

HARVARD LAW RECORD

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TWENTY CENTS

Law Review Names Staff Members; Competition Begins

By Gary L. Rubin

Another year's crop of student stalwarts has entered the sanctum of the *Harvard Law Review*, while 16 others are now embarked on the second phase of the *Review's* annual writing competition.

Second-year students invited to join the *Review* on the basis of their first-year grades include, by 1L section number:

—Section I: Daniel P. Cunningham, William R. Galeota Jr., Todd D. Rakoff, Faith I. Shapiro, Phillip L. Spector, and Rogih Yazgi;

(Continued on Page 2)

P/F Grading Abolished By Law Faculty Vote

By Daniel M. Taubman

For the first time since 1968, all first-year students will receive grades on the nine category grade scale in the normal way, with no option to receive pass/fail grades in any courses.

The curricular change was approved by the faculty last May 31st at the fourth and final lengthy meeting at which the proposals for grading reform of the Committee on the First Year and Related Mat-

ters were vigorously debated by the faculty.

The first-year committee, chaired by Professor Jerome A. Cohen, recommended the adoption of a modified pass/fail system for first-year fall semester courses: *Torts*, *Criminal Law*, *Contracts I* and *Civil Procedure I*, and reexaminations of students who received a "D" or an "F" on the above examinations. The committee had also recommended other reforms dealing with other aspects of the first year, both educational and social, including abolition of the

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3 Profs Work on Cox's Staff

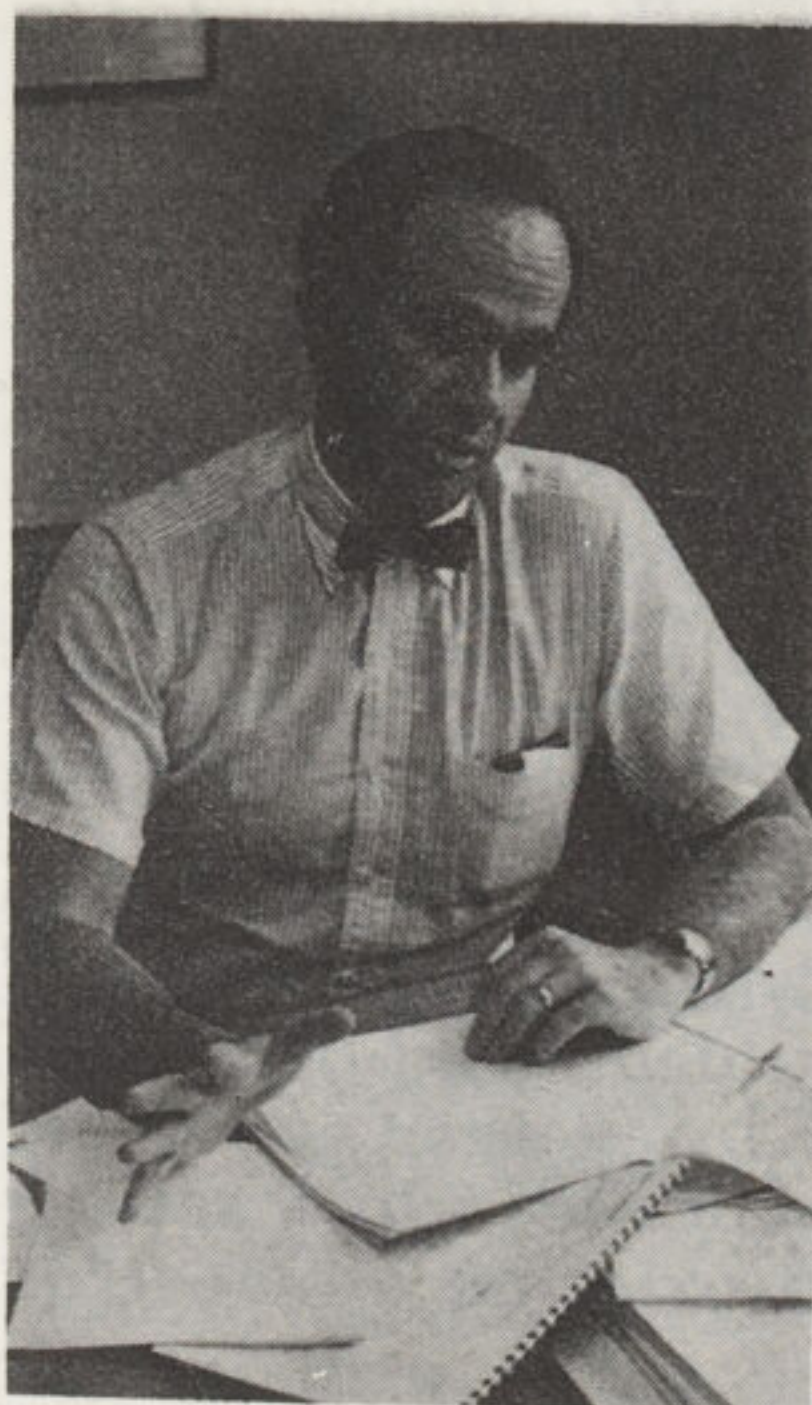
By Kermit Kubitz

Three members of the Law School faculty — James Vorenberg '48, Philip Heymann '60, and Stephen Breyer '64 — undertook their own program of clinical legal education in Washington this summer as members of the staff of their colleague, Watergate Special Prosecutor Archibald Cox.

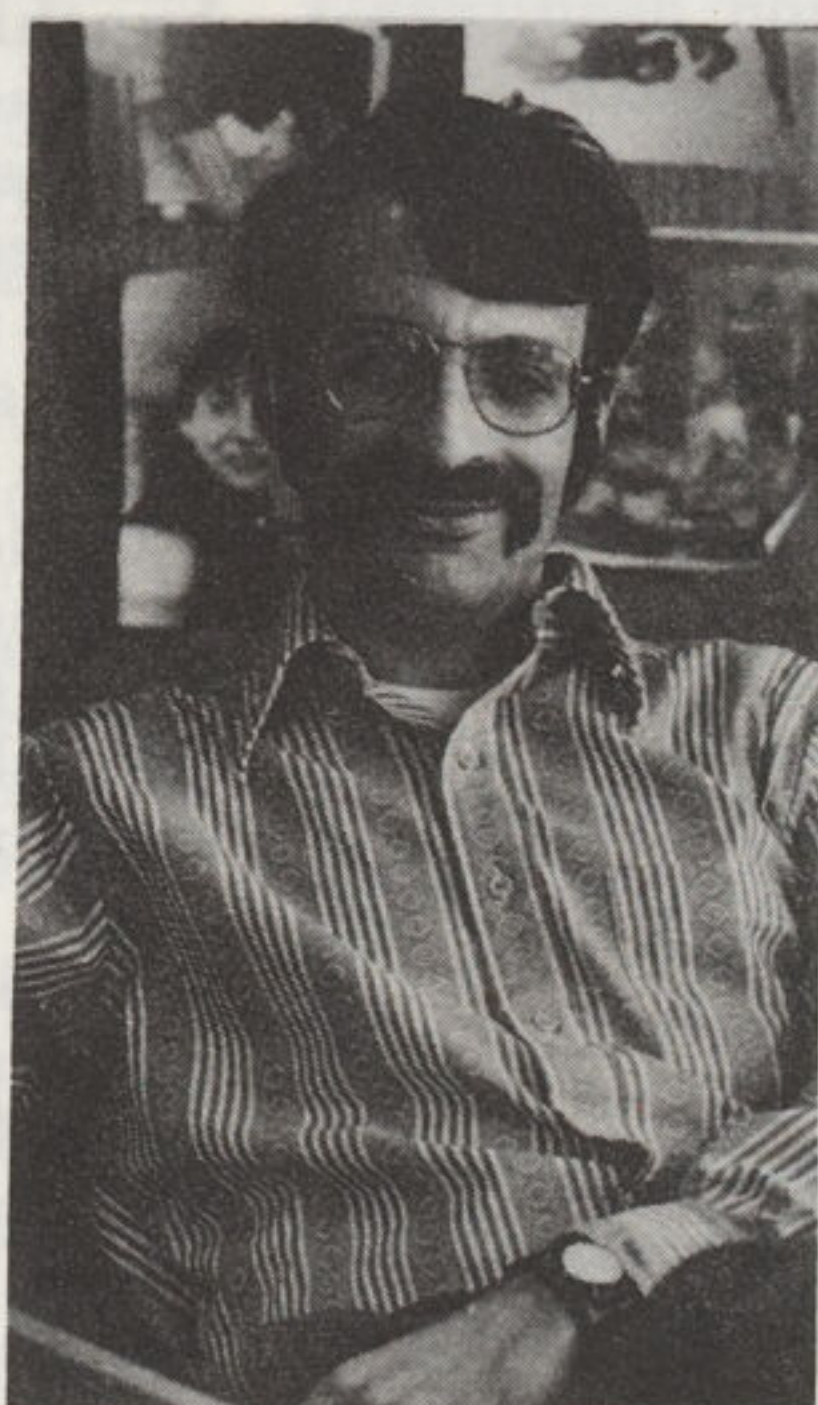
Beginning shortly after Cox's appointment in May, Vorenberg and Heymann joined the staff and began organizing and recruiting other members. Besides these two and Cox, the only other members of the Prosecutor's staff at this point were James Neal, Tom McBride, and Rosanne Kumins, Administrative Assistant to the Law School's Criminal Justice Center.

Vorenberg, who served as deputy prosecutor until the end of July, operated at first as chief of staff to build up the organization. Over 1000 applications were received from lawyers all over the country, including many from Harvard. Early in the summer, the criminal law professor spent about one-third of his time on hiring, organization, and appropriations, and two-thirds on various aspects of the investigation.

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Pete McClanathan
James Vorenberg



Philip Heymann

Law Review Selects Staff; Writing Contest Starts

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—*Section II*: Richard F. Hope, Richard A. Meserve, Conor D. Reilly, and Thomas D. Vander Molen;

—*Section III*: Steven J. Agresta, Kent L. Jones, David M. Silberman, Ellen S. Silberman, and Richard K. Willard;

—*Section IV*: Bruce J. Berger, Robert L. Deitz, John Fleming, Ladd Leavens, Daniel J. Meltzer, Robert S. Taylor, and Claudia H. Versfelt.

In addition, Donald B. Ayer and Allan Taylor, both 2Ls, are returning to Gannett House after taking leaves of absence from the Law School. One 2L who was offered *Review* membership declined to join the organization.

Roger L. Davis, Jay A. Goldberg, David M. Jones, David Patterson, and Ari L. Rothstein, all 3Ls, were also invited to join the *Review* during the summer, on the basis of their second - year or first- and second - year grades.

Law Review President Barry S. Simon, 3L, said he was "quite pleased" with the 8-6-5-4 section - by - section breakdown of the 23 2Ls offered membership on the *Review*. The *Review* had planned to send invitations to 20 students with the highest 1L grade averages, but four students were tied for the 20th slot in rankings supplied by the Registrar.

In recent years, there has been increasing concern over alleged grade disparities among 1L sections, said to be caused by habitually high or low grading by certain professors. Last year's *Review* editors reportedly considered proposals to select a minimum of three or four students from each section, but this

year, Simon said, "the old system worked out just fine."

He speculated that next year's selections would be determined on a similar ad hoc basis, noting that the *Review's* bylaws allow the staff considerable flexibility in determining how many and whom to select.

Simon reported that of 59 2Ls who accepted "citecheck" packets for the first phase of the *Law Review's* writing competition, 31 returned answers last Friday and 16 were admitted to the competition's second phase. He said the *Review* expects to admit between three and seven of the competitors, depending on the quality of the articles they submit.

Simon Says Review Back on Schedule

For reasons best known to the denizens of Gannett House, the June issue of the *Harvard Law Review* did not find its way to subscribers until early September.

Review President Barry S. Simon, 3L, declined to comment on the three-month delay, but hearsay emanating from the journal's office indicates that missed publication deadlines, organizational ills, and the onset of summer played stellar roles in the drama.

Simon vowed that the November *Review* would indeed be ready by the 10th of that month, stating that "a return to standards" would be a paramount goal of his administration. To that end, he is reported to have spent the bulk of summer at work in his Gannett House office.

Women Still Lack Shower Facilities In Hemenway Gym

The Faculty of Arts and Sciences has decided not to spend \$9,200 to install women's locker room facilities in Hemenway Gymnasium. The University is instead spending approximately \$30,000 to provide women's facilities at the University squash courts on Linden Street. According to Vice Dean William L. Bruce, the Faculty of Arts and Sciences was not deterred by the cost of the proposal but by the fact that it would have displaced 140 locker spaces for men. The Arts and Sciences faculty also believed that it would have to open the proposed women's locker area in Hemenway to Radcliffe undergraduates and women graduate students in other schools, who would overcrowd the gymnasium.

According to Jamie Gorelick, 2L of the Women's Law Association, Dean Bruce proposed the \$9,200 modification last spring in consultation with the WLA. At the end of the last academic year, Gorelick, who with Anne E. Libbin, 2L represented the WLA in the negotiations, believed that the University had finally agreed to make the proposed changes.

In response to the University's rejection of the earlier proposal, the Law School has this month recommended to the Faculty of Arts and Sciences that a wooden partition be erected in the Hemenway locker room and shower area to provide a women's locker area. "This proposal," said Bruce, "would involve no expenditure to speak of while still providing facilities for the Radcliffe squash team and women in the graduate schools as well as those in the Law School." It would displace 60 men's locker spaces, which could be accommodated in another section of the gymnasium, while setting aside 75 existing spaces for women.

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Faculty Changes Loan Interest Rates

The Law School is now changing the interest rates and increasing the repayment periods on loans to students. Other changes for the new academic year were announced last Friday at the first faculty meeting: This month, for the first time, emeritus professors are teaching courses at the Law School. Judge William H. Hastie '30, S.J.D. '33 will inaugurate a biennial series of lectures on civil rights and civil liberties in honor of Francis Biddle '11. The entering class numbers 571, 31 more than the target, because of fewer withdrawals and a miscalculation by the admissions committee. Videotape and other clinical education equipment will be made available to all professors.

The Law School is now changing its interest rates on student loans from two per cent while the student is in school, four per cent for two years afterward, and seven plus per cent later, to zero while the student is in school and for nine months afterward and seven per cent thereafter. According to Dean Albert M. Sacks, the new rates will mean a decrease in interest payments for most students. The new rates are in line with government guaranteed loan practices.

Graduating students will now be allowed a "much longer repayment period" (up to 10 years) in which to repay loans. "This has been forced on us," said one professor. "Graduates have simply not been repaying in that time." Some

graduating students now have combined law school and college debts approaching \$20,000, with many in the high \$10,000 range. Students will now make arrangements for a repayment schedule before graduating. Most student loans now come either from the University endowment or from commercial lenders in a plan sponsored by the federal government rather than from Law School funds, though all scholarships still come from the Law School. This has created some inconsistencies: thus the Law School assumes parents will pay part or all of their children's expenses, in line with their income, while the government generally ignores the parent's contribution where the student has not lived with the parent or been claimed as a deduction for one year.

The Law School now has \$4 million in outstanding loans and according to Dean Sacks, "we have what appear to be some serious collection problems. We are going to be very tough about trying to get

(Continued on Page 7)

Over 40 Per Cent Receive JD Honors

More than 40 per cent of the students awarded Juris Doctor degrees from the Law School last June graduated with honors, the Registrar's office reported last week.

Of 509 students who received J.D.'s, 208, or 40.86 per cent, graduated with honors. Thirty-nine students (7.7 per cent) were awarded their degrees magna cum laude, and an additional 169 students received degrees cum laude. Last year, by comparison, 35 per cent of the 569 graduates received honors, with 6 per cent graduating magna cum laude. There were no students who graduated with highest honors, summa cum laude, in either of the last two years.

The Registrar's office further reported that four students were awarded the S.J.D. degree, and 82 others received their LL.M.'s.

Phila. DA Speaks Today

Arlen Specter, District Attorney of Philadelphia since 1966, will speak at the Law School at 8 p.m. tonight. Specter is considered by many in his state to be one of the brightest prospects in the upcoming Pennsylvania gubernatorial race.

Specter was an assistant counsel to the Warren Commission investigation of the assassination of President Kennedy in 1964, and he has been a member of the Peace Corps National Advisory Council, the 1971 White House Conference on Youth, and the National Advisory Commission on Criminal Justice Standards and Goals. He was also trial prosecutor for the Local 107 Teamsters case.

Specter attended the University of Pennsylvania and Yale Law School, where he was a member of the *Yale Law Journal*. He has written articles on such diverse legal subjects as pollution, procedural aspects of criminal law, close corporations, and censorship.

Specter has received the Junior Chamber of Commerce Man of the Year Award (1964), the B'nai B'rith Youth Services Award (1966), the Alessandrini Lodge Sons of Italy Award (1968), the Morris Chapel Baptist Church



Arlen Specter

Humanitarian Award (1969), the Temple Beth Ami Man of the Year Award (1971), and the N. E. Catholic Outstanding Achievement Award (1973).

