

Miss Moody

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TWENTY CENTS

Law School to Sponsor E-W Trade Conference

By Daniel M. Taubman

More than 100 lawyers specializing in international law and 25 law school professors from the greater Boston area are expected to attend a forthcoming conference on East-West trade scheduled to be held at the Law School next Friday and Saturday, February 23 and 24.

Former Senator Fred Harris and Law School Professor Harold J. Berman will be the featured speakers at the two-day event, hosted by the International Law Society and cosponsored by the Boston Bar Association, the International Center of New England, and six Boston area law schools.

The conference participants, including representatives of business, academia, and government, will discuss "The Legal Framework of U.S. Trade with Communist Countries", focusing on prospects for increased East-West trade in light of the recent U.S.-U.S.S.R. trade agreement.

Following a keynote speech by Berman at 7 p.m. on Friday, February 23, the first of three panel discussions will concern Congressional restrictions on trade with Communist countries. Participants at that panel will

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'HARK' CORRECTIONS

Corrections to last week's article "Hark is Missing \$3600; Audit Brings Dismissal" appear on Page 15.

Law School Names Four Visiting Profs For 1973-74 Year

By Mark C. Rutzick

Four men have been named visiting professors to the Law School for the 1973-74 academic year, including a consumer law expert, a specialist in comparative criminal law, and an outspoken advocate of law school curriculum reform.

The four men are James J. White of the University of Michigan, George P. Fletcher from UCLA, Robert A. Gorman '62 of the University of Pennsylvania, and Ronan E. Degnan from the University of California at Berkeley.

White, who will be in residence for the fall term only, is noted for his work in the rapidly expanding field of consumer law. He will teach a course in *Com-*

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Professor Harold J. Berman

Sacks to Seek Interviewing Shift To Put 2L Placement in Spring

By Gary L. Rubin

By the end of the month, Dean Albert M. Sacks will begin a series of discussions and inquiries which may lead to the postponement of second-year placement interviews until the spring term.

Sacks told the Placement Committee earlier this month that "the pursuit of jobs intrudes itself at too early a stage in the second-year student's life," according to Placement Director Eleanor R. Appel.

The Dean believes it is "only the tension between students and prospective employers in the legal profession that makes the interviewing process start so early," Appel said. Accordingly, he will soon begin querying a host of law firms, placement offices and students as to the feasibility of filling summer jobs in the spring.

In an interview with the RECORD earlier this week, Sacks

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Conference to Highlight E-W Trade

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include Rauer Meyer, Director of the Office of Export Controls of the Department of Commerce; Jay A. Burgess, Office of the General Counsel, Agency for International Development; and Franklyn D. Holzman, Professor of Economics at the Fletcher School of Law and Diplomacy. Professor Marshall I. Goldman of Wellesley College will preside as panel chairman.

Saturday's first panel participants will consider the new role of the executive branch in East-West trade, and will be chaired by Professor Abram J. Chayes, last year one of the key foreign policy advisers to Senator George S. McGovern. Participants at the 10 a.m. panel will include: Charles N. Brower, Acting Legal Adviser to the State Department; James Mitchell, Special Assistant to the Secretary for Policy Development, Department of Commerce; William F. Kennedy, General Counsel, General Electric Company; and Don Bostwick, Executive Vice-President of the Export-Import Bank.

The third panel discussion, "Legal Dimensions of Business Negotiating Techniques in East-West Trade", will begin at 2:30 p.m., Saturday, and will be chaired by Professor Jerome A. Cohen. Corneliu Bogdan, Romanian Ambassador to the United States; E. Allan Farnsworth, Professor of Law at Columbia Law School and U.S. Delegate to the United Nations Commission on International Trade Law; J. A. Verdol, Licensing Manager for the Atlantic Richfield Corporation; and Boston attorney Joseph M. Szabo will be featured participants.

Harris, recently named director of the East-West Trade Center, will deliver the principal address at the Saturday luncheon. The Center is a newly-formed, private organization interested in developing inter-bloc trade.

J. Gregory Lynch, 3L, co-chairman of the conference, said recently that the new Soviet-American trade agreement is the "keystone" in the lowering of trade barriers between the United States and Communist countries. Lynch is President of the Association of Student International Law Societies.

According to Lynch, the conference discussion will explore the ramifications of the grant of most favored nation status to the Soviet Union under the recent accord. Also under consideration will be means of encouraging pri-

vate American investment in the Soviet Union in co-ordination with that country's five year plans.

The conference will take place as part of the 1973 Northeastern Regional Meeting of the American Society of International Law. All sessions will be held in the Pound Building.

Those who wish to attend must pay a registration fee of \$15, which includes the cost of the Saturday luncheon. Students will be admitted free to the panel discussions, but are expected to pay \$5 to attend the luncheon.

Berman's Keynote to Promote Increased Inter-Bloc Trading

"Our trade relations with the Soviet Union ought to be normalized." So suggests Professor Harold J. Berman.

Seated in an upholstered red leather chair in his office, the expert on Soviet law explained during an interview earlier this week the implications of the recent Soviet-American trade agreement and sketched the outlines of his keynote speech at next week's East-West trade conference here.

"It is wrong to ask how much of an economic impact the recent trade agreement will have, Berman believes. (It is expected to triple — perhaps quintuple — Soviet-American trade.) "Legally and politically it is offensive to withhold trade relations from countries and it aggravates hostility to do that."

Berman pointed out that Congress must pass legislation according most favored nation status to the Soviet Union before the trade agreement can be implemented. Berman said he was optimistic that such legislation would be approved this year despite the present uncertain political situation arising from American opposition to the So-

viet policy on emigration.

"I can't believe that our sense of outrage — which I think is wholly justified — will prevent us from establishing normal trade relations."

Berman further stressed the need for developing different ways of trading with Eastern European countries. "Institutional techniques in Eastern European countries are very different," he said, adding that the conference participants will explore the nature of relations between private American firms and the Soviet government, and between private firms and American agencies, needed to increase East-West trade.

Berman, who teaches *Comparison of Soviet and American Law*, as well as *The Law of International Trade*, said he will discuss in his keynote address the historical background of Soviet-American trade relations and the difficulties and opportunities for constructing official and proper trade relations between market and planned economies.

"In my opinion the subject has a very great intellectual challenge," the legal scholar concluded.

New Dean Seeks Clinical Expansion; Courses to Merge

By Phil Spector

Less than two weeks before she will begin her duties as Director of Administration for Clinical Programs, Assistant Dean-designate Jeanne Charn Kettleson '70 described her role as one of encouraging experimentation and flexibility in the clinical offerings of the Law School. Professor Gary Bellow, who currently teaches the clinical courses at the Law School, agreed with Kettleson's assessment of the new post and outlined changes which will be made next year in his own clinical courses.

Bellow said the changes amounted to an "experiment for the next two years." He said that his two clinical courses, *The Lawyering Process*, a second-year course focussing on civil cases of indigents, and *Criminal Trial Advocacy*, a third-year course, will be combined for classroom purposes. Because of Massachusetts state law, however, only 3Ls will be able to take criminal cases.

Combining the course lectures and readings, Bellow explained, will provide students with a more complete picture of the entire legal system. It will also allow more students to take clinical courses and will give Bellow time to teach an advanced clinical course analyzing in greater depth the "institutional relationships" involved in the system of justice.

Kettleson said that her new job "wasn't specifically defined, and I think that's good." She considers her most important and "exciting" task to be working with members of the Faculty who want to develop a clinical component for their own courses. At present, clinical legal education at the Law School is largely confined to the two courses taught by Bellow.

The new Assistant Dean emphasized the many other possibilities for clinical education. Within the traditional law school courses, she said, there may be opportunities for more limited

clinical activity than is involved in Bellow's courses, such as assigning students just to observe a trial or negotiation and report on it.

Clinical credit for summer jobs is another possibility, she added, in which a critical analysis of the experience would be required in the fall. Areas other than poverty law and public service may become involved in clinical programs, Kettleson said; she noted that there appear to be opportunities, for example, to add clinical work to such standard courses as *Contracts* or *Corporations*.



Jeanne Charn Kettleson

Bellow suggested two other functions for the new Assistant Dean: assisting in the administration of existing clinical programs, and representing the Law School nationally at clinical education conferences and workshops. Praising Kettleson's legal skills, Bellow also expressed the hope that she could become somewhat involved in teaching.

Kettleson responded enthusiastically to this idea but she noted that "my appointment is not a teaching appointment," although "it would be helpful to me to develop a clinical course myself, to get some firsthand experi-

ence of how it works in the classroom."

Kettleson summarized what she sees as the important and educationally justifiable reasons for clinical legal education: "People learn from experience. Law is never strictly an intellectual experience, it's something which has to be practiced. I don't see why the line should be strictly drawn between what happens in the Law School and what happens afterward."

Sacks to Explore 2L Placement Shift

(Continued from Page 1)

stressed that he has thus far conducted only "preliminary discussions" of the idea with isolated members of the Law School community, but confirmed that he will be contacting "a representative group of law firms" on the subject later this month.

He said it is unlikely that the proposal could be implemented in time to affect the job-hunting process for this year's 1Ls.

Sacks said he believes that "students' concerns in this are of a narrow dimension — whether the other law schools will do the same." He therefore hopes to persuade placement officials at other major schools that a change is warranted, although, according to Appel, "there's some feeling that other law schools might fall in with us if we tried it."

As for law firms themselves, Sacks said it must still be determined whether they will want to accommodate to a new hiring season, rather than making random contacts with second-year students during the previous summer or during third-year interviewing in the fall.

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Council Collecting Basketball Fees

After a three-month struggle, the Dormitory Council is well on its way to collecting a one-dollar referee fee from each participant in intramural basketball.

On February 5, David T. McDonald, 3L, Dorm Council President, sent letters to all team captains reminding them to pay the fee and warning them that after February 12 non-paying teams would receive only one referee instead of two in games in which they participated. The letter further warned that referees would be withdrawn entirely from games involving persistently delinquent teams.

According to Dorm Council Comptroller Michael J. Critelli, 2L, captains were warned that teams that continued to withhold payment would have default losses entered against them in their league games.

Brian A. O'Connell, 2L, Dorm Council Secretary, reported on Wednesday that no penalties had in fact been put into effect, and that the incoming flow of funds indicated that sanctions would prove unnecessary.

The fees may be paid to Xavier L. Suarez, 2L, or Charles Roybal, Basketball Commissioners, or to any officer of the Dorm Council.

The fee, according to O'Connell, became necessary because the Law School had this year withdrawn its support for referees for the A League and because the

Council had increased the referees' fees from \$2.00 to \$2.50 an hour. O'Connell estimated that the new fee would approximately cover the cost of these two changes.

The Dorm Council now bears the entire expense of the intramural basketball program. O'Connell stated that a motion to limit

the Council's basketball appropriations to \$1000 had been introduced but had failed. The Council has committed itself to paying the referees' fees. Informally, it is also committed to paying the other miscellaneous costs of the program, such as expenditures for pencils and scorebooks.

Unit Seeks Law Researchers

Tired of student legal groups? Not in the mood for moot court? A Harvard Law student, a recent Harvard Law graduate, and a graduate of Northeastern University are forming a partnership to be called Cambridge Legal Research Associates which will hire law students to do research for law firms.

The group expects to begin work about March 1 and to employ 2Ls, 3Ls, graduates, and graduate students. According to Harvey C. Dzodin, '72, the Associates plan to pay 2Ls approximately \$3.15 an hour, though the rate will be flexible.

The other two organizers are Howard B. Brownstein, J.D.-M.B.A. candidate and Claire Fall.

The group expects to have openings initially for 15 to 20 students; it will give preference to Harvard Law students. Dzodin predicts that there will also be jobs available during the summer, and that students finishing their first year would then be eligible for employment.

"We saw a need," said Dzodin, "for something for law students besides the run-of-the-mill homework assignments and student organizations." He added that The Research Group in Charlottesville, Virginia and a group in Florida were already operating along the lines of the nascent Harvard group.

While gathering support for

the Associates, Dzodin heard reports that a similar but unsuccessful group had been organized years earlier at the Law School.

"We have the jobs waiting from law firms," said Dzodin, "but we're just waiting to select qualified people. We're dubious about the validity of grades," he added. "We may not even take grades. We plan to put more emphasis on people's writing ability and practical experience." The group will administer a two-hour practical research sample as a test of applicant's qualifications.

"We think we'll cover the whole rainbow of legal questions," said Dzodin, from the public interest oriented to the commercial. "We just don't want to be doing wills and estates all the time."

The group is considering charging and paying more for rush jobs, giving automatic raises after every 100 hours of work, and selecting some students as supervisory editors. All work will be done under the supervision of attorneys, Dzodin added; the group will not and can not practice law.

Said Dzodin, "We think it will be a lot of fun for everyone involved."

Interested students who missed yesterday's meeting should call Dzodin at 876-4528 or Brownstein at 661-1390.



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ELS Urges Harvard to Keep Black Rock

By Daniel M. Taubman

Adding its voice to those concerned with the preservation of New York's scenic Hudson River Valley, the Environmental Law Society has called on Harvard to "oppose with full vigor the construction of a pumped storage generating plant on Storm King Mountain" by declining to sell its 3600-acre Black Rock Forest at the proposed site.

The five directors of the Environmental Law Society sent a letter to Harvard University President Derek C. Bok earlier this week urging him and the University to "take strong positions against the planned taking of Black Rock Forest and the generating station itself."

The action follows the release of a report last month by a three-man committee which recommended that Harvard adopt a neutral stance with respect to the construction of the generating plant by Consolidated Edison in New York.

According to Douglas K. Mertz, 2L, one of the Society's officers, the committee's report in effect means that Harvard should sell the land to Con Edison for the construction of the proposed plant.

Mertz explained that the Society's letter to Bok represents the first public position taken by the group since its formation. The directors of the ELS decided to make the group's position publicly known because the issue directly involves Harvard, and because it is "such a major battle for environmental groups in general."

Environmentalists fear that the proposed pumped storage plant would have harmful ecological effects, including a diminution of the fish population in what is now a major spawning region of the Hudson River.

The Black Rock Forest, owned by Harvard, was donated in 1949 by Ernest Stillman to be used for forestry and biological research.

The Environmental Law Society letter states that although "Dr. Stillman did not specify the uses to which he intended the gift to be put . . . his broad intention was to preserve the area in its condition of natural beauty.

" . . . We would remind you," the letter adds, "that in this case there is no neutral ground; what-

ever action Harvard takes or fails to take will have an effect on the project."

The five directors of the Environmental Law Society who signed the letter are Mertz; Karin W. Carter, 3L; Michael A. McCord, 2L; Marshall W. Taylor, 2L; and Paul V. Applegarth, 2L.

HLS Names Four Visiting Profs

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mercial Transactions, and will offer a seminar on the subject of the lawyer as negotiator. White, who is 39, graduated from the University of Michigan Law School in 1962, where he was an editor of the law review.

Fletcher, who has done work in the field of torts as well as in his specialty of comparative criminal law, will offer a course in the latter field next year. The 34-year-old professor graduated from the University of Chicago Law School in 1963, and received a master's degree in comparative law from that school in 1965. Since then he has taught at the University of Florida, the University of Washington, Boston College, the University of Southern California, and UCLA, where he is now a member of the faculty.

Fletcher is spending the current year as a visiting professor at the Hebrew University of Jerusalem.

An editor of the University of Chicago law review while a student, he wrote an article in 1972 on "Fairness and Utility in Tort Theory" in Volume 85 of the *Harvard Law Review*.

Gorman, 36, will be offering courses in *Contracts* and *Labor Law*. He has been teaching at the University of Pennsylvania since 1965, after serving as Treasurer of Volume 75 of the *Harvard Law Review* in 1961-62. He served as law clerk to Judge Irving Kaufman of the U.S. Court of Appeals for the Second Circuit in 1962-63.

Gorman is an advocate of expanded clinical education and of reform of the legal education process. He has called for the law school curriculum to be cut back to two years, or for a completely restructured third year.

Gorman has also cited expanded training in practical lawyer's skills, interdisciplinary study, and individual instruction as other areas into which law schools should move in their search for an improved curriculum.

Degnan, 49, is a 1951 graduate of the University of Minnesota Law School. He will teach courses in *Civil Procedure* and *Evidence* next year. He taught at Drake University, the University of Minnesota, and the University of Utah before joining the Berkeley faculty in 1962. He served as an editor of the University of Minnesota law review as a student.

The appointments all come in areas in which the Law School is seeking to expand its faculty. The commercial law field has been undermanned ever since former professor Robert Braucher joined the Massachusetts Supreme Judicial Court in 1971. The impending retirement of Fessenden Professor James H. Chadbourn will create a vacancy in both the civil procedure and evidence fields. In addition, the Law School has been seeking a labor law professor for some time, and at present has no one specializing in comparative criminal law.

Panel Debates Affirmative Action

By Paul Weiner

Everyone agrees that affirmative action is a "good thing" but that ethnic quotas are a "bad thing." Last Sunday's discussion on "Affirmative Action: On The Conflict with Meritocracy" thus turned on where the panelists would draw the line. Walter J. Leonard, Special Assistant to Harvard President Derek C. Bok and Assistant Dean and Assistant Director of Admissions and

Professor Alan M. Dershowitz, who was scheduled to participate in the discussion, did not appear because he had caught the flu.

"There is no conflict between equal opportunity, affirmative action, and merit," said Leonard. "Institutions private and public have been given more than 100 years to act on the basis of merit" but have not done so.

"I am opposed to quotas," Leonard replied to a question.

was never considered." He noted that "nothing in the executive order requires that a university" eliminate standards when they are necessary.

Leonard noted that recently "a number of scholars have built international reputations deriding the dignity and qualifications of whole races or groups of people . . . many from a posture of economic self-interest, racism, sexism, or all three" or confusion.

"If the suggestion is that only white males need apply, then say so. When I hear talk of the appointment of white males," Leonard remarked, "I never hear the terms 'qualifications'."

Glazer supported the principle of affirmative action as a necessary antidote to past discrimination, but attacked quotas as justified only in rare instances. "Quotas divide American people into ethnic, religious, and racial compartments," leading to the "obscene result" that "people would try to advance on the basis of group membership, not on qualification."

Glazer also opposed goals and targets. "I'm afraid there is no way of preventing them from becoming quotas."

Glazer maintained that it would be impossible accurately to divide Americans into groups according to the amount of historical prejudice each citizen and his ancestors had suffered. He suggested that preferences be limited to those who had been officially discriminated against by the federal or state governments, but questioned the policy of giving preference to an immigrant West Indian black, a Spanish-surnamed Sephardic Jew, "the son of a Hong Kong millionaire or immigrant Japanese physicist," none of whose ancestors had suffered official discrimination in this country. He noted that Orientals, until recently the subjects of intense official prejudice, have as a

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Mark McNeil

Panelists (left to right): Walter J. Leonard, Roger Rosenblatt, Daniel Steiner '58, Nathan Glazer.

Financial Aid in the Law School, saw the shrill calls for meritocracy as a foil for deep-seated sexism and racism; Nathan Glazer, Professor of Education and Social Structure, attacked "targets" and "goals" as euphemistic quotas. Roger Rosenblatt, Assistant Professor of English, saw the conflict between merit and diversity in the University as more apparent than real. University Counsel Daniel Steiner '58, who oversees Harvard's affirmative action program, served as moderator.

Rabbi Ben-Zion Gold, director of the University's Hillel House, arranged the discussion, which drew approximately 250 people to Emerson Hall Sunday afternoon.

"Quotas have always put my people . . . at the lower end of the totem pole." He endorsed percentage requirements "for a floor, yes, but not for a ceiling."

Leonard defended affirmative action programs and percentage goals for the employment of women and minority group members as the only effective means of insuring these groups opportunities equal to those of white males.

As evidence, Leonard pointed to the case of William T. Coleman, Jr., '43 ('46), who graduated first in his Law School class. "His classmates — some of them — teach at the Law School. He

Why Not Abolish Grades?

By Daniel M. Taubman

The Harvard Law RECORD's editorial last week advocating the retention of the grading system represents little more than gratuitous mollicoddling of the Faculty at a time when the overwhelming majority of students remains disgruntled by the present state of affairs.

Harvard Law School students have been engaged in the battle for the reform of the grading system for the past five years,

rest their selections of students on slight differences in grades, but the sad fact is that they do. And since one's grade depends solely on a single final examination in most courses, whatever margin of error exists in (a) the student's performance on a given day and (b) the professor's reaction to an exam at a given time is unnecessarily magnified.

Second, the RECORD's suggestion that law schools and judges of high appellate courts do not

As a colleague of mine wrote in these pages nearly four years ago, "Come now gentlemen, does an interviewer become anti-black or anti-Semitic because he has no record of a man's grades? Such recruiters should be banned from the campus anyway; that would certainly be a good way of eliminating that fear." (R. Berenbeim, "An Argument for Pass/Fail," RECORD, February 18, 1969, at 16).

Fifth, the RECORD maintains that mandatory pass/fail would deprive some students of certain opportunities, cause a "serious diversion of effort to non-curricular activities," and create motivational problems. Perhaps the RECORD would have been on stronger footing had it invoked the familiar "Constitutional right to receive grades" (Article ? Section ?) Or perhaps there is a Constitutional right to not participate in "non-curricular" activities? One can only hope that the editor of the RECORD and those similarly situated could manage to adjust without suffering from culture shock in the eventuality that grades are eliminated during the first year.

Sixth, the RECORD invokes the argument from the status quo to suggest that since students can now opt for pass/fail no change is needed. That's close to saying that slavery should have continued since blacks were always free to determine whether they

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'Many students learn far more law outside the classroom.'

and despite the RECORD editorial, there is no indication that students are any less interested now in a pass/fail grading system than they were then. On the contrary, 70 per cent of the present 2L class voted in favor of pass/fail grades last spring, while 63 per cent of the present 1L class voted similarly in December.

The Law School Council should be commended for its first decisive act — endorsing mandatory pass/fail grades during the first year — and Faculty members should not be deceived into believing that the RECORD editorial is at all in line with the mainstream of student opinion.

First, it is plainly wrong to assert that "because the range of grades is so narrow, and the general reputation of the School so high, few employers make significant distinctions among students solely on the basis of grades." Precisely the opposite is true, and for that reason, the grading system should be abolished or radically altered. Every law student with a B or B-minus average who interviewed law firms realizes that he or she was at a disadvantage compared with fellow students whose grades were just a shade higher. Clearly, employers should not

rely to any great extent on a student's grades seems unfounded. Only last fall, one of two lecturers hired by Harvard Law School was a recent graduate who was President of the *Harvard Law Review* and a Sears Prize winner.

Third, one is hard put to understand how the RECORD can maintain that grades "remain a valuable indicator of how much law a student has learned." Many students learn far more law outside the classroom, in legal aid, working part-time for a law firm, or writing for a student journal. Obviously, to the extent one participates in these activities, one is not even entered in the competition for good grades.

Student organizations which formerly selected students on the basis of grades — Legal Aid and the Board of Student Advisers — no longer do so. Even the *Law Review*, that bastion of academic elitism, selects one third of its members on the basis of a writing competition.

Fourth, the RECORD fears that employers, unable to hire on the basis of grades, will resort to "less relevant factors" such as "race, sex, ethnic background, connections, or college records."

SUNDAY BRUNCH

10a.m. - 2p.m.

In the
Harkness Commons
Dining Room

Coudert's Jet Setter Stevens

By David J. Cocke

Lecturer on Law Charles R. Stevens '66 is a man on the move. This term, in addition to his full-time position as a partner in the well-known international law firm of Coudert Brothers, he is a lecturer in Japanese Law at both Harvard and Columbia Law Schools, and, according to Professor Jerome A. Cohen, is a "regular commuter" to Japan.

Stevens thinks his mobile life-style will be the wave of the future in the field of international

Lecturer is studying origins of modern Japanese Constitution

law. "Law practice is now changing," he explains, "to the point where a geographical base is less and less important. If you have good support services where you go, your law practice will follow you."

As an expert in Japanese-American legal relationships, Stevens is very much in demand, which is a partial explanation of his hectic pace. He is one of two Japanese legal scholars now teaching in the United States (the other is Prof. Dan F. Henderson '49 of the University of Washington) and one of a handful of attorneys in a rapidly expanding field.

At Harvard, Stevens is teaching a course with Cohen on the function of law in modern Japanese society. More specifically, he says, the course is about "how a Western legal structure functions in an Eastern society." Although Stevens' own specialties include business relations and commercial law in Japan, he stresses that his course has been designed with a more general perspective, touching on both public and private law problems.

He has only been at Harvard for three weeks, but Stevens is certain that this position here will be temporary. "This is just too much," the young and not particularly harried-looking attorney explained. In his present schedule he flies up to Boston from New York every Monday afternoon for his two-hour class and returns that same evening. "I agreed to help Prof. Cohen out for a while," he said, but after this term he plans to continue teaching only at Columbia, where he has led a seminar on Japanese Law for a number of years.

Stevens' tenure at HLS is the first to be financed by the recent \$1 million grant to the Law School by the Mitsubishi Corporation of Tokyo. He calls the gift, which will eventually support the work of a full-time professor in Japanese Law, "a very well thought out" project. "The need for lawyers with a knowledge of Japanese-American law is

very pressing," he said. "There are only five or six lawyers from America who are now practicing in Japan, all admitted to the Japanese bar before 1955 when it was closed to foreigners."

In addition, he explained, there are "no more than five to 10 American lawyers who have a reading, writing and oral knowledge of Japanese." This is particularly important, he said, because "the Japanese thought patterns are very different from what we're used to. A lawyer has to play an interpretive role much more than in Europe." This fact, he explains, makes the knowledge of language essential. Meanwhile, in the face of mushrooming Japanese-American trade there is a "huge shortage" of lawyers.

Part of the purpose of the Mitsubishi grant is to fill this vacuum, said Stevens. And, as it turned out, Harvard was an ideal place to start. There are already more than 30 students at HLS with some knowledge of Japanese, including "15 in my course who are capable of doing original research in the language. All we need to do is encourage them."

"A student with a knowledge of Japanese and who is reasonably competent, can write his own ticket to a major New York, Washington, or West Coast law firm," he said. "The opportunities are unlimited."

Harvard's Japanese scholar began his interest in the Orient at Princeton in the Woodrow Wilson School of Public and International Affairs. And it was there that he found his first opportunity to visit Japan, as a participant in the Princeton summer program in that country. He began studying the language after graduating from Princeton in 1963 and before entering law school at Harvard. By studying summers and cross-registering in the College he managed to complete the equivalent of four years' language study by his year of graduation from HLS.

Law school, he said, was a way to combine his academic interests in Japan "with my own practical personality. I had decided that I didn't want to teach and I wasn't interested in the foreign service, so my professors at Princeton led me in this direction."

While at Harvard, Cohen and Professor David F. Cavers encouraged him to continue his studies as a Fulbright Fellow in commercial law at the University of Tokyo, where he stayed for 13 months.

Perhaps the most "historically significant" experience was his participation in the research and publishing of the works of the Government Section of the Supreme Command Allies-Pacific

Teaches Japanese Law Here

(SCAP), which was responsible for drafting the post-war Japanese Constitution. "These papers are in effect the Japanese 'Federalist Papers,'" he remarked.

The movement toward uncovering these documents began with Professor Hideo Tanaka (no relation to the Japanese Prime Minister) of the law faculty of the University of Tokyo (and a Visiting Professor at HLS a few years ago), who had acquired the papers of Lt. Col. Milo Edwin Rowell, 1924-25, one of the top four officers in the Government Section of SCAP during the post-war period.

According to Stevens the papers were considered particularly important because until their release there had been very little information available about how and by whom particular sections of the Japanese Constitution were drafted. This paucity of information made it difficult to determine what was in the minds of the drafters when the Constitution was written. Even more mysterious was the role of the American occupation lawyers in the drafting, and whether the Constitution was imposed on the Japanese people by force or whether it developed with indigenous participation.

On returning to the United States, Stevens followed up his studies of the origins of the modern

Japanese Constitution by searching out and interviewing the surviving members of the Government Section, more than 25 in all. He was aided in his efforts by his students at Columbia, many of whom conducted interviews of the former SCAP officers in lieu of an examination.

A compilation of these and other research efforts on the Japanese Constitution is soon to be published in a two-volume set edited by Dale Helegras, a former Harvard graduate student who spent last year working on her master's thesis on this subject. Helegras was a guest speaker in Stevens' course earlier this week.

"Dale has the advantage of having a [U.S.] government security clearance," remarked Stevens. "One barrier that we had was that our own government archives were closed to those without a clearance." Much of the material, he noted, is still classified.

Stevens says he has no plans to follow an academic career entirely, preferring instead a dual career as teacher and international lawyer. "I'm much more interested in doing both than in doing one or the other," he said. "If I were interested in full-time teaching, Harvard would provide an ideal opportunity." But, alas, HLS will apparently have to look elsewhere for its Mitsubishi scholars.

Harvard Law School's Rowell: Japan's Madison

Lt. Col. Milo Edwin Rowell, a central figure in an effort by HLS Lecturer Charles Stevens and others to explore the origins of the modern Japanese Constitution, is a former student at the Law School (1924-25). In a telephone interview from his Fresno, California home earlier this week Rowell reminisced about his experiences as a former member of the Government Section of the occupation forces in Japan at the end of World War II. The Government Section, under the direct supervision of General Douglas MacArthur, was responsible for reorganizing the political and legal structure of the conquered nation, including the awesome job of drafting, if necessary, a new constitution for the country.

"By the terms of the Potsdam Declaration we were supposed to reorganize Japan in such a manner that no militarists or other

dictator-minded group could take over the government," he said. "And we were supposed to encourage democratic tendencies. With these requirements it was obvious that the constitution would have to be amended."

The section members began by talking with leaders in the post-war Japanese government about "many types of reform, including a reorganization of the Diet, the duties and responsibilities of the Emperor and reorganization of the criminal laws." Initial efforts were relatively unproductive, he said. "They had an entirely Oriental point of view, naturally enough, while we approached it from the common law point of view. We found the best way to explain to them what we expected was to write down specific examples."

At first the section continued along these lines, encouraging

the Japanese government to come up with an acceptable draft. When they didn't, members of the Far Eastern Commission, the official Allied supervisory body, encouraged the section to draft its own proposed amendments. "MacArthur gave us two weeks to come up with a draft," said Rowell. "We had to finish it by Lincoln's Birthday." It was this draft, called by Stevens the "MacArthur Draft", which is essentially the present Japanese Constitution.

Rowell explained that he had not stayed to complete his degree at Harvard because HLS would not accept the transfer of various law school credits that he had acquired as an undergraduate at Stanford. He discovered that he could spend less time in school by seeking a Stanford law degree. Rowell is now a successful Fresno attorney.

A New Pace

Harvard Law School, with over 1600 students, is perhaps the largest law school in the nation. To too many students, that largeness is stifling, and has produced only over-size lectures and anonymity. But though large size can lead the School to boredom and stagnation, it can also encourage individualism and diversity. The appointment of Jeanne Kettleson as Assistant Dean and the undertaking of Professor Gary Bellow to widen his offering of clinical courses are an indication that the Law School has opted to follow the second route.

Kettleson's ideas for presenting standard law school courses such as *Contracts* or *Corporations* in a clinical format are particularly promising. Since many courses at the School have to be given in three, four, or five sections, why must each section follow the same pattern — approximately one third Socratic Method, two thirds lecture? Why not present the subject in a different format in each section — one utilizing the Socratic Method, one clinical, a third in seminar form emphasizing research papers, and perhaps a fourth drawing on economics or sociology equally with law? Professors and students could be given the maximum opportunity to teach and learn in styles which suited them best.

At least two sections are already starting on this path. Professor Frank E.A. Sander, in *Taxation I*, has been presenting federal income taxation as a series of simulated problems. And this term, Professor Stephen G. Breyer, in his *Administrative Law B2* section, is putting a special emphasis on the economic factors which underlie the actual practice of administrative regulation.

As the methods of instruction vary, so too would the methods of evaluation of students' work. By allowing students to choose among courses relying on written exams, papers, practical clinical exams, and group argument or presentation, the Faculty would go far towards defusing the pass/fail issue without abdicating its duty of evaluation.

The introduction of sections using diverse approaches would also help solve the dilemma of some students who feel torn between the "solid" courses which they believe each prospective lawyer should take and the more unusual clinical, international, or public policy courses offered at Harvard. Such students should for example be able to choose a *Labor Law* course using a comparative law approach, a *Constitutional Law* course stressing the nature of modern bureaucratic government, or an *Administrative Law* course which confronts administrative agencies through a legal aid program.

Some might argue that this would amount to turning Harvard into Antioch. If at one time it was true that Harvard stood for the Socratic method as Antioch now stands for an activist or unconventional approach to lawyering, that age has passed. Many professors, as well as students, appear uneasy with the Socratic-lecture-casebook lockstep. It is time for a new pace.

HARVARD LAW RECORD

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Fenno

Fenno wandered aimlessly through the tunnels like some bewildered gopher. Suddenly he beheld, etched among the smudges, a law student's haunting grafitto.

THE RAVINGS

"Once upon a midnight dreary, As I pondered weak and weary, O'er Teitelbaum and Terms of Years, And other best forgotten lore, Suddenly there came a pounding, crashing, smashing, frightening sounding Banging noise that shook the floor. Whence cometh this unseemly nuisance, This rattling sound that shakes the floor? 'Tis the pipes of ancient vintage, the rusted pipes behind the door. Only this and nothing more. The noise subsided — all was still. I read of tenancies at will And life estates and adverse claimants And torts I'd never seen before. Crash! Boom! The violent sounds resumed, Sending shock waves through my room, Rattling, shaking my decor. What thus disrupts my quiet enjoyment? What is all this banging for? Of course, I recognize it now. 'Tis the assignation house next door. Only that and nothing more.

Once again the noise abated. I returned to casebooks hated. (We'd been assigned a brief diversion of fifty pages from Chapter four) But while I read of acres Black, Bang! The sound again came back. Now I realized — it's the door! I rushed to let the knockor enter before the knockee suffered more. To my dismay it was my landlord, A man whom I did not care for — A greedy man whose head was sore. He said he'd come to give me warning Of a rent increase next morning. This was the third such raise this year, And I protested this must cease. But he replied with smile resplendent, "All my covenants are independent". He cited *Franklin v. Brown*, the beast! He told me I would have to pay — The rent would rise, 10 bucks at least. I said he could not on such notice Effect this onerous rent increase. Quoth the landlord, "Read the lease."

I complained of faulty lighting, Of burglars burgling and vermin biting, Of lack of heat and leaky plumbing, And of noxious odors from next door. The scoundrel stopped me, "Desist, you fool! This state allows the American rule, And allows the lessor much, much more." I protested, "There's no justice In this increase you ask for. I realize, Sir, I'm at your mercy. Give me respite, I implore." Quoth the slumlord, "Caveat emptor."

I thought I might just be in luck if, I pled an eviction constructive. Alas, I'd given up that right In covenant Number 94. I then suggested a sub-leasing To a friend of mine, whose ways were pleasing. This was rejected by the boor. He scowled and growled, "No mitigation! You'll pay what you've contracted for." "Wait," I said, "I never bargained For these rats within my door." "A cat," he laughed, "Costs 10 bucks more."

My only hope for an abatement Lies in the words of the Restatement—Noble words of Truth and Justice, Which tell it all like it should be (or is, depending on the trend And on which causes courts befriend). Yes, these words may set me free, Return the rights I'd signed away, Keep me from being the screw. I'm no fool, I go to Harvard—I'll soon finish *Propertee*. And then I'll get that S. O. B." . . . J. Fleming (D. Prestemon, ed.)

Fenno smiled and shook his head knowingly. Edgar Allen Poe, he thought, would surely understand.

Law Notes

Four members of the Environmental Law Society—Paul V. Applegarth, 2L; Michael A. McCord, 2L; Douglas Mertz, 2L; and Stephen H. Schroeder, 3L—attended the ALI-ABA Course of Study in Environmental Law held in Washington, D.C. February 8-10.

The conference was sponsored in cooperation with the Smithsonian Institution, and featured talks by U. S. Court of Appeals Judge James L. Oakes '47, noted environmental lawyer David Sives, and Russell Train, chairman of the Council on Environmental Quality.

The students' expenses for the trip were paid for jointly by the ABA and by the Law School.

The Harvard Voluntary Defenders elected the following officers for the coming year: President, Robert Cordy, 2L; Operations Officers, Ralph R. Safford, 2L and Martin Flumenbaum, 2L; Administrative Officer, Thomas Bruen, 2L; and Research and Appeals Officers, John S. Jaffer, 2L and George C. Lyon, 2L.

The increase in health service fee for the 1973-74 year will be \$20, and not \$5 as reported in the RECORD last week. The fee will thus rise to \$150.

The schedule of the HLS Library for the Washington's Birthday Holiday, February 19, is: Langdell: 9 A.M.-

Letters to the Editor of The RECORD

Grades Scored

To the Editor:

While the RECORD claims to oppose complete pass/fail grading, none of the arguments justify the present system while most cut in favor of pass/fail.

"Grades are a valuable index of how much law a student has learned." The feeling of many students that an arbitrary categorization from A to F on the basis of a single examination is not an accurate index of a student's performance is one of the reasons for pass/fail. Professors go to great lengths to find distinctions among examinations of almost uniform quality, distinctions which may not reflect the student's insight at all. Employers pay no attention to grades and decide on other grounds who they will hire if we are to believe the Record's initial arguments. . . .

Would pass/fail reduce motivation? People who are accepted at Harvard almost by definition possess a high degree of self-motivation. This is neither enhanced nor diminished by grades. The notion that if pass/fail

were adopted the entire first-year class would drop their case books and turn on the television is absurd, especially since the sanction of failure has not been withdrawn.

The Record puts great weight on the fact that only ten per cent of the first-year class actually elected pass/fail. The reason for this is relatively clear. An average student's perception of the situation is as follows: "I know as much as A. If I get two P's, and he gets two B's, a law firm will hire him before me. Therefore, I'll try for the grade." Whether this perception is right or wrong, it blocks the voluntary extension of pass/fail grading.

I do not mean to imply that pass/fail is the only alternative. An evaluation system which correlated more closely with a student's progress than the present one-shot exam would be just as desirable. The point to be made is that a pass/fail system is a far more relevant and efficient system in the context of Harvard Law School than the system presently in operation.

P. Courtney Hunt, 1L

5 P.M.—Circulation and limited reference service; Langdell: 5 P.M.-11 P.M.—Stacks will be open for study. No circulation or reference service; ILS: 9 A.M.-11 P.M.—Circulation and study. No reference service.

* * *

The Harvard Law School Library is featuring an exhibit entitled **Mr. Justice Douglas, dissenting**. This exhibit is based on Justice Douglas' dissent in *Sierra Club v. Morton (1972)*, a case which involves the application of Walt Disney Enterprises to develop a com-

mercial recreation area in one of the most beautiful and unspoiled areas of the Sierra Nevada of California, Mineral King Valley.

Justice Douglas in his dissent declared that such inanimate natural objects and phenomena of our biosphere as trees, rivers, valleys, beaches and mountains should have legal "standing" in court litigation.

The exhibit will be on display through March 15 in the exhibit case in the basement study area of Langdell Hall.



Charles Soberman



Charles Soberman

Stars of the silver screen: Professor Alan M. Dershowitz (left) and Associate Dean Paul M. Bator on WGBH-TV's "The Advocates" February 8.

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Full Employment

Nominal full employment is easy to achieve. Keynes taught us how. Inject more money into the economy. As it is spent, demand will increase. If enough is supplied, then the available manpower and capacity will be absorbed. But the trouble begins before that point is reached. It gets worse after that.

At true full employment there is no way to significantly increase the average standard of living. One person's increase is another person's inflation. Increased output requires increased capital investment. But capital formation requires deferred consumption. The average standard of living must go down in the present to enable it to go higher in the future.

Foreign trade could raise the average standard of living. Low productivity jobs are exported and high productivity jobs are substituted. But this process produces structural unemployment during the transition. Structural unemployment lowers output during the transition. Some present unemployment is necessary to permit a future standard of living increase.

Full employment is an unstable equilibrium. On the one side are shortage and inflation. On the other are unemployment and reduced productivity. The equilibrium is unstable because an economy has great momentum. Changes in the money supply take time to take effect. Overkill and overcontrol are almost inevitable if partisan politics are involved in the control system. Even at best there is a significant lag.

Full employment may be too costly if it is achieved. The *real* loss in output to stop inflation in the U.S. during 1970 and 1971 was more than enough to pay every unemployed person in the U.S. more than the per capita average income. Inflation and full employment are Siamese twins. When you have one, you are very close to the other.

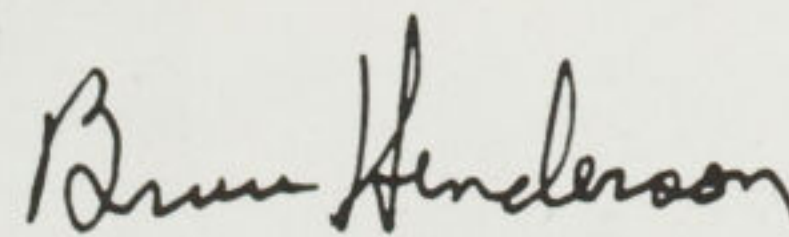
To sustain full employment, inflation must not be stimulated. Most conventional cures for inflation induce temporary unemployment. Full employment without inflation on a stable basis is most likely if there are:

- No federal deficits.
- No labor contracts or collective bargaining (wages vary with supply and demand).
- No minimum wage (determined by supply and demand).
- A metered increase in money supply.
- Price competition and above average growth rate by the low cost competitor.

Since these things are politically unachievable, it seems inevitable that a significant permanent rate of inflation is the price of full employment. Price and pay controls do not help. They produce shortages. They interfere with productivity. They misallocate resources.

Full employment in an overregulated and overcontrolled economy is full throttle in a car with the brakes on. It produces overheating but not much performance.

It is far less costly to have a negative income tax than it is to attempt to achieve full employment in a controlled economy. The cost to the economy of full employment may be far more than the cost of supporting the unemployed at an acceptable rate of inflation.



Bruce D. Henderson

Perspective #117

BOSTON • LONDON • MILAN • PARIS • TOKYO

Bergman's 'Cries': Stark Beauty

By Robert G. Flanders

CRIES AND WHISPERS Directed by Ingmar Bergman. Now at the Pi Alley Theatre, Washington Street, Boston.

Whether or not *Cries and Whispers* is Bergman's greatest film, and it may well be, it is a work of such power and virtuosity as to merit the kind of intense critical scrutiny which invariably adheres to a Bergman masterpiece. The story, in keeping with an oeuvre begun some 17 years ago in *The Seventh Seal*, is

autumn dawn breaks in gold filaments through the drifting fog. The camera pans to various pieces of all-too-perfect statuary, then to the ubiquitous clocks whose ticking is heard in counterpoint to the death throes of Agnes, and finally the camera catches the dead leaves carelessly blowing across the landscape. Wallace Stevens' famous epigram, "death is the mother of beauty," never seemed more apt.

Yet this is a movie which leaves a pit in one's stomach. There is a strong undercurrent of

disgusted Karin looks on with silent revulsion. Later, he proposes they retire to bed, but Karin is so repulsed with her life, "a tissue of lies," that she peels off all her layers of petticoats and then proceeds to brutalize her reproductive organs with a shard of a glass that she had clumsily broken during the meal.

By this time, the sight of red comes as no surprise: it is the color of the movie, the mode of transition from real to surreal, literally the life-blood of the dying characters whose cries and whispers permeate their tenuous existence and are indeed the only genuine speech of love. Bergman juxtaposes the murmurings of barely audible voices with the screams and outcry of the drama itself to arrive at an expressive echolalia of wind and man, that which has no significance other than its emotional resonance, its very fact of having been uttered.

Cries and Whispers, is a film of stark and disturbing beauty. Perhaps Bergman's greatest gift is his artistic courage, the temerity with which he explores and then listens to an articulate silence swarming at the rim of intelligibility.

**'It is a work of such virtuosity
as to merit intense critical scrutiny.'**

characteristically spare: three sisters (the Fates?) and a servant girl are quartered in an elegant but remote family estate. Agnes, the eldest sister, is dying of a stomach cancer while her sisters watch and listen to her agony but are helpless to ease her travail in confronting an excruciating death. Only Anna, the fat, terrestrial child-woman, is able to comfort Agnes for a while by pressing her bare bosom to the dying woman's face.

The dialogue of the film can be received at several levels of meaning, all of which admit of a frantic effort to communicate, to reach through the silence and touch another human being and establish some bond, if only a shared whisper to hold fast against the inevitable dissolution of life. This is very much a movie about human love and its sacred, solacing power to withstand the ugliness of death.

From the opening sequence of *Cries and Whispers*, the viewer cannot help but be dazzled by the sheer, deft artistry of Bergman's cinematography. The mist-en-shrouded estate is filmed as a cold

violent ignominy to both Karin and Marie, the seriously flawed sisters who cannot or will not embrace the death which is implicit in life. Karin's self-debasement is particularly horrific. In a flashback sequence, she is shown dining with her despicably cold and inhuman husband, ironically a diplomat. His spurious charm is searingly exposed while he devours his dinner as a

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Panel Divides on Action Plans

(Continued from Page 6)

group a higher economic position than the average American.

Nevertheless, Glazer denied that merit was always the best criterion for selecting employees. He noted that some positions, such as laborer under a civil service system, are awarded on the basis of pull or irrelevant qualifications masquerading as merit, and might be more equitably dispensed by lottery. He added that other positions, such as school principal or even Harvard Law student, serve a representative or political function, and also should not be awarded solely on the basis of merit.

Glazer concluded that quotas were only justified "where we have something like a conspiracy to discriminate," such as "Negroes trying to vote in the South . . . It is certainly not the situation in the university. Nor can we detect such situations, simply by numerical tests."

