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TWENTY CENTS

Bruce Tells Of HLS Fuel Crisis Steps

In reaction to the current energy crises and rising fuel costs, the Law School has begun to implement various energy-saving measures.

In an interview with the RECORD early this week, Vice Dean William L. Bruce outlined the steps the Law School was taking to conserve fuel. Classroom buildings (Austin Hall, etc.) will remain at 68° during the daytime hours (7:30 a.m. to 6 p.m.) and will drop to 65° or 63° at night and on weekends. Buildings with offices (Pound, FOB, Gannett) will remain at 68° until 10 p.m. while 23 Everett's

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Prof. Cox to Return; Will Teach in Spring



Professor Archibald Cox

Former Watergate Special Prosecutor Archibald Cox will return to the Law School next semester and will teach one or possibly two courses.

The announcement of Cox's return was made last week by Harvard President Derek Bok, Cox's former colleague at the Law School, and was confirmed Tuesday by Dean Albert M. Sacks.

United States District Court Judge Gerhard A. Gesell handed down a decision Wednesday in which he held that the firing of former Special Prosecutor Cox was illegal because it was contrary to Justice Department regulations. As of Wednesday evening, Cox indicated that he did not intend to return to his former post, even if the option were available.

Sacks said that Cox will "certainly" teach one or two courses next semester, but that the specific courses have not yet been determined. Cox had originally planned to teach *Constitutional Law*, *Labor Law*, and an advanced constitutional law course before his selection as Special Prosecutor last May.

Sacks, who conferred briefly with Cox Monday at the Law School, stated that the former Solicitor General would be at the Law School all spring, and that he would not begin teaching as a visiting professor at Cambridge University in England until September of next.

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Rehnquist, Coffin, Wisdom to Preside At Tuesday Ames Competition Finals

Associate Justice of the Supreme Court, William H. Rehnquist, will team with judges from the Fifth and First Circuit Courts of Appeals to hear the final round of the Ames Competition in the Ames courtroom next Tuesday evening at 8 p.m.

Rehnquist, President Nixon's latest appointment to the high court, will hear a case based on the resentencing limitations of *North Carolina v. Pearce*, 395 U.S. 711 (1969). On the bench with him will be the Honorable John Minor Wisdom of the United States Court of Appeals, Fifth Circuit, and Frank M. Coffin, United States Court of Appeals, First Circuit.

Oral arguments on the application of *Pearce* to the question of whether a federal court can apply habeas corpus procedure to release or retry a case without giving the state the option of resentencing will be presented by third-year students Charles W. Douglas and James E. Tyrrell, Jr. of the Learned Hand Club. On the brief are E. Joseph Dean, Gregory R. Mowe, Edwin P. Rutan II, and Robert L. Tortoriello.

Arguing the other side will be Robert L. Mote and David P. Towey for the Harlan Law Club. With them on the brief, which also examines the constitutionality of death qualification of a jury on grounds of conscience under a statute providing that death is to be imposed only if stated "aggravating circumstances" exist, will be David Ackerman, Daniel C. Bort, Kenneth N. Klee, and Alan L. Morrison. All of the competitors are 3Ls.

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Senate Panel Hears Braucher Testimony

Professor Emeritus Robert Braucher, chairman of the National Institute for Consumer Justice, testified before the Senate Commerce Committee Tuesday to urge Congress to pass new federal legislation regarding consumer class action lawsuits.

Braucher, who is currently an Associate Justice of the Massachusetts Supreme Judicial Court, reviewed the recommendations relating to consumer class actions made by the national institute and submitted in its September report to the President.

The National Institute for Consumer Justice is a group composed of prominent citizens from public interest groups, business, universities, and local, state and federal government. The OEO-funded organization was formed two years ago at President Nixon's request to undertake a thorough study of the adequacy of existing procedures for the resolution of disputes arising out of consumer transactions.

"It is our hope that the Report will help to improve the quality of justice available to aggrieved consumers, and that our studies will be useful to others who continue to consider this important subject," Braucher told the committee.

The national institute, Braucher related, felt that "more experience with the consumer class action is needed," even though "in appropriate cases it may be the most fair and effective means of adjusting consumer grievances." The institute urged Congress or state legislatures to undertake a thorough study of consumer class actions five years from now.

The institute recommended the following additional steps with respect to consumer class

actions, Braucher testified:

- Congress should act to permit the claims in consumer class actions to be aggregated for purposes of determining whether a sufficient sum is at issue to meet the monetary requirement for federal court jurisdiction;

- Groups of judges should be established to issue class action guidelines;

- A preliminary hearing should be held to determine whether an action is to be allowed to proceed as a class action, taking into account such factors as plaintiff's chance of success and the propriety of using damages for a related purpose if they cannot practically be returned to the injured class members;

- Neither punitive nor unlimited "minimum" damages should be allowed in a class action; and,

- Successful plaintiffs should be awarded appropriate attorneys' fees; successful defendants should be awarded attorneys' fees only if the plaintiff's case was frivolous and brought primarily to coerce a settlement for the attorney's monetary advantage.

Braucher, who is teaching a course on *The Consumer and The Law* this semester, also noted that the national institute also made recommendations regarding expanded use of small claims courts, arbitration, and business-sponsored mechanisms, but that these recommendations called for action principally at state and local levels of government, or by the private sector.

Braucher served as chairman of the National Commission on Consumer Finance until he was appointed to the Massachusetts Court in 1971.

Field to Leave Harvard, Begin Work in Maine

Professor Emeritus Richard H. Field will return to his native Maine early next month to continue his work as a consultant to the Maine Advisory Committee on the Rules of Evidence.

In addition, he will serve of counsel to Murray, Plumb & Murray, a newly organized firm of young lawyers in Portland, whose senior partner is Peter L. Murray '67.

Field, who is one of three emeritus professors presently teaching a course at the Law School, will continue to teach the first-year elective on the *Legal Profession* in the spring semester. The 70-year-old Field retired from the faculty in June after more than 25 years of teaching.

His affection for Maine is well known. "I was born and grew up in Maine and have a sentimental feeling about the state," he told a reporter last spring.

Previously, Field helped draft the *Maine Rules of Civil Procedure* and is the author of *Maine Civil Practice*.

As a professor of civil procedure, he co-authored three editions of a widely-used casebook with former Harvard Law professor and now Associate Justice of the Massachusetts Supreme Judicial Court Benjamin Kaplan.

Field said last spring that he believes that a flat rule of compulsory retirement at 70 is a "sound idea ... If senior professors are allowed to stay on too long, it delays the progress of younger men."

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HARVARD LAW RECORD

'Review' Spawns 2 Musical Satires

By Daniel M. Taubman

Characteristically omnipresent, the Harvard Law Review has become the point of departure for two spoofs about life at the Law School.

With an abundance of talent among the present student body, not one, but two, law school shows will be performed this academic year.

The first, billed as the Law School Early Show, is being produced by a group of students calling themselves the Harvard Law (Musical) Revue. It is based on a script by two participants in last year's traditional law school show, Bill L. Rothschild, 3L, and Roberta J. Morris, 2L, who decided to chart their own musical course after their scenario was turned down by the present directors of the Law School Drama Society, which produces the traditional Law School show.

They turned down Rothschild and Morris' "Peabody Terrace: The Watergate of Cambridge," in favor of a script entitled "Paper Waste," a satire on the recent movie filmed at a prestigious law school located somewhere in the Northeast.

The main character in the March production of the traditional law school show will be Harv. L. Rev., 3L, president of the Harvard Law Review. In addition to satirizing the Law Review, the show will take pokes at the law, law firms, and life at Harvard.

With two competing, and to some extent overlapping, crews of aspiring legal thespians, the moving forces in each have been striving to separate the two productions in the minds of students at the Law School, much as B.F. Goodrich has sought to distinguish itself from Goodyear.

At the same time, both groups have stressed their desires to initiate law school talent. Previously, the Law School Show has borrowed liberally from Lesley College and the surrounding area for staff personnel.

According to Rothschild, the
(Continued on Page 14)



Bill Rothschild, 3L directs Law School Early Show

Bob Mack

Israeli Reservist Noam, 2L, Returns From Mideast War

A second-year law student returned to Harvard last week after three weeks with the Israeli Air Force. Eli Noam left the Law School October 9, three days after the outbreak of the current Mideast War.

Noam, an Israeli citizen and resident of Tel Aviv, is an air force reservist and joined his nation's forces in fighting over Israel and the Sinai battlefield. Noam also fought in the 1967 Six Day War.

The citizen-soldier told the *Harvard Crimson* last week that the outbreak of war was a surprise, and he had not expected it to last longer than a few days. When fighting continued, he said he felt obliged to go.

Noam was reluctant to discuss his activities during the limited period of active duty. Upon leaving Israel, he said, soldiers are requested not to report actions they have witnessed for national security reasons.

"I don't want to sound idealistic," the 2L said in describing his reasons for going, "but I suppose it was some kind of sense of duty to my friends who were there.

"They were risking their lives and I felt that in such a situation my place was with them."

This war was much more difficult for Israel than the 1967 conflict, according to Noam. "It was much harder" he explained. "There were higher costs in terms of people killed which were not accompanied by the kinds of spectacular victories like in '67. It was an uglier war."

At a cost of about \$7 billion and over 2000 lives, Noam admits that the Israeli economy will be shaken by the war.

He does not feel, however, that a recession will follow. "There will be industrial production to make up for the military losses," he said. "Israel will have to withdraw resources from the civilian economy. It will be a matter of less butter and more guns."

One of Noam's relatives was killed while removing mines from an area in the Hermon Mountain area. Noam said his last act in Israel was to help carry wounded soldiers from a plane to ambulances at Lod Airport in Tel Aviv.

1Ls Compute; Miller Awes Root

Langdell Terminal Shows Cites, Texts

By Arnold S. Rosenberg

The door to the Typing Room languishes in a niche beneath the portrait of Ezra Ripley Thayer in the Harvard Law Library's South Reading Room. One might well expect it to contain mops, brooms and a bucket. Inside, however, first-year law students are learning to use what Professor Arthur R. Miller calls "the most sophisticated" computerized system yet devised for the retrieval of legal materials.

Developed by Mead Data Central, Inc., a subsidiary of the Mead Corporation, in conjunction with the Ohio Bar Association, the system was brought to Harvard under the auspices of Miller.

Mead's purpose in installing two terminals in the Typing Room linked to a computer in Dayton, Ohio, is "to see if there's some rational way this technique can be incorporated into legal education," Miller says.

To this end, 40 first-year students, few of them possessing computer science backgrounds, are being trained to use the system. The first students from each section to sign a list were selected to participate in the program, which demands of each student a total of eight or nine hours, two or three of them on the machine.

The program began with a seminar in which the system was explained generally. A programmed learning session followed, "to show you where the buttons were," according to Jeffrey Gilbert, 1L. Another seminar was followed by group, then individual, projects.

Students didn't take the program too seriously, but were impressed with the system. "It was more like a game than a training program," said Andrew Weiner, 1L. "The system is so simple that even a lawyer should be able to use it."

Gilbert commented, "I felt more as if I was testing it for them than they were testing me."

As yet no written feedback has



Mark McNeil

Librarian operates computer terminal in Langdell Typing Room.

been required of the participating students.

In addition to the students now being trained, reference librarians at the Law Library have viewed a demonstration of the computer system. A demonstration is also planned for the faculty, and others for student organizations are being considered.

At least one more group of first-year law students, and perhaps two, will be trained this year, probably before Christmas.

Miller began working with the system on a consulting basis at the University of Michigan about five years ago. "I have no technical competence — I'm not a programmer," Miller points out. "I've been involved in working out what the component elements are and what the format should be."

The system is based on what Miller terms a "word co-occurrence and frequency" theory. After dialing the computer's Ohio number on a telephone connected to the terminal, the user chooses a state and a "file" (appellate cases, statutes, etc.). He then types in key words, which can signify facts or concepts. He can request all the materials in which the combination of words appears, in which the words appear in a certain proximity to each other, or in which one word appears and the other does not.

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Data Technology Threatens Privacy

By Kermit Kubitz

Professor Arthur R. Miller told a crowded Root Room audience November 8 that although he was not "advocating that everyone get out their fire axes and go out and smash their quota of machines", the new information handling technology developed in recent years posed real problems because of its effect on certain rights, including rights of privacy, civil rights, and constitutional rights.

The room was filled with students who had gathered to hear the author of *The Assault on Privacy* present his personal opinions on methods for handling computer information technology. Miller, an animated, aggressive speaker, began by saying, "Contrary to popular belief, I will call on no one in the next hour."

Portraits of computers monitoring heart patients, predicting heart attacks, communicating medical records from a central storage bank to a foreign doctor, monitoring the environment surrounding an individual implanted with a sensor and performing numerous similar functions were sketched by Miller in his preliminary description of the increasing prevalence of information technology in everyday life.

Indeed, Miller added, criminologists have suggested that our prison population be implanted with these sensing devices, so that they can be monitored when they are released into the general population. "It is perfectly clear," he noted, "that this stuff will be able to sniff marijuana." (See RECORD article on parolee monitoring, April 30, 1970).

The multiplication of such technology, Miller said, begins to resemble that "fabled womb to tomb dossier that Orwell and Huxley write about."

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HARVARD LAW RECORD

Point in Time

Ex-Editor Starts Satirical Biweekly

By Paul Weiner

"It's sort of a combination of *Mad* magazine and *Newsweek*, with a strong dose of anarchy."

Robert L. Hernandez, who dropped out of the Law School in 1972 during the spring of his second year, has started a new biweekly satirical newspaper called *Point in*



First preview issue

Time. Hernandez, who served two terms as News Editor of the *RECORD*, is Coordinator of the new periodical, which published its first preview issue in the beginning of October.

Point in Time draws its influence from the French satirical press, in particular *Charlie Hebdo*. Hernandez spent a year in various parts of France before returning to the United States in June. In the French language, according to Hernandez, every word has a very precise meaning, whereas in English words have a number of possible meanings. While English humor tends to subtly play on ambiguous meanings of words, French satire attacks its subject in a withering, vitriolic, and even vulgar manner.

Also, Hernandez notes, the French emphasize cartooning as an independent art, whereas in this country cartoons tend to

be subordinate to a verbal text. *Point in Time* is devoting a majority of its space to cartoons drawn in a number of styles.

Point in Time is published in Somerville by a staff of approximately 20, only a few of whom are students. It is still seeking writers, photographers, and artists interested in becoming staff members. It plans to publish six biweekly preview issues this fall; the fourth, the first to include two-color printing, came out Wednesday. It is on sale at The Coop in Harkness. Beginning January 1, the newspaper will publish a 16-page issue every two weeks priced at 50 cents an issue, or \$10.00 for an annual subscription (24 issues).

(The newspaper's address is *Point in Time*, P.O. Box 191, Winter Hill P.O., Somerville, Mass. 02145.)

According to Hernandez, the funds necessary to start publication were raised by various staff members.

Hernandez, a 1969 Princeton graduate, was sensitized to political issues by two institutions which usually have the opposite effect: Harvard Law School and the Army Reserve. "Everything that happened in the '60s I missed out on—I was always pursuing a law school career or a college career ... I didn't even start thinking in political terms until the Kent State strike in 1970."

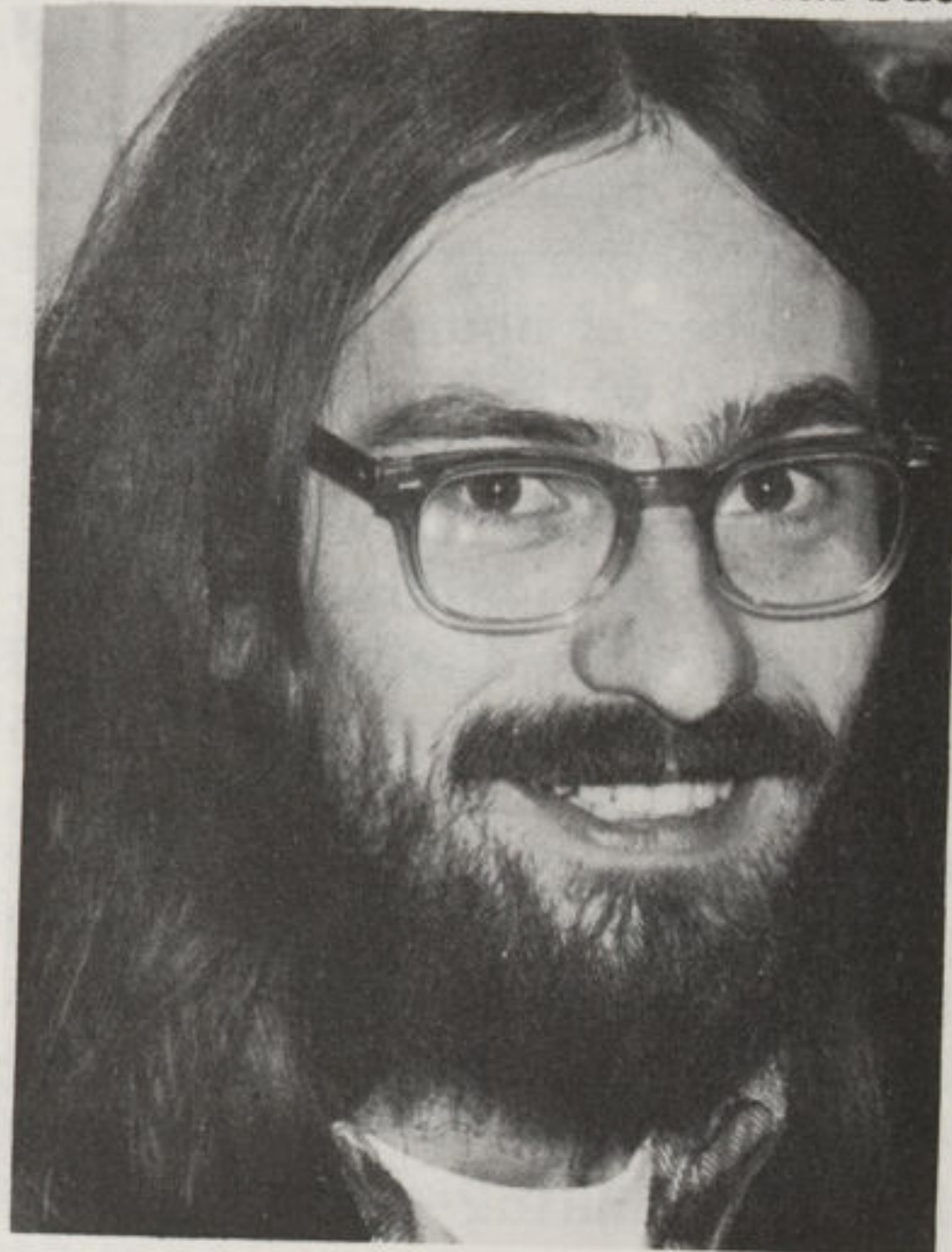
Hernandez began six months of active duty in the Reserves shortly after Kent State. He had enlisted the day before he was drafted. "I was appalled by the totalitarianism of it." After a year, he got a conscientious objector discharge.

"I got as involved in journalism in the Law School as in law," Hernandez recalls. "I found that law was confining me." Despite the fact that "Most of the revolutionaries in the world have been lawyers," including the American founding fathers, Hernandez believes that American lawyers are "a philosopher caste that stopped hav-

ing much purpose after the Revolution was accomplished."

"One thing I got out of Harvard and the *RECORD*, in part," according to Hernandez, "is some idea about the peripheries of the First Amendment as they define freedom of the press ... I don't know how free the press is in this country." Hernandez notes the problems posed by "the pornography laws — can they use them to reach political writing? Part of the challenges to the institutions are sexual challenges. At what point do our offenses against community standards become such that we become pornographic instead of political writing?"

In his last year at Harvard Law, Hernandez became "intensely involved" in one of Professor Gary Bellow's clinical legal education courses. Despite the fact that there have been "a lot of individual suc-



Paul Weiner

Robert L. Hernandez

cesses" in suits brought by public interest lawyers for impoverished clients, Hernandez discovered that "the powers that be are so strong" that "this generation of poor people will never have a real chance to participate in society."

"It's only recently that lawyers have become active in truly far-sighted social change," the former News Editor noted. "The profession hasn't come to grips with its radicalism yet."

Alumnus Suggests Full Disclosure by Firms

By Roland A. Paul

From the days when I was a student at the Harvard Law School in 1960 to the present I have participated in numerous job interviews, from one side of the table or the other. Out of this experience I have become convinced that the information which a student receives from prospective firms is often inadequate for an intelligent career choice. Indeed, if some interviewers were selling securities publicly instead of hiring employees on the basis of the information they provide young law students, they would be in violation of Section 11 of the Securities Act of 1933 (a provision close to the daily practice of many of them), which imposes liability for any registration statement that "omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading."

Among other questions that may be on many young applicants' minds are his chances, statistically, for becoming a partner and the number of hours per week he will have to work. Frequently these questions are never directly addressed in an interviewing session. Instead, these matters are only alluded to and the discussion goes off on other less delicate subjects such as the sort of practice the firm has, its devotion to legal aid and other good causes, or the informality of the place. Some students make the false assumption of measuring their chances for partnership by simply comparing the number of

associates to the number of partners in the firm. A more meaningful measure is to compare the average number of associates hired each year (including those hired years after their graduation) with the average number of partners made each year, and then perhaps to discount the ratio slightly to take into account the prospect of some growth in the firm. With respect to the hours worked, some applicants hesitate to ask such a question, since they do not wish to appear to have the wrong sort of values. Even when asked, the question is not always forthrightly answered. Nevertheless, the question is amenable to a more or less quantifiable answer.

In the interest of greater information for the applicant, the placement office should insist that each interviewing firm provide a dossier for the applicant's private review, which includes the following information:

1. The number of associates the firm expects to hire that year and the number hired the year before.
2. The number of partners made in each of the last three years.
3. The total number of recorded hours worked in each of the three years prior to becoming a partner for each lawyer becoming a partner in the last three years.
4. The name and address of each lawyer who has left the firm in the last three years (and the number of years he had been with the firm before leaving).

The last item in the foregoing list serves two purposes. First, with respect to some firms, most beginning associates will also leave as associates a few years later. Therefore, they ought to be aware of the job opportunities after leaving. Second, before accepting an offer, they may wish to contact some who have left. This group I have found to be very frank in discussing what work was like at their prior firm.

Frequently firms make a practice of encouraging certain young associates to participate

in the recruiting process. This is modestly desirable because they presumably relate better to the applicant than can older lawyers. But do not assume they are necessarily going to be entirely candid either. First, their efforts in recruiting others will, they hope, gain them esteem in the eyes of their superiors; and conversely any negative comments, if reported back to the partners, could well be damaging to their own careers. Second, there is some natural desire to justify to others and to oneself the choice one has made as to his own employment. I would only add that I have not seen it to be a firm's policy to encourage associates who have been passed over for partnership to participate in the recruiting and interviewing program.

I also think in some cases a false impression is given as to the amount of time and effort that is devoted to pro bono work relative to clients' work. Several summaries I have read prepared by firms for placement office bulletin boards devote quite a few words to this side of their practice. Interviewers also play on this theme. Often the actual time spent on such work is not proportionate to the length of its description to applicants.

Perhaps a way to get at a more accurate picture of the amount of time devoted to pro bono work would be to require each firm to provide in its interviewing dossier the total number of hours worked by all associates on Mondays through Fridays on pro bono work and the total number of hours worked by all associates all week on all matters. In some cases at least, I think the fraction produced by this formula will be very small indeed.

The author is a member of the New York firm of Gilbert, Segall and Young. He graduated in 1961 from Harvard Law School, where he was an editor of the Law Review.

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Law Council to Keep Thrift Shop Operating

By Michael Bowen

The Law School Council decided last Friday to continue operating the Law School Thrift Shop and to regularize its functions. Responding to the assertion of Rene Townsend, 3L that the Thrift Shop is "the only service the Council has ever really given to the students," the Council decided to allocate the shop's sales and supervisory responsibilities among its own members. The Council will hire a student to handle the Thrift Shop's paper work which Townsend termed "monumental" and "tedious."

Townsend assumed responsibility for details of the project. Once fully operational, the Thrift Shop will be open from 11 a.m. until 3 p.m. weekdays during specified buying and selling seasons.

Another action Friday was the tentative implementation of a proposal by Russell Richeda, 2L to increase student input to the Council. Richeda suggested that the Council set aside a specific day to hear student grievances and ideas, and that the time, date and location of these hearings be heavily advertised in order to maximize student participation. After extended debate the Council directed Richeda, in the words of presiding officer Jamienne Studley, 2L to "take the ball and run with it." Richeda said that today (Friday, November 16) would most likely be chosen for the planned activity.

The Council, advised that "Guts is maybe *the* qualification" for the

posts, also selected five of its members to represent it at faculty meetings. Since it was decided that each class should have at least one member among the delegates, William O. Ligon, 3L, and graduate student Gregorio Arena, the only members in their respective classes to indicate interest in the positions, were selected automatically. The Council then chose Paul D. Gutierrez, 2L to represent the second-year class and Margaret M. Montoya, 1L to represent first-year students. Jeffrey F. Reiman, 1L was elected to the fifth position.

In other actions, the Council decided that one student member from each of five Law School committees—the Administrative Board, the Committee on the First Year, the Committee on Clinical Education, the Financial Aid Committee and the Committee on Legal Education—would be chosen to attend faculty meetings and to exercise speaking privileges there.

Council members proceeded with plans to choose student members of various governance committees. The members are to be chosen by class caucuses from those who had applied by November 14. In response to questions from members of the Council, Studley said that all committee positions were open and that incumbents must therefore reapply to keep their jobs. She emphasized that reappointment was not automatic.

The Council was informed that Gerald H. Grissom, 1L had been chosen by lottery from among 12 applicants for a seat on the University Planning Committee. The Planning Committee is a 36-member body responsible for producing a master plan for dealing with the University's physical plant over the next 10 years. Studley explained that the Law Council's executive committee had resorted to a lottery to choose among the 12 as "a crisis move" necessitated by Dean Bruce's insistence that the position be filled within a comparatively short time after he had informed the committee that it was vacant.

Shockley to Debate Innis At Princeton

The *New York Times* reported Tuesday that the Shockley-Innis debate canceled here at the Law School will take place at Princeton University next month.

Michael M. Shepard, President of the Princeton Whig-Clisophic Society, announced that William Shockley and Roy Innis will meet in the university's Alexander Hall on the evening of December 4 to discuss "IQ Differences, Heredity, and Dysgenics: A Debate."

The *Times* story noted that "Mr. Innis and Dr. Shockley had originally arranged to debate Dr. Shockley's disputed theories about alleged genetic inferiority of blacks on October 26 in Boston as guests of the Harvard Law Forum. Strong opposition to the debate from the Harvard Black Law Students Association and several members of the school's faculty prompted the Forum to cancel the event."

The speakers will each make a 20-minute address and a 10-minute rebuttal and then answer all questions from the audience. "We have had no trouble with the university in arranging the debate," the Princeton student spokesman said. "The school officials did not participate in the decision to invite the speakers."

He added that campus reaction ranged from "indifference to reasonably enthusiastic."

Innis confirmed his acceptance of the invitation with the promise to "leave Shockley an intellectual dead duck on a frozen lake."

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Visiting Professor Kitagawa Sees

By Jim Stewart

The rapid international expansion of the Japanese economy has made an understanding of Japanese law a necessity. And Visiting Professor Zentaro Kitagawa of Kyoto University believes American-Japanese legal problems today will appear simple when contrasted with those of the future.

Currently, foreign trade controls and access to the Japanese market are the major problems for non-Japanese lawyers, Kitagawa said. These relations are controlled by very rigid statutory regulations, and hence the problems that arise are very practical and relatively easy for American lawyers to understand, he said.

"But as the Japanese government liberalizes its regulation of foreign trade and American companies expand into the domestic market, a



Mark McNeil

Visiting Professor Zentaro Kitagawa

much more basic understanding of Japanese law will be required," Kitagawa said.

Kitagawa explained that while at times the practical impact of Japanese law is the same as that of American, philosophically it is completely different from American common law. Too often foreign lawyers believe a basic understanding can be dispensed with while dealing with an immediate practical problem.

Kitagawa is attempting to confront these problems in the course he is currently teaching, *U.S.-Japanese Contracts and Sales Problems*. His visit is being funded by last year's \$1,000,000 grant from the Mitsubishi Corporation.

Kitagawa has taught previously in the United States, at the University of Washington during 1969-70, and has visited a number of German universities. He has published works in Japanese, English, and German, and is using a casebook he co-authored in his class this fall.

While Kitagawa said that he enjoys his students,

he added, "everyday I find problems." These stem primarily from the fact that the Japanese contract is very difficult for Americans to grasp at the conceptual level, even when the outcome is the same, he said.

As a result, Kitagawa uses a problem approach both in class and in his casebook. He encourages students to examine the problems he has selected first from a theoretical point of view, and then from a functional point of view. "I have tried to choose relevant issues from which to compare the American and Japanese outlooks," he said. Since the practical and theoretical are becoming increasingly intertwined in Japanese legal problems, Kitagawa believes this method is essential.

Kitagawa has found the academic climate at Harvard interesting, but very different from that of his native university. "We call law 'legal science' in Japan. We feel as scholars first, teachers second. It is a very traditional approach." Kitagawa finds American students very practically oriented. "My students always immediately look for what the issue is and what points must be covered. This is very good, but they need a basic understanding of the system."

In Japan, law professors never practice law while they are teaching and most have never practiced law. Of the 40 faculty members at Kyoto, only two have passed the necessary examination to become a practicing lawyer, and one of these is a retired judge, Kitagawa said.

Kitagawa sees many of the distinctions between legal systems in Japan and the United States in what he terms his "maximum law-minimum law" theory. A maximum law approach, such as that in the United States, sees every dispute as a legal problem, to be settled by lawyers in a court of law. The minimum law theory takes the opposite point of view, and Kitagawa points to mainland China as an example.

Japan's legal system is closer to the minimum law theory, he said. "Japan has only 10,000 lawyers in a population of 100,000,000." He explained that the Japanese place a great emphasis on conciliation, on compromising their demands and settling differences privately, out of court and out of the public eye. He said that even major corporations settle 90 per cent of their differences secretly, and most have large legal departments in which none of the personnel are actually practicing lawyers.

Kitagawa pointed to this sharp contrast with the American legal system, where people believe in their right to a jury trial. "What I am interested in is whether these systems make the people happy. Do all these lawyers make Americans happy?" Kitagawa said that he is not trying to criticize the American system, but is trying to discover from a neutral point of view whether Americans and Japanese are happy with the manner in which their disputes are settled. Kitagawa said that he speaks only for himself, but he sees a trend in Japan towards a maximum law approach, and he doubts whether that is the solution to

Future Japanese Legal Problems

Japan's legal problems.

Kitagawa strongly hopes that the Harvard faculty will appoint a permanent expert in Japanese law. "I believe this is very important, although I understand that it will be difficult to find a good teacher." He believes it is difficult, though not impossible, to be an expert on Japanese law in America since the expert must know the Japanese civil system and the American common law system and overcome the language problem.

"I hope Harvard will find someone who is ready to understand Japanese society, who has a very flexible way of thinking," Kitagawa said. He added that "I would like to help educate an expert myself. I know that I have some very good students in my class right now."

Kitagawa said that he enjoys Cambridge and Boston, but misses the mountains which surround Kyoto. He and his wife and three children frequently hike in Japan, but haven't found much time to do so here. Kitagawa will be at Harvard until the end of March, when he will leave for the University of Munich. He is currently preparing an introductory work on Japanese law for foreign lawyers.

Kitagawa did his legal study at Kyoto University, and has been a member of the law faculty there since 1961. In addition to the casebook which he is currently preparing for publication, he has written four books on Japanese law, including one work in German.

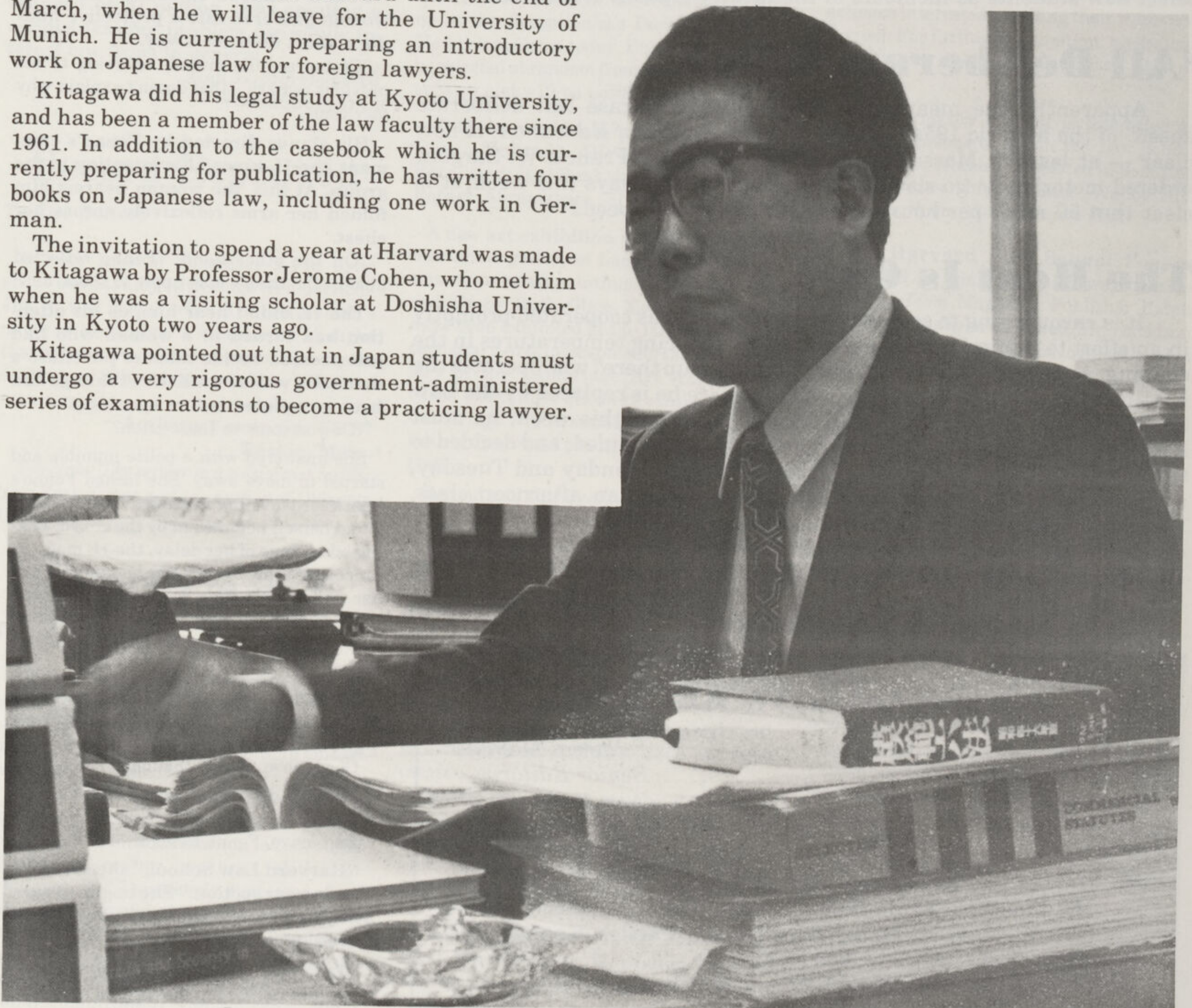
The invitation to spend a year at Harvard was made to Kitagawa by Professor Jerome Cohen, who met him when he was a visiting scholar at Doshisha University in Kyoto two years ago.

Kitagawa pointed out that in Japan students must undergo a very rigorous government-administered series of examinations to become a practicing lawyer.

Less than three per cent of those taking the exam, about 500 people, pass the first round of examination, and two additional years of study are then required before they are eligible to take the final qualifying examination.

"An American professor told me that I had to be wrong — that Japan had to have more than 10,000 lawyers," Kitagawa said. "People say 'you must have more lawyers'. But I find the argument silly. In Japan we have many means to settle disputes."

Kitagawa said that he tries to maintain a very objective point of view when contrasting legal systems. "I am committed to presenting my students with concrete problems, but from a neutral point of view," he declared. He said that American and Japanese students often approach a problem from the standpoint of a particular political ideology, but he does not find that compatible with his role as a scholar.



Wise Council

The Law School Council decided recently that membership on faculty-student committees would be open to all students, and that committee members would not be chosen from the Council itself, as had been done in the past. This is a salutary change, and should be welcomed by all. Too often, students have fortuitously become members of a committee, and have remained on the committee for two or three years at a time when most of their fellow students scarcely knew of the committee's existence. At other times, students who had served for one year on a committee were selected the following year on the grounds that they had more experience than their classmates. Rather than justifying the longevity of student committee members, there is much to be said for injecting new blood into the faculty-student committees. While these groups have done little thus far this year, they have at times contributed significantly. Last year, for example, the student members of the ill-fated Cohen Committee on First Year Evaluation and Related Matters argued vigorously for their points of view, and succeeded in persuading several faculty members on the committee of the advantages of pass/fail grading.

The method of selecting students this year on the basis of interest and experience are far more democratic and equitable than the nepotistic procedures of the past. We commend the Law School Council for its enlightened action in this area, and we trust that its members will expeditiously select new students as members of the faculty-student committees.

'All Deliberate Speed'

Apparently, the meaning of the enigmatic phrase "all deliberate speed" of the historic 1954 decision *Brown v. Board of Education*, is now clear — at least in Massachusetts. Since Governor Francis W. Sargent ordered motorists to go slower on the nation's highways this week, it is clear that 50 miles per hour is now "all deliberate speed."

The Heat Is On

It is encouraging to see that the Law School has cooperated promptly in an effort to minimize its use of energy by reducing temperatures in the evening. Apparently, the proverbial "little man up there" who operates the heating system is playing games with us before he is replaced by the Law School's newly ordered computer. In one classroom this week, he must have forgotten that there was an afternoon class scheduled, and decided to turn down the heat to about 55 degrees. Between Monday and Tuesday, someone must have reminded him that there was an afternoon class, because Tuesday the heat was on, and how. The "little man" must have decided to use the leftover energy from the day before, and the result was a stultifying classroom temperature which unfortunately did not provoke any heated discussions.

Maybe things will get better. We hope so.

HARVARD LAW RECORD

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Fenno

Fenno, moving much as he supposed a broken-field runner might if the runner were travelling in slow motion, worked his way smoothly through the closely-packed crowd. The stentorian music of a rock band several dozen feet away overwhelmed the large room. Everyone was swaying more or less unconsciously to the amplified beat except Fenno, whose sways were strictly conscious. At last Fenno had completed his convoluted course from the entrance to the refreshment counter. Fenno's first-year friend pulled up behind him, impressed by Fenno's expertise in the matter.

"I never know why I come to these things," Fenno's friend said as he paid for his beer.

"It's a combination virility-test and morality play," Fenno suggested in his longest sentence of the year. This caused the 1L to frown, because he never knew when Fenno was being serious.

Fenno chanced to see a cluster of women gathered into a protective huddle a short distance away.

"Of course," he mused, referring to his previous remark, "that doesn't explain why they come."

His glance directed by Fenno's comment, the 1L turned his attention to the group. At this, the woman nearest him folded her arms reflexively across her chest.

"On the other hand," Fenno reflected aloud, "the theory may apply to them, too."

The 1L didn't hear him, as his attention had turned to a woman who had just pressed beside them to purchase a drink. He waited until the exchange had been completed before speaking.

"Do you come to these often?"

She answered with a polite mumble and started to move away. She lacked Fenno's knack for traveling in traffic, however, and found herself hemmed in by the crowd. Taking advantage of her delay, the 1L made an innocuous reply to what she had intended as her valediction. She hesitated a moment, then decided to reply. Their conversation was under way. Fenno looked on encouragingly.

Presently, the woman took a cigarette from her purse. The 1L did not offer to light it for her.

Good move, Fenno thought.

"Where do you go to school?" the 1L asked.

Bad move, Fenno thought.

"Harvard Law School," she said icily. "I'm in your section." She began to move away in earnest, this time wholly undeterred by the crowd.

"Take heart," Fenno consoled. "You lost an acquaintance, but you proved a theory."

Letters to the Editor of The Record

Record Corrected

To The Editor:

An article appearing in the October 19th issue about the meeting that Mark Green and I held on October 9th concerning public interest law contains a statement which ought to be corrected. The reporter attributes to Mr. Green a statement that the "Ford Foundation had reduced its grant to the [Center for the Study of Responsive Law] by \$1 million per year."

As the Ford Foundation would surely point out if the matter were called to its attention, no such reduction by Ford is possible since it has never given a penny to the Center for the Study of Responsive Law or any other organization with which Ralph Nader has any connection. What Mr. Green said was that Ford's overall contribution to public interest law firms in the coming year was to be reduced by \$1 million, thus creating a serious funding problem for public interest law firms in general.

Alan B. Morrison '66
Washington, D.C.

Record Reproved

To The Editor:

In your issue of November 2 you write about one Stanley Kitteridge as a participant in the model trial. The gentleman's name is Kentridge. I would have thought that getting the names of persons presently at the Law School right would be a modest requirement.

Anthony Lewis, Sp. '56-'57
Boston, Mass.

Ed. Note: The writer is a columnist for the New York Times and the author of Gideon's Trumpet.

Record Lauded

To The Editor:

This brief note is to endorse your editorial entitled "Speechless" in the October 19, 1973, issue. The Forum seems to have capitulated in a manner which is an embarrassment to us all.

I am never troubled when the Law School is publicly attacked from within or without for being Establishmentarian, leftist, out of touch with reality, crackpot, elitist, or whatever. But, I am deeply distressed when journalists around the country can accurately report that free expression and debate are in trouble at Harvard. I join the RECORD in urging the Forum to reestablish its traditional commitment and courage, and I

NOVEMBER 16, 1973

would also urge it to reschedule the Shockley-Innis debate.

Craig Eldon Pinkus '68
Indianapolis, Indiana

At a Loss For Pictures

To The Editor:

I can't for the life of me understand what Mr. Kenety had to complain about in his November 9 piece, "1973 Yearbook: Recycled Pulp," so far as my 1964 and 1973 pictures are concerned. The Yearbook did vary things by having me looking to the right in

one of them and to the left in the other—all of which evidences the traditional open-mindedness of Harvard Law School professors. On the contrary, it is I who have a serious complaint to register; for Mr. Kenety hasn't helped me at all in defending against my wife's suggestion that I should have thrown that jacket out a long time ago.

Professor Louis Loss

Ed. Note: If Professor Loss takes a look at his old yearbooks, he will discover that he is facing to the right in both 1964 and 1973. It was we who flipped one of the yearbook pictures, simply to vary our layout. Apparently, the "traditional open-mindedness of Harvard Law school professors" is a proposition still to be proven.

Law Notes

Students interested in lunching with Supreme Court Justice William Rehnquist next Tuesday at 1 p.m. are requested to sign up at the Receptionist's Desk in Langdell Hall before 5 p.m. today. Eight students will be selected at random from among those who sign up and will be notified by Monday.

* * *

Students may obtain copies of the 1973-74 Law School Directory at the Receptionist's Desk in Langdell Hall, Robert Abramowitz, 3L, has announced.

* * *

A new art exhibition is on display in the mezzanine gallery of Langdell. The exhibition contains six paintings by Renee Collins and six by Ruth Glass. Collins' paintings have been exhibited at the Institute of Contemporary Arts in Boston and the Little Gallery of the Cambridge Art Association. Glass' works have also been exhibited by the Cambridge Art Association, as well as the Boston Center for the Arts and Boston City Hall.

* * *

Second and third year law students have until April 15 to enter the 1974 Howard C. Schwab Memorial Award essay contest in the field of Family Law.

To enter the contest, sponsored by the American Bar Association's Family Law section, contestants must write on some aspect of Family Law. Essays that have been, or are scheduled to be published, are ineligible for consideration.

First, second and third-place winners will receive cash awards of \$500, \$300, and \$200 respectively.

Contest entry forms may be obtained by writing: Howard C. Schwab Memorial Award Essay Contest, Section of Family Law, American Bar Association, 1155 East 60th Street, Chicago, Illinois, 60637.

* * *

Professor Derrick Bell will address the First Year Writing Workshop Lecture Series next Monday, November 19, in Pound 101.

The Harvard Law Community Association is sponsoring a crafts sale, which will be held in early December. All artisans interested in selling their wares are invited. For further information, please call Susie Jacobs at 491-6250, or Susan Hunt at 492-3581.

* * *

The Dormitory Council is interested in obtaining pianos to put in the Law School dormitories. Alumni interested in donating usable pianos should contact Nancy Holland, 2L, Room 133, Hastings Hall.

* * *

The Harvard Law School Forum scheduled for tonight, which was to have featured Time Magazine Publisher Ralph Davidson, has been cancelled. Mr. Davidson will be unable to appear due to a death in his family.

* * *

Students can copy Law Review outlines held in the Library by arrangement with the Copy Center. During the month of November, copies of outlines will be deposited with the copy center. After November 29, the outlines will again be available on desk reserve for Reading Room use only, subject to a two-hour use limitation.

* * *

The Center for Law and Health Sciences of the Boston University School of Law will sponsor an all-day symposium on "Psychosurgery: The Legal and Ethical Issues" Saturday, December 1. The symposium will be held at the Boston University Law School Auditorium, 765 Commonwealth Avenue, Boston, Massachusetts from 9:00 a.m. to 4:30 p.m. Speakers will include Drs. Vernon Mark, Stephen Chorover, George Annas and Robert Neville. A demonstration of multidisciplinary review will take place in the afternoon.

Further information may be obtained by contacting the Center for Law and Health Sciences, 209 Bay State Road, Boston, Massachusetts 02215, or by calling (617) 353-2910.

The Boston Consulting Group

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Ineffective Competition

We have a society and an economy that is built on the concept of free enterprise regulated by competition. That concept starts with certain assumptions:

- The efficient will displace the inefficient.
- Competition will cause the benefits of low cost to be passed on to the consumer.
- New investments of resources will be made where they are the most productive.

The basic underlying assumption, of course, is that the low cost competitor can and will set a price that higher cost competitors cannot justify. If that happens, then all the other assumptions are validated.

On the other hand, if high cost competitors gain market share, then all the other assumptions are invalid. We must then reexamine all of our ideas about free enterprise. Either we make free enterprise work, or we find an entirely different way of allocating resources.

We can observe that free enterprise is not working.

We see that prices are often raised although excess capacity exists. We see high cost competition not only adding capacity, but often growing faster than lower cost competitors.

Our economy is far from free.

Large sectors are regulated in detail. This is particularly true of power, communications and transportation. Certain policy aspects are regulated or prohibited. This is particularly true of labor, prices and finance. The tax structure significantly dampens certain economic effects and amplifies others. The administration and court interpretation of certain laws has a profoundly inhibiting effect on competitive behavior, particularly those dealing with labor relations.

Competition is inherently unstable if the efficient competitor follows his own best interests. Failure of the low cost competitor to gain market share steadily and consistently is a failure of management as well as a failure to serve the public interest. Prices could be lower, profits per share could be higher, productivity could be higher, business could be more stable in almost every area if competition were more effective.

The low cost competitor serves his own interests and public policy best if he:

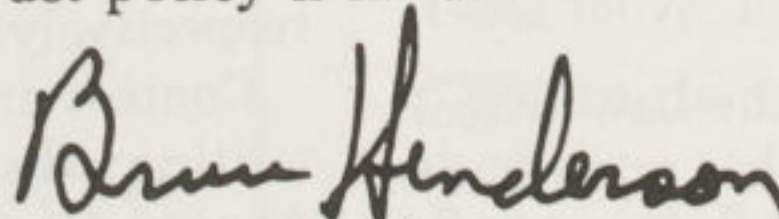
- Keeps prices low enough to inhibit competitors growth.
- Adds capacity as necessary to preempt industry growth.
- Substitutes debt for equity as long as total costs are still significantly below competition.
- Continues to invest in cost reduction as long as the net return on new investment exceeds interest costs.

It is an observable fact that there is a direct correlation between market share and cost potential. The competitor with the largest market share should have the lowest cost. If this is not true, then the market has not been defined properly. The only alternate explanation is inadequate management. Therefore, