixon's past difficulties in appointing a Southerner to the Court. "An obvious Southerner is Charles Alan Wright." Wright is a Republican and considered a strict constructionist and a moderate on civil rights questions. "If he's too liberal for Mr. Nixon, then I guess we may end up with nine Druids." Several faculty members praised Wright's breadth and intellectual power, qualities which might make him a good successor to Black or Harlan.

Nixon's Strategy May Call for Appointment of Legislator or Professor

Several times professors said that they had no feeling for how the present Administration worked. Representative Richard H. Poff's withdrawal seems to have taken everyone by surprise.

It is generally assumed that President Nixon will nominate a "strict constructionist," but there is considerable difference of opinion as to what these words mean.

"The words 'strict construction' are often an appealing catch phrase, but they tend to mean 'the construction I like' more than anything else," said Professor Richard H. Field. Professor Vern Countryman thought that for President Nixon a strict constructionist is someone who is "hostile to the Bill of Rights." Some professors thought that Nixon would accept as a "strict constructionist" someone who followed the tradition of judicial restraint once espoused by Learned Hand and Oliver Wendell Holmes.

Many professors thought that Nixon would think in terms of a "Black seat" and a "Harlan seat" when nominating new justices. Both Black, as a Southerner, and Harlan, as a one-time Wall Street lawyer, represented constituencies which Nixon cannot ignore.

President Nixon originally tried to placate the South by nominating federal judges from the South for the Supreme Court. However, every federal judge in the South has had to take a side on the school desegregation question. If he has ruled for rapid desegregation, he will alienate the Presi-

politician rather than a judge.

"There is a tendency to make far too much of prior judicial experience," said Professor Field. He pointed out that just as prior trial experience is more important for a district court judge than for a circuit court judge, prior judicial experience is more important in a lower court than in the Supreme Court. Someone like Justice Felix Frankfurter, whose background was academic, would probably have been inadequate in a district court.

"Black's experience was in the Senate, rather than in judicial robes," said Field, but he became the "intellectual leader of his side of the court for a long time." Field pointed out, however, that a sound legal background, either in the courts or academically, should be a prerequisite for appointment to the bench.

When the discussion got down to names, there were five which appeared on virtually every list: Charles A. Wright of the Univer-

Judge Gignoux was appointed to the bench by former President Dwight D. Eisenhower. He is characterized as a moderate on criminal procedure questions. Since he sits in New England rather than in the South, he has no record of desegregation decisions by which one can gauge his position on civil rights issues.

Professor Laurence H. Tribe has been coordinating the efforts of a group of students who are doing research on twenty to twenty-five possible nominees for the use of some people in and out of the Law School. Gignoux is the only candidate whom Professor Tribe rates as both an excellent and a likely appointment, though more likely for the "Harlan seat" than for the "Black seat." Other professors generally agreed on Gignoux's desirability, but many doubted that he was a likely choice.

Nearly everyone mentioned

Gignoux, Wisdom, Johnson, Richardson, Wright Seen as Possible Nominees

sity of Texas Law School, District Judge Edward T. Gignoux of the District of Maine, Judge John M. Wisdom of the 5th Circuit, District Judge Frank M. Johnson, Jr., of the Middle District of Alabama, and Secretary of Health, Education and Welfare Elliot L. Richardson.

"There are many qualified

Judge Wisdom, but many thought that he was both too old and too liberal to be a likely Nixon appointee. Wisdom led the 5th Circuit prior to the Supreme Court's 1967 "freedom of choice" decision, building up a civil rights record which might make him unpalatable to the President's Southern supporters.

Impending High Court Selections

Judge Johnson's civil rights record puts him in a similar position. Alabama Republicans are moving to block his appointment; on the other hand he has increasing support from Southern legal scholars, among others.

Elliot Richardson, though he lacks judicial experience, was once an editor of the *Harvard Law Review*. President Nixon may be unwilling to lose his services in the Cabinet by appointing him to the Court. By appointing Richardson to the "Harlan seat," Nixon would please the northeastern Republican establishment. Some professors thought that Richardson would have a better chance if he were from New York rather than Massachusetts, since Nixon may have given up on Massachusetts as a lost cause.

Two professors other than Wright were mentioned as likely contenders: Alexander Bickel of Yale and Dean Phil Neal of the University of Chicago Law School. Bickel is a "conservative Frankfurterian scholar." He writes for the *New Republic*, and defended the *New York Times* in the Pentagon Papers case, but takes a conservative line on many issues. Bickel was one of the first scholars to attack the Supreme Court's thrust in the civil rights area on the grounds of results achieved, not just those of legal craftsmanship. He advanced this position in the Holmes Lectures given at the Law School in 1969, which he later published as *The Supreme Court and the Idea of Progress*.

Dean Neal was characterized as "an intelligent man" and "quite conservative." He has served on a number of commissions appointed by President Nixon.

Four state judges mentioned as possible nominees are Judge Charles D. Breitel of the New York Court of Appeals and Chief Judges Stanley H. Fuld, Joseph Weintraub, and Donald R. Wright of the New York, New Jersey, and California high courts. Judge

Breitell is active in the American Law Institute and has taught jurisprudence at Columbia. Judge Weintraub is quite conservative on criminal process; he has aroused a lot of interest in the Justice Department.

One professor mentioned Judge Robert Braucher, a member of the Law School faculty until recently appointed to the Massachusetts Supreme Judicial Court. Braucher is "very conservative," but he "probably won't occur to Nixon."

Though Nixon has said that he could find no suitable woman to nominate for the court, many professors thought the matter might be open again in light of Poff's withdrawal. Those most often mentioned were Judge Shirley M. Hufstедler of the 9th Circuit and Rita Hauser, who is now

Other blacks mentioned were Wade H. McCree, Jr., of the 6th Circuit, also a Law School graduate, and Dorsey Lane, professor of law and general counsel at Howard. One professor mentioned Senator Edward W. Brooke (R.-Mass.), though he added that there would probably be "no mileage" for Nixon in removing a Republican senator, even one who doesn't always follow the Administration line.

