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TWENTY CENTS

Professor Cohen Travels to Korea On Historic Visit

By David Cocke

In the aftermath of the celebrated Nixon visit to Peking another important "first" visit took place in an Asian country this summer. Three reporters followed by a university professor and his family made the first "authorized" visits by Americans to the Democratic People's Republic of Korea since the Korean War.

The professor, Jerome Alan Cohen of the Law School, and his wife and three children were the guests of the Korean Association for Cultural Relations with Foreign Countries and spent more than 14 days on a carefully guided "tour" of the DPRK. Cohen was quick to point out his
(Continued on Page 4)



Chou En-Lai welcomes Cohen to banquet in Peking.

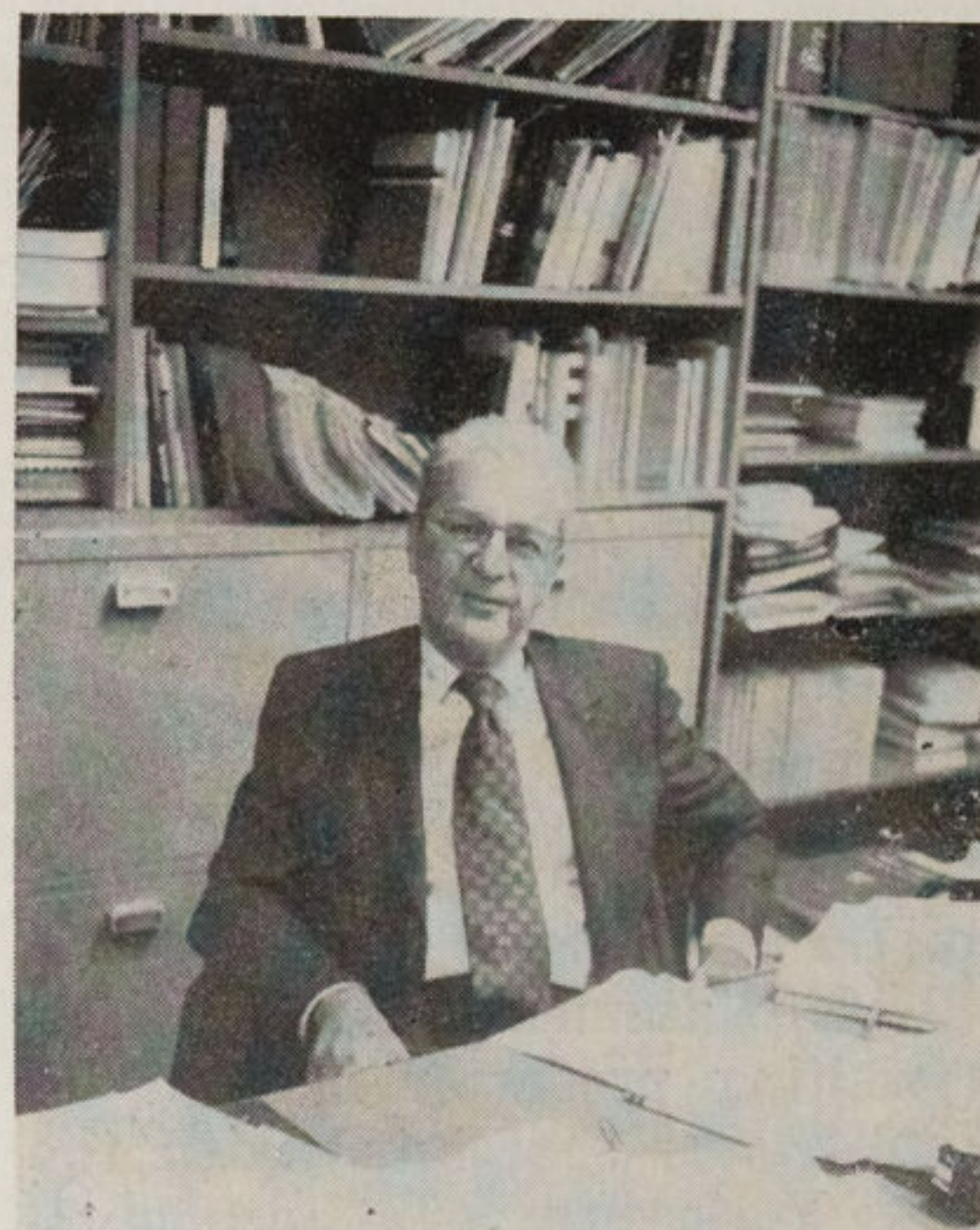
Sargent Names Kaplan To Mass. High Court

By Daniel M. Taubman

Following in the footsteps of former Harvard Law School professors Oliver Wendell Holmes and Robert Braucher, Benjamin Kaplan was sworn in Wednesday as an associate justice of the Massachusetts Supreme Judicial Court.

Kaplan, a 25-year veteran of

the faculty, was given the oath of office in the Pound Building of the Law School by Massachu-



Justice Kaplan

\$1M Chair Given In Japanese Law

The Law School received a \$1,000,000 gift yesterday from a Japanese corporate group to establish a chair in Japanese legal studies here.

Chujiro Fujino, president of Mitsubishi Corporation of Tokyo, formally presented the gift to President Derek C. Bok and Dean Albert M. Sacks on behalf of that corporation at a luncheon ceremony yesterday attended by various Japanese and Harvard dignitaries.

According to Fujino, the professorship will strengthen teaching and research on Japan's accomplishments in developing a democratic legal system. The grant will be used in the East Asian Legal Studies program at the Law School and will support the work of a full-time professor.

No faculty member has yet been selected to fill the newly created chair.

setts Governor Francis Sargent, who nominated Kaplan for the judgeship in mid-August.

The 61-year-old graduate of the City College of New York and Columbia Law School will become professor emeritus; he is now Royall Professor of Law.

The appointment by Sargent, a Republican, of Kaplan, a Democrat, was called "gratifying and in some respects surprising" by Kaplan during an interview last week.

"I'm not sanguine," Kaplan said. "I'm anticipating the work and I'm eager to get going."

"I'll be missing the boys and
(Continued on Page 2)

Kaplan Joins Highest State Court

(Continued from Page 1)

the gals and the faculty, undoubtedly," Kaplan added. This sentiment was echoed by Dean Albert M. Sacks who said of the appointment: "It's splendid for the court and a very great loss to the school." Sacks served with Kaplan as an associate reporter for the Advisory Committee on Court Rules of the Judicial Conference of the United States.

Kaplan's first-year *Civil Procedure* course is now being taught by Professor Arthur R. Miller, one of Kaplan's former students. According to Sacks, Kaplan's *Copyright* course has been suspended for the fall semester. The Law School, he said, is currently looking for someone, probably from outside Harvard, to teach both *Copyright* and Kaplan's popular *Advanced Civil Procedure* course during the spring semester.

During Kaplan's tenure at the Law School, he has taught *Property*, *Trusts*, *Contracts*, and *Business Torts* in addition to the above-mentioned courses. His former students include 15 members of the Law School faculty in addition to Harvard president and former Law School professor Derek C. Bok.

Before assuming his duties as a visiting professor in 1947-48, Kaplan was associated with the New York firm of Greenbaum, Wolff, and Ernst from his graduation from law school in 1933 until 1942, and again in 1946. He engaged in general law practice with some emphasis on appellate work.

