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TWENTY CENTS

Ted Kennedy Pulls Law Review Piece; Avoids Ethical Bind

By Mark C. Rutzick

An article by Senator Edward M. Kennedy scheduled for publication in the March issue of the *Harvard Law Review* has been withdrawn at Kennedy's request to avoid a possible violation of legal ethics. The request came after the issue had been printed and was within two days of distribution. Costs of reprinting may run over \$2500.

The article dealt with the President's right to exercise the so-called "pocket veto", a term describing the process in which the Chief Executive, by failing to sign legislation after Congress

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HLS Faculty to Meet Today To Debate Cohen Proposal

By Kermit Kubitz

The Report To The Faculty by Professor Jerome A. Cohen's Committee on First-Year Evaluation and Related Matters will be discussed at a faculty meeting today in the first of a series of steps that may lead to some mandatory pass-fail grading and semesterization of first-year courses next fall.

The report, circulated to faculty members Monday and discussed at a meeting with students yesterday afternoon, presents the results of eight months of deliberations aimed, according to Cohen, at, "giving people the freedom to explore what the dimensions of the law are" by achieving "a certain moderation of first semester atmosphere."

The recommendations of the report fall into four major categories: (a) that pass-fail grading not be adopted for the first year as a whole; (b) that fall term exams be given in Torts, Criminal Law, Contracts I and Procedure I, and that these be graded for the record on a modified pass-fail basis; (c) that reexaminations be given to students who do "D" or "F" work on the above-mentioned fall term exams; and (d) that the existing first-year pass-fail option be modified, so as to convert it into a "postponement" rather than a "suppression" option.

The report recommends review of the effect of these changes in each of the two years following implementation. Chairman Cohen commented, "Asking anybody to agree on one pet formula is like asking people to agree on the ingredients for a martini. I think we got nine people to agree on this. It probably deserves at least a look-see for a few years. If it should turn out that people do less work in the first year, then we would pull back. On the other hand, it might be helpful if they did, because it would give people

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Berger Debunks 'Exec. Privilege'

By Paul Weiner

"Executive privilege," says Raoul Berger, Charles Warren Senior Fellow in American Legal History, "is a myth without constitutional underpinning." For Joseph A. Califano, Jr. '55, former Special Assistant to President Lyndon B. Johnson, executive privilege is "a practical problem with legal ramifications rather than a legal problem with practical ramifications." Rufus L. Edmisten, Chief Counsel and Staff Director of Senator Sam J. Ervin, Jr.'s Subcommittee on the Separation of Powers, asserted

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Charles Soberman

Joseph A. Califano

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Registrar Discusses Graduation Requirements

Registrar Mary D. Upton has some good news for 3Ls: students may fail up to seven hours of work in one year (11 during their Law School careers) without having to make up failed hours and without threat of loss of satisfactory standing. Last year, no 3Ls failed to graduate because of low grades (though some did not receive degrees because they never

wrote their third-year papers). And if your overall Law School average is 71.50 (low B+) or better, you will graduate with honors on June 14.

Honors awarded with the J.D. degree depend solely on the student's three-year numerical average. A student with a 71.50 (low B+) average will graduate cum laude; 74.50 (low A-), magna

cum laude; and 79.50 (high A), summa cum laude. In most years there are only one or two summas, if any.

Second- and third-year course grades are weighted according to the number of hours of credit they carry. Cross-registration course grades are not included in determining the student's average for honors. The five required first-year courses each count as four hours; the small group course, if taken for a grade, counts as two hours. Written work is weighted according to the number of hours taken.

Though internal Law School records are based on numerical grades, these numerical grades are not formally released to anyone, even the student. However if a student looks at his old examination booklet in a particular course, he will often be able to find his exact numerical grade.

Last June, according to the University commencement program, 569 students received J.D. degrees. Of these, 199 (35 per cent) received honors: 167 (29 per cent) cum laude and 32 (six per cent) magna cum laude. There were no summas.

Advanced degrees (LL.M. and S.J.D.) are generally not awarded with honors, though they require a higher minimum quality of work than the J.D.

Students are cautioned that they must maintain a satisfactory average to remain in good standing, even if they pass all their courses. Students who fail more than seven hours in one year or 11 while at the Law School, or whose averages become unsatisfactory, are treated by the Administrative Board on a case-by-case basis.

Miller Defrocks Himself of Vest In 'Off-the-Record' Class Action

By Paul D. Gutierrez

Last week's report by the RECORD's ubiquitous Fenno speculated that Professor Arthur R. Miller was "born with a vest." These words were hardly off the press before steps were taken Monday to correct that impression.

In what some would term a "subtle" approach, a motley clad Miller thrust himself upon his *Civil Procedure* class amid resounding cheers and foot-stomping. Admitting that he was dressing "off the RECORD" (pun intended) the somewhat less than dapper Miller titillated the classroom with the latest in avant-garde fashion.

Clothed in basic denim, Miller displayed the ultimate in creativity in a counter-cultural motif. His feet modeled the most recent in progressive multi-colored stocking loungers. A modest tic-tac-toe vest (ever present) adorned the upper torso covering a tight-fitting jet black sweat-shirt that bore three golden chevrons on each sleeve, obviously reminiscent of an earlier era. A gayly designed necktie that nestled snugly about the throat accented the outfit and cascaded

majestically to a point well below the navel. It resembled a gigantic gray tongue.

He then broke a lifelong tradition. Miller departed custom when, to roaring applause and wild shouts of "Take it off!!", he deftly removed his vest and revealed, to the crowd's delight, its scarlet lining. And with what could aptly be described as a futile gesture, he threw out his chest(?) to expose an unreasonable facsimile of the great Alfred E. Neuman appropriately captioned: "What, me worry?" The ensuing pandemonium rattled the windows, sending excited vibrations rippling through Langdell South and urging imaginary smiles from the faces of the solemn jurists whose portraits line the classroom.

When sanity was restored, class resumed at a rather abnormal pace, interrupted only by the sudden flash of a phantom photographer. In a true Millerian response the professor interposed innumerable Supreme Court cases attesting to his right to privacy, copyright and various legal penumbras. The expounding of such substantive rights was followed with a half-hearted promise to assert them.

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Record Ceases Publication

With this issue, the RECORD suspends publication for the academic year. We wish our readers a pleasant and productive summer, and look forward to returning to the press in September.

12 Additional Fall Clerkships Are Reported

The following 12 students and graduates have reported their 1973-74 clerkship plans to Assistant Dean Stephen M. Bernardi since the RECORD published its list of clerks (February 2): Christopher S. Lyman, '72, Supreme Court of Oregon; James F. Ponsoldt, '72, U.S. Court of Appeals (Fourth Circuit); Stefan M. Lopatkiewicz, 3L, U.S. Court of Claims; Barbara A. Reeves, 3L, Ninth Circuit; Dennis M. Perluss, 3L, Ninth Circuit; William R. Reiter, 3L, U.S. Tax Court; Stephen Shakman, 3L, U.S. District Court (W.D. Wis.); Michael A. Levitt, 3L, U.S. District Court (N.D. Ill.); Henry Hubschman, 3L, U.S. District Court (Mass.); Richard L. Berkman, 3L, U.S. District Court (E.D. Pa.); Richard S. Kay, 3L and Stephen B. Burbank, 3L, Massachusetts Supreme Judicial Court.

Law Review Considers Change In Procedure for Selecting 1Ls

The *Harvard Law Review* is considering a change in the selection of the top 20 students on the basis of grades, *Review* President-elect Barry S. Simon, 2L, said Monday.

The contemplated change would probably involve selection of a minimum of three or four students from each present first-year section, with the remainder chosen on an at-large basis.

Simon said that there might be some change, but that he did not expect to make a definite decision until the beginning of the summer. He stressed that no decision would be made before upcoming final examinations.

He added that while he did not believe that there exists any discrimination in grading among sections, "I would not like to see a nine-seven-two-two distribution." During the last two years the distribution of the *Review* ed-

Dorm Council Asks UHS To Stock Contraceptives

The Dormitory Council last Monday called on the University Health Services to provide contraceptives to Law School students "at cost" and voted to rescind a proposed one-dollar increase in the price of activity cards.

The contraceptive resolution, which was introduced by Geoffry W. Oblath, 2L and which began by citing the "epidemic" incidence of venereal disease, called on the Health Services to provide birth control devices and drugs "to all individuals covered by the Harvard University health plans" and to distribute contraceptives for Law School students at the Law School Health Service clinic.

The birth control resolution, which was addressed to Deans Albert M. Sacks and William L. Bruce, Harvard President Derek C. Bok, Dr. Warren E. C. Wacker, Director of University Health

Services, and Dr. Leo M. Cass, Director of the Law School Health Services, asked the UHS to begin the program in September after a summer of preparatory studies and to provide full counseling services in the use and selection of contraceptives.