Other possible nominees mentioned included Arlin M. Adams of the 3rd Circuit, 5th Circuit Judge Paul H. Roney, District Court Judges George C. Young (Florida), John H. Wood, Jr., (Texas), and William B. Bryant (D.C.). Republican Governor Linwood Holton of Virginia and Charles S. Rhyne, former president of the ABA and a close

President Thought Not Likely To Nominate Woman or Black

a member of the U. S. delegation to the U.N. Also mentioned were Cornelia G. Kennedy, appointed by Nixon to the Federal District Court for the Eastern District of Michigan; Herma Kay, professor of law at Berkeley; and Mildred L. Lillie of the California District Court of Appeals in Los Angeles.

No one thought Nixon very likely to appoint a black to fill one of the two vacancies, though some names were mentioned. However, should rumors that Justice Thurgood Marshall is ailing and might resign prove true, Nixon might feel bound to appoint a black to his position. Professor Tribe thought that William T. Coleman, Jr., a partner in a Philadelphia law firm, might be a likely candidate. Coleman graduated from the Law School near the top of his class and clerked for Justice Frankfurter. He is the incoming president of the NAACP and is on the board of directors of Pan American.

friend of President Nixon since law school, were also cited. One professor thought Nixon might appoint Secretary of State William P. Rogers, who was once attorney general under Eisenhower, depending on whether he wanted to replace him in the State Department.

No one mentioned Vice President Spiro T. Agnew as a possible nominee.

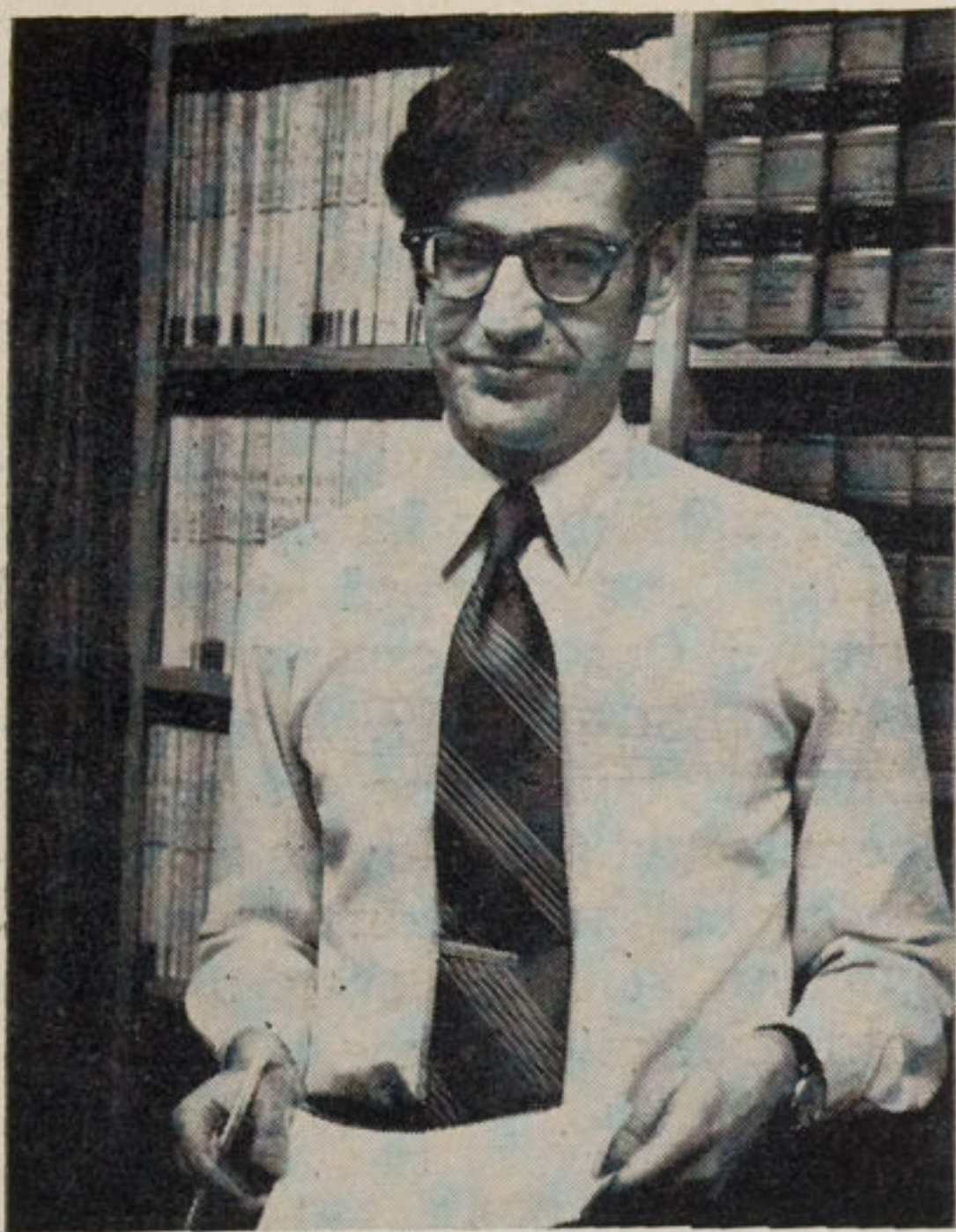
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Charles Soberman

David L. Shapiro, recently named an associate dean, is to coordinate curriculum development.

Two Appointed Associate Deans

(Continued from Page 1)
their jurisdictions with great clarity."

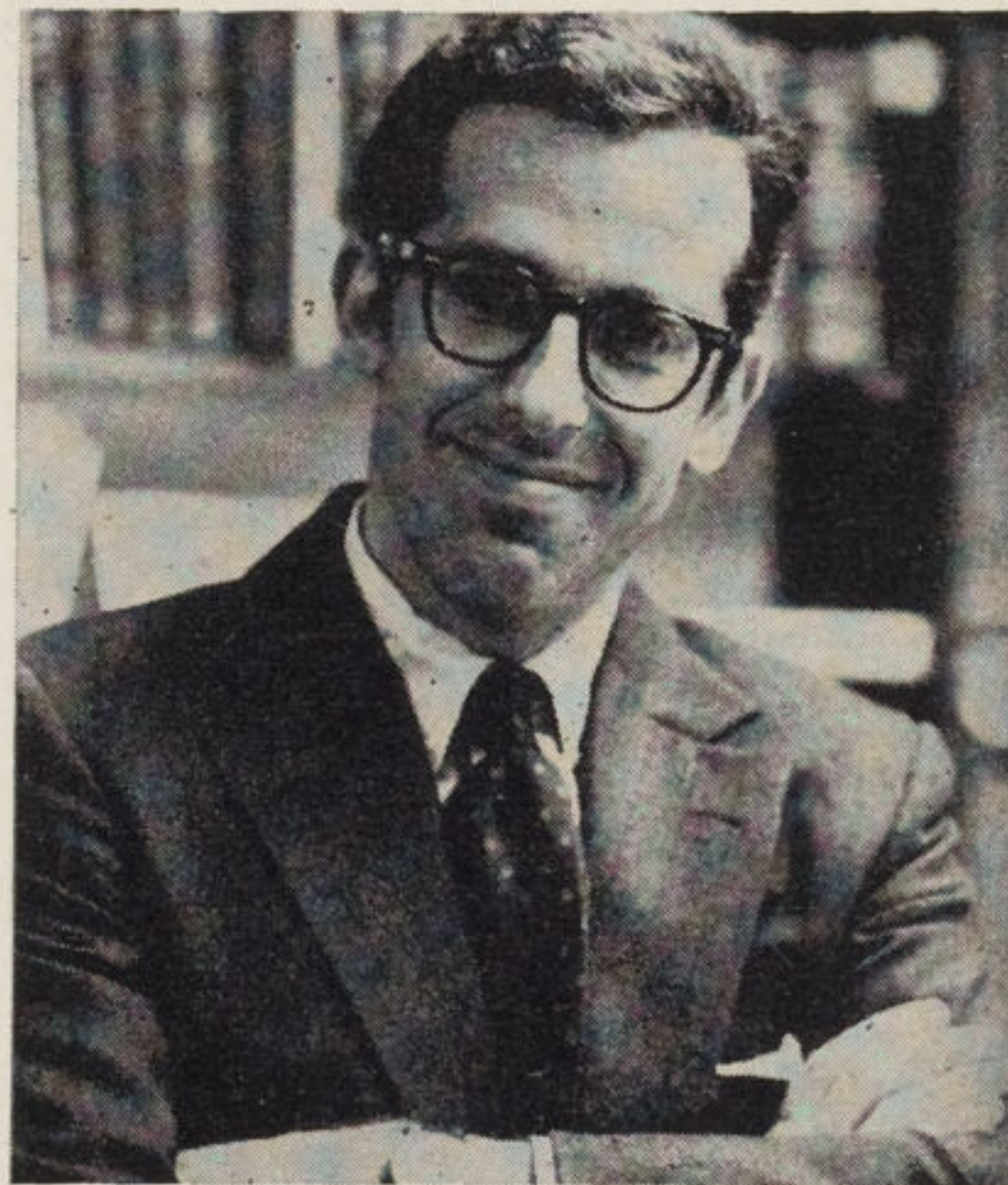
The presence of two associate deans at the Law School will not become a reality, however, for another two years. Professor Bator is currently on leave at the Stanford University School of Law and the following year Professor Shapiro will be on leave.

Professors Bator and Shapiro were among those persons most often named by their colleagues last spring as likely candidates for the deanship of the School.

Both Bator and Shapiro are graduates of the Law School and served as *Law Review* editors. Both men also filled clerkships for

Supreme Court Justice John M. Harlan.

Shapiro joined the faculty in 1963 and became a full professor three years later. His interests lie in the field of labor and administrative law. After graduating *magna cum laude* from Harvard College and *summa cum laude* from the Law School, he



Charles Soberman

Paul M. Bator, appointed as a second associate dean.

worked for five years for Covington & Burling in Washington, D.C. He edited a volume of selected opinions and papers of Justice Harlan in *The Evolution of a Judicial Philosophy*, which appeared in 1969. Author of numerous articles and reviews, Shapiro is now serving as a reporter for the American Law Institute and

Both New Deans Clerked for Harlan

is collaborating on a textbook on federal courts.

Bator was born in Budapest, Hungary, in 1929. He graduated *summa cum laude* from Princeton University in 1951, studied history at Harvard as a Woodrow Wilson fellow for a while, received an M.A. degree from Harvard, and eventually his LL.B. After clerking for Justice Harlan, he practiced law in New York with the firm of Debevoise, Plimpton & McLean for two years before joining the faculty in 1959. He became a professor in 1962.

Christmas Shoplifting

Extra-Legal Book Selection Reviewed

By Bob Dwyer

A number of HLS-related books appear on the Christmas lists, and a synopsis of several of the best works is provided here to assist your fall shopping.

THE LIGHT AT THE END OF THE TUNNEL, by Robert S. McNamara. 712 pp. \$12.95. When an Accounting professor is nominated for the Supreme Court, his enraged lover, a 2L, garrotes the *Review's* Supreme Court notes editor in Langdell tunnel. A disappointed *Review* competitor is convicted, and the book climaxes when his lawyer, the mistress, seeks an *in camera* hearing with her old lover to seek a stay of execution. Focuses on conflict of interest questions.

THE SENSUOUS INTERVIEWEE, by Placement Office. 50 pp. Great personal cost. Another in the popular series of how-to-do-it books. Tells all about white shirts, mouthwash, and haircuts. Presents an old-fashioned view of the employment mystique. Stresses foreplay and rejects perversions. Still, a must for fall reading.