During World War II, Kaplan served as a civilian consultant to the War Department in Washington, D.C. and later as a commissioned officer, emerging as a lieutenant colonel at the end of the war.

Describing his ascent through the military hierarchy, Kaplan says, "That was mild compared to the leaps of others."

Kaplan also served on the staff of former Associate Justice

Robert H. Jackson during the Nuremberg trials, and was present during the first two months of the trials before returning to the United States.

Kaplan served as a liaison between Jackson's staff and the Office of Strategic Services; aided in drafting the American part of the indictment; and aided in the preparation for the early part of the "first great trial" of Nazi

leader Hermann Goering and others.

A popular, witty teacher, admired and respected by his students, Kaplan has also been the co-author, with Professor Richard H. Field, of a casebook on civil procedure. Revision of the 1968 "Temporary Second Edition" is currently under way, and Kaplan hopes the new edition will be in use next September.

Kaplan is also author of *An Unhurried View of Copyright and Cases on Copyright*, as well as numerous law review articles.

Reminiscing about his years at the Law School, Kaplan remembered his postwar years as days when many students were older veterans and when "we taught our heads off." Kaplan noted that faculty members had to develop expertise in their courses, and that he taught *Property* even though he had no long-term experience teaching in that area.

According to Kaplan, the quality of the student body has been going up. However, he feels that the "top men" today are of the same caliber as the top students when he began teaching.

Today there are very few poor students, Kaplan said. Even those at the bottom are "bright, brilliant even." Students today are "more educated when they get here, more cultivated," he said.

They are very eager "to get at the moral foundations of the law," Kaplan says, "which for my money is okay. In older days, these questions did not come out as early or as insistently as they do now."

Regarding his own teaching methods, Kaplan noted, "I have far more patience (now) than I used to."

"I never really tried to take a fall out of a guy, as far as I can recall. I always tried to put the best turn on what he said."

Harvard Leading In Justice Race

Forty of the state supreme court justices of the 1960s were Harvard Law School graduates, more than from any other law school. Yale came in a poor second with 11, tying "relatively unknown" Cumberland Law School, formerly of Tennessee but now located in Birmingham, Alabama.

This is one of many fascinating bits of trivia reported by Bradley C. Canon, associate professor of political science at the University of Kentucky, in "Characteristics and Career Patterns of State Supreme Court Justices" in the July-August issue of *Case & Comment*. The article was reprinted from *State Government*.

Canon also noted that Massachusetts had the highest percentage of justices who graduated from "prestigious" law schools — seven Harvard Law graduates out of eight justices.

Canon collected data on 441 of the 479 justices who sat on state supreme courts between 1961 and 1968.

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Vending Machines Replace Half of Hark Grill

By Paul Weiner

One thousand 2Ls and 3Ls returned to the Law School last week to find new lights, new locks, a new library decor, and all but seven feet of the Harkness Grill gone forever. The missing grill was replaced by a battery of machines vending everything from three macaroons (10¢) to a corned beef sandwich (80¢). What was left of the Grill still served hamburgers, cheeseburgers, french fries, and beer, but the Mighty Mo and the "real" ice cream frappe were no more.

On learning of this catastrophe, Robert W. Mack, 2L immediately launched a petition drive calling for a boycott of the Harkness

Grill until two demands were met: restoration of the Mighty Mo and of the "real" frappes. An early announcement had the Grill closing at 8 p.m. this year, but this decision was countermanded before the Law School opened, thus mooting Mack's original demand number one.

As of Monday, Mack's petition had attracted about 50 signatures. Another boycott petition, calling only for restoration of the Mighty Mo, had about five signatures.

Vice Dean William L. Bruce, who acts as liaison between the University and the Marriott Corporation, which operates the Hark for the Law School and

Graduate School of Arts and Sciences, gave two reasons for approving the change in the Grill. First, the Hark's deficit of nearly \$55,000 last year made some cost-cutting measures necessary. Second, the machines will enable the Hark to provide a greater variety of food at off-peak hours, thereby providing better service to the students and more income to the Hark.

Bruce sympathized with Mack's demand for the return of the Mighty Mo, pointing out that it was the only thing he ate in the Grill himself. He said the Mighty Mo was an economically viable product, but that there was not enough counter and grill space to prepare it and still heat the rolls for hamburgers and cheeseburgers. As a compromise measure, the Mighty Mo returned Tuesday in a new vending machine, radar oven incarnation, (Continued on Page 16)

Enrollment of 1L Women Rises; Total Applications Up Slightly

Harvard Law School was only moderately successful in increasing the number of women in its student body this year, according to figures released by Director of Admissions Russell A. Simpson.

The new 1L class has 81 women, or almost 15 per cent of the total of 544. This represents an increase over the 12 per cent female representation in the class of '74.

Women applicants made up just less than 16 per cent of the total number applying. Roughly 13 per cent of both male and female applicants were accepted. However, while 39 per cent of the

women turned down Harvard's offer, only 31 per cent of the men did so.

The Women's Law Association is now engaged in an extensive study of the reasons behind the relatively high percentage of women refusing the offer of admission. The study is being financed by the Law School.

Although the total number of applicants increased slightly this year, from 6140 to 6228, the total number of male applicants was actually lower. A big jump in the number of women applying, 986 this year compared to 844 in the previous year, more than offset this downturn, however.

'No Blue Jeans,' Dean Tells Staff

Vice Dean William L. Bruce earlier this week sent a memorandum to all staff members directing that "dress should be neat and professional looking at all times."

Bruce specifically outlawed "slacks of blue denim or blue dungaree material" and stipulated that "shoes or sandals should be worn at all times."

In an interview Tuesday, Bruce explained that he sends a similar memo every year, designed primarily to inform new staff members of the proper mode of dress. The dress requirements, he said, do not apply to faculty members, who "normally set the pace." "Stack boys" and building maintenance people are permitted to wear work clothes, Bruce added.

"It is a temptation occasionally to emulate the more casual garb of students, but that is inappropriate in staff positions," the memo stated.

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Prof. Compares Confident China

(Continued from Page 1)

disappointment in not being able to travel more freely in the country and contrasted the visit with ones that he made earlier in the summer to China. "But it was an important first step," he noted, "and the sign of a modest desire for accommodation on the part of the North Koreans."

"What we saw was quite impressive," said the noted Asian scholar, "but we were unable to see anything spontaneously. I'm afraid we left a bad impression with our hosts because we were constantly complaining about the restrictions."

Cohen characterized his hosts as suspicious but nonetheless eager to learn from their visitors and to accommodate them. He noted specifically that he and his family were treated with much greater consideration than the three reporters from the *Washington Post* and the *New York Times* who preceded them by only a few weeks. For one thing

Kim Il Sung. And he did seem to have greater access to political and cultural leaders than did his immediate predecessors. "We were the first Americans our particular hosts had ever met," he explained. "They were perplexed by us but were learning more about us every day."

Cohen said that the Koreans seemed "preoccupied with technology." "We were told before we arrived that everyone in Korea is a student," he said. "Even by their clothing you could tell that the North Koreans wanted to create a 'modern' nation. The women mostly all wore brightly colored traditional garb but the men wore Western suits. They seemed particularly concerned with their looks." In explaining their technological orientation the North Koreans told Cohen that to them industrialization meant freedom and independence.

Cohen and his family were treated "royally" by the North Koreans. While there they stayed

by the dramatic changes that had taken place since its devastation during the Korean War.