"Universities," said Glazer, "have been treated as though they were Southern rural police departments" but "they are too dependent on federal funding and the balance of power is too unequal" for them to fight back.

"Affirmative action — yes. Goals, targets, and quotas — no," Glazer concluded.

"Pure meritocracy does not exist now at Harvard or anywhere else I know," said Rosenblatt. "Quotas are bad things," he said. "Goals look more to the process"

of selection than to the result, but he conceded that "if you're opposed to the notion, they are more wishy-washy and sneaky."

Rosenblatt noted that admissions to Harvard College are not based on an idea of individual merit but on the need for diversity within the institution, thus negating any conflict between the meritocracy and affirmative action.

A black audience member pointed out that Jews and blacks together make up only 15 percent of the nation. "It looks like blacks are being pitted against Jews . . . I don't see any captains of industry or bluebloods here. They're probably off laughing somewhere in the background, 'Let them cut each other up and then we'll have

a reason to get rid of both of them.'"

At one point during the questioning, Glazer indignantly denied the assertion by a woman in the audience that universities are discriminatory in hiring and that women's problems were treated as an afterthought: "We see who's the best man around."

"The University," Steiner concluded, "is committed to targets and goals. In all our dealing with HEW, we have not had a clash on principle . . . Commitment by the University administration is not enough to make this work at Harvard." He asked the faculties, administration, alumni, and students to "give affirmative action a much longer time than we've had to see it do something."

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Clothing Bias Shows Deeper Ills

By Phil Spector

Recently (February 2, 1973) Barry Golomb '51 of New York sent a letter to the RECORD taking issue with a column of mine (December 1, 1972) in which I had urged abandonment of the de facto requirement of a coat and tie for law school job interviews. Our disagreement on that question can stand as printed, but a sentence in Golomb's letter carries far wider implications:

"The client in the open sport shirt or sweatshirt quite frequently would be totally dissatisfied with a professional man who, while engaged in his professional activities, dressed in the same fashion."

The Backbencher

Golomb is absolutely right on this point, of course, (except for forgetting that there are professional women as well as professional men), and the client, naturally concerned about his or her own interests, should indeed be dissatisfied. If I needed a lawyer to represent me, in nearly any situation, I don't think that I would be satisfied with one who (if male) had hair as long as mine or who wore faded blue jeans, as I have a habit of wearing to school, to court.

But my reasons for preferring a "respectably-dressed" lawyer to represent me involve only my perceptions of self-interest and have nothing to do with what I think is appropriate. Beyond the basic requirement for relating to others of being clean and somewhat neat, I think a lawyer should be as free as anyone else to express himself or herself in dress. To some the freedom involved may seem relatively insignificant, but, in an increasingly standardized society, such a daily choice on something as personal as dress may take on new meaning.

These is an even more important sense, however, in which the fact that Golomb is right should be a cause for concern. He is right because not only clients or jurors, but also judges and at-

this country has never been, and is not now, color-blind. The question of what a lawyer should look like will take on new importance in the next few years as increasing numbers of blacks and wo-

'How will clients respond to an Afro-coifed, black woman lawyer?'

torneys, expect a lawyer to have a certain appearance. To the extent an individual attorney doesn't meet the standard and any discrimination results, the ideal of blindfolded justice suffers.

The problem in its wider scope cannot be confined just to dress, over which at least there is choice. Black defendants have long faced the obstacle of being different in the courtroom, and it is almost a truism that justice in

men are graduated from the nation's law schools.

If clients, jurors, and judges have trouble responding fairly to a white male lawyer in a sports shirt, how will they respond to an outspoken, Afro-coifed, black woman lawyer? The answer to that question should trouble us all, and it should make one pause before lightly dismissing the idea of relaxed standards of appearance for those involved in the legal profession.

Harkness Article Correction

The lead article, "Hark is Missing \$3600; Audit Brings Dismissal", as printed in some copies of last week's issue of the RECORD contained several errors: Only the manager of the Harkness Commons and not the subsequently dismissed assistant manager flew to Washington to participate in an audit of the operation's books. The audit was conducted by auditors from both the Boston and Washington offices of the Marriott Corporation. The assistant manager was not, as stated, suspended with pay on January 25.

The source and nature of the discrepancy in the books of the Harkness Commons operation is unknown. No one has charged either the recently dismissed assistant manager or anyone else with any wrongdoing of any kind

in connection with this matter. According to Vice Dean William L. Bruce, the assistant manager was dismissed for failure to follow Marriott's bookkeeping procedures, and for no other reason.

The article erroneously described the 1971-72 contract between Harvard and Marriott as the contract for the current year.

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Why Not Abolish Grades?

(Continued from Page 7)

wanted to be slave or free. Actually, the reason that only 10 per cent of the 1Ls (20 per cent the year before) decided to take grades pass/fail is because everybody realizes that high grades are still the sine qua non of obtaining a good job.

As a distinguished alumnus defending the grading system wrote to the RECORD two year's ago, "only the ungraded law student with an *exceptional* college record will have much chance.

"This does not mean that other ungraded students may not obtain jobs somewhere, perhaps in the many offices where *any* graduate of a good law school is deemed good enough, or where there is not much competition, or where *his* family knows a partner or client. But to pretend that they are not handicapped in the competition is absurd. The faculty knows better, and so should the students, as I'm sure most of them do." (Robert L. Stern '32 in December 3, 1970 issue of the RECORD).

So much for an optional system of grades or pass/fail.

The RECORD concludes its editorial by noting that abolition of first-year grades can only put greater pressure on 2Ls. This may be so, but only suggests that a more general overhaul of the grading system is needed. If grades do not adequately measure a student's performance during the first year, the likelihood is that they will not do so during the second or third year of law school.

This is not to say that there is no difference in ability among law students. There are differences, but grades do not measure them. When students at the Law School were less rigorously selected, grades probably served to a greater extent than they do now to distinguish *Law Review* editors from others. Now, however, the accuracy of the grading system as a means for selecting *Law Review* editors is subject to question. As the RECORD itself noted in an editorial only this past September, "If the distribu-

tion of grades at the highest level is plagued by so much disparity [3000 to one probability of the actual distribution by section of *Law Review* editors during the past two years] one would expect the same system to be equally unsatisfactory at all levels." (RECORD editorial, September 29, 1972, at 10).

If grading itself is not rationally related to a student's academic performance, the alternatives would seem to be either pass/fail during three years of law school, or frequent exams and/or papers in each course so that the course of a student's future employment is not so wholly dependent on a single academic performance.

One would hope that the faculty is now prepared to follow the lead of the Law School Council and seek to ameliorate the deficiencies of the present system without allowing itself to be lulled into complacency by last week's ill-conceived, beleaguered attempt at creativity in the RECORD.

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