OPERATION GRIST MILL: THE GREAT SUPREME COURT CON-

SPIRACY, by David Vincent Duffy '71. 17 pp. 37 appendices. \$1.50. An expanded version of the author's third-year paper. Propounds the unique theory that the differences in judicial philosophy between the Warren and Nixon Courts result from a conspiracy among justices, professors, and law review editors to provide more grist for the legal mill in a full employment scheme. Suffers from acute appendicitis.

THREE YEARS TO KICKOFF, by Albie Booth, as told to Dick Schaap. 200 pp. \$6.95. A daily diary by the ex-Yale great of his years at HLS, from intramural football to Lincoln's Inn squash, including the attempt by XLOTI to draft Bill Bradley. Learn what really goes on in Hemenway.

INTERNAL REVENUE CODE, Commerce Clearing House. 8023 sections. \$3.50. Plot within a plot. During a war between Texas oilmen and wage-earners, a lonely old woman, seeking an additional deduction, forms a liaison with a 3L. Vaguely modeled on *War and Peace*. Sections 278 and 621 particularly well done. Recommended bedside reading.

Feiffer's "Carnal Knowledge": Spiritual Ignorance

By Joel Seligman

"The purpose of the revolution is not only to save the victims from the executioner but also, to save the executioner from himself."

— Cesar Chavez

Everyone is wrong in Jules Feiffer's *Carnal Knowledge*. Jack Nicholson portrays Jonathon Fuerth, machismo man going impotent — "I bet I only screwed twelve new girls last year . . ." — Art Garfunkel is Sandy, the sort of man a Smith girl marries rather than hurt his feelings. In

"'Carnal Knowledge' is the knowledge that the basic relationship is a fraud."

Carnal Knowledge, the feminist believes in a double standard and the prostitute can't remember her routine. The film ends the way real lives end with the protagonists disillusioned, tired and bitter.

Carnal Knowledge is the most "important" motion picture released so far in 1971 — the sort of cinema that rightfully wins awards from the New York Drama Critics. Mike Nichols' incisive direction sculpts characters who are archetypes for our time.

Jonathon's failure is not unlike that of Joseph K in Kafka's *The Trial*. Jonathon does all the "right" things: goes to the "right" school, gets rich, sleeps with the "right" girls and still both knows he has failed and like Joseph K does not know why. His impotence is spiritual as well as physical. Sex is only a palliative to his deeper wound in the same sense that *Carnal Knowledge* is a superficial appellation for the deeper wisdom of this film.

A generation before, Jonathon would have modelled himself after Horatio Alger. Horatio was the

frontiersman of the industrial era in America; invariably a young man from agrarian America who achieved success through earnest effort in corporate America. Jonathon would have been aware of "real" Horatio Algers and tolerated their excesses in respect for their achievement — industrializing the nation.

Jonathon wished to succeed in the America Alger built. That America was like its prototype — self-involved, ambitious, and brusque rather than feeling. To prevail in that America, Jonathon disaffected himself of concern for others so as to better compete. In all relationships he sought to dominate rather than to be an equal.

Today the Horatio Alger ideal no longer holds. America is built. The frontiers are conquered.

Feiffer considers it no defense that Jonathon is a product of yesterday's values. He would affirm Kafka's words, "Only our concept of Time makes it possible for us to speak of the Day of Judgment by that name; in reality it is a summary court in perpetual session."

Horatio Alger always was a son of a bitch. The fact that Algers were once exonerated for their domineering manner and megalomania by a nation that welcomed their achievements does not reduce the measure of their sin. It is relevant only in so far that their sins are more visible today in a more populous and more complex setting. Today, Jonathons are emotional bulls in metaphoric china shops — their bruising

manner is so harmful that it impairs even themselves.

The question becomes not how to live in Alger's America — even Jonathon is failing at that — but how to create an America that everyone can live in.

Sandy is an attempt at an alternative. He is sensitive and would rather "love than be loved," which is a pathetic half step in the right direction. But Sandy, though well-intentioned, is still living in Jonathon's world.

It is a world in which men are expected to dominate and women are expected to exploit the manner in which they are used. "*Carnal Knowledge*" is the knowledge that the basic relationship is a fraud. Only the unfeeling can prevail.

Sandy's experiments all fail. He is better than his world and must delude himself to survive at all.

* * *

It is not half answers like Sandy's that will save us but a termination of the social conditioning that produces Jonathons. *Carnal Knowledge* takes us half way — it deftly depicts the failure of the old way but has no pat answers for the new.

It is as if we rest between two eras. Our generation is like a Phoenix that is seeing the ancient regime fall but so far seems incapable of rising out of its ashes. Mordant, perhaps like the mood of an old Feiffer cartoon, in which a haggard husband asks his equally haggard wife, "Do you believe in life after death?" and she replies, "What do you call this?"

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Harvard's Loss at Ease in Classroom

By H. Kaback

Louis Loss looks like a lawyer. The alliteration is (of course) unpardonable. And the sentence may be a trifle facile. But it is true.

Do you doubt Professor Loss looks more the lawyer than, say, former Dean Bok? Consider, for a moment, a random sampling of the faculty. Mr. Field — easily a professor of classics, vigorously elucidating (in detail) the causes of the fall of the House of Atreus; Mr. Michelman — a physicist, preoccupied with the intricacies of the Heisenberg Uncertainty Principle; Mr. Nesson — well, that is a bit tougher. But Louis Loss? It is as though he wears a scarlet "P" (for *Pierson v. Post*).

It is not suprising. It is what he always wanted to be. As a boy in Lancaster, Pennsylvania ("I grew up in a small town") he used to hang around the courthouse, and knew then that he wanted to be a "real, honest-to-God trial lawyer, not just an office lawyer. What I saw in the courthouse in Lancaster — *that* was lawyering."