From his mountain retreat Cohen was escorted to numerous "significant talks" with government officials and specialists in various fields, including medicine, health, international politics and trade, education, literature, science, and law. The highest governmental official on the list was Chong Jung-Tek, one of the vice premiers in the cabinet of Kim Il Sung. In a land preoccupied with technology Chong was an expert on the economy and the scientific establishment. Cohen described him as an "intellectual technocrat."

One of the more significant interviews granted Cohen was with a professor of law from the national law school. He was told that the DPRK has both courts and an active bar and was still using the code of laws adopted by the government in 1950. In this respect North Korea seemed to be following the Soviet influences rather than the recent trends in China toward a more "flexible" legal system, remarked Cohen. As an example the HLS professor noted that North Korea actually uses a system for arbitration of international trade disputes. The Chinese, on the other hand, stress informal private arrangements for the resolution of such disputes.

"The Chinese seem uncomfortable in being bound by anything as rigid as law," explained Cohen. "To them law is the enactment of the party's wishes and party policy is constantly changing. As a result the Chinese have had a very difficult time in developing a stable legal system." There are no practicing lawyers, and the Chinese have yet to reestablish their law schools since the cultural revolution. And, in China, unlike Korea, Cohen was unable to speak with anyone from the courts or the legal academic community.



Professor Cohen and his family are greeted by Korean children.

he was not taken to the museums of alleged American atrocities in the Korean War. Nor was he subjected to as many exhibits extolling the virtues of Premier

in an air-conditioned villa nestled in the mountains north of Pyongyang. The Harvard professor viewed scenes of the city 19 years earlier and was impressed

To Very Suspicious North Korea

By way of contrast he was unable to visit any of the informal legal institutions in Korea as he was in China. In the latter country, in Shanghai and Peking, Cohen actually met with a "Street Revolutionary Committee," a local political institution which has both political and legal functions. Among other things it was

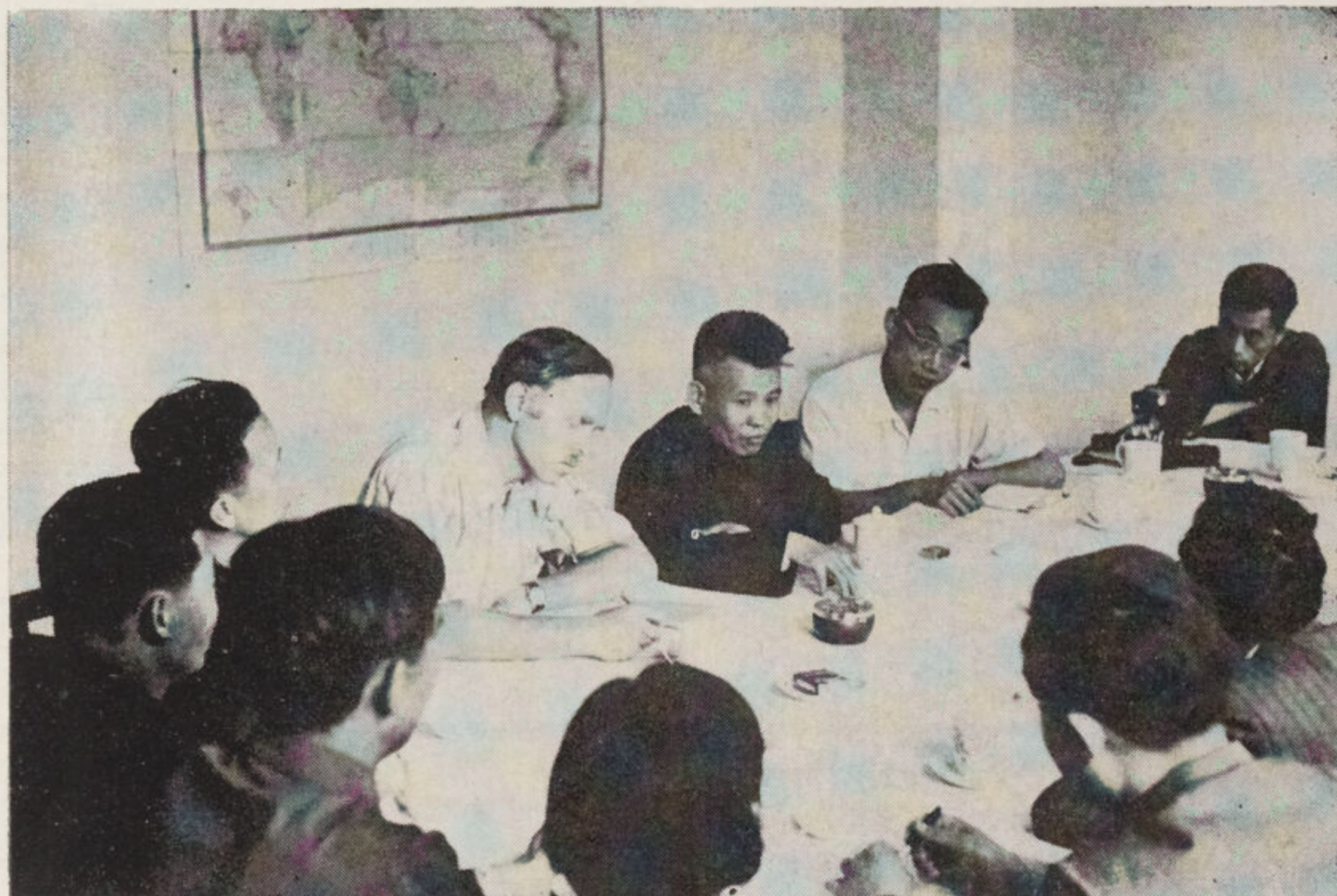
attended by Cohen earlier in the summer. Chou told his American guests that he had made a mistake in signing the 1954 Geneva Accords. Cohen quoted Chou as saying: "I signed the agreement. Our only excuse is that we had no experience at that time."

Cohen told his Korean hosts that they should have learned

from their Chinese allies how to prepare for foreign visitors. Rather than frustrate their visitors with rigid travel restrictions they should not have admitted visitors until they were secure enough to allow a more open tour.

In reply to his criticism his DPRK hosts told him that such restrictions would cease when the Americans withdrew from South Korea. Cohen said that he had been told that other foreign visitors from other countries had been treated similarly, however.

Cohen began his historic visits to Korea and China while he was on a year's leave of absence studying in Kyoto, Japan. The HLS professor was the recipient of a Guggenheim Fellowship to study the language, society and legal institutions of Japan. His first trip into China was sponsored by a Chinese scientific group's invitation to the Federation of American Scientists. On a second trip he and his family toured China "relatively freely" for two weeks on their way to North Korea.



Cohen meets with Peking Street Revolutionary Committee.

responsible for registration of marriages, granting divorces, the informal settlement of disputes and the handling of minor cases of anti-social behavior. This level of public life was unavailable for scrutiny in Korea.

Cohen compared the two countries by describing China's "enormous self-confidence" and Korea's "enormous sensitivity." Size itself plays a large part in this disparity, he explained, since the population of all of North Korea is about that of Shanghai alone. But China's history plays the most important role, he said. "China is proud but confident enough to be able to say 'We know we are a poor nation; we know we have problems.' DPRK people seem unable to say this."

Perhaps the best example of this ability on the part of China to criticize itself was made by Chou En-lai himself in a banquet

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Councilman Hits Inadequate Student Parking

By Paul Weiner

In response to a letter of protest from the president of the Dormitory Council, Vice Dean William L. Bruce announced that some ground level parking may become available to law students after the Broadway Garage opens next month.