Monday's meeting was called on petition by Oblath and five other Council members. Oblath complained of poor notification for the previous Monday's meeting, at which the Council had voted to increase the activity card fees from three dollars to four, effective next year. According to Oblath, the Council "at least broke even and could have made upwards of \$1000 profits this year," thus making the price rise unnecessary.

The resolution, proposed by Andrew P. Geoghegan, 1L, as amended, maintains the price at three dollars for members of the Law School community, but increases it to five dollars for everyone else.

Council President T. Greg Bowe, 2L asked the Council's opinion on a number of possible solutions to the Harkness Commons' deficit problem informally proposed by Vice Dean Bruce, including closing down Harkness, putting in an all-vending machine operation, charging all dormitory residents approximately \$200 a year to counter the deficit, or charging a larger group of students approximately \$200 a year. The Council voted to recommend the appointment of a joint student-faculty committee to resolve the Harkness problem.

According to a Council member, Bowe reported that Bruce predicted a \$90,000 deficit for Harkness for this academic year. The Council member added that most Council members appeared to be opposed to the vending machine proposal, opposed to the \$200 charge, and in favor of opening the Harkness management contract to bidding by other caterers as well as Marriott.

Berger Hits Privilege 'Myth'

(Continued from Page 1)

that constitutionally Congress has the absolute right to determine who may invoke executive privilege before it and to apply arrest and contempt sanctions accordingly.

Though Edmisten and Califano, unlike Berger, believed that some applications of executive privilege are valid and necessary, all three disagreed strongly with President Nixon's expansive reading of the doctrine.

The colonists "weren't minded to exalt the governors over the assembly. . . . There is no evidence in any of the [Constitutional or state ratifying] conventions that the founding fathers intended to limit this power in any way. . . . The President was not looked at with religious awe, but with apprehension." The framers of the Constitution explicitly provided for impeachment procedures, thus implicitly recognizing the Congressional right of inquiry.

branches of government, thus forcing itself to turn to executive staff members for detailed information. "Congress has the power, as does the press, to deal with an overbearing executive."

Congress, Edmisten said in reply, "is at a stage right now where it will cease to be trampled upon." He rebuked the White House for the "abuse of executive orders" in place of legislation, which practice has been "greatly enhanced in this administration, by what I call arrogance. . . . On the executive privilege issue, we have a lack of manners."

Three Forum Panelists Disagree With Nixon's View of His Privilege

Berger, Califano, and Edmisten addressed a joint Board of Student Advisers — Harvard Law School Forum audience of approximately 150 last Thursday. Arthur Maass, Harvard professor of Government, served as moderator.

According to Berger, who is one of the nation's leading experts on the doctrine, the term "executive privilege" was not even used until 1958. "It really began to grow like Jack's Beanstalk in 1954." Berger then traced the history of the common law power of the legislature to question executive officers.

The legislative power of inquiry, said Berger, was originally derived from the power of impeachment, not the power of legislation; parliament or Congress can act "as the grand inquest of the nation."

Berger has made an extensive sampling of Parliamentary records from 1621 to 1742. "I found legislative oversight of administrative proceedings across the board. Foreign affairs, about which American precedents have drawn a shroud of secrecy, are not excepted. . . . The highest officers of the land responded to such inquiry without demurrer.

"The colonial assemblies," Berger continued, "laid claim to all the powers of the Parliament."

The only time the founders talked about secrecy was in reference to Congress.

"I deny a bootstrapping power of the President to create power by his own exertions," concluded Berger, who has recently testified before Senator Ervin's subcommittee.

Califano, now a member of the Washington law firm of Williams, Connolly & Califano, introduced himself as a "great American bootstrapper." He noted that "the issue is much more a practical one than a legal one. . . . I believe some kind of privileged discussion is essential if the President is to fulfill his constitutional role of governing the country."

Califano warned that "the issue of privilege will increase sharply because of the information problem and the way the executive branch is organized." He blamed Congress for allowing a fragmentation of effort in executive departments and agencies, citing the existence of 37 different departments and agencies dealing with the energy crisis.

He said this had forced the President to rely more on a centralized White House staff which was unresponsive to Congress. He also chided the legislature for allowing itself to become the most thinly staffed of the three

Edmisten, who is also Deputy Counsel to the Senate's Select Committee on Watergate, commented on former Attorney General Richard G. Kleindienst's statement that the President could constitutionally forbid any of the two and one-half million executive branch employees to testify before Congress: "How much absurdness can we have anywhere?"

"The Senate or [House]," Edmisten asserted, "has the absolute right to arrest a White House aide and try him for contempt if he refuses to respond to Congressional summons or testify before Congress."

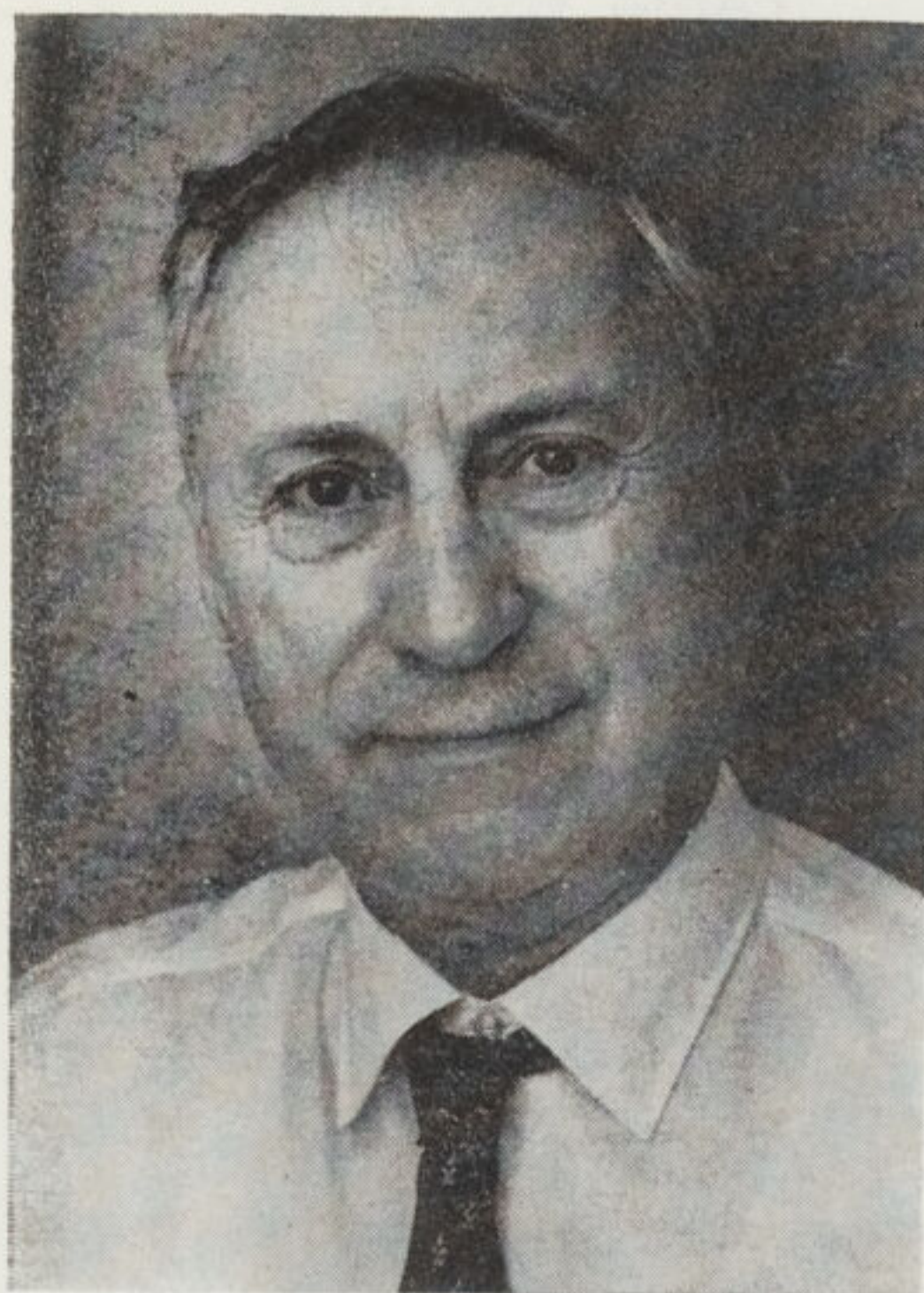
Under the current understanding with President Nixon, White House aides will first be invited to testify before Congress, and subpoenaed only as a last resort. "He will be able to invoke any privileges like any other person," said Edmisten, including executive privilege. "The committee will determine whether or not the privilege is well taken. . . . The Congress is in the driver's seat.

"Had we not had secrecy in this Watergate business up to now, the country wouldn't be in such a fix. We would not have been in as many global wars as we have been in. Secrecy," Edmisten concluded, "can cause our republic to topple."

Raoul Berger: A Privileged Fellow

By Mark C. Rutzick

Raoul Berger is the hottest property in town. The Charles Warren Senior Fellow in American Legal History at the Law School is the nation's foremost, and perhaps only, expert on the suddenly-dominant topic of executive privilege, and has just published a new book on the even



Charles Soberman
Raoul Berger

more suddenly-dominant topic of impeachment.

In addition he has recently written a lengthy law review article on limitations of the war powers of the President. He just completed testimony before Senator Sam J. Ervin's Select Committee on the Watergate case, and last week reached the pinnacle of success with a direct quote in *Time* magazine.

The 72-year old Berger is taking his newly-achieved fame with all the *élan* of one who began his career as a concert violinist and appeared with the Cleveland and Cincinnati Symphonies, and this is not at all surprising, for the Russian-born Northwestern Law School graduate did just that.

Berger's explanation for his prescient choice of subjects to study is that "I was looking for something that hadn't been hack-

neyed. The trouble with constitutional scholars is that they're too keyed into Supreme Court cases. I wanted to study something where there were no cases."

With that in mind, Berger turned in 1965 to the subject of executive privilege, while a visiting professor at the University of California at Berkeley. He produced a monograph on the subject that year, and then left it for other pursuits.

In 1971 he was called to Washington to testify on executive privilege before another of Senator Ervin's committees, on the basis of that article. Soon after that, he returned to the subject full-time and for the past 20 months has been at work on a book entitled *Executive Privilege: A Constitutional Myth*.

After three years at Berkeley, Berger returned East and came to the Law School in 1968 as a historical scholar. While here he completed two books, *Congress v. The Supreme Court* and *Impeachment: the Constitutional Problems*. The latter volume, though completed over three years ago, was only published this February.

Berger's thesis on the executive privilege doctrine is simply that it has no foundation whatever in history or the constitution. He has examined British Parliamentary records from 1621 to 1742 and found that Parliament had plenary power to investigate all matters concerning the government, and that there was no right for the Crown or the Prime Minister to withhold any information.

This Parliamentary power, he found, originated in Parliament's right of impeachment but soon spread to all other concerns. British history is important, Berger believes, because the British precedent was accepted for the American government by the Framers of the Constitution. Thus, he concludes, there is no right of executive privilege to

withhold information from Congress which is inherent in the concept of separation of powers.

The white-haired Berger, who served with the Securities and Exchange Commission, the Justice Department and the World War II Alien Property Custodian before beginning 16 years of private practice in Washington, D. C., sees several possible grounds for impeaching President Nixon. He says, "If Nixon knew of the Watergate cover-up, that might be misprision of a felony, which is an impeachable misdemeanor. But you don't need a crime for impeachment. Invading the prerogatives of Congress — which Nixon has done through impoundment of funds — is an impeachable act, and so is subverting the Constitution."

Berger, who received an LL. M. from the Law School in 1938, also looks to the judicial branch to resolve the current dispute between Congress and the President. "Where two branches are arguing over power, there's no political question, and the third branch should decide." He sees the function of the Supreme Court as being "to police Constitutional boundaries."

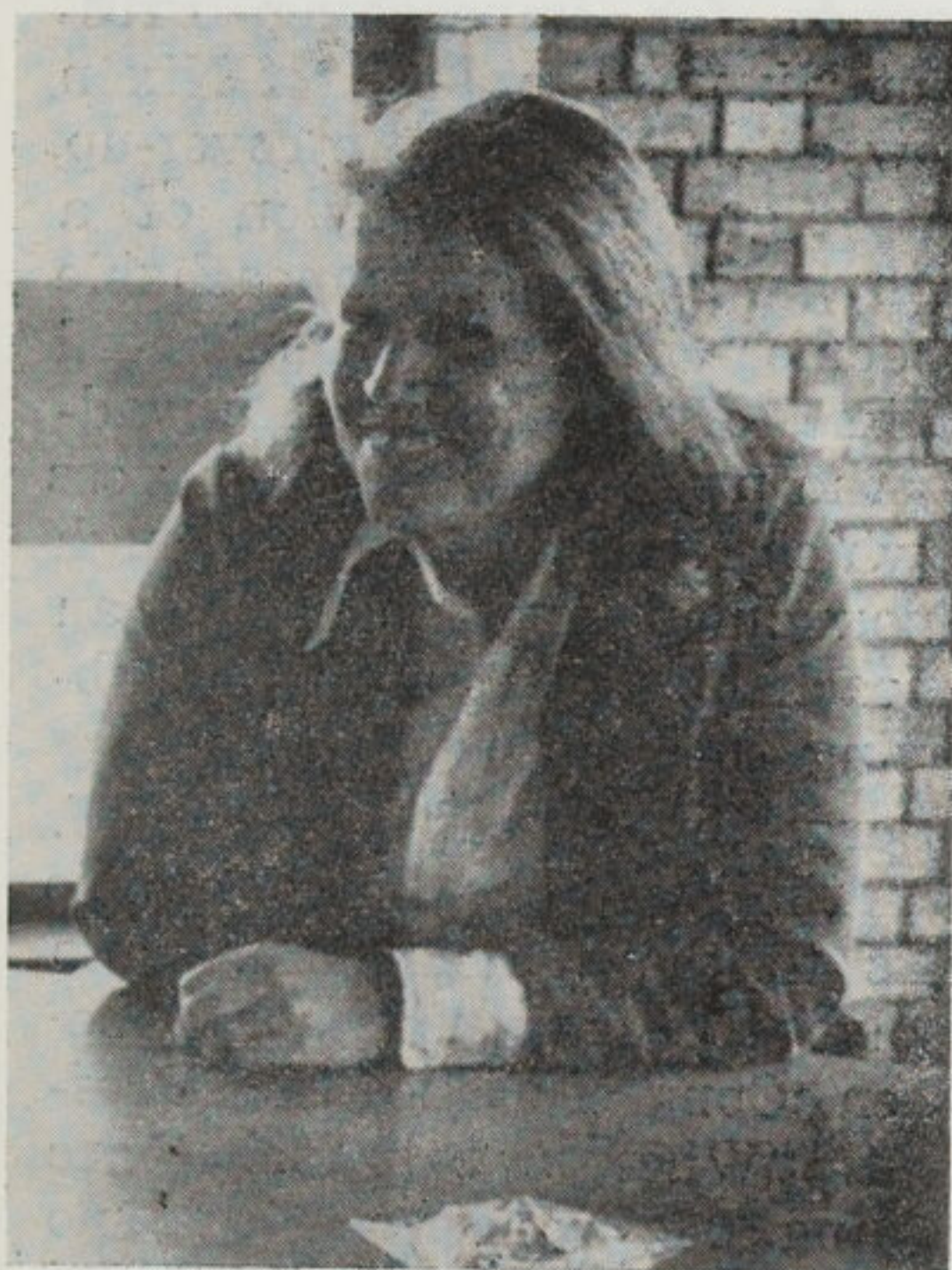
The former violinist, who studied music in New York and Berlin, admitted that a musical career was "my most passionate desire from earliest childhood. In my house our heroes were always musicians rather than hockey players." He turned to law at 26 after deciding that he would not make it to the "first range" as a violinist.

From Berger's historical perspective, the time of the framing of the U.S. Constitution has special significance. "Every country has a great creative period. For the Italians it was the Renaissance, and for the French the period of the Impressionist painters. In America our creativity was in the art of government. The men who wrote our constitution were geniuses."

Ackermann Looks At Cambridge Scene

By Kermit Kubitz

Cambridge Mayor Barbara Ackermann told a Women's Law Association luncheon last week that she felt the women's liberation movement had not made it possible for her to be mayor, but has "made me feel less guilty about it. I felt guilt about spending so



Charles Soberman

Mayor Barbara Ackermann

much time away from home, and I had felt guilty arguing with men."

Ackermann opened the discussion, attended by about 20 persons of both sexes, by acknowledging a desire to have had legal training. She did, however, express the opinion that the legal profession has its faults, mainly stemming from its emphasis on advocacy: "You tend to forget what's right," and, she continued, "You tend to go overboard."

The mayor explained that her position was primarily legislative and ceremonial because of Cambridge's city manager form of government. The mayor's power derives from her ex officio positions as chairman of the city council and school committee. The first-term incumbent noted, "The city manager does all the hiring and firing. The only person

we can hire and fire is the city manager."

Cambridge, she stated, has a per capita average income of between six and seven thousand dollars, a very low figure. The city has many pockets of elderly persons, wealthy persons, and people on welfare, she noted, resulting in a very heterogeneous community. Ackermann hopes to retain this diversity, but warned, "The people who are being squeezed out are the low to middle classes. They're the people finding it hard to rent an apartment, to find space."