But he has never been a trial lawyer. While with the Securities and Exchange Commission, he went to court frequently but — with only rare exceptions — at the appellate level. He began working for the commission immediately after he graduated from Yale; still harboring the strong desire to try cases, he was nevertheless convinced by the SEC recruiter to "give it a try." Times being what they were (it was 1937), he decided that in all events Washington was an exciting place to be. He was to stay with the SEC for fifteen years.

The years with the commission encompassed three stages: first, as an attorney; next, at the age of 29, as chief counsel for the Division of

Loss Wanted To Be Trial Lawyer, Not Office Lawyer

Trading and Exchanges; finally, as the associate general counsel. In 1947, he developed what was presumably the first securities seminar in the nation, and spent Fridays and Saturdays commuting from Washington to New Haven to teach it. In 1952, he became a professor at Harvard and for the last nine years has been William Nelson Cromwell professor.

* * *

The voice, at first, catches you off-guard. It is deep and rich and well-modulated. (It is only fitting that his secretary is English and speaks beautifully.) In the first moments of the first class you are not prepared for it, and it startles you. But then you smile and think, what a pleasure it is going to be to listen to this guy. Hell, he could even read the phone book.

Often, in fact, Professor Loss does read aloud in class: excerpts from Cardozo's "morals of the market place" opinion; magazine stories giving inside gossip on cases (like the *Ringling* litigation); anecdotes from *The New Yorker*. He is not above venturing into the land of the risqué. One class last year was spent in an analysis of the language "manipulative or deceptive device" in section 10(b) of the Securities Exchange Act. Twenty minutes of discussion. Then: "Manipulative or deceptive device?" The Loss voice inflected. The Loss eyebrows arched. "Sounds dirty to me."

He received, at year's end, a standing ovation. The man has presence.

Loss Locates Lascivious Language in Securities Act

Loss teaches *Corporations and Securities Regulation*. For several years, he taught *Agency*. The first year that he gave the course coincided with Warren Seavey's last year of teaching. Professor Loss made it his business to sit in on Seavey's classes.

"Didn't that cause some disquietude on the part of your students?"

"No."

Those days are past. His course in *Corporations* is always very healthily subscribed, but he does little work in the field. His professional life is devoted to securities regulation. He spends the great bulk of his time keeping abreast of the fast-breaking developments in securities law, in order to keep his six-volume treatise, *Securities Regulation*, up to date, and to be better prepared for classes.

He has also a significant practice. His dealings are not, however, with clients; he functions almost exclusively as a "lawyer's lawyer." The allocation of time between teaching and private practice he finds most congenial.

"I would not have it any other way. It is the best of both possible worlds. I can be my own man. I would not want to teach if it left no room for lawyering. But to be solely a practicing lawyer would have left me no time to have done the treatise.

"It is also the case that, peculiarly in the administrative fields of law, a high level of scholarship requires practical experience as well as scholarly ability. This is so for antitrust, for labor law — and for securities regulation. Williston was perfectly able to write his treatise sitting in Langdell Hall. In these other areas, it is impossible. You have to have been in the arena."

or SEC Arena

Louis Loss is in the arena. In 1964-65, he journeyed to Pakistan and, under the aegis of the World Bank, drafted what was to become five years later that country's Securities Exchange Ordinance. He was the draftsman of the Uniform Securities Act. He was one of the few Americans invited to give evidence before the Jenkins Committee in London, convened for the purpose of revising the English Companies Act. And he is the reporter for the American Law Institute's Federal Securities Code, a task he finds engrossing.

Professor Loss expresses shock that so few law students today do not follow his desire — though not his example, since he only does appellate work — and try cases.

"It does not, however, follow that the clinical courses are necessarily desirable," he said. "It is doubtful, in fact, whether such courses can make a lasting contribution to legal education at the university level, at least at Harvard. The reason for this is that most Harvard students do not upon graduation hang up their own shingles. Were that the case, the clinical courses would make sense.

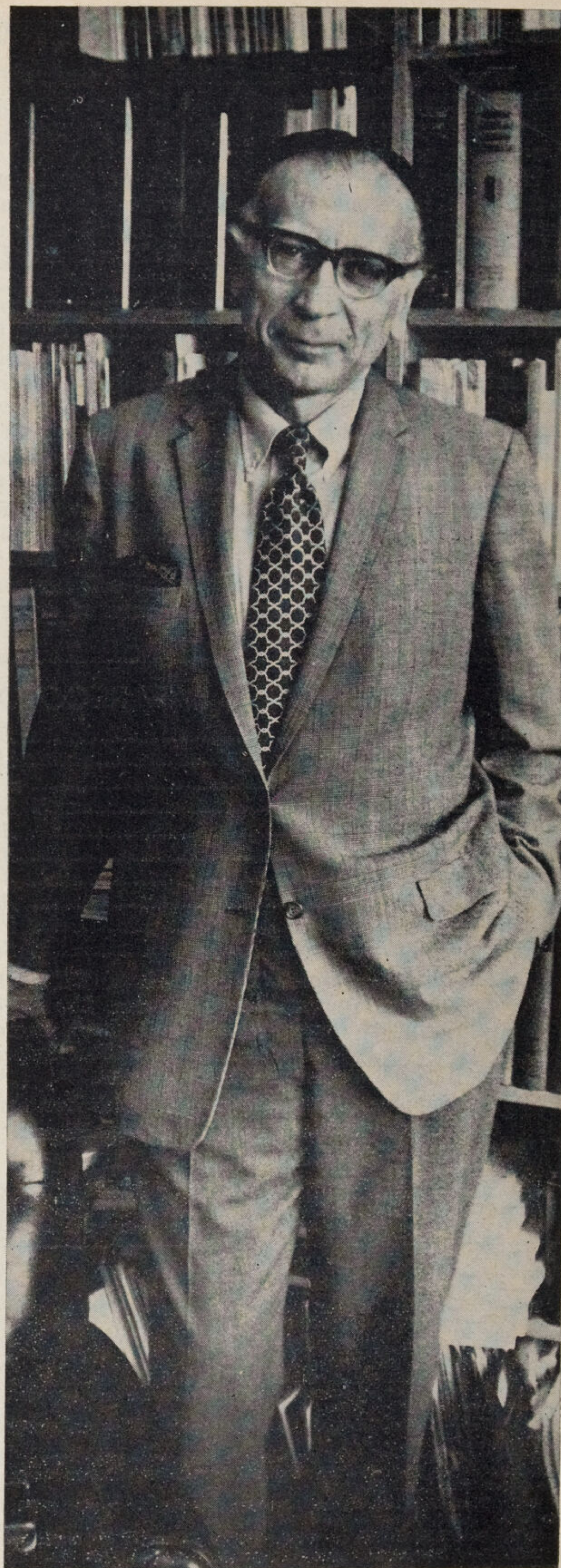
"As it is, however, upon graduation students are not left to their own devices, as they would be if they went, alone, into private practice. They have the benefit of the wisdom and experience of their older associates — not just in the Wall Street firms, but in any firm. That then becomes, in effect, their clinical training. This is by no means to say that clinical education is not worth a healthy experiment. But students should rather take advantage of what the Law School has to offer in its regular courses. And incidentally, the faculty here has never been better than it is right now."