David T. McDonald, 3L, sent a letter of complaint to Bruce concerning the most recent "Battle of the Parking Permit", during which law students began camping out in Grays Hall, University Police headquarters, at 3 p.m. Monday, September 11 in order to be sure of receiving the parking stickers which were handed out beginning at 9 a.m. the following day.

He called on Bruce to investigate the University's failure to assign to Law School dormitory residents any parking spaces out-

side the fifth floor of the Everett Street garage and criticized the amount of official misinformation which was handed down to students.

According to Bruce, the ground level lots belong to the Graduate School of Arts and Sciences. Last year, the Graduate School let the Law School use some of those lots, but now it needs them for its own students and staff, he said. This shortage will be alleviated when the new garage opens—it is scheduled to open October 15.

McDonald noted that this was the first time in three years that no ground level space was made available to Law School students.

McDonald asked that some spaces in the Perkins and Conant lots be assigned to law students before they are given to Graduate School students on September 25.

McDonald then cited some of the alleged misinformation which had been handed down by the University Police: telling him that space would be assigned on September 14, rather than September 12; announcing that Perkins West spaces would be given out September 12; and telling students that they would need their automobile registration in order to receive stickers, at which point several students left the line to run home for their registration cards.

The Dorm Council president didn't blame the police for the erroneous information; he doubted that anyone had given them the correct information either. He recommended that in the future a printed memo be distributed to all students seeking information on parking.

McDonald also criticized the
(Continued on Page 13)

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The New Breed

By Harmon J. Grinchley, Jr.

Professor Contra dressed carefully for class. He would wear a dark brown suit and cream colored alligator shoes. He would flop his natty fedora over his well-greased hair and puff intently on a long thick cigar, always keeping close at hand his old battered violin.

His eyes gazed beadily at each face in the classroom. "Any Narcs?" he demanded. His two teaching fellows, Mr. Palermo and Mr. Napoli, stood by the doors in the back of the classroom. Napoli reassured the Professor, "They look clean." With that Contra gave a signal and all the doors and windows were locked. Napoli and Palermo then proceeded to collect all of our books and notes. They heaped them in a gigantic pile in front of the Professor's lectern.

As Palermo collected my stuff, he whispered, "Wanna buy some coke?" I shrugged. "Need any, see me. I got the best. O.K.?" "O.K."

Contra eyed the enormous pile of books before him, then took a machine gun out of his violin case. He fired until the thousands of pages were reduced to meaningless scraps. "Ain't no bullshit

**"Need any, see me.
I got the best."**

here! Nothing written down, you forget everything soon as you leave class. All right?"

Some of the class answered weakly, "All right."

"All right!" He put his gun back into the guitar case. "Let's go."

Contra was one of the new breed of young professors who believed in going out into the field, seeing how the law applied to real events. We trotted alongside his shiny black limousine

until we reached a liquor store a few blocks up Mass. Ave.

Palermo hopped out of the driver's seat and opened the curb-side back door for Contra.

With a mighty kick, Contra bashed the front door down. His dark eyes turned suddenly on us, angry, probing eyes. "You," he pointed to a trembling student, "What's that?"

"Breaking and entering, sir."

"Louder!!!"

"Breaking and entering, sir!"

"That's better. You're wrong. You're an idiot. I haven't entered yet."

"I'm sorry, sir."

"Don't give me no sorry. Now what is it?"

"Breaking!!!"

"Breaking what?"

"The door, sir."

"Good." He paused long enough to put a silencer on his Bereta. "Criminal or civil case?"

"Criminal, sir."

"State court?"

"Yes, sir."

"Always?"

"I'm not sure, sir."

Contra looked disgusted. "Idiot."

We followed him into the small liquor store. When he was sure we could all see him he knocked down three counters of New York wines. His merciless gaze fell upon a slender co-ed now splattered by domestic Burgundy. "You." The girl started. Perhaps no one had ever pointed a gun at her before. "Is that an infraction?"

"Yes . . ."

"Louder!!!"

"Yes, I should think so."

"Criminal?"

"Oh yes."

"What if I get hurt?"

"What?"

"What if I get hurt? Do I

have an action in Torts against the store owner?"

"I never thought about that, sir . . ."

Contra was fuming. He turned to Palermo. "Never thought about it! Never thought about it! No one ever thinks about the criminal. No one gives a damn!"

Palermo sympathized, "Typical bourgeois reaction."

**"No one ever thinks
about the criminal."**

Contra smashed him upon the side of his head, "Don't ever use Commie language again, you understand?"

The bleeding Palermo nodded politely before coma set in.

Just then we heard a rustling in the back room and the store manager, a stout fiftyish looking man, stormed out carrying a shotgun. He pointed the gun at Contra, "I saw you on my remote control television."

The Professor seemed overjoyed. "Excellent. He saw us on an inter-store detection device." He turned to a tall Puerto Rican student standing next to him. "Will that hold up as evidence in court?"

The student was about to answer when Contra interrupted, "Remember the store was not open for business when we came in. Recall the rule set forth in *Sciortino v. Zampano* and the rules promulgated in the Federal Rules of Criminal Procedure, specifically Rule 5(c), supra, page 775, et al."

"The evidence is legal," Contra nodded in encouragement, "but is not a prima facie case."

Contra patted the young man on the head, "You good with your hands?"

The student nodded.

"See me after class, I think we can use you."

(Continued on Page 13)

Bellow Charges Fraud in N. Y. Race

By Mark Rutzick

Former Congressman Allard K. Lowenstein was the victim of outright fraud in his 890-vote New York Congressional June primary loss to Rep. John J. Rooney, according to Professor Gary Bellow, who worked on a federal court challenge to the election over the summer. The New York Court of Appeals, in a separate suit brought in the New York state courts, ordered a new election in the race, which was held earlier this week.

Bellow, speaking last week at a meeting sponsored by the Harvard Democratic Club, said that the initial decision among Lowenstein's attorneys was whether to base the challenge on an allegation of fraud or simply to try to establish sufficient voting irregularities to invalidate the election, without regard to intent.

Lowenstein, according to Bellow, wanted to emphasize fraud as the gravamen of the complaint, but ultimately the case was tried in the Brooklyn Supreme Court with primary emphasis on proving irregularities caused by errors on the part of the Brooklyn Board of Elections inspectors on and before election day. This occurred in part because the trial judge, an affiliate of Rooney's Democratic organization, refused to allow into evidence any testimony tending to establish fraud.

Lowenstein's lawyers resisted the idea of basing the challenge on fraud, according to Bellow, because they found it difficult to accept the possibility that an election in New York City could really be stolen.

As evidence was painstakingly accumulated after the election, a pattern of irregularities became apparent throughout the 14th Congressional District. Voting machine breakdowns and late poll-openings occurred in pro-Lowenstein election districts

rather than pro-Rooney districts at a statistically significant rate to indicate deliberate action. In some pro-Lowenstein districts the voting lever next to only his name would not register votes, Bellow said.

Lowenstein Prevails In Court Challenge

In many pro-Lowenstein districts voters had to wait two hours or more to vote because only one voting machine per district was provided, although in past elections two had been used; and on election day 350 voting machines sat unused in a warehouse in Brooklyn. Bellow explained that in many districts throughout the Congressional District voters were turned away from the polls because their registration cards had been mislaid, though most of them had been voting for years. In addition, several hundred voters whose registration had lapsed by failing to vote in two consecutive elections were allowed to vote illegally, he said.