Arlen Specter's talk is part of a continuing series of presentations sponsored by the Harvard Law School Forum. As with all Forum events, there will be a question - and - answer period following the talk. Tickets are \$1.50 and are available at the door. The talk will be held in the Ames Courtroom in Austin Hall.

Profs Serve Part-time on Watergate

(Continued from Page 1)

Explaining the deluge of applicants, Vorenberg said, "I think it was a combination of the excitement, and a sense that this was where there was a chance to do some good. The letters often displayed a high degree of idealism. There are many people who like the idea of working for the government, for whom this administration has been terribly frustrating."

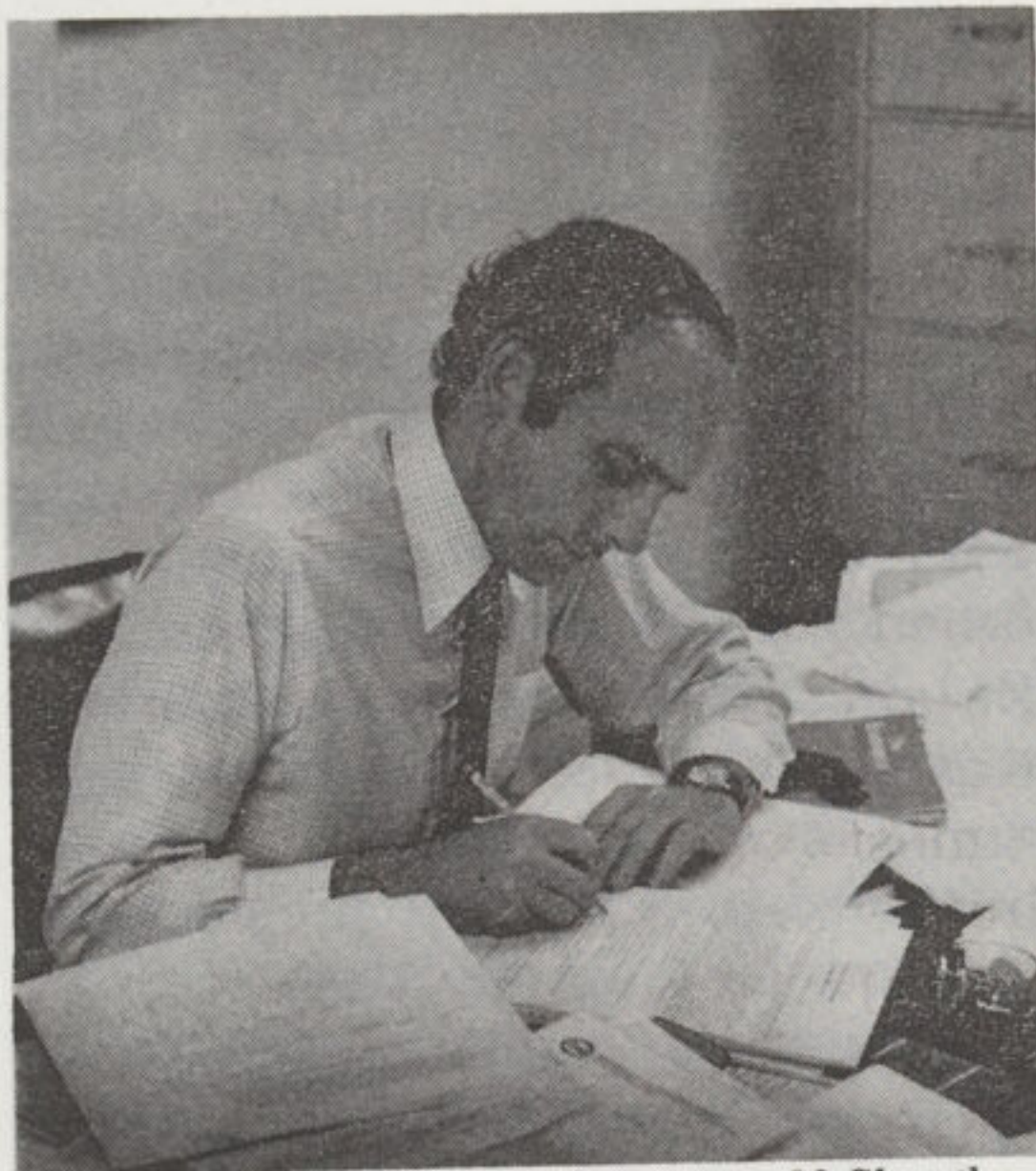
While Vorenberg was setting up the organization, Professor Philip Heymann spent one-third of his time assisting in organizational work and the rest on the investigation itself.

"I almost immediately argued the case asking Sirica not to require Dean and Magruder to give self-incriminating testimony to the Senate committee before television cameras," said Heymann. After reviewing the record of the original Watergate prosecution with Jim Neal, Heymann picked up investigation of all other illegal acts allegedly done by Hunt, Liddy or any of their predecessors, including the break-in at Daniel Ellsberg's psychiatrist's office.

Asked whether he volunteered or was drafted into the Prosecutor's staff, Heymann replied, "It was sort of half and half. I called up and let him know that I was available and ready." Heymann said that his previous trial experience, which included cases of murder and armed robbery, had always been from the defense viewpoint.

Professor Stephen Breyer worked from mid-June until the end of August on all the facets of ITT's relation to the administration. While unable to comment on any material aspects of the investigation, Breyer mentioned that he found the matter fascinating.

Breyer had planned to spend part of the summer reorganizing his *Administrative Law* materials, mentioning that he was only one-third of the way toward his ideal course. But he seemed to feel that the experience was worthwhile, saying that it made him feel "professional," in the sense that



Pete McClanathan
Professor Stephen G. Breyer

instead of academic work he was going out and doing the day to day legal work of most of the profession. He felt that most law professors would benefit by occasional departures from the university to operate in the legal profession outside.

All three foresaw the Special Prosecutor's office continuing to investigate Watergate and its extensions for several years. Vorenberg estimated that, "If you talk about trials and appeals, including possible perjury trials, you could be talking about three years or more."

Some of Vorenberg's time was spent on the relationship of the Special Prosecutor's staff to the Ervin committee, trying to work out cooperation on the exchange of information. Heymann felt that the presence of both the Senate Committee and the Watergate prosecutor's staffs had resulted in the discovery of information not available to one group alone. He added, "For a long time there was a certain amount of holding back on everybody's part, but I now think there exists quite decent cooperation on everybody's part."

Opinions varied among the three as to the relative importance of the Senate hearings and the work of the Special Prosecutor. Vorenberg said there was no way of judging now which was more important in view of their quite different goals, while Breyer said that,

in the long run, the prosecutorial function might be more significant because if those who committed crimes are put in jail, future occupants of similar positions will remember the convictions more than the publicity generated by the Senate Committee. Heymann believes the dual arrangement "has worked out rather well. The Senate is nearing the end of its hearings. The trials do take rather long even to get started. I don't think that the hearings have so prejudiced people that we're not able to get juries."

Listed on organization charts as Special Assistant to the Special Prosecutor, Vorenberg revealed that close to half of the Prosecutor's attorneys were Harvard graduates, explaining that, "We were under the gun to build up the staff. There was a large percentage of people that Cox, Heymann, and I knew, and a large percentage of applicants were Harvard people. We had to make an effort to limit Harvard people."

All three faculty members are still involved, although to a lesser extent, with Cox's work. Heymann was leaving the day after his interview for two days in Washington, while Breyer has been spending one day a week on continuing assistance in the ITT investigation. Vorenberg's further work will be limited to aiding in the writing of a final report.

The organization left behind at the end of the summer has, according to Heymann, "Republicans and Democrats and above all, it's got professional prosecutors. Any prosecutor's office takes an initial approach of looking for evidence of crime, but even this initial approach has never focused in specifically on the President rather than those around him. A good prosecutor's office then takes a hard second look at what it has before a final disposition as to whether to prosecute. In those terms, Cox is going to be the finest prosecutor that you can imagine - which is, incidentally, exactly what most people want of him."

Staff Problem Endangers Yearbook

By Bill Kenety

The search for an editor and staff of the 1973-74 Harvard Law School Yearbook continues without success, casting some doubt as to whether there will be a yearbook at all this year.

The nucleus of last year's staff returned to the Law School this fall, but the individuals involved are unable to work on the current yearbook due to other commitments. According to Vice Dean William L. Bruce, three successive candidates had been chosen for the position of editor, but each in turn withdrew, citing other obligations or schedule conflicts.

In an interview with the RECORD, Bruce predicted that there definitely will be a yearbook this year. Posted notices soliciting staff have brought a minimal response, and Bruce is considering looking outside the Law School for editorial help if none materializes from the student body. Currently, he hopes to find a student's spouse to take over as editor; failing that, he would offer the editorship to anyone, whether connected with Harvard or not. With some \$4,500 tentatively allocated for staff salaries, Bruce is optimistic about finding an editor.

During the last few years the staff has gradually diminished. Last year's editor, Marley S. Weiss, 3L, estimates she finished the year as the sole member of the editorial staff and put in close to 1,000 hours.

The inability to find a staff at this point might also have jeopardized the financial future of the yearbook. During the past several years the yearbook staff has also published the directory. During this time, directory advertising sales have turned a handsome profit, while yearbook profits have been marginal or non-existent. In reality, the directory has made the money to pay the yearbook staff. Since the directory and yearbook staffs were nearly identical, this never posed a problem.

This year, however, the directory is being published by Weiss, Robert L. Abramowitz, 3L, and Daniel S. Koch, 2L — essentially last year's

yearbook staff. This year's yearbook and yearbook staff (assuming there is one) thus will not get the financial benefit from the directory profit.

Figures from Bruce's office for 1971-72, the latest available, show the directory accounting for some \$4,500, or over 25% of the combined directory/yearbook income. Balancing that directory income was some \$2,800 in expenses, but almost half of those expenses were in the form of advertising commissions paid to the staff. (Individuals could — and did — collect both advertising commissions and staff salaries.) Both Weiss and Abramowitz, editor and advertising manager for last year's directory

and yearbook, indicated that the directory's percentage of combined income would be even higher in 1972-73. Thus, with the split in staff, no longer will directory profits automatically cover yearbook expenses.

A contract for the 1974 yearbook has been signed with the American Yearbook Company. No contract has been signed as yet with a photography studio. The yearbook office has the cards which students signed to receive this year's yearbook, but neither Weiss nor Abramowitz could estimate the number of students agreeing to purchase the 1974 edition. These cards, and the 1974 yearbook, await the finding of a new staff.

Griswold Joins Washington Firm

Erwin N. Griswold, Dean of the Law School from 1946 to 1967 and Solicitor General of the United States from 1967 to 1973, is now a partner in the firm of Reavis Pogue Neal & Rose in Washington. "I have entered into private law practice," said the 69-year-old Langdell Professor emeritus, "and find it very interesting."

Why did the former Dean join the Washington branch of the Cleveland law firm? "Cleveland was my old home town," said Griswold. "Many of the people in the firm are old friends and former students of mine."

Griswold retired as Solicitor General on June 25, after the end of the Supreme Court term, ending the third or fourth longest tour of service of any Solicitor General. "I think it's fourth by just a matter of two or three days," Griswold is reputed to have tried more cases than any other living Solicitor General.

The Dean emeritus has been able to avoid the Watergate maelstrom; he has not been asked to represent either side in the dispute and has not been in contact with Professor Archibald Cox or any of the other investigators.

During Griswold's deanship, he insisted that the *Law Review* be printed and on his desk by the 10th of each month. "They never failed during all the time I was Dean." Last year, the *Review* fell regrettably far behind — the June issue did not come out until late in the summer.

The former Dean, who has already retired from two of the nation's most prestigious jobs, is still hard at work.

"I have every hope and expectation," said Griswold last Tuesday, "of returning to the Law School when I really do retire."

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Bailey Hits American Bar's Incompetence

By Michael Bowen

"We all believe that in the end our system will somehow vomit up justice," celebrated defense counsel F. Lee Bailey told a crowded Ames courtroom audience September 14. "But in our system, innocence has nothing to do with being acquitted, and guilt most certainly has nothing to do with conviction." That observation summarized a broad indictment of United States jurisprudence delivered by Bailey to over 550 participants in the year's first Harvard Forum presentation.

The principal source of the American system's infirmity, the attorney said, is the absence in the United States of the "divided bar" characteristic of British practice. As Bailey described it, that institution, by vesting trial lawyers as rigorously trained officers of the court with an overriding responsibility to see that justice is done, provides British legal administration with a degree of competence, integrity, and over-all equity that is lacking in the United States.

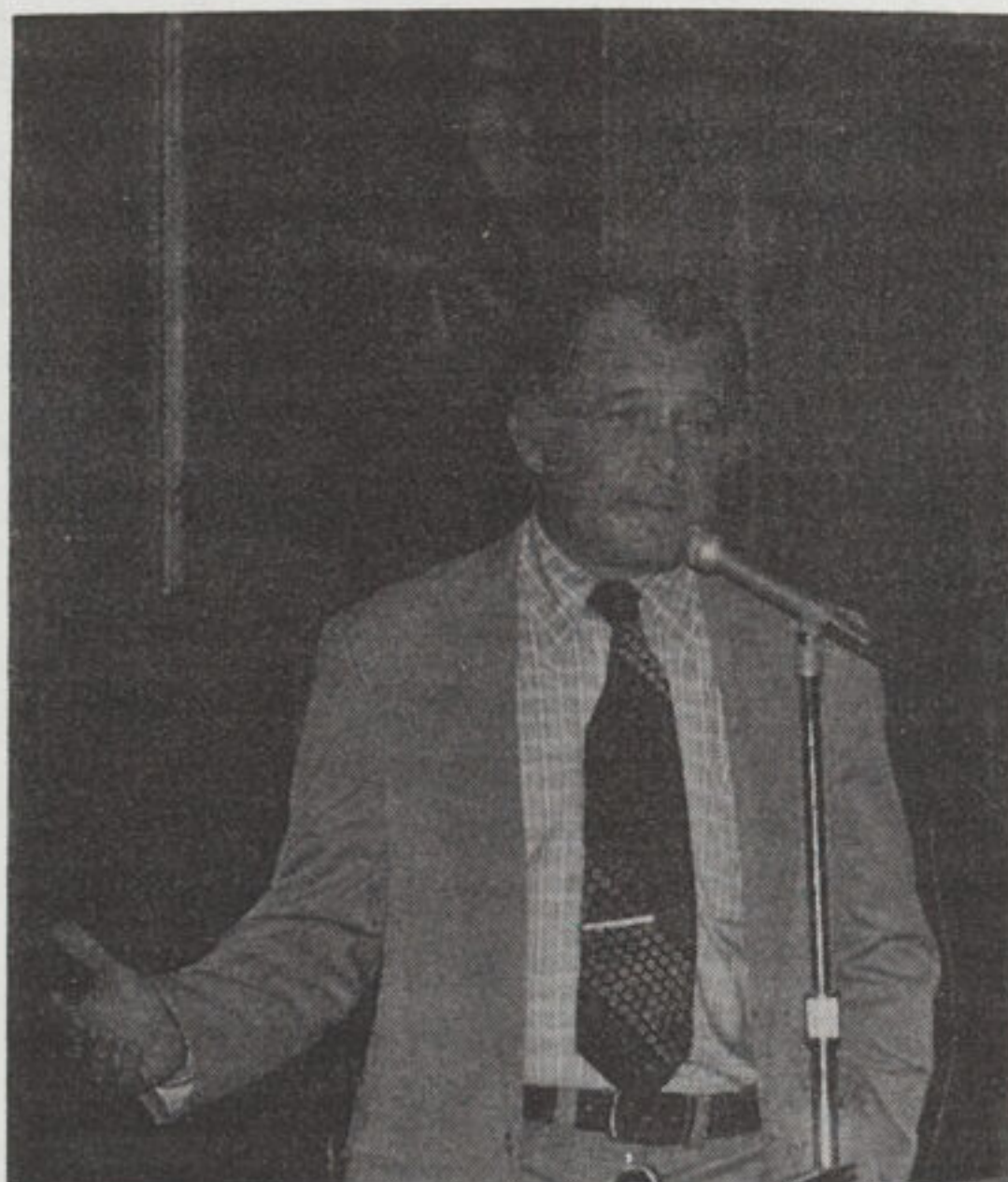
"We do not have and have never had in this country," Bailey said in contrasting the preparation required of British and American trial counsel, "despite the occasional snipings at it that have come from some law schools, including this one, a system that will teach a young man how to try a law suit."

Favors 'divided bar'

Whereas British barristers must endure extensive post-graduate instruction, Bailey noted, the American system relies on "on the job training," with results that are often "disastrous. I defy any one of you," he said, "to find a single Master's course in Advocacy." For this reason, Bailey concluded, less than 5% of U.S. trial lawyers "could hold a candle to the British bar — and I include myself among those who could not."

Bailey's attack on the integrity of the American legal system was

even broader than his allegation of its practitioners' ineptitude. "Corruption is rampant in our politically infested Justice Department," he claimed, and grand juries are, "a shameful institution where the



Mark McNeil

F. Lee Bailey

most nefarious perjury goes unpunished if it is suborned by the prosecution."

Bailey, who lightly alluded several times to the fact that he is himself facing trial this month, suggested that one of the hazards faced by vigorous defense lawyers is the prospect of becoming a target of self-serving law enforcement agencies. "If you look at the great criminal lawyers in American history," he said, "you'll find that at least half of them have been the subjects of criminal prosecution."

The barrister system, Bailey claimed, avoids these pitfalls. The barrister, he explained, is independent of the executive, and provides a buffer between the people and the exercise of governmental power. "If the police come to him with a half-done case," Bailey said, "he sends them packing." Further, since "in England, one day you prosecute and the next you defend, everyone gets an expert for a lawyer. We can't approach that standard." The closest analogue in the United States to

the divided bar, Bailey related, is the system established by the Uniform Code of Military Justice, "the best legal system we've ever developed."

Summarizing the abuses he had alleged against American jurisprudence, Bailey asserted that "in the business of human liberty, there is no excuse for not drawing upon the length and breadth of human imagination to find a better way to do it."

The largely receptive audience responded to Bailey's presentation with prolonged applause. Of six questions asked during a brief exchange following the lecture, the only hostile one referred to a 1971 episode in which Bailey had been disciplined by the New Jersey and Massachusetts Supreme Courts for accusing New Jersey judicial officers of corruption in a letter that eventually was published. "How do you think the British bar, for which you've expressed such admiration, would have treated you for what you said in New Jersey?" the ques-

Attorney faces trial

tioner demanded. While claiming that he would never have had occasion to make such a charge in the British system, Bailey acknowledged that, had he made it, "they would have come down rather hard on me."



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Women Still Lack Showers In Hemenway

(Continued from Page 2)

According to Gorelick, the new proposal is "more practical than the original plan. I don't know why it wasn't made originally." She protested the University's lumping the problems of Law School women with those of undergraduates, noting that there are still no squash, basketball, or volleyball courts anywhere in the University with locker areas open to Law School women. "Our problem is a Law School problem — our problem is Hemenway." She disputed the Arts and Sciences faculty's contention that Radcliffe undergraduates would have to be admitted to Hemenway, or would feel discriminated against. "No undergraduates are allowed to use Hemenway — not from Harvard, not from Radcliffe — except the teams."

Hemenway is run by the Faculty of Arts and Sciences, which includes the Department of Athletics, rather than by the Law School. "In that the Law School was not incurring any expense," said Bruce, "we were not really asked for input by the Faculty of Arts and Sciences. We did, however, express our views and ideas before the committee."

Faculty Discusses Aid, Emeriti, New Lectures

(Continued from Page 3)

the money back." The Law School's first formal collection efforts began last week. Nationally, a number of university graduates have gone through bankruptcy shortly after graduation in order to wipe out student loans, but that trend has not caught on at the Law School.

One professor noted that students assume a moral obligation to repay outright scholarship grants. Dean Sacks recalled that one graduate recently arranged to repay the exact amount of his scholarship grants made during the '50s "but that is the only one I've ever seen." But he added that many contributions to the Law School Fund represent repayment of prior grants, though not specifically so designated.

During the summer, the President and Fellows of Harvard College approved a plan proposed by Dean Sacks which will allow emeritus professors to teach one semester course or seminar for each of two years and receive compensation similar to that of part-time lecturers. They will teach courses which are neither "required" nor "basic." Professors emeritus Lon L. Fuller, Robert Brauler, and David F. Cavers are teaching courses in the fall; Richard H. Field will teach *The Legal Profession* for 1Ls in the spring.

The Biddle Lectures on civil rights and civil liberties were recently established by the Law School in honor of Francis Bid-

dle, Attorney General of the United States from 1941 to 1945, pursuant to a gift by Mrs. Francis Biddle. Biddle, a Philadelphia lawyer, also served as a judge on the Court of Appeals for the Third Circuit and as Chairman of the National Labor Relations Board. Judge William H. Hastie, who will begin the series, is now a senior judge of the Court of Appeals for the Third Circuit, where he has served since 1949. He served earlier as Governor of the Virgin Islands and as dean of the Howard University School of Law. The date and time of his lecture have not yet been announced. The lectures will be given no more frequently than every two years, and will be run by the same faculty committee which manages the Holmes Lectures.

The first year class last week numbered 571, as compared to 545 last year at the same time and the 540 ceiling set by the School. The primary reason for the increase was that "the admissions committee last year had a notion of the average caliber of the entering class that was somewhat off and thus adopted a lower academic standard for admissions than was called for." In addition, fewer students withdrew from the class after being admitted. One professor pointed out that the difference in standards was minimal and cautioned "those first year teachers who spot an occasional dumb remark" not to attribute it to the extra 31. Dean Sacks suggested that the admissions committee this year err on the side of accepting fewer applicants

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Watergate Committee Counsel

By Daniel M. Taubman

Special to the Harvard Law Record

Washington — What makes Sammy Dash? Samuel Dash '50, chief counsel to the Watergate Committee investigating political dirty tricks surrounding the 1972 presidential election, recently has become known to millions of American TV viewers as a result of the committee's hearings which began last May and will resume on Monday.

But long before he was thrust into the limelight, Dash was busy making a name for himself in the Cantabrigian legal arena.

At a recent interview in the New Senate Office Building here, Dash reminisced about his days at Harvard Law School and discussed his views on legal education, the committee's work, and Martha Mitchell.

As a student at the Law School, Dash participated in Legal Aid, then an honorary organization, Cardozo Club, and the Harvard Law RECORD. He was also an Ames Competition finalist, and was founder and first president of the Harvard Voluntary Defenders.

"At that time, I was one of the few people to enter Harvard Law School with a predisposition to enter criminal law," the balding law professor, director of the Institute of Criminal Law and Procedure at Georgetown, recalled.

With the assistance of then-dean Erwin N. Griswold, Dash succeeded in assisting in the criminal practice of Boston criminal lawyer Wilbur Hollingsworth. "I interviewed clients in jail and did legal research," Dash said. He pointed out that this work was of great value to Hollingsworth, who at that time had too many clients and no other students to assist him.

When Dash organized the Voluntary Defenders, he recalled, there were about 20 members. "We decided not to make it an honor group." Each applicant was interviewed and had to present a written statement expressing his or her interest in criminal law, a process similar to that still used today.

Dash recalled with amusement that shortly after Voluntary Defenders had been organized, Griswold would constantly give "glowing reports on the Law School's contribution to criminal justice." At that time, the Law School offered only one criminal law course — substantive criminal law. According to Dash, there were not even any electives on criminal law available.

"I think Harvard Law School has placed much more emphasis on criminal law than when I was there," Dash commented. He praised the present criminal law teachers, particularly James Vorenberg, Alan A. Dershowitz, and Lloyd L. Weinreb.

Dash, who has spent most of his professional career in the criminal justice area, stressed the importance of criminal law for all law students. "Since most



Daniel Taubman

Samuel Dash in his Washington office

students are not going into criminal law ... when they hear of a Fourth Amendment case, the reaction is very often that of a layman rather than that of a professional person.

"Even if a lawyer doesn't practice criminal law, he will be called on to engage in criminal law," either as a community leader or as a member of the American Bar Association.

Non-criminal justice lawyers "often vote their prejudices," Dash complained.

In addition to his strong support for criminal law courses, Dash expressed his enthusiasm for clinical legal education courses. While praising the role of clinical legal education courses, especially the one taught at the Law School by Professor Gary Bellow, Dash stressed that clinical courses must be balanced with traditional ones in order to produce an optimum legal education.

"I would make clinical programs required, maybe in the third year," Dash commented. The author of *The Eavesdroppers* took issue with consumer advocate Ralph Nader '58 and his attacks on the traditional legal education offered at Harvard Law School. Dash pointed out that whatever Nader's criticisms may be, Nader himself is a product of a traditional Harvard legal education.

Dash did note, however, that many graduates just out of law schools "don't have an adequate perception of their role."

"Very often lawyers adopted a fictional role, based on Perry Mason or something," the former partner of the law firm of Dash and Levy remarked.

Turning to his role as chief counsel of the Select Committee on Presidential Campaign Activities chaired by Senator Sam J. Ervin '22, Dash explained

Dash Backs Clinical Education

that he had been approached by Ervin "out of the blue" to be chief counsel, and that his nomination was subsequently approved unanimously by the seven-man Senate committee.

"I don't think people can fully appreciate what we produced," Dash commented. "We had to create a staff and find space. In about six weeks I had to develop an expert staff, and conduct an investigation which was to begin May 17.

"There was never a failing in the efficiency of the staff. Witnesses were always there, the documents were always there," Dash declared with obvious pride.

"We had to put in two days for every one day of hearings. Our work began at 5 (p.m.) when the hearings were over." Dash explained that he and other staff members frequently worked into the early morning hours. He often arose at 6 a.m. after only two or three hours of sleep; "the adrenalin keeps you going," he said.

Responding to the charge that the committee's questioning had been less than adroit at times, Dash stressed that one had to ask what he said was the ultimate question — "What did Congress and the public know on August 7 when we closed the hearings as opposed to May 17 when we opened up?" Dash obviously felt that much had been learned as a result of the committee's hearings.

He pointed out, however, that the basic differences between a committee hearing and a trial made it more difficult for the questioning to be as skillful as possible. First, he said, while trial lawyers are expected to be tough, committee staff lawyers or Senators must be more sensitive because of possible adverse public reaction. Dash pointed out that the committee counsel could not leave the public with the impression that they were harassing witnesses.

"We ask questions from an exalted position. We look like inquisitors all in a row. At a committee hearing, all of the ingredients of what would be harassment if you have an overbearing committee were present," Dash added.

As a result, he said, "you had to engage in what I called studied restraint." "That doesn't mean you have to sacrifice getting essential facts ... you have to let some things go ... you have to make a balance," he declared.

A second difficulty the committee encountered was the coordinating of questions by nine people — the seven senators, minority counsel J. Fred Thompson, and Dash. A criminal conspiracy case, Dash noted, is the only other situation in which there is a multitude of questioners.

Asked about whether Martha Mitchell would be called before the committee in light of her recent public statements to the effect that she had information to give it, Dash indicated that she would be inter-

viewed by committee staff personnel. He said, however, that he didn't expect that she would appear as a public witness.

Does Dash hope to remain in the limelight? "Actually, I find it embarrassing," he declared. While this is "a truly historical investigatory proceeding," Dash observed, "I look forward to going back (to Georgetown) as a professor and director of criminal research."

Undoubtedly, once the hearings spin their course, the Watergate committee's chief counsel will get his chance to return to academia where his friends will find new appreciation for the salt and pepper of Dash.



Samuel Dash (circled) as *RECORD* editor in 1950

98 Women Enroll as 1Ls

Ninety-eight women, a record number, are registered in the first year class. This compares with 82 and 69 in the 2L and 3L classes. About 37 per cent of the women admitted for the Law School class of 1976 decided not to attend.

Ninety-five of the 98 1L women were admitted in 1972-1973. The other three entered on deferred admissions. One hundred and fifty women were admitted last year.

The 98 women make up 17 per cent of the 571 members of the class of 1976.

These statistics were contained in the September 17 issue of the *WLA News*.

No women were admitted to the Law School until 1950.

P/F: R.I.P.

Although the Cohen Committee on First-Year Evaluation and Related Matters last spring recommended, by a 9 to 2 vote, the adoption of a mandatory pass/fail system for first year, first semester grades at the Law School, it appears that the minority of two was able to sway the faculty. In one of the most incomprehensible faculty votes in recent memory, the Law School professors decided to reject the mandatory pass/fail proposal and abolish the optional system which had been in existence since 1969.

While it may be technically correct that the two pass/fail measures were separate, the elimination of the optional pass/fail system would make sense only when replaced by some other non-graded option. After all, the Cohen Committee itself was formed after four consecutive years of pressure by first-year students to institute some form of compulsory pass/fail grades. While even pass/fail proponents would willingly concede the shortcomings of the optional pass/fail system, few would have anticipated or desired the complete elimination of all pass/fail options for first-year students.

Given the tension and competitive atmosphere which pervades the Law School, particularly the first year, we feel that it is not at all unreasonable to extend the option of pass/fail grades to those students who wish to choose it. At least with such an option, those who want graded exams will still be given their chance to compete against their peers.

We realize and appreciate the view of many faculty members that the semesterization of first-year courses, begun last year, has contributed to a reduction in tension among first-year students. Nevertheless, there are still a substantial minority who opted for pass/fail grades last year, and probably an equal number who would do so this year. Unfortunately, the only option open to those 1Ls who do not wish to receive grades is to remain wholly ignorant of their academic performance.

What the faculty has pretended to do in the name of academic reform is to adopt a reactionary policy on grading — i.e. restoring the policy in existence six years ago. Hopefully concerned students will express to the faculty their disagreement with its rash action.

HARVARD LAW RECORD

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Fenno

Fenno perched himself on the concrete blocks in front of the Hark. It was good to be back, he thought, after another long and arduous summer of job hunting. He smiled. The law school, it seemed, was always moving yet somehow remaining remarkably stationary. He was bemused at the ever-changing crop of 1Ls. How different from the suit and vest crowd Fenno once knew. Yet, he thought, they all come here for the same thing: to learn truth, justice and the American way. Fenno sighed.

In *Contracts*, after accepting a professor's offer of knowledge, the new students might find him distinctly lacking consideration. *Criminal Law* will create new in-sights for those who thought that penal reform was a euphemistic way of saying circumcision.

To Fenno, though, that observation was common through the years. Yet this time the 1Ls had been prepared early for life at HLS. Each packet of entering materials contained a recording of "Tort of My Torts" by Pedibus Ambulando and backed up by Big Al and the Half Writs. The hit (figuratively speaking), once number one on the ABA charts, features an equally impressive flip side — a little number intertwining law and inflationary economics — "If It Won't Give You Beef, Suet".

In addition, the 1L package contained an 8x10 glossy of Archibald Cox being hoisted triumphantly upon the shoulders of one Professor Chayes (who, of late, has taken to wandering about aimlessly muttering, "I told you so").

Yet Fenno knew that returning students would have adjustments to make also; particularly those returning in a catatonic state from learning how incredibly little they knew about the law. They would learn that the Hark has disguised its hamburgers and that last year's french fries are also this year's french fries. They will discover that half of those who made Law Review they never knew existed.

They will find that, like the Celtics but with hopefully more success, HLS has its own J.J. White, whose manner and appearance are the closest yet to Jack Webb in his infamous role as "The D.I.". And who better to teach *Commercial Transactions* to people who look upon a pot party as a joint venture.

Fenno smiled. Yes, this was going to be another great year.

Publication Dates

The Harvard Law Record will be published this semester on the following dates: September 21, 28; October 5, 19; November 2, 9, 16, 30; and December 7, 14.

Letters to the Editor of The RECORD

Law Notes



'Michigeese'

To the Editor:

I enclose a recent photograph of James J. White, Professor of Law at the University of Michigan, with the hope that you might find space to print it. It is apparently already custom to print pictures of Michiganders (as perhaps some day for Michigooses), oddly attired, in the Law Record.

The hairpiece was a gift from Professor White's freshman class, presented with the wish that it would "keep his head warm in Cambridge." What had not been anticipated was the enthusiasm with which our crew-cut Air Force Reserve bomber wore his gift.

What distinguishes this case from that of the picture of Arthur Miller is, of course, the fact that no one who knows Jim White would suspect him of having arranged for the publication of his own picture.

James A. Martin
Associate Professor of Law
University of Michigan
Law School

A New Look

Keeping up with the times, the RECORD is moving to an offset printing process from the letterpress used in the past. Several new fonts were used in this issue, and the RECORD now has increased flexibility in the use of photographs.

The staff of the RECORD hopes that its readers enjoy the change and welcomes any comments from readers on the new style. The basic format of the RECORD has not changed.

'Reunion Racket'

To the Editors:

I wish to call your attention to what appears to me a very unfruitful situation for the law school, in the least, and some kind of racket at worst. I am talking about the exorbitant cost of attending a class reunion as evidenced by the prices listed in the Class of '68 reunion invitation.

For example, the cost of *any person* renting a single room at the Holiday Inn on Mass. Ave. is \$20. Through the reunion, which buys not only large blocks of rooms for this class but for many classes, it is the same \$20. Either the Holiday Inn is not giving a discount or somebody is pocketing the difference. Dining, dancing and cocktails should not cost anywhere near \$18 per alumni. How does an open house cost \$5? What kind of lunch is being offered that will cost \$12 a head? You can eat at Top Of The Hub for less than that.

These prices in my opinion are outrageous. I for one refuse to pay them. I suspect many of my classmates with new practices and families to support will be turned away by these incredible prices. This is hurting the class of 1968 and the Law School.

Sincerely,

Richard Iacobucci, B.S., M.S., J.D.

The Harvard Law Community Association will sponsor a boat cruise on Boston Harbor on Saturday, September 29th, from 4:30 to 6:30 p.m. Tickets are \$2.00 per person and may be purchased by calling 492-5858 or 547-1781. A bar will be available on board.

* * *

There will be an organizational meeting of the Harvard Law and Graduate Democratic Club Wednesday, September 26, at 6 p.m. in the Mallory Smith Room upstairs in Harkness Commons. Present and prospective members are invited.

Anyone who is unable to attend the meeting may contact Robert W. Mack, 3L, at 876-8476.

* * *

Residents of Shaw and Story Halls who have been wondering what all the hammering is about will be happy to know that the Law School is putting a new roof over their heads.

According to a leak from Vice Dean William L. Bruce, dormitory roofs are replaced at 20-year intervals to prevent young attorneys from finding raindrops falling on their heads.

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Law School Penalizes Working Wives

By Phil Spector

The Harvard social scientists who study the nation's haphazard welfare system might sometime take a look in their own backyard. The Law School's financial aid program has some of the same faults as welfare, albeit on a much smaller scale. Both welfare and financial aid subsidize a spouse who stays home with the children, and benefits are cut, often dramatically, if the spouse of a law student with children chooses to go to school or to work.

The wife of one Harvard law student with children had planned to attend a major university in the Boston area this fall. She had stayed home with the children last year, and the Law School had given the student enough aid to support his entire family. When the Financial Aid Office was informed that this year the wife would be going to school, the student's aid for living expenses was cut in half. The wife's prospective university would only pay her tuition, not living expenses, and she has now decided to stay home with the children again. There was simply no way to make up the living-expense aid cut from their budget by the Law School.

The student's wife summarized their experience with a statement familiar to those who have had any experience with welfare: "It might be better if we separated. At least then the Law School would provide full support for the children."

The plight of the spouse with children who wants to work has even more parallels to welfare. Welfare has frequently been criti-

cized for discouraging recipients from working by reducing benefits, dollar for dollar, by any amounts earned. Since the jobs usually available to welfare recipients pay little more than welfare benefits, there is an incentive not to work.

The Law School is somewhat more liberal than the welfare authorities, deducting reasonable child-care expenses from the spouse's net earnings before subtracting the remainder, dollar for dollar, from the law student's normal financial aid award. Unless the spouse is making substantially more than child-care expenses, there is, like welfare, an incentive not to work and instead to stay home with the children.

Assistant Dean Russell A. Simpson, director of the financial aid program, explained the policy with regard to spouses in school by urging, "It ought to be up to the schools they are attending.... We cannot provide financial assistance so that

spouses can attend other schools." When asked about the situation where the spouse's school will not provide living expense aid, aid which the Law School would provide if the spouse stayed home with the children, Simpson responded by noting that those situations are few in number and suggested that the couple make "accommodations", such as alternating years in which each attends school.

The Law School's policy with regard to working spouses is consistent with its general policy of deducting all assets of the student, from whatever source, from the hypothetical student budget. While Simpson emphasized that there is some flexibility in the financial aid program, through loans, to assist students with problems not met by the normal aid package, he conceded that some spouses might be forced to drop out of school as a result of the Law School's financial aid policy.

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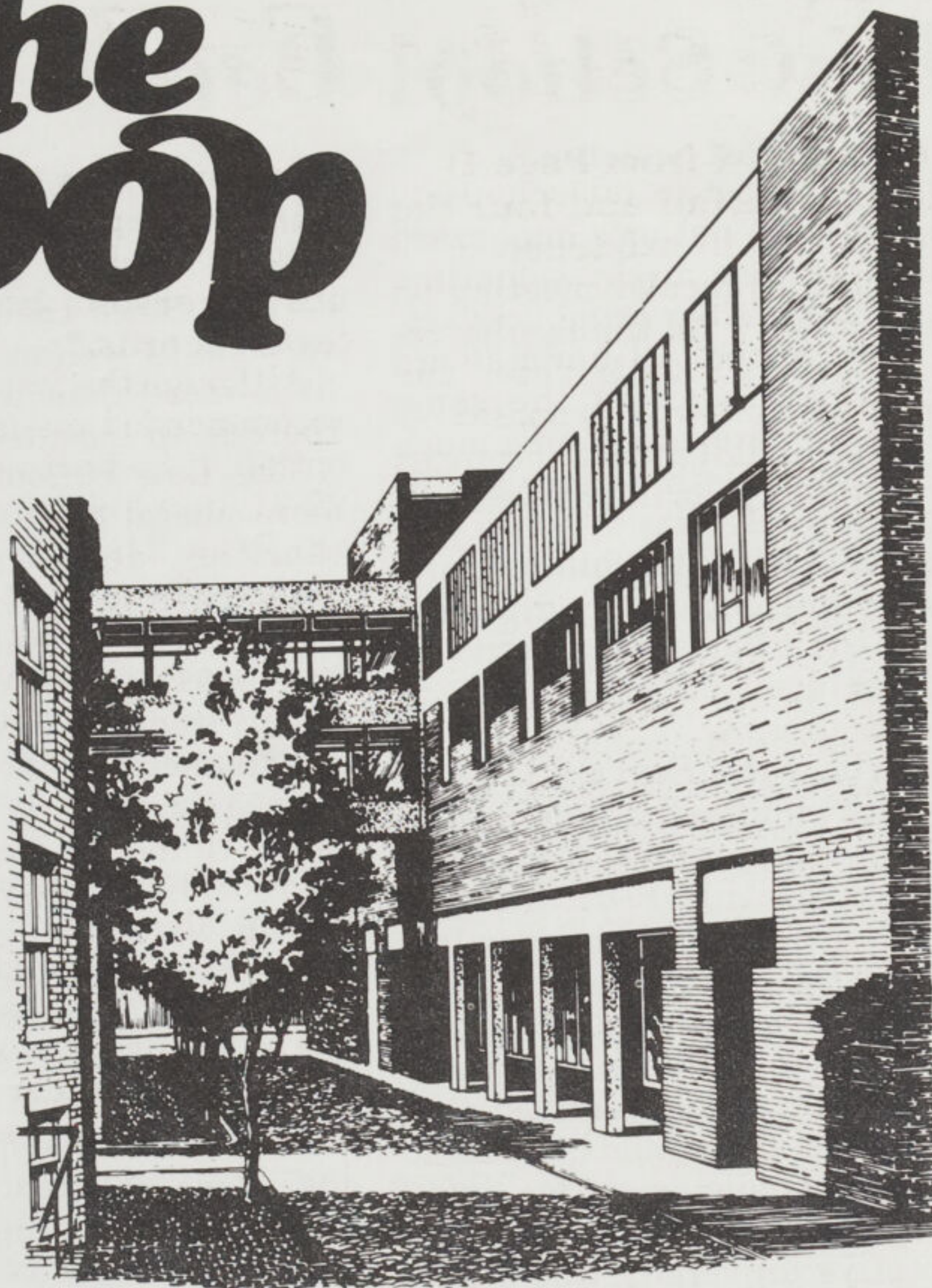
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Faculty Ends Optional P/F

(Continued from Page 1)
optional pass/fail and four tier systems then in existence.

At the third faculty meeting on Thursday, May 24, the faculty rejected by a 27 to 9 vote, the committee's central proposal — that first year fall semester courses be graded on a pass/fail basis for all students.

The faculty at its May 31st meeting then accepted the committee's suggestion to eliminate the pass/fail and four tier options, which allowed first-year students to receive pass/fail grades, or a four category variant thereof, in all first-year courses. That action was approved by a vote of 27 to 3. Under the pass/fail option, students were later allowed to have their grades revealed during the second year if they so chose.

As a result of the faculty action, therefore, there is now no pass/fail option for any first-year students. However, first-year students do retain their "present rights to decide

whether or not they wish to receive a report of their own grades and to control what other persons have access to their records."

Although the faculty rejected the recommended mandatory pass/fail option, it had actually approved it 22-21, in one of three straw votes at the May 24th meeting. But Associate Dean Paul M. Bator, a committee member, then declared that since there wasn't a sufficiently large margin in favor of the reform, the committee had not met the requisite burden of proof in persuading the faculty. Bator then said that he himself would vote against the committee's mandatory pass/fail recommendation which he had originally supported.

The faculty also agreed on May 31st that first-year students shall take at least one practice examination question in early November in at least one fall term course. That proposal, adopted by voice vote, followed one of the recommendations of the Cohen committee.

Following that action, the faculty adopted by voice vote a related proposal to encourage graders of the fall term practice examination and the January final examinations in *Torts* and *Criminal Law* to offer marginal comments in the blue books.

Still another measure approved overwhelmingly by the faculty at its last meeting expressed the sense of the faculty that second-year summer job interviews be held in the spring of the second year, instead of the fall as is presently the custom. At the same time, the faculty recommended that when this postponement has been accomplished, the existing rule prohibiting potential employers from inquiring about grades would be abolished."

Following the extensive faculty deliberations on grading reform last spring, it is generally agreed that no further curriculum reform

(Continued on Page 16)

Sacks Tells 1Ls To Take Work Seriously

By Daniel M. Taubman

Dean Albert M. Sacks counseled the entering class of 1976 to "take your work seriously on the premise that you'll find yourself more and more drawn in" at an orientation address two weeks ago.

Speaking to more than 570 1Ls in the air-conditioned multi-purpose room of the Pound Building, Sacks sought to calm the fears and nervousness of the entering class by entertaining them with anecdotes and assuring them that "you are rather remarkable but rather different human beings."

Sacks also discussed legal ethics in light of the Watergate controversy. He chided those critics of the law school curriculum who have suggested that there should be more emphasis on legal ethics. All those involved, Sacks declared, "know the difference between right and wrong." A course in legal ethics, he said, wouldn't have dis-

couraged those involved in the Watergate affair from acting as they did.

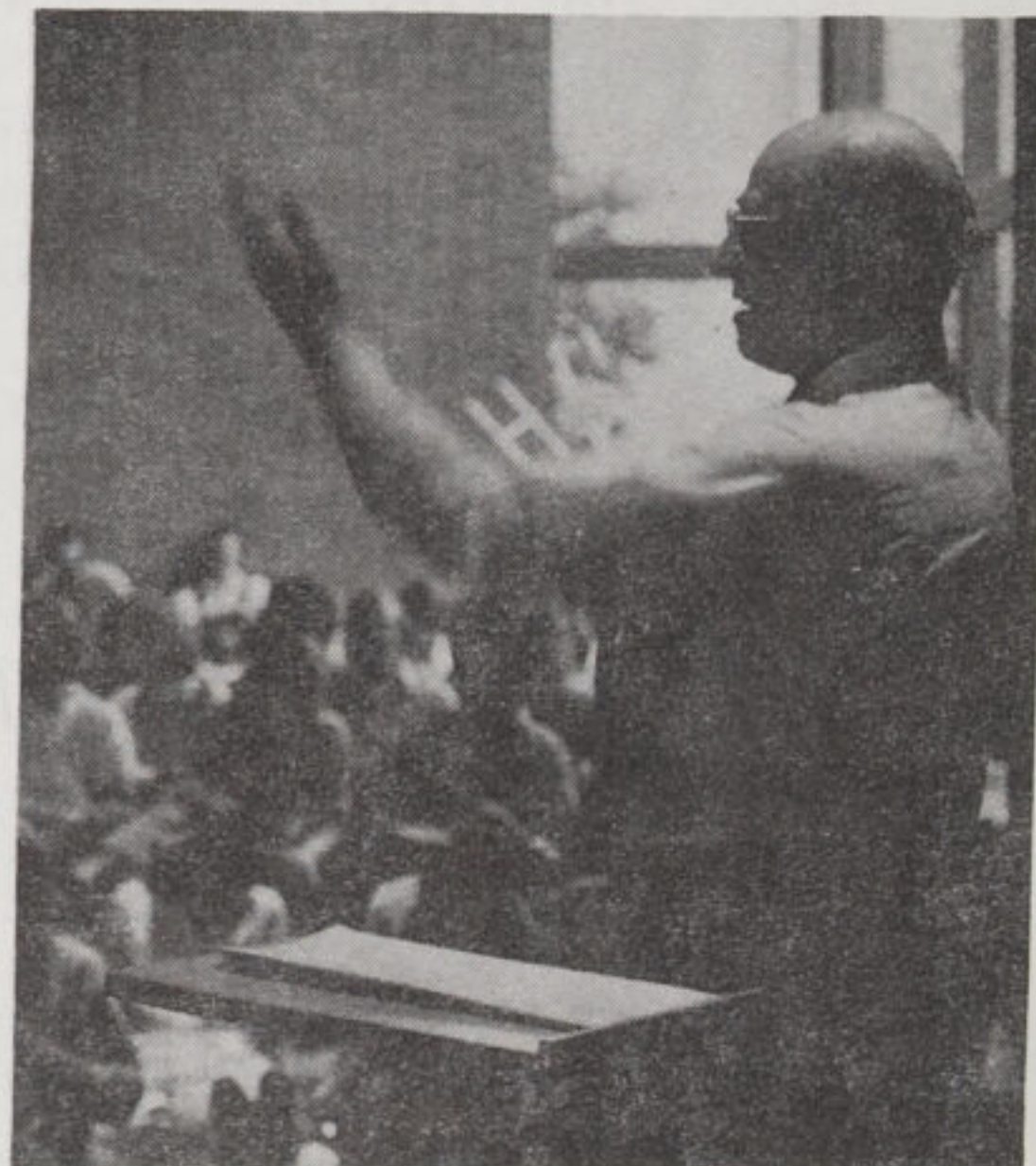
In lieu of a course in legal ethics, Sacks suggested that in the study of legal problems, "we must understand that we are judging values ... perhaps that is something we haven't recognized enough.

"This study has to take place within the framework of professional craftsmanship, and within that framework value judgments are made," he added.

Sacks also urged the entering class to make use of its talents, and to consider charting new legal paths. "Students have a special obligation to do more than pursue a successful private law practice," the Dean maintained. "Much has been given to you and you should consider what to give in your own way."

The Dean further urged the new law students to allocate their time

efficiently, and not to spend all their time in course pursuits. "If you find you don't have time for normal pursuits, then I suggest you need some help from people in better organizing your time."



Paula Bonnell

Dean Albert M. Sacks

Faculty Ends Optional P/F

will be considered for at least several years.

Professor Jerome Cohen, asked for comment about the result of faculty response to his committee's recommendations stated earlier this week that he was "very pleased that the recommendations got as thorough a review as almost anything since I've been here." Cohen said he wasn't disappointed about the defeat of the mandatory pass/fail proposal, since it was "not unreasonable" to have some proposals rejected.

As a result of semesterization, begun last year, both the three students and eight faculty on the committee had changed their views on grading somewhat, Cohen commented.

"In the end we've got a faculty that depends on proceeding by consensus, moving cautiously, and not doing away with something till the need is very great," Cohen continued.

Associate Dean Bator, a leader of the faculty debate in favor of the report's acceptance at the last three faculty meetings, noted earlier this week that he thought the vote on mandatory pass/fail would be close. "My hope was that there would be a substantial majority (in favor) but there wasn't."

Bator stressed that it was not anomalous to have the mandatory pass/fail proposal system rejected and the optional pass/fail system eliminated at the same time. He explained that the two proposals were separable, and that many committee members felt strongly opposed to the optional pass/fail system.

Echoing the view of Cohen, Bator



Professor Jerome Cohen

commented that "I would think it would be desirable to have the matter rest now for several years."

Noting that "the results speak for themselves", Dean Albert M. Sacks said Tuesday that he agreed with the faculty's action to abolish the pass/fail option. "The option system had not functioned effectively and that seemed to be generally supported in the faculty," he said.

Sacks also praised the various proposals for orientation that were recommended earlier in the year by the committee. "I think they ought to have a very positive effect, and already are having a positive effect," he stated.

He cited as praiseworthy recommendations the orientation program just completed by 1Ls, the expanded role of the Board of Student Advisers this year in assisting 1Ls, and the expected hearing of an actual case by first-year students in their Legal Methods classes.

Student committee member David P. Towey, 3L, unlike his professorial colleagues Bator and Cohen, was unhappy about the fa-

culty response to the committee's proposals.

Towey noted that the committee spent "much, much more time discussing pass/fail during the first semester than it did discussing the abolition of the existing pass/fail option. While he agreed with Bator that the two aspects of pass/fail grades were technically separable, he said he believed that "the two proposals were certainly related."

"It seemed for once that the faculty was politicized on an issue instead of the students," he concluded.

At its May 31st meeting, the faculty approved a modified recommendation of the Cohen committee report expressing the general concern which had led to the establishment of the committee the year before. The faculty unanimously approved a statement that "Every effort should be made 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."

This proposal was exactly that originally proposed by the Cohen group, except that the faculty deleted the phrase "utilizing the absence of recorded grades and competitive pressures in the first semester," in order to reach the stated goals.

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