There is an old faculty anecdote about Professor Loss, kindly remitted by Fessenden Professor of Law James Harmon Chadbourn. Upon leaving Yale for the professorship at Harvard — the first graduate of Yale Law School so appointed — Loss fell victim to the wily Thomas Reed Powell, famous wit and constitutional law expert. Said Reed Powell of the move: "Yale's gain is Harvard's Loss."

There is another story. During moot court final arguments at Yale, first-year student Loss was forced to argue for both himself and his partner when the latter fainted away under the relentless questioning of Learned Hand. He won the case. Years later he reminded Judge Hand of the incident. The great jurist nodded and said, "You know, that same year the identical thing happened while I was judging at Harvard. I began to think I was Svengali."

For relaxation, Loss used to play the violin in string quartets, but has since given that up in order to concentrate on his tennis game. He says he is not particularly good.

(Continued on Page 15)



Charles Soberman

Representative Government

What can be said about student government that hasn't been said countless times before? That it is no government at all? That it is nonrepresentative? Perhaps. Disillusionment with student government is nothing new.

However, there has been particularly vocal concern at Harvard Law School in recent years about student participation in the formulation of policies affecting the Law School community. There have been a number of "crises" where the alleged lack of such participation was a major focus of grievance.

The relative merits of student government are arguable. So is the legitimacy of government without the consent of the governed. In any event, a Law School election is about to be held and 16 to 24 students chosen who will hold potentially influential positions in the School. Whatever degree of student representativeness actually develops in practice, this election will put a stamp of legitimacy on it.

When — and if — the next crisis arises, some will undoubtedly charge that students are not fairly represented in the decisions made concerning them. However that may be, now is the time to do something about it, or one's right to complain later will be greatly diminished.

Moreover, the Law School Council will surely find its more productive uses in times of tranquility than of crisis — a fact of first, not last, importance.

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Gerald T. Snow, Editor

Fenno

There was a decided gleam in Bunky's eye. He was sitting alone at a corner table in the Grill Room of the Hark. I sidled into the adjacent empty chair. He didn't even look up.

"Clearly, something crucial must be up," I said.

"It is," he said hoarsely. He bent over the table and motioned with his fingers that I come closer. "Have you seen the latest *Esquire*, detailing a foolproof system for ratching the phone company?"

"Yes."

"Well," he whispered triumphantly, "there you have it. I'm implementing it here at the Law School."

"Now wait a minute —"

"I can see it now." His eyes shone with delight. "I'll bounce off an Insurance Company 800 toll-free line, tie up to a few free tandems, and then, boom, right into that cutie in the FOB—you know, Professor Kingsfield's secretary—right into her nocturnal phone conversations."

Next, I'll loop around Nome, Alaska, and through Singapore and have all calls in the world north of the 44th parallel charged to Dean Bruce's home number. Then, I'll check the radical underground at the College and zip back through Iceland and Majorca and get through to Derek to warn him of the effigy-burning.

Then I'll foul up the Law Review lines by looping them around the world 150 times so when they call a professor at the FOB it takes ten minutes for his voice to reach them. They'll never meet their sub-cite deadlines."

He paused to take a breath.

"It's really too bad Dershowitz is on leave, or I'd foul him up the same way, so the *Times* would not be calling him so often for instant commentary on the latest legal developments. But I'll have to console myself with zapping Areeda's hot line to the sheikdom of Kuwait."

"You're like a man possessed."

"Maybe. But are you ready for my most fiendish idea? I'm going to rig the circuits on every third professor's phone. Whenever they dial any number, they will get a continuous and incessant recording. It will be Smokey the Bear saying, 'Remember, he who seeks equity must do equity.'"

Law Notes

The nation's first full university paralegal course of instruction, which will give rise to a new profession of "assistant attorneys," has been initiated at the University of West Los Angeles in Culver City, California.

The purpose of paralegal training is to produce legal technicians skilled in drafting and preparation of legal documents, research, client interviewing, and other routine tasks of lawyers, short of having to obtain a formal law degree. Paralegal technicians are already a commonplace in England and other countries, and have long been urged in this country as well.

Enrollment in the program was substantial. Successful completion of the course work results in a B.S. degree or certificate in "legal administration."

* * *

Black Panther lawyer Gerald Lefcourt and Leonard B. Boudin will speak on "The Role of the Defense Counsel in Political Trials" at the Law School Forum on October 21 at 8:30 p.m. in Lowell Lecture Hall.

* * *

The Law School and the Center for Criminal Justice have announced the selection of twelve criminal justice fellows for the school year 1971-72. The fellows were drawn from police departments, corrections agencies and the courts, including a detective inspector from Scotland Yard. Their year at the Law School will involve them in research, courses, seminars and various other activities.