The two most flagrant acts which turned up as the evidence was accumulated appear to be nothing less than patent fraud, Bellow commented. Two days before the election, Rooney's organization mailed out a postcard to every registered voter in the only one of eight Assembly Districts in which Rooney ended up with more votes than Lowenstein. The card was labelled "Notice of Primary Election" and bore the legend "Return Receipt Requested", giving it the appearance of an official notice. The back of the card contained a reminder to vote on primary day and what appeared to be a sample ballot; but it listed *only* the names of John J. Rooney and his organization's candidates for lesser offices.

Even more surprising is the fact that on election day a Brooklyn Supreme Court judge, sitting at the Board of Elections office in Brooklyn to hear cases of voters who had been denied the right to vote at their polling place, issued court orders *in blank*, permitting voters brought in by the Rooney organization to vote, without hearing their cases, while Lowenstein voters were required to wait over an hour to be heard.

As evidence of this nature piled up it became clearer to the attorneys that more than just mistakes and oversights had occurred. Accordingly, in the brief prepared for the trial and appellate courts, the thrust of the complaint was changed by adding fraud allegations to the above-noted irregularities.

This decision, Bellow believes, won the case. Although the Appellate Division, in its unanimous order for a new election, specifically stated that no fraud had occurred and that the mass of proven irregularities was the sole reason for the election, it was the allegation of fraud, Bellow concludes, which compelled the appellate court to take the drastic step of ordering the new contest. Without the threat to the whole system of machine politics which the thoroughly-documented Lowenstein challenge brought into being, Bellow thinks no new election ever would have been ordered.

Professor Bellow completed his talk as he began it, by asking for volunteers to travel to New York to work for Allard Lowenstein in the new primary held last Tuesday. "If Al Lowenstein loses this election," Professor Bellow said, "no one is ever going to be able to challenge the Brooklyn machine again with as much manpower and resources as he had this time."

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Doing Kaplan Justice

As Professor Benjamin Kaplan was decorously elevated to his present position on the Massachusetts Supreme Judicial Court midst praise and pleasant laughter from his colleagues and friends it was hard not to think about our own aspirations here at the Harvard Law School. Certainly this must have been one of the most satisfying moments in Kaplan's life, to be recognized publicly for his competence and accomplishments and to be honored with a position of great public trust and responsibility. It was a moment most of us would be more than happy to recreate for ourselves.

It is a temptation for all of us at HLS, having already shown that we are successful scholars and test takers by virtue of being here, to ascribe such success to intellectual merit alone. But as Governor Sargent was quick to point out, such assets were merely the beginning requirements for an outstanding justice. Other qualities which Kaplan possessed such as compassion, humility, and a sense of wit were the deciding factors.

But even these qualities are not always the deciding ones. One would be naive to think that all judicial appointments are made with as much thoughtfulness and objectivity as this one obviously was. Political patronage and ideological narrowness characterize the reasons for all too many appointments to the bench.

But the people in Pound 102 who gave Kaplan a standing ovation at the end of his oath of office were not honoring a position given because of political patronage or party. They were honoring a man whom they respected for more fundamental reasons.

In a meeting held last spring with the first year students to discuss the grading system at the Law School Kaplan defended the present method of testing students (a position, incidentally, which we do not share). But he qualified his remarks by saying that there were many equally important ways to test a lawyer's value, including, among other things, the measure of his integrity and his compassion and his understanding of the larger problems facing society.

These other tests of value are often ignored or forgotten by HLS students, whether in the throes of their first Ames or the decline of their final paper. But they are at least as important as grades in measuring the worth of a lawyer and indeed are more important in measuring the worth of the individual.

This is the most significant message that came to us at the ceremony. The people in that room were honoring the man, not just the lawyer. They would continue to respect him for his personal worth, not only his office.

HARVARD LAW RECORD

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Fenno

"Listen, Bunky, the latest Law School machinations at the Hark demand immediate protective retaliation. We must restore some class to the law school cafeteria."

"What do you have in mind?" Bunky queried.

"For one thing, we have to bring some appropriate music to the juke box. Like the latest hit recording of Justice Oliver Wendell Holmes' March 8, 1931 radio remarks on the occasion of his 90th birthday. We need to educate the 1Ls, bring culture to their fuzzy-headed minds."

"But do you think anyone would really listen to Holmes on a juke box?" Bunky said doubtfully.

"Of course they would. We wouldn't have just a dry speech title; we could call it O.W. and the Supremes. That would attract listeners—even blasé 2Ls."

"That sounds great."

"Sure, besides, the record retails for \$14.41. We've got to give it some judicial play," I declared.

"Okay, but what else could we put on the juke box?"

"Well, we could use some courtly music," I said. "Maybe we could get Dean Sacks and Dean Bruce to record an 'Ode to Langdell' based on Beethoven's Ninth."

"I've got an idea," Bunky chimed in. "How about a recording of Howard Cosell's famous 'Speaking of Torts' lecture delivered to a crowd of delirious Boston Bruins fans?"

"Good, and how about Bobby Orr's noted talk following the Bruin's Stanley Cup victory last year on the 'Metaphysical and Teleological Implications of the Doctrine of Judicial Restraint in a Changing World'?"

"That'll get all the sports freaks to eat at the Hark. They're most in need of culture, anyway."

"That's right, Bunky, but we still need something that will make the Hark a really popular and cultured eatery."

"What do you have in mind?" Bunky asked.

"Ralph Nader's acid rock version of 'Light My Fire.'"

Law Notes

Eight days after Robert Fellmeth, '70, director of Ralph Nader's Congress Project filed suit to compel Representative Edward Garmatz (D., Md.), Chairman of the House Merchant Marine and Fisheries Committee, to make available the rollcall votes of that Committee, the chief counsel for the Committee, Ernest J. Corrado, notified Fellmeth that he would be permitted to examine the votes. The suit, which was filed in the United States District Court for the District of Columbia, followed repeated efforts by Fellmeth and members of his staff to obtain the votes.

When members of the committee staff, apparently acting on orders from Garmatz, refused to speak with anyone associated with the Congress Project, Fellmeth sent a letter to Garmatz requesting the votes. This letter was totally ignored, so the litigation section of Ralph Nader's groups filed a complaint on August 15, and on August 23, Corrado consented to make the votes available.

Fellmeth expressed satisfaction that the votes had been made available, but deplored, "It's unfortunate that we must resort to the already overburdened court system to get a member of the U.S. Congress to comply with such a clear and simple law."

The Congress Project is a two year long study of the Congress by hundreds of citizen researchers in all fifty states and 250 attorneys, journalists, economists, professors, graduate students and students in Washington, D.C. The Project hopes to release 25- to 30-page profiles on each member of Congress in October, followed by detailed studies of reform topics and of the committees of Congress in January.

* * *

During registration, more than 100 law students signed up to do campaign work for McGovern according to David S. Fishback, 3L, Harvard Law School co-ordinator of the McGovern for President Committee. According to Fishback, 55 1Ls, 30 2Ls, and 37 3Ls expressed interest in political work for the Democratic candidate.

Other students working for McGovern include Fred Geldon, 3L, Cambridge co-ordinator, and Mark Rutzick, 3L, a Cambridge ward co-ordinator.