Asked whether Cambridge would benefit or suffer under federal revenue sharing, Mayor Ackermann said, "We thought we were going to be worse off," but added that a recent increase in federal job training funds was good news. She felt that community development funding, however, would be lower than previous levels.

On the effectiveness of rent control, the mayor stated candidly that she thought rent control in Cambridge had started too late. She described the process of real estate speculation and rent escalation in the city as having begun about five years ago. She added, "It's caused by people like you who started moving out into the community and looking for apartments. Landlords found they could sell the properties for four

times what they were worth. And the person who owned it had mortgaged himself to that extent. Had we had rent control about six years ago I think we could have saved a lot of people who were forced out of Cambridge."

Ackermann: rent control came too late

Now, Ackermann continued, the government ought to be building low and moderate income housing. She referred to Harvard's plans to build young faculty housing on the Sachs estate but felt that this would not ease the pressure on Cambridge housing space. "Instead of Cambridge people," she warned, "you'll just have people moving in from Arlington and Lexington." The Sachs estate is a large wooded area west of Beacon Street on the Cambridge-Somerville border.

The mayor deplored the lack of women in administrative positions in local government, and described the paucity of women applicants for the job of city manager. She called her own career typical of many women; from college and a job in the publishing field, "I got married and raised a family and joined the PTA and ran for school committee," she explained simply. "I think women in my generation were afraid of administrative jobs."

Asked about campaigning for office, she replied, "The important thing is to take it seriously, find out how you campaign, and don't take anything less." On the question of being a woman politician, Ackermann, who is beginning a campaign for a second term, stated, "My sex has been an asset. Shirley Chisholm says her sex has been a detriment, but I've been the token woman in many situations." Her colleagues, she explained, "say its OK to have one."

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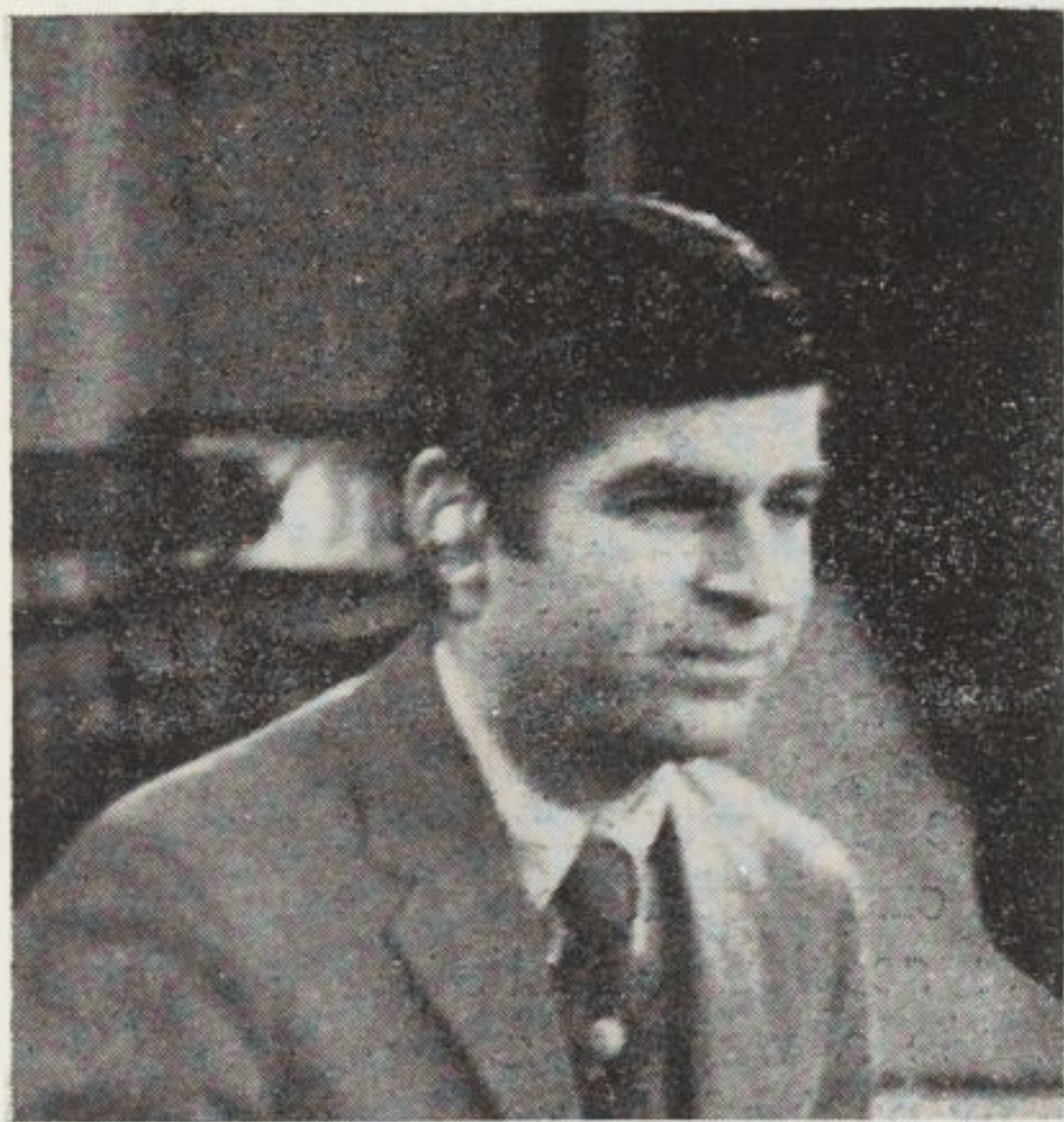
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Dukakis Asks Primary Support

By David J. Cocke

Massachusetts gubernatorial candidate Michael J. Dukakis '60 told a sparse Monday night crowd that he intended to run in the Democratic primary next year whatever his vote in the pre-primary convention. "I expect to win," he said.

Speaking at a gathering sponsored by the HLS Democratic Club and attended by students from various Boston area colleges, Dukakis said he could not accept a "closed convention sys-



Michael J. Dukakis '60

tem as binding, since broad-based public participation is eliminated." On the other hand, he said, a completely open primary would "fragment" the party and leave the Democrats divided "just like New York."

"My solution would be to use the Connecticut system of allowing all candidates who get at least 20 per cent of the vote at a convention to run in the primary. This is an effective way to narrow the field," he said.

Dukakis, a youthful but experienced politician (10 years in the Massachusetts House, Democratic nominee for lieutenant governor in 1970), spoke informally to a highly partisan gathering and was briefly interrupted by President Nixon's "Watergate" speech, broadcast to the audience by a portable television in the

Langdell North Middle lecture hall.

The candidate said he planned to run a campaign based on a large number of "full-time volunteer organizers," perhaps as many as 10,000, who would begin canvassing the state this fall.

Dukakis, who is best known to the Massachusetts voter as the suave, unruffled host of the popular "Advocates" television program, indicated that the main issue of the 1974 campaign will be the fact that the administration of Governor Francis W. Sargent has "run out of gas." "The great Massachusetts paradox," he said, "is that this state, with all its intelligent manpower, has a state-house which is less than mediocre."

The Sargent administration, he said, had made some progress in the beginning of its term. "At one point, if I proposed something, 14 months later the governor would adopt it. Even that hasn't happened lately." In making this statement the young Democrat was alluding to the fact that he was one of the Commonwealth's leading advocates of no-fault insurance, a system finally adopted during Sargent's term of office.

Some of the other issues of the campaign, he said, would be the "crazy corporate tax structure" and a serious unemployment problem.

Dukakis' leading Democratic opponent at the moment is the State attorney general, Robert H. Quinn. He refused to talk about his pre-primary opposition, however, saying that attacking a fellow Democrat "is not my style; it doesn't work; and if I were to win the nomination it would make it all the harder to win the election."

Even the Governor came in for some praise. "I like him. The people like him. He was even a witness for me on the highway trust fund debate on the Advocates program. I coached him, and he did a great job."

Record Chooses Daniel Taubman As New Editor

Once again a city boy has been named editor of the RECORD. Brooklyn-born Daniel M. Taubman, 2L was chosen Tuesday as Editor and President of the RECORD for the fall semester.

Taubman, who now resides in Baldwin, New York, is a former Senior Editor of *The Cornell Daily Sun*, and will follow the tradition of former RECORD editor Richard B. Hoffman, '71, who was also an editor of the *Sun*.

Replacing Taubman in the post of Editorial Manager will be Kermit R. Kubitz, 2L of Janesville, Wisconsin. Kubitz, who has served the RECORD in an editorial capacity since 1971, is a former reporter for the *California Tech* of the California Institute of Technology. He spends his idle hours now writing book reviews for the *HarBus News*.