The 1971-72 fellows are: Joseph H. Amos, lieutenant with the Atlanta police department; Keith R. Bergstrom, administrative assistant to the chief of police, Miami, Florida; Lawrence Bershad, commissioner of the Vermont Department of Corrections; Frank A. Blount, inspector with the Detroit police department.

Donald L. Chamlee, assistant chief of probation for the administrative office of the United States courts, Washington, D.C.; Ronald Chun, district parole administrator with the Oakland Parole and Community Services Division of the California Department of Corrections; Richard P. Dillon, captain with the New York City police department; David H. Gerty, division detective inspector with Scotland Yard in England.

Carson W. Markley, supervisor of education at the Federal Correctional

Institution at Danbury, Connecticut; Francis A. Pisani, lieutenant with the Cambridge police department; Herbert C. Willman, Jr., executive assistant at the Bureau of Education of the Massachusetts Department of Youth Services; and Ronald O. Winters, lieutenant with the metropolitan police department of Washington, D.C.

* * *

The *Law Review* has announced that ten members of the second-year class have been invited to join the *Review* on the basis of their performance in the recently completed writing competition.

They are: James H. Binns, Jr.; Timothy H. Gailey; Simeon Gold; Arthur Klebanoff; Stanley Langbein; Kenneth Moore; David L. Raish; Jeffrey Schoenblum; John Thomson; and Jay Urwitz.

* * *

New members of the Board of Student Advisers have been announced. Stuart Fuchs, Mark Silberblatt, Kenneth Tune and Michael Wyatt are the new third-year members. Second-year members are Dan Broderick, George Bustin, R. Mason Cargill, Loftus Carson, Edward Delaney, Brackett Denniston, John Elligers, Betty Gittelman, Arthur Kokot, Stephen Landers, Michael Lehr, Michael Levy, Steven Marshall, Norman Miller, Michael Nations, Paul Reichler, Bonnie Roddenberry, Roy Shults, Corey Trubey, Ronald Waicukauski, Peter Wang and David Wrubel.

* * *

Professor Philip Heymann will conduct a seminar on techniques of decision-making at the October 20 meeting of the Harvard Law Wives. The meeting will be held in Harkness Commons at 8:00 p.m. Materials for the seminar are available at the receptionist's desk in Langdell Hall. All are welcome.

* * *

Harvard Law Students for McGovern will hold a meeting on Monday, October 18, at 4:00 p.m. in Pound 213. All students interested in working for the presidential candidate in the Boston area or in New Hampshire are invited to attend. Further information may be obtained by calling 547-7864 or 498-3134.

RECORD SALES

The RECORD will be sold this year at

- Harkness Commons
- Langdell Basement
- Austin Hall

on Fridays, from 8:30 a.m. to 3:30 p.m.

Issues will also be sold at the Harkness COOP store or may be picked up at the RECORD offices, 23 Everett St., at any time.

Subscriptions still available



"Frankly, in my opinion, I don't think a woman could be appointed to the Supreme Court in America today..."

Letters to the Editor of the RECORD

Editor's Note: The RECORD welcomes letters from its readers. Brevity is valued; the staff reserves the right to edit rambling epistles. Worthwhile albeit lengthy writings may be run as guest columns. All letters must be signed as evidence of the correspondent's good faith. However, names will be withheld at the request of the writer.

Hot Meal Advocate Attacks Soggy Mush

To the Editor:

The article on hot breakfasts at Harkness in the latest RECORD was a welcome source of information, but the information it revealed was not so welcome. Mr. Cocke demonstrates that he is completely out of touch with the mood of the campus on this vital issue.

If, as reported, "only two people have complained personally" to Dean Bruce about the problem, does it not occur to your writer there are probably dozens, perhaps even hundreds, of silent sufferers for each person who

takes the trouble to seek out the dining hall Dean? When he asserts that "about twenty or thirty names have been attached to these petitions" is he perhaps confusing one sheet of a petition with the entire document? First floor Ames alone contributed twenty signers to our copy. And is the increase in contracts for breakfast not due at least in part to those who, like myself, signed up under the impression that a *real* breakfast would be provided?

Breakfast, as you know, is the most important meal of the day. As in any enterprise, the way a day begins has a crucial effect on the tone of the whole. How can students be expected to unravel the procedural complexities of *Pennoyer v. Neff* or the contractual problems in *Groves v. John Wunder* in a morning class if their stomachs are uneasily digesting a soggy mush composed of half-masticated Special K and rancid grapefruit juice? The answer is that they cannot. No, the students of Harvard Law School do not merely *want* hot breakfasts in the mornings, they *need* them.

Robert W. Mack 1L

Harris: Black Veep Possible

(Continued from Page 3)

terms of self-fulfilling prophecy, Harris noted that saying a black could be elected increases the chances of that happening, and vice versa.

Harris thus took issue with unannounced presidential aspirant Edmund Muskie, who said two weeks ago that he did not think a presidential slate which included a black as vice presidential running mate could be elected in America today.

Discussing American policy on the Middle East, Harris said Israel has a right to exist, and that the parties themselves must make peace.

Harris was introduced by Professor Stanley S. Surrey of the Law School in the second of a series of lectures sponsored by the Harvard Law School Forum.

Harris graduated from the University of Oklahoma in 1952 and received his LL.B. there two years later. He was elected to fill a two-year unexpired Senate term in 1964 and was re-elected to a full 6-year term in 1966.

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Characteristically all costs associated with a product, net of inflation, decline by 20 to 30 per cent as accumulated experience with that product doubles. The significance of the experience effect is compounded by the product's growth rate. In a true growth product all past accumulated experience is rapidly duplicated, and competitive relationships are increasingly unstable unless industry prices are declining in parallel with cost.

The implications of rapid growth are very important:

- great increases in capital investment will be required
- shifts in market share occur very quickly, particularly during periods of inadequate capacity.