On the Republican side, 30 law students and 35 Business School students signed up as members of the Harvard Law and Graduate Republican Club, according to club treasurer Rayetta Nee, 2L. She said these students would

probably work for the re-election of President Richard Nixon, but "we haven't actually been out recruiting for Nixon."

Nee added that between 10 and 15 law students have so far expressed interest in working on the re-election campaign of Massachusetts Republican Senator Edward Brooke.

* * *

The latest issue of *Harvard Legal Commentary*, the journal of the Second Year Writing Program, will be its last. In the preface to Volume Nine of the *Commentary* the editors explained that the publication was dying for lack of interest. The short note cited various reasons for the decline of the writing program in recent years, including the expansion of competing publications and the resulting increase in the opportunity to do intensive writing at HLS. The preface acknowledged the work of the program's advisor, Professor Frank E. A. Sander.

* * *

There was a recording made of Justice Oliver Wendell Holmes' short remarks over the radio on March 8, 1931 on the occasion of his 90th birthday celebration. Just recently this recording of Holmes' voice was published, evidently for the first time, by Caedmon Records on record TC-2033: *Great American Speeches*, vol. 3. This record should be available from your local retail record store. The price of the record is \$14.41, which includes tax.

* * *

The following students have accepted membership on the Board of Editors of the *Harvard Law Review*, Volume 86: Donald B. Ayer, Thomas F. Cullen, Jr., Roger H. Cummings, Stephen B. Deutsch, Toby R. Hyman, Myron Kirschbaum, Shalom L. Kohn, Gilbert L. Kujovick, Isaac M. Pachulski, Gregory K. Palm, Michael E. Ross, Robert L. Schnell, Jr., Timothy C. Sherck, Barry S. Simon, John C. Sims, John-Mark Stensvaag, Ronald A. Stern, Allan B. Taylor, Arthur G. Telegen, Philip J. Ward, Donald R. Ware, and Jeremy N. Williams '74.

Also, Brackett B. Denniston, III, Ralph Mitzenmacher, Glenn Padnick,

Ronald Stauffer, Louis Wolcher, and David Wrubel '73.

* * *

Three Law School members of the American Bar Association's Law Student Division have been named to the position of student liaison with three of the ABA's 20 sections.

The three — Roger Keithley, 3L, Harold Fitzpatrick, 2L, and Daniel Smith, 2L, were named as student representatives to the ABA sections on Criminal Law; Corporation, Banking and Business Law; and Local Government Law, respectively, at the ABA's national convention held last month in San Francisco.

Peter Kirby, 2L, First Circuit Governor of the ABA's Law Student Division, the three newly chosen liaisons, and two other second year students represented Harvard Law School at the ABA convention.

Keithley, the only 3L in the group, will be serving his second year as liaison.

In related news, Keithley and Kirby traveled to Washington, D.C. last weekend to lobby for Congressional funding of Title XI of the Higher Education Act of 1965 as amended in 1968, which authorizes federally financed clinical legal education programs. Keithley and other Law Student Division officials met with Dana Meade, a special assistant to the President in charge of higher education, Kirby said.

The ABA Law Student Division had a membership last year of 18,000 students, including about 150 from Harvard Law School.

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Wealth and Tax Reform

Preservation of wealth should be the first objective of any tax policy. Revenue is the main purpose of a tax. But tax policy must preserve the revenue source or be self-defeating. Taxation of *invested* wealth is liquidation of its productive power. Productivity is exchanged for current consumption.

Tax reform will come... again and again. There will always be such demands in a democratic society as long as some people are better off than the average person. But tax reform can lower the whole standard of living for everyone, unless restraint and perspective are used.

Few, whether rich or poor, really object to gradual equalization of the national standard of living. Everyone realizes taxes must be the mechanism to collect the funds that are redistributed. But the choice of point of collection can have far reaching consequences.

Wealth is deferred consumption. It is also capital. Without it, real productivity is impossible. Someone must own it. Someone must accumulate it also. Creation and preservation of wealth must precede prosperity and the elimination of poverty. This is an absolute prerequisite.

Any tax which prevents income from being reinvested is destructive to the economy. At least ten years' pay on average must be invested in capital for every worker if we are to achieve our full potential quality of life and standard of living. Even that goal would shut off all investment that resulted in less than 10 percent return. The real assets employed must increase even more than in proportion to produce real income increases. Capital formation and return on capital are the very foundation of all living standards above subsistence levels.

The perpetual beneficiaries of wealth are the general public, not its owners. Owners benefit from wealth only when they consume it. The constant problem for any society is to create wealth faster than it can be consumed. Distribution of the benefits is also a problem. But that does not become relevant unless the wealth itself is preserved and compounded.

The largest and most productive aggregation of wealth is in business, particularly corporations. The corporation is not a person in any real sense. It is merely the means of organizing accumulated wealth and making it more productive for the benefit of real people. A tax on corporate income is a tax on productivity.

Corporate income taxes make no sense at all. They handicap the efficient and thereby subsidize the high cost competition. They are anti-competition. A value added tax would raise the same revenue without subsidizing high cost.

Income does not become consumption as long as it is reinvested. Someone must own wealth. Someone must defer consumption to create wealth. Someone must own corporations and all productive activities. It is immaterial who owns

what as long as the wealth is effectively employed at maximum utility. Therefore, a tax on personal income is also a tax on productivity *if* that income is reinvested.

A graduated personal income tax may be an appropriate way to level off the standard of living. But such a tax can be quite destructive to capital formation and productivity, unless taxation is deferred as long as the income remains productively invested. Money invested is not consumed.

Personal income invested in securities, savings accounts, mutual funds, insurance and incorporated business is not consumption, and it should not be taxed until it is. A tax on these investments is a tax on thrift, a tax on productivity and a tax on our national prosperity.

Real tax reform would substitute a value added tax for all forms of corporate taxation except a real estate tax on the *land* occupied.

Real tax reform would tax the value of land but prohibit the taxation of property improvements. Use of land is a privilege. Improvement of property is either an investment or personal consumption and should be treated accordingly.

Real tax reform would cancel all forms of capital gains tax. Instead, personal income would be taxed only after adjustment for net investment or disinvestment. Then, people could have a chance to save for their own old age.

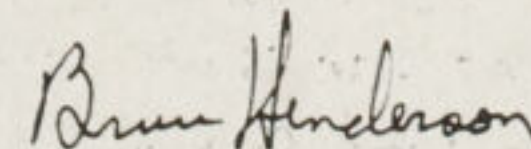
Real tax reform would cancel all estate taxes and death duties, both national and local. Instead, the estate would be charged only the government interest rate on its valuation until distributed. When distributed, the recipient would receive taxable personal income except to the extent it is kept reinvested.

Real tax reform must simplify tax administration and interpretation. Hundreds of thousands, perhaps millions, of lawyers, accountants, bookkeepers and bureaucrats are diverted from productive work by the unneeded complexity of taxes.

Regardless of the exact form of tax, it is possible to achieve simultaneously all real objectives of tax reform:

- Raise the average standard of living.
- Raise the desired revenue for government expenditures.
- Level off the standard of living among the social classes.
- Permit personal performance to provide future security of income.
- Simplicity and fairness.

All wealth eventually benefits some individual when it is consumed. However, while wealth remains invested, it may benefit many people in many ways. When wealth is consumed, it benefits only the individual consumer. It is the consumption that should be taxed, not the ownership or the income.



Perspective #101

Bruce D. Henderson

BOSTON • LONDON • MILAN • TOKYO

The New Breed, Cont.

(Continued from Page 7)

By now the store manager was near apoplexy. "What's going on here!?!"

Contra wheeled on him. "Shut up or I'll blow your brains out." Deftly Napoli seized his shotgun and unloaded it before handing it back.

'Recall the rule in Sciortino v. Zampano'

Now Contra spoke to me, "What if Napoli had garroted the old man. Case for murder one?"

"Only if it was premeditated."

"If it was self-defense?"

"No case."

"Correct. Now assume Napoli is a pickpocket. In garroting the old man, he injures his thumb and forefinger thus making it impossible for him to pursue his chosen profession. Can he sue the old man's insurance company for willful damages?"

"You mean the old man's estate's insurance company?"

"Yes, of course."

"No, in Torts he can't sue for willful damages, only for unintentional damages."

"Why?"

"Because it is against public policy to insure willful harm."

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"Do you think this is a good law?"

I stammered, "I'm not sure."

"Take my word for it, it's not a good law."

Contra opened the cash register, removed \$220 in small bills, and put them in his pockets.

"How many violations so far?"

Someone yelled out, "Four."

"Jesus, they must have given me the remedial class! At least seven: 1) Breaking and entering, 2) Trespass, 3) Willful destruction of property, 4) Assault without battery, 5) Carrying and using a weapon without a license, 6) Robbery, and 7) Holding a citizen against his will."

Distantly we heard police sirens. Contra looked at his watch and explained, "I guess we'll have to cut it short. All right now, what should the old man do?"

"Report the theft to the insurance company."

"Right." Contra turned to the old man, "You understand that?"

The old guy nodded, "I'll claim \$400 was stolen and not even bother to report you."

Napoli looked incensed. "Bastard!"

Contra shushed him. "Excellent. All right class, think about what the old man has just said. Your assignment for next week is to research extortion schemes."

He strode out of the room, his head back proudly. He was the best of the new breed. He paused just long enough at the door to say over his shoulder, "Somebody revive Palermo," and then muttered under his breath, "That idiot."

Parking Battle

(Continued from Page 6)

police for advising people to arrive at two or three a.m. in order to be sure to get stickers instead of simply telling them that it would be first come, first served.

Dean Bruce answered that the University Police had told some people to get in line earlier than proved necessary because they based their advice on "experience from last year, which was more of a horror story than this year."

Next year, Bruce added, a parking information sheet will be prepared for students. The police will give out no other information.

Parking stickers went on sale at 9 a.m., Tuesday, September 12. Jay Howard Zimble, 1L, became the first person in line when he arrived at University Police headquarters in Grays Hall at 3 p.m. on Monday. Zimble just brought a blanket, but others came prepared with sleeping bags.

According to Zimble, the only category filled up as of 8:30 a.m. was 1L 24-hour parking.

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La Hark: A Unique Bounty of Delights

By Mark C. Rutzick

*La Hark *****
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Maitre d' and chef:
Monsieur Frank
(formerly Monsieur Chet)*

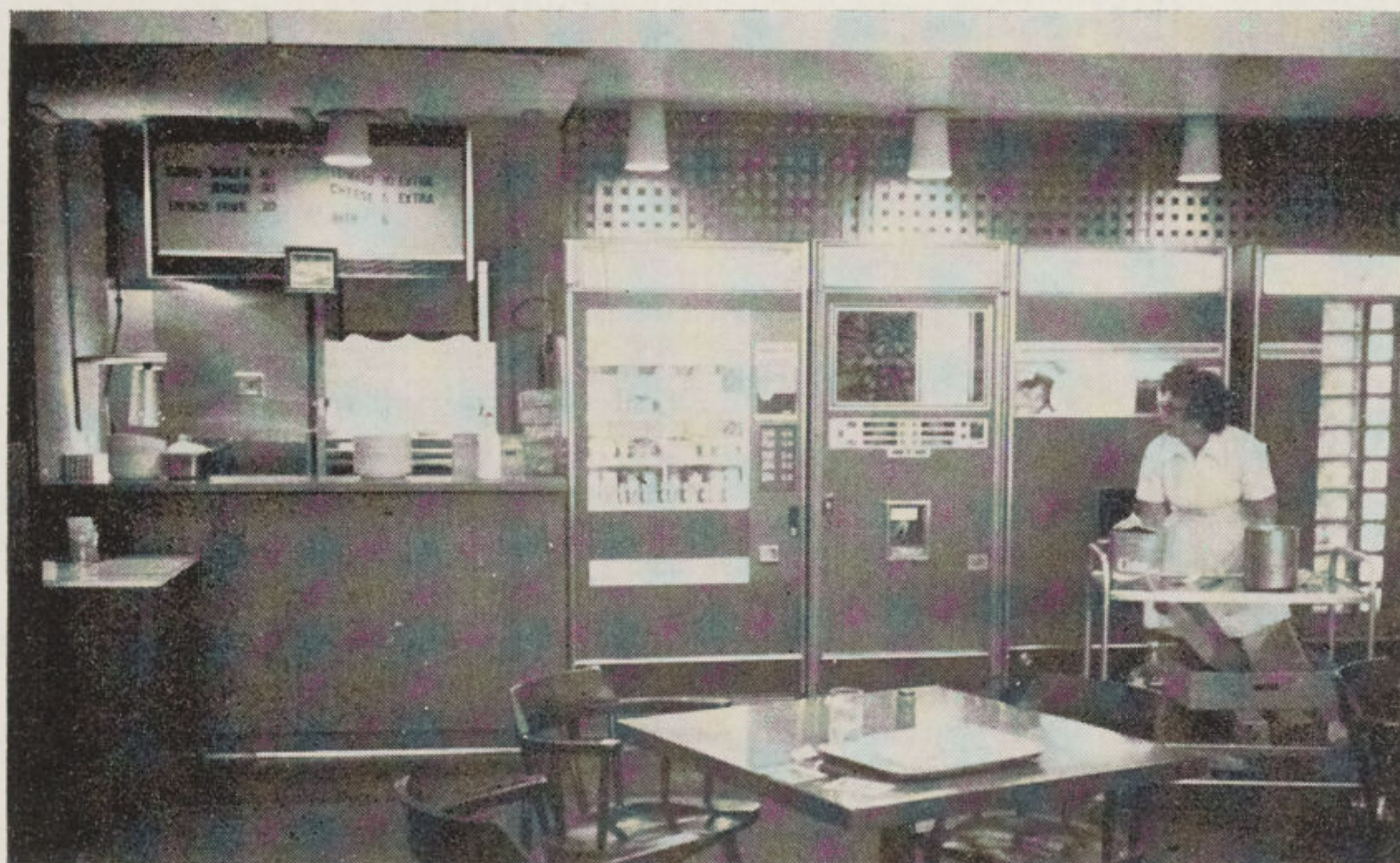
Cambridge gourmets will be delighted by the long-awaited re-opening this fall of one of the city's foremost dining experiences—La Hark on Jarvis Street. This fine spot, a familiar haunt for both the beautiful people and the artists' set from the entire Boston area, opened last week for both lunch and dinner (weekdays only), featuring the traditional Continental cuisine (French emphasis) for which it won so many admirers in the past.

A visit to the spacious, well-appointed restaurant was welcome after a hiatus of several months. (As with Le Pavillon, La Grenouille and the other great restaurants of this country, La Hark closed for a lengthy summer "*vacance*." M. Frank, the new maitre d', chef and guiding force of the restaurant, is said to have spent the summer in southern France digging for truffles.) Housed in a deceptively plain building (allegedly designed by Gropius as a study for his students of what modern architecture should *not* be), the restaurant offers three separate rooms for diners, all different but all with a distinct unifying tone that generates the mood of hedonistic pleasure which dominates the establishment.

The main room is the "*pièce sans égal*" of La Hark. It combines a delightful Old World ambiance with an exquisite collection of modern art and an imposing view of the exciting interplay between structures and open space which gives Cambridge the well-earned title of "City of the Future."

Tables are widely spaced across the room to avoid that cramped

feeling common to more pretentious restaurants, and in a burst of creative genius, M. Frank has chosen to leave the handsome birch and walnut tables completely and totally uncovered. In a brilliant stroke, he has succeeded



in both visually uniting the patrons with the culinary environment which surrounds them during their repast, and in underscoring his commitment to high quality, imaginative cuisine as the sine qua non of a rewarding dining experience.

Ambiance and visual surroundings are only secondary to M. Frank's first and greatest pride—the food he serves. And it is here above all else that La Hark succeeds. For this reviewer can honestly say that consistently through the many meals he has enjoyed at La Hark, the food is like that served nowhere else in the world.

A recent dinner began with a fruit compote of the finest pears, pineapple and oranges, with a rare maraschino cherry atop the delightful mix. Seldom has that combination of fruits caressed the palate as it did that evening. My companion later inquired as to the source of the delectable compote and was jovially told by

M. Frank personally that though it was a secret, the answer did involve No. 10 cans. A host with a sense of humor can improve even a great meal.

The soup de jour (opting for excellence, M. Frank serves only

one soup a day) was a subtle but distinctive clear vegetable broth, from which all the vegetables were conveniently removed. This is, frankly, a gourmet dish and those readers without extensive haute cuisine experience are likely to find it a disappointment—"like dish water", some will say. But the true gourmets will recognize it for what it is—a very remarkable creation.

An innovation which M. Frank is proud of (he is not a modest man) is the salad-dressing bar—a central location at which all patrons can bring their salads at their own convenience to apply the desired dressing. This allows the patrons to stroll about during the meal to examine the panorama and to mix with the other patrons if desired.

A delightful curiosity at a recent meal was that both bottles for the oil-and-vinegar dressing contained only vinegar. This creative "vinegar-and-vinegar" dressing, while a success, requires an

adjustment from the traditional expectations of even a gourmet.

The early courses were uniformly remarkable, but it was the main courses which made this meal so memorable. I sampled several entrees and found all of them to be of a quality unmatched in my memory.

The "*suprema de pollo frite*" (fresh chicken parts breaded and fried in a secret batter containing at least two herbs and spices) was a magnificent journey into the realms of the ecological future of Western Civilization, showing how man can achieve homeostasis with his environment — by eating it.

M. Frank boldly disdained tradition by refusing to serve the dish at the usual hot temperature; instead he chose a mild warmth which effectively accentuated the flavor of the meat and especially of the homemade cooking oil in which it was fried. It was a sensation.

The "*cotellette de porc garni*" combined the finest cut of pork with a magnificent half-sprig of parsley. It was a single chop but M. Frank, knowing his clientele well, opted for flavor over gross quantity by offering up a thin but satisfying piece of meat. Again, his bold culinary imagination led the way to success.

He chose the time-consuming "duo-heat" method of preparation, by first broiling the chop early in the afternoon and then reheating under a special microwave warmer to insure maximum flavor and that special indefinable "something" the duo-heat method brings to meat dishes.

La Hark offers a wide selection of desserts, from four kinds of ice cream to cakes and pies as well as fresh fruit "*de temps en temps*." Especially delicious was the marble cake, which proved that day-old cake need not taste all bad.

All in all, a meal at La Hark is a meal to remember. Its return to Cambridge should make all of us grateful to have the opportunity to spend pleasant afternoons and evenings glorying in the wonder that is — and always will be — La Hark.

Record Urges Students, Alumni To Help Write, Edit or Draw

To extend the breadth of its coverage of Harvard Law School and its alumni, the RECORD editors are encouraging students, faculty, and alumni to contribute to forthcoming issues.

Students interested in writing, photography, drawing cartoons, or business should come to the RECORD office at 23 Everett Street Monday or Tuesday evening to speak with the RECORD staff and see first hand how the RECORD is put together.

"The RECORD," says Editor-in-Chief David Cocke, 3L, "offers a unique opportunity to combine a flair for creative journalism with a law school education."

This year RECORD editors are seeking contributions from alumni that may fill what has heretofore been a journalistic void. Any alumnus or alumna who has been

involved in innovative litigation, unusual legal research, or other newsworthy activity is requested to write to the RECORD.

Record Publication Dates — Fall Term

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Economy Brings Twilight of Frappe

(Continued from Page 3)

but without Russian dressing or lettuce. (This deletion has nothing to do with the United Farm Workers' lettuce boycott, but with the fact that lettuce sitting around in a vending machine wilts quickly. If the turnover is great enough, the lettuce will be restored.) The "double cheeseburger", as it is now known, sells for 75¢, a dime less than the old Mighty Mo.

Bruce himself campaigned for the introduction of the real ice cream frappe, but says that it had to be dropped because it required too much labor to prepare. The only time that labor is a problem is during the 11:30-12:30 nightly rush hour. Mack offered to find students to work (and be paid for) this one hour each night, but Bruce vetoed the idea as too undependable.

To meet complaints about the size of beverage portions, a Coke machine selling soda in cans will soon be installed on the ground floor of the Hark. Coffee was reduced to 10¢ a cup. According to Bruce, the 15¢ price was just a mistake.

The Law School made the decision to reduce the Grill last summer, on the recommendation of the Marriott Corporation and of Donald Mitchell, a Law School graduate and now the School's management consultant.

According to David McDonald, 3L, Dormitory Council president, Bruce mentioned the possible change in the Grill to him late last term, after the last meeting of the Dorm Council but while its Executive Committee was still in session. However, neither the Dorm Council nor the Executive Committee formally considered the matter, nor were they ever formally consulted for approval. The Dorm Council has decided to give the new system a chance for 30 days before making any formal complaints.

The Root Room and the south end of the main reading room in the Law School library in Langdell are being renovated to provide what Bruce calls "a little island of calm and comfort." Easy chairs, foot stools, carrels, and tables are being installed to provide a greater variety of seating in the library. The area is

being repainted, the windows in the Root Room weatherstripped to keep it warmer, and carpeting installed to make the area quieter. In addition to this improvement on the main floor, some study areas in the stacks are getting new carrels and carpeting.

The work, which began last spring, should be finished within "a matter of days." The project would have been finished by now, except that a shipment of carpeting was sent to Dallas by mistake.

As part of the University's never-ending battle against crime, the Law School area is getting new lights and new locks on dorm rooms. The new lights, most of which have been installed over the summer as part of the University lighting project, are, according to Bruce, non-glare, vandal-proof, and have the widest arc and are the least expensive to maintain of any outdoor lights. They were installed for the betterment of "safety in general," not just for crime prevention.

All Law School dorm rooms will soon have received either entirely new locks or pickproofing devices on their old locks. The Law School had, at its expense, earlier installed such devices whenever inspection revealed a wide gap between the door and doorpost and whenever a student specifically requested one. The Law School had installed 50 such devices up to the end of 1971-72.

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