After three semesters as Business Manager, graduating 3L Terry S. Coleman will step down in favor of Kenneth D. Nyman, 1L, of Casa Grande, Arizona. Nyman, a 1970 graduate in political science from the University of Idaho, was the Associate Editor of the *Intermountain Economic Review* while a graduate student at UI.

Also new at an editorial position will be Mark S. McNeil, 2L, who will develop the role of Photography Editor. He replaces Charles A. Soberman, 3L, who has been Photography Editor for a record three years.

Continuing as editors will be Gary L. Rubin, 1L, a former managing editor of *The Cornell Daily Sun*, who will be News Editor; Robert G. Flanders, 2L, who will continue as Arts Editor; and former RECORD Editor Paul J. Weiner, who will remain a Senior Editor.

Faculty Set to Debate Cohen Report

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time to think about why they are here."

The cover letter for the report mentions that Professors Vern Countryman and Andrew L. Kaufman, also members of the committee, "will make clear the extent to which they disagree with the report."

Kaufman's dissent, distributed with the committee's report, indicated that he agreed with recommendations dealing with improvement of the educational content of the curriculum by providing first-year students with more evaluation of their work. However, he disagreed with the grading system proposed for the first term of first year because, "while some students will not perform at or near their maximum potential as soon as others — indeed, some will not until after law school — most should be able to do so by the end of their first term."

Kaufman found support for this conclusion in the lack of any substantial difference in quality between January examinations in *Criminal Law* and *Torts* and previous June examinations.

Further, Kaufman felt that a full schedule of exams in January rather than the present two would not allow students to focus on the larger number of courses successfully. The potential necessity for four make-up examinations also seemed onerous to Kaufman.

Professor Vern Countryman issued an even more strongly worded dissent, in which the only committee recommendations that he favored were elimination of the current pass-fail and four category options.

Noting that in a response to a recent poll, 30% did not respond, 26% opposed pass-fail, and 44% favored pass-fail, Countryman concluded that the committee's views, "were shared by only a minority of the current first-year

class." Countryman found the committee report to be, "an uneasy compromise between two minority views."

Commenting caustically on the reliance on nine-category grading for feedback from January exams without recording these grades on the transcript, Countryman stated, "It is not enough that they control who has access to the record — they must be freed also of the embarrassment of anyone asking for access to the record."

The report itself mentions that "some members of the Committee felt that distinguished performance, even at an early stage, should be so recognized. In the end, however, we were persuaded that the advantages of a 'distinguished-satisfactory-fail' system would be outweighed by the extent to which such a system might undermine the possibility of testing our hope that reducing competitive pressures and 'grade orientation' in the early months of life at the Law School may make substantial contributions to the quality of first-year education."

Cohen felt that the recommendations were not an all-or-nothing proposition. "If the faculty rejects the pass-fail aspects of the first semester," Cohen commented, "we would certainly hope to have the recommendations for practice exams and more feedback still implemented."

An important independent occurrence necessary for full implementation of the committee's recommendations is movement of 2L hiring to the spring semester. Cohen felt that the question here was, "Should we do it only if the other law schools or some of the principal ones will agree?"

Dean Albert M. Sacks, who has been in communication with other law schools on this subject, said only, "I agree with the committee's recommendations as to the goal and I'm going to press to see whether we can resolve the prob-

lems presented. The most obvious of the problems is the question whether we would go ahead even if a substantial number of other schools don't agree. My sense of it is that at this point opinion is divided, but it's not final."

Cohen, asked what would follow faculty approval of the recommendations, said, "We'd call for implementation beginning in the fall."

Regardless of acceptance of the grading proposals, Cohen felt other recommendations could be adopted independently: "Another thing that's severable is the orientation proposal." He continued, "We do feel, regardless of system of grading, that we need more feedback."

For the purpose of computing grade averages, the second semester exams would be given a half year's weight.

The report also recommends that one instructor in each first-year section be allowed to substitute a written assignment for all or part of the course examination. Cohen said that the committee "felt it was desirable in the second semester that people who desire more legal writing get it."

The goal of increased feedback will impose an increased burden on first-year instructors, because, Cohen said, "we're calling upon all first-year teachers to do what some have done — practice exams, model answers, class discussion of exams. We may have to distribute the teaching load differently because three hours of teaching in the first year will be different from three hours in the second year."

"To some extent," Cohen said, "this must be considered a question of the difference between the kind of school where you expect faculty members to teach most of the week and a school where the faculty are to be scholars and engage in law reform."

Excerpts from Committee Proposals

Excerpts from the Report to the Faculty of the Committee on First-Year Evaluation and Related Matters:

Section 1. For purposes of examination . . . in the first semester . . . Contracts and Civil Procedure shall be treated as fall semester courses. "Fall semester courses," as the phrase is used in these recommendations, refers to Criminal Law, Torts, Contracts I, and Civil Procedure I, . . .

Section 2. In all fall semester courses, the instructor shall provide at least one practice examination question in early November. It shall be evaluated either by the instructor or by graders . . . encouraged to offer marginal comments in addition to any other evaluation. The instructor shall distribute a sample or model answer and shall discuss the question at a regular or extra session of the class devoted to that purpose.

Section 3. Subject to the provisions of section 4, a final examination shall be given in January in each fall semester course.

(a) The work of each student on the examination shall be evaluated by the instructor, on the basis of the nine category grading system or some other grading system that conveys substantially as much information about the overall quality of the student's work. That evaluation shall be conveyed to the student but shall not appear on the transcript.

(b) For purposes of the transcript, each January examination shall be graded as follows:

(i) Satisfactory work shall be graded "satisfactory."

(ii) Unsatisfactory work shall receive no grade, but the student shall be notified that, to maintain satisfactory academic standing, he or she must take a reexamination in that subject during the second semester. Work which on the nine category scale would have received a "D" or an "F" shall be considered unsatisfactory work for purposes of this paragraph . . . Reexaminations should be held in mid-March. . . .

(iv) If a reexamination results in a performance of "D" or better,

the student shall receive a grade of "satisfactory," and the transcript shall not indicate the previous performance. If on the reexamination the student receives an "F", that grade shall be recorded on the transcript.

Section 4. One instructor in each first-semester section may substitute a paper for part or all of the January examination in his or her course, so long as the total effort demanded of the student is substantially equivalent to that required in other first-semester courses.

Section 5. The first-year second-semester examinations shall cover Property, the second half of Procedure and Contracts (to be known as Procedure II and Contracts II, respectively) and elective courses. Examinations in all second semester courses shall be evaluated as follows: . . .

(c) Students who so elect shall have the right, as at present, to have their grades recorded on a "Pass-Fail basis" at the end of the first year. However, during the spring of the second year, at the same time or shortly after second-year fall term grades are recorded, the first-year second semester grades of these students shall be recorded on the transcript according to the regular nine category scale. . . .

(f) The Faculty should express its sense that the facilities of the Law School Placement Office should not become available for second-year summer job interviews until second-year fall semester grades are recorded. When this postponement has been accomplished, the existing rule prohibiting potential employers from inquiring about grades should be abolished. . . .

Section 6. Every effort shall be made to utilize the absence of recorded grades and competitive pressures in the first semester to meet two needs that we believe are now present in our first year:

(a) The need of students to be introduced to the variety of professional lives available to them and the satisfactions each offers.

(b) The need of students to formulate an appreciation of law as a subject of intellectual interest and to

learn the importance and the satisfaction of continued study throughout a legal career.

Excerpts of Comments

Many of the concerns about the Harvard Law School we have heard and we have discussed have only a speculative relationship to the grading system; they relate also and more obviously to matters such as the size of the school, the faculty-student ratio, the relationship of the school to the profession, etc . . . Some students, while having the same motivation and ability as their fellows, by reason of temperament or background may require a period of practice and adjustment to attain their full potential as law students. It is, therefore, unfair and inaccurate to make a student's early efforts a permanent, indeed a most significant part of his or her overall record. It is particularly unfortunate to make a student's first seriously evaluated exercise at the law school a permanent part of the record on a par with all subsequent work. . . .

We believe mastery of first-year fundamentals is an important and significant step in the development of a lawyer; and that evaluation of that mastery at the end of the first year is a fair and significant part (though only a part) of the over-all evaluation that should be made. We thus recommend that spring semester first-year grades eventually be recorded for all students in the normal manner. . . .

Because three years of law school represent for the student a major transition from general education to a career commitment, we believe that the Law School's responsibility to its students is twofold: to prepare them to be excellent lawyers, and to introduce them intellectually and emotionally to the range of possibilities presented by law as a profession and as a subject for intellectual pursuit. For the large number of entering students who lack a sufficiently rich conception of what a legal education means for them and what law means for the society, a carefully designed program of meetings, discussions, and lectures could serve both to relieve a major source of anxiety and to provide an informed basis for the many choices students must inevitably make while here. . . .