A failure to understand these implications can cause a company to compete in growth products for which investment needs will exceed the ability of the company to provide for them. The result is a marginal position which rapidly becomes unprofitable because of the experience effect.

On the other hand, payoffs are extremely high for companies which can sustain the required investment levels. Relative costs are declining. Market share can be increased rapidly. The market itself is increasing. The compounding of these three factors can easily lead to improvements in dollar cost **differentials** relative to competitors that exceed the **total** cost only a few years previously.

It is obvious that an extremely high price can be paid to obtain improved market share if the growth rate is high. On the other hand, only a relatively small investment can be justified if the annual growth rate in physical volume for the product is low.

The Boston Consulting Group is an international management consulting firm which specializes in the policy problems related to corporate strategy. The above is an abstract from one of the firm's publications on corporate strategy.

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COOP NOMINATIONS

The Stockholders of the Harvard Cooperative Society have nominated the following Directors and Officers:

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Irwin W. Sizer	Dean of the Graduate School — M.I.T.
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Milton P. Brown	President
Louis Loss	Vice President & General Counsel
Malcolm G. Kispert	Vice President
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Philip A. Stoddard	Clerk

PROCEDURE FOR MAKING ADDITIONAL NOMINATIONS

Pursuant to Article VI, 2, of the Society's By Laws, as revised October, 1969, additional nominations for student directors may be made by petition signed by at least one hundred student members and filed with the clerk (by leaving the petition at the General Manager's office in the Harvard Square Store) not later than 5 p.m., October 15, 1971. A signature will be invalid unless the student designates his membership number and school and he is currently enrolled in that school. IF A STUDENT SIGNS MORE THAN ONE PETITION, HIS SIGNATURE ON EACH PETITION WILL BE DISREGARDED.

Pursuant to Article VI, 4, additional nominations for officer-alumni directors may be similarly made by petition signed by at least one hundred non-student members.

At their September 22, 1971, annual meeting the Stockholders elected Howard W. Davis, the General Manager, a Director.

As a result of the filling of vacancies at the Stockholders' meeting, the ten stockholders are:

STUDENT STOCKHOLDERS

William K. Jones	Graduate School — M.I.T.
Emily Marwell	Radcliffe College '72
Cornelius W. May	Kennedy School of Government — Harvard
Frank A. St. Claire	M.I.T. '72
Daniel H. Smith	Harvard Medical School

OFFICER-ALUMNI STOCKHOLDERS

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John P. Elder	Professor of Greek and Latin — Harvard
Dana L. Farnsworth	School of Public Health — Harvard Medical School
Carl F. Floe	Professor of Metallurgy — M.I.T.
J. Daniel Nyhart	Dean for Student Affairs — M.I.T.

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Yale's Loss Is Harvard's Gain

(Continued from Page 9)

He lives with his wife in Cambridge. A past president of the Cambridge Art Association, an artists' cooperative, she graduated from the Yale School of Fine Art. (The Losses met at Yale.) Several paintings by Mrs. Loss (one of which was recently stolen) hang in the Pound Building. Loss has a son in his early twenties who is studying architecture and a daughter, Mrs. Margaret Blomquist, who began working for Sullivan & Cromwell three weeks ago. She is also a graduate of Yale Law School.

What about getting out? Greener pastures. The commission, say, or perhaps a deanship, or the bench. Or the Board of Governors of the Stock Exchange.

"I don't know. I'm perfectly happy doing exactly what I am doing right now. Just about everyone on the faculty has turned down offers at one time or another. But you never know. You never really know how you will decide until that phone rings."

A position with the Exchange is actually quite unlikely, for Loss has absolutely no interest in the financial side of "the Street." His only concern is regulation.

Because of the nature of his work, it is inevitable that he deal in cases involving large sums of money. Yet last year he suggested and wrote a detailed letter on behalf of a small businessman

who purchased a three-year magazine subscription under the mistaken apprehension that he was required to do so by the United States government. The man did not read English. Professor Loss' letter got him his refund.

Probably — and mistakenly — most students would not have thought he would do something like that.

* * *

Walking with a classmate after *Sec. Reg.* one morning.

"Loss is so predictable," he said. "You push one button and he's as arrogant as everybody else around here."

("Arrogant" is a word used around the Law School with amazing frequency. It has roughly the status of an Homeric epithet. When you say Athene you say green-eyed Athene; when you say Professor So-and-so you are just as likely as not to say, arrogant Professor So-and-so. It is an occupational hazard of being at Harvard Law School. Some well-known students have also earned the adjective.)

"You push another button," he continued, "and he's witty. With the proper control switch he's both arrogant *and* witty."

"Don't you like him?"

"Sure." He stopped and grinned. "Louie is great."

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**Thursday
October 21**

Lowell Lecture Hall

8:30 p.m.

Election Info

(Continued from Page 2)

office in either class, a primary election will be held Thursday, October 21st, at which time the field of candidates will be narrowed to 10. Balloting for the second year class will take place in a particular class in each section. Balloting for the third year class will take place on Thursday, October 21st, in both sections of Business Planning and Evidence, Corporate Finance, Federal Courts, and Criminal Trial Advocacy. Tuesday's October 26th balloting for the third year class will take place in Antitrust-A, State and Local Taxation, both sections of Casner's Estate Planning, all three Comm-Trans sections, Sec. Reg. and Evidence (Chadbourn).

Students who are not enrolled in any of the above classes may attend the beginning of one of those listed in order to cast their ballots.

First Year:

In the first year class, the election for the at-large representative will be

held on Wednesday, October 20th, and the general election will be held on Thursday, October 28th. If there are more than four candidates in each section, a primary will be held on Tuesday, October 26th, at which time the field of candidates will be narrowed to two. Balloting will take place before one of the section classes of the designated day.

Graduate Students:

The graduate student election will be conducted in Introduction to American Law on a date to be set later. Ballots will be mailed to those graduate students not enrolled in that course. The student receiving a plurality will be elected.

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