Cohen Report: A Nice Try

Professor Jerome A. Cohen's Committee on First-Year Evaluation and Related Matters has, after eight months of serious deliberation, completed its recommendations for changes in the first-year grading system. The committee has confronted the basic paradox which exists in the demands for changes. On the one hand there is pressure from many students for increased evaluation of their law school performance; on the other there is an insistent demand for less competitive pressure among students, especially in the first year. Yet when evaluation is comparable, it generates competition; and the most convenient way to lower pressure is to eliminate evaluation. It is the fine line between these contradictory problems which the Cohen Committee has attempted to walk.

Initially, great credit must be given the committee for having perceived and attempted to resolve these conflicts. However, the general impression from students is that the report has pleased neither those who favor a pass/fail system nor those who regard the present system as satisfactory.

To those who favor a pass/fail system, the proposal to transform first semester exams into a pass/fail basis and then grade June exams on the nine-category basis appears only to put more pressure on students to perform well in June, and to put increased emphasis on the four June grades, since the present two January grades are eliminated. And though the committee seeks to move second-year interviewing to the spring to provide the third semester's grades as an added base of evaluation, such a move is no more than problematic for external reasons, and at best would provide only one or two more grades than 2Ls currently have for fall interviewing. In addition, since students would receive their first semester grades in traditional nine-category form, there would be considerable incentive for students voluntarily to reveal those grades to interviewers, thus defeating the purpose of making them less important.

For those who regard grades as important and meaningful both for the law school experience and for the interviewing process, the recommendation to eliminate formal grades for the first semester is unacceptable. To the extent that grades are deemphasized as a mode of evaluation, and other subjective methods are introduced in their place, the interviewing process is threatened with invidious discrimination. To the extent that grades constitute a motivation for study, and a reward for this study, to deny them to students wanting them seems coercive and unfair.

Thus, sadly, the committee in its effort to please everyone has in effect pleased no one, at least among students. But the faculty should not exclude the possibility of adopting those sections of the report about which students are in agreement. These include most prominently the suggestion to broaden evaluation in quality and quantity. All students agree that this action is necessary and desirable.

HARVARD LAW RECORD

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Fenno

Fenno stood up and walked to the window in his room. How many times had he done this, he wondered. The sunlight glowed incandescently, painting the quad with golden brilliance and Fenno knew that summer was coming. The signs were clear. The sale of Gilbert's was skyrocketing. The bulletin boards were matted with the advertising of SUB-LETS, considerable activity over a baby hero sandwich, Fenno thought. But mostly he wondered how everybody would remember this past year. Fenno sighed.

Most probably, he thought, they would remember this as the year that Professor Bator cancelled his lifetime subscription to the Harvard Law RECORD. This was surely the year that Dean Sacks realized, under fire, that he must treat each HLS woman as "one of the boys."

Yes, it was 1973 when, in a masterpiece of creativity, Harvard Law Wives became Harvard Law Community Association, having then to beat back a stampeding onslaught of "non-wives" clamoring for membership. That left only the Women's Law Association to carry the banner for sexist-named organizations on campus.

Fenno turned and slumped into his chair. Another sigh. This was the year that the RECORD's Book Reviewer was asked by the Alumni to review "How to Win Friends and Influence People." And this year that notorious scandal sheet stepped on so many toes it received a "thank you" note from the Association of Podiatrists.

Fenno stretched vigorously then poured himself a cup of coffee and sipped quietly. Yes, he thought, this year the Law School show gave new meaning to the words "avarice," "subtlety," and "damnation." It was also the year that 1Ls experienced the "law school blues" in January and wished that the pass-fail support of earlier classes had been heeded.

This year Hollywood descended upon HLS as the "Paper Chase" put out a call for bit-part "hams." The entire school was appalled at the producer's lack of surprise at the overwhelming turnout.

Fenno opened his casebook, read a paragraph, sighed, and shut it gently. He closed his eyes and a faint smile slipped softly across his face. He knew that, in one sense, everybody would look upon this year the same way. To all, 1973 would be a memory.

Letters to the Editor of the RECORD

A Frank Reply

To the Editor:

Evaluation of food is naturally subjective, but in defense of our establishment, we should like to present some "substantive" facts regarding "The Underdog". "The Underdog" uses Hebrew National frankfurters imported from New York, and encases these franks in a kosher egg roll. It supplies unlimited quantities of mustards, relishes, and sauerkraut. It carries not only franks, but Hebrew National Pastromi, salami and a variety of other sandwiches.

We have had superior ratings from **Boston Magazine**, the **Harvard Independent**, and **Cheap Eats**, the Harvard GSA guide to dining.

Hot dogs may not inspire your galloping gourmet but to loyal "Underdoggers" we're providing not only a restaurant, but a public service.

Rhoda Shapiro,
Dan Shapiro, 1L,
The Underdog, Inc.

Propriety Breached

To the Editor:

It is most unfortunate that the RECORD showed such eminent bad form in publishing, in the April 27, 1973 issue, comments of Associate Dean Paul M. Bator made in informal discussion at a gathering of the Learned Hand Club. Club luncheons (which are social affairs) are not open to the public nor the Law School community generally, and the discourse therein is understood to be private and not for the press.

You state in your rather defensive editorial in the same issue that "...the RECORD showed such eminent bad the wishes of the faculty to preserve some forums for private, off-the-record discussion." The faculty guests of the Learned Hand Club have not heretofore felt compelled to demand off-the-record status before conversing with Club members at our luncheons. It has been taken for granted that such was the case. Now a sense of propriety has been breached, and it is foreseeable that faculty members (and others in the legal community) will be reluctant to talk with us concerning Law School affairs should they risk imminent publication of their comments.

I would have thought the RECORD would have adhered to a higher stand-

ard of journalism than to print the hearsay you headlined in the last issue. The Learned Hand Club expects that such transgressions will not occur in the future.

John A. Entenman, 3L
President, Learned Hand Club

Current Ethics

To the Editor:

The RECORD's report on the Black Alumni meeting quotes a statement by Clarence C. Ferguson Jr., former Howard University Law School Dean, that "charges of unethical practices were more common against black lawyers than whites." Your reporter left out, for some reason, Ferguson's explanation for this fact. Ferguson noted that when young black lawyers use some of the tactics common among their white peers, law enforcers and hypocritical ethics committees often single out the blacks for punishment while continuing to ignore, and sometimes tacitly to encourage, the identical behavior when engaged in by whites.

Law students, Ferguson suggested, should urge the schools they attend to provide increased instruction in legal ethics, so that all graduates, when entering into practice, can have useful guides to the shifting and treacherous currents of ethical right and wrong.

Steven Morris, 1L

Small Campus

To the Editor:

Though the RECORD's editorial [On and Off the Record, April 27, 1973] attempts to balance off-the-record forums and journalism, it in fact does so by balancing *non-sequiturs*. . . "Off the record" speeches are tentative discussions, a necessary process which can only suffer from being galvanized without nuance or inflection into cast-iron policy. . .

Finally, ringing statements of the press's freedom and the public's right to information seem more pertinent to a massive daily and surreptitious government, than to the small campus here. I suppose, however, that that is the fact which bothers the RECORD.

John L. Clifford, 1L

Law Notes

Twelve men and women will begin a year of study in September 1973, as the Law School's first **Fellows in Law and Humanities**. The Fellows will receive tuition and a \$13,500 yearly stipend.

Announcement of the awards was made by Professor Roger D. Fisher, director of the program funded by the National Endowment for the Humanities. The Fellows are: Lewis M. Collens, Associate Professor, Chicago-Kent College of Law, Chicago; Stuart L. Deutsch, Assistant Professor, The University of Santa Clara School of Law, Santa Clara, Calif; C. Ronald Ellington, Assistant Dean and Associate Professor, University of Georgia School of Law, Athens, Ga.; Jaime B. Fuster, Associate Dean and Associate Professor, University of Puerto Rico Law School, Rio Piedras, P.R.; Kenney F. Hegland, Assistant Professor, University of Arizona College of Law, Tucson, Ariz.; Donald H. J. Hermann, Associate Professor, DePaul University College of Law, Chicago.

Stephen E. Kalish, Assistant Professor, University of Nebraska College of Law, Lincoln, Neb.; Drew L. Kershner, Assistant Professor, University of Oklahoma College of Law, Norman, Okla.; Judith S. Koffler, Law Clerk to Associate Justice Louis Shapiro, Supreme Court of Connecticut, Hartford, Conn.; Cynthia C. Lichtenstein, Assistant Professor, Boston College Law School; Thomas M. Lockney, Assistant Professor, University of North Dakota, School of Law, Grand Forks, N.D.; and Michael S. Moore, Associate Professor, University of Kansas School of Law, Lawrence, Kansas.

* * *

Commencement this year is **June 14**. Applications for tickets to the morning ceremony in the Yard are due at the Langdell Receptionist's desk by May 8; the ticket supply is limited and tickets should be picked up in person.

After the formal Commencement ceremony, a Law School luncheon will be held on the Holmes Field in front of Langdell Hall; immediately after the luncheon, Law School degrees will be awarded. Tickets for the luncheon, at \$2.25 each, must be purchased by June 11, also at the Langdell Receptionist.

The Board of Student Advisers is sponsoring a free party for all Law Students, spouses, and friends today at 8:30 p.m. in the Harkness Commons. A live band, Enuma Elish and the Melanisian Mortals, will perform.

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Directors' Responsibility

Are directors responsible for the management of a corporation? Or are they merely character witnesses for the management that selects them? The two roles are incompatible.

Few managements want an independent active board. Such a board could become a major consumer of time. Unless the board is unusually able, it can become an inhibitor of creativity and imagination. A board is a committee. Committees are notorious for collectively representing the lowest common denominator of their ability as individuals.

Yet the law holds directors responsible as individuals for the management of the company and all the actions of the company.

Most boards are too large to be effective in policy formulation or even surveillance. The executive committee is usually the real board if there is an effective board.

Outside directors are usually highly respected and prominent people who have great status because of their responsibilities. Their other responsibilities give them status but also prevent their board activity from being more than a cursory surveillance. As a consequence, their board membership is not functional. It is a role as a character witness.

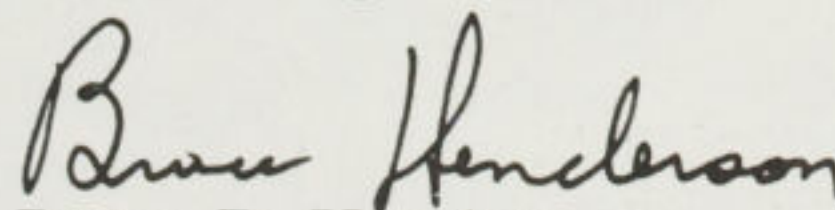
Inside directors are spokesmen for the incumbent management. Otherwise, they would not be both board members and employees. For them, board membership is an honor. But for them management policies are defended at the board, not formulated at the board. Their board role is passive at best. Their only influence is indirect through the internal chain of command and the chief executive.

The size of most boards is a measure of their ineffectiveness. The larger they are, the less they know or can do. Even the Supreme Court has only nine members as a maximum. Anything larger has the worst attributes of a committee. Real initiative from a large board is an unrealistic expectation. Large boards are necessarily either negative or passive.

The responsibilities of directors under the law are grave indeed. The willingness of able men to assume the responsibilities of directorship with only superficial knowledge of company affairs is a tribute to the integrity and quality of management in general. In specific cases, the results are occasionally regrettable, of course.

- Active working boards need no more than seven to nine members.
- Inside directors are completely unnecessary. Members of management are always at the service of the board.
- Outside directors must be able to devote the time to be personally familiar with management policies and personnel and the reasons for them.
- The time and services of able and experienced men are worthy of their hire. They should be compensated in proportion to their value. Per hour they should be worth as much as the chief executive officer.
- An active board should be elected for a specific term and a predetermined limited maximum term.

The lack of an effective, strong outside board is one reason few companies maintain their momentum through successive generations of management.


Bruce D. Henderson

Perspective #120

BOSTON • LONDON • MILAN • PARIS • TOKYO

Maids End Service at Law School



Charles Soberman

Katherine Lee, Delia Walsh, Gertrude Burke, Eleanor Fitzgerald, Prudence Marks, Ann Donnellen, Lillian Guthrie, and Mary Donnellen after a recent day's work.

More than 120 years of experience will be lost to the Law School with the ending of maid service and the retirement or transfer of the 12 maids serving the law school dormitories at the end of this semester.

As a result of budget cuts, maid service will not be provided next year. In the past, there were as many as 40 maids in the graduate dormitories, said Mrs. Eleanor Fitzgerald, acting crew chief. But the Graduate School of Arts and Sciences abolished maid service several years ago, and in recent years, the practice of making beds by maids was abolished. Next year, students will be expected to maintain their own rooms with equipment available from the caretaking service.

The maid with the longest ser-

vice who will be affected is Mrs. Lillian Guthrie, who worked in the student dormitories near Harkness Commons. Guthrie has received a Harvard chair for 25 years of service, and will have completed 27 years of work before retiring. Also retiring will be Mrs. Gertrude Burke, Mrs. Mary Donnellen, and Mrs. Ruth Kane.

Other maids who will continue to work are Katherine Lee, Ann Donnellen, Delia Walsh, Lucie Blouin, Elizabeth Messina, Mary Wessels, Marie Igo, and Prudence Marks. They will probably be transferred to other areas of the University.

Said Fitzgerald, "Those who are here and still working will

miss the Law School. They all enjoyed working. The maids worked a 24 1/2 hour week, from 9:00 a.m. to 2:00 p.m. every day except Friday, when they finish at 1:30 p.m.

Each of the maids has an area in which she usually has worked, and remembers her customary areas. One mentioned her years around Story Four: "Story Four celebrated everything. You would think, 'Those guys are never going to make it', but they were never the worse for wear."

Another remembered "when the beer cans used to roll down the stories in Shaw, and the newspapers piled up on the window sill from September 15th to June 15th."

Another reported, "The students are very interested to know what's going to happen to the maids after they leave. One student said he hopes they keep them around because they're a change from the law."

Fitzgerald, commenting on the future, said, "Some students keep things up better than others. When they know someone will come in they tend to keep things up. You know, 'Here comes the maid, I'd better pick up my socks.'"

The consensus of those to whom the RECORD talked was expressed by Mrs. Delia Walsh: "We made a lot of friends among the students and we'll miss them."

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Paula Gold Visits HLS, Reviews Judgeship Try

By Daniel M. Taubman

Paula Gold, the youngest woman ever nominated for a judgeship in Massachusetts, and the youngest woman ever turned down for a judgeship in Massachusetts—discussed her recent experiences Tuesday before a group of about 30 law students in a talk sponsored by the Women's Law Association.

Gold, who graduated from Boston University Law School in 1967, said she was one of 20 lawyers given a superior rating from among more than 500 candidates for Massachusetts judgeships which became vacant when Commonwealth voters last November approved a measure calling for mandatory retirement of judges at age 70.

Gold said that because of her experience working in Dorchester and because of her involvement in much complex litigation, she was chosen over many other lawyers with more experience. Gold has worked actively during the past five years as an anti-poverty lawyer with the Boston Legal Assistance Project (BLAP).

Despite the high rating by an ad hoc committee chosen by Governor Francis W. Sargent, subsequent endorsement by a joint committee of the Boston and Massachusetts Bar Associations, and support by an ad hoc community organization in Dorchester, where she works, Gold was rejected not once but twice, in her bid to become a judge of the Dorchester District Court.

During her remarks, Gold explained what she felt were the real and alleged reasons for the rejection of her nomination. The real reason, she maintained, was opposition by a Dorchester representative on the Governor's Council, Patrick J. McDonough,

and his association with Judge Jerome Troy, who is the defendant in a pending suit by another BLAP lawyer.

Gold said that another reason for her rejection was the resistance of some members of the Governor's Council to the fact that she was a young woman with two young children. She also suggested that she might have been confirmed if she were of Irish descent.

She disagreed with the contention that opposition to her nomination by the National Association for the Advancement of Colored People was a decisive factor. She pointed out that the NAACP recommended that she be nominated to a judgeship in another district, but that the group had strongly favored a black judge in Dorchester. Gold added, however, that she had received significant support from black residents in Dorchester.

A director of the National Consumer Law Center, Gold said that one alleged reason for her nonconfirmation was her lack of criminal experience. She denied the allegation, stating that "if the criterion of criminal experience had been used, the majority of judges would not have been confirmed."

Professors Aid Farm Workers With Donations

Over twenty Harvard Law School faculty members have donated or pledged money for a dinner and fund raising event to be held tomorrow on behalf of the United Farm Workers. The function, originated by a group of concerned law students and headed by Beverly Lucero, wife of Chris Lucero, 2L has netted almost \$500 in donations from the HLS faculty.

The dinner will be held in conjunction with the Mexican holiday of Cinco de Mayo.

Ms. Lucero said there was a highly successful response and indicated that all tickets to the festive Mexican dinner have been sold. Among those contributing, she said, were: Professors Alan A. Stone, Louis L. Jaffe, William L. Bruce, Vern Countryman, Laurence H. Tribe, Stephen M. Bernardi, Lance M. Liebman, Frank I. Michelman, Richard B. Stewart, Frank E. A. Sander.

Also donating were: Professors Abram J. Chayes, Lloyd L. Weinreb, Stanley S. Surrey, Paul M. Bator, Richard H. Field, Oliver Oldman.

Other instructors contributing were: Michael D. Rosenberg, Karen S. Metzger, and Lewis D. Sargentich.

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Belfrage Recalls McCarthy's Anti-Communist Hearings

By Daniel M. Taubman

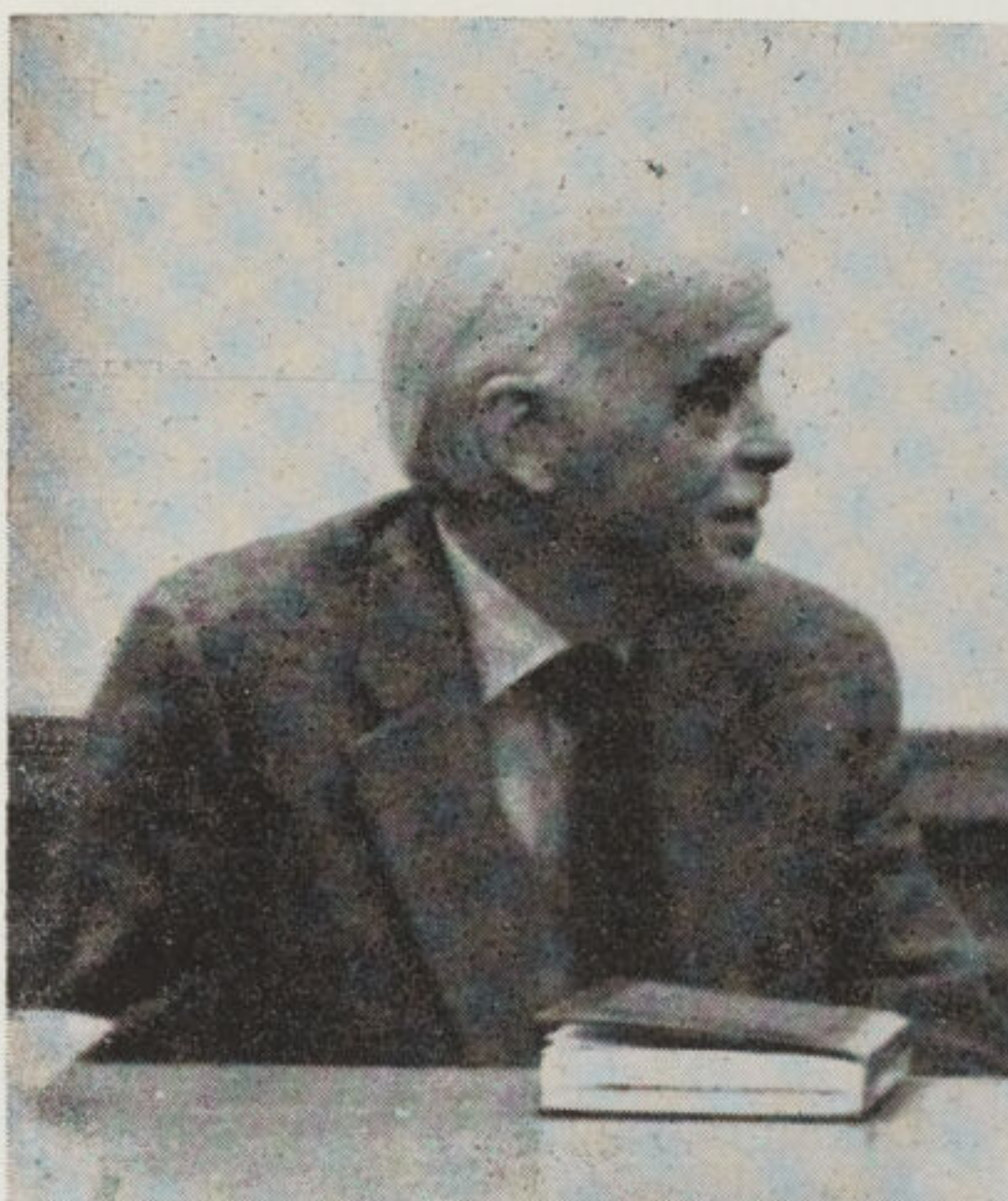
A British-born journalist who was deported from the United States in 1955 after being investigated by the McCarthy Senate Committee discussed his impressions of the American political climate then and now at a lecture last Friday sponsored by the Harvard Law School Forum and attended by about 30 people.

The journalist, Cedric Belfrage, is presently in the United States for 30 days to discuss his latest book, *The American Inquisition*, which deals with the McCarthy era and its effect on ordinary Americans. He is now living in Mexico with his American-born wife.

Belfrage, who is 68, stated that it had taken him two months to get a visa, and that he was able to obtain it in part because of the invitation to speak at Harvard Law School and in part because of intervention on his behalf by some 40 United States Senators and Representatives.

"The young generation of today knows almost nothing of what went on in that period," Belfrage, a co-founder of the *National Guardian* newsweekly, said.

The self-confessed "unrepentant socialist" remarked, "My presence here alone shows the radical change in your world.



Mark McNeil

Cedric Belfrage

Before 1960 I wouldn't be allowed to open a hot dog stand in the United States."

Recalling his appearances in 1953 before the House Committee on Un-American Activities and the McCarthy Senate Committee on charges of being a Communist, Belfrage commented, "Most of us invoked the fifth amendment after the first amendment was declared invalid in the Hollywood Ten case. This led us to be called fifth amendment communists."

Belfrage added that "thoughts rather than actions were the source of danger and the word 'inquisition' was entirely apt."

Later, in response to a question, he compared the American inquisition — the McCarthy era — with the fifteenth century Spanish Inquisition.

Belfrage had been accused, he said, "of everything from spying for Russia to incest." He said he was ostensibly deported because two informers testified that he had been a Communist 17 years before. However, he said the real reason he was deported was his position with the *National Guardian*, which he described as "the first United States paper friendly to the Communists but not controlled by them."

The outspoken social critic concluded his formal remarks by calling for an end to the American policy of exclusion of aliens on political grounds, or alternatively, a set of narrow rules for their deportation.

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Kennedy Pulls Law Review Piece

(Continued from Page 1)

adjourns, prevents its passage into law.

Kennedy is the attorney and plaintiff in a suit in the U.S. District Court for the District of Columbia challenging a pocket veto by President Nixon of the Family Practice of Medicine Act passed by Congress in December 1970. The case has been argued and a decision in it is pending and expected soon.

The request to withdraw the article came Tuesday, April 24 after members of Kennedy's staff discovered that the publication of the piece by Kennedy while he was the attorney in a pending case might constitute improper external pressure upon the judge deciding the case. While it was not believed that a violation of a current canon of ethics was involved, there was concern that a proposed canon currently being considered might forbid such a publication. Richard Drayne, Kennedy's press secretary in Washington, told the RECORD, "There was really no specific provision in the canons which we

were worried about. It was just a general fear of improper outside publicity."

At the time of the request, the March issue of the *Review* had been printed and was awaiting stitching as its final step before distribution. Because of the *Review's* printing process, the entire 10,000-issue run had to be destroyed and reprinted with the 26-page Kennedy article omitted and much of the rest of the issue relaid and renumbered. The *Review* is printed at the Harvard University printing office.

However, much of the issue did not require resetting and the costs of the second run were considerably below those for an initial press run. While the exact cost could not yet be determined, it was learned that it may run to over \$2500 and possibly twice that much. It has not yet been decided whether Kennedy or the *Review* will bear the expense. According to Drayne, however, an agreement has been reached in principle between Kennedy and the *Review* to split the costs in-

involved. He said the proportion of the expense to be paid by each party has not yet been agreed upon.

As a result of the delay caused by the necessity to reprint the entire run, the March issue of the *Review*, which would have been out by April 27, may not be distributed until as late as May 15. However, printing of the April and May issues, which were close to completion, will not be delayed and they are expected to be distributed in the near future.

Should the case in which Kennedy appeared be decided soon, it would be possible for the article to appear in a later issue of the *Review*. But if the case is appealed to the Court of Appeals, the same ethical restrictions would apply until the appeal were decided. The decision to run the article in the future would be up to the President of the *Review*. No decision has yet been made on that possibility.

Drayne also said that it is possible to obtain a ruling from the American Bar Association that a publication does not violate ethical standards, but that no decision had been made by Kennedy to seek such a ruling.

At Gannett House, the last minute withdrawal and reprinting were described as "unprecedented," and were known to have caused considerable confusion and chaos.

Kennedy graduated from the University of Virginia Law School in 1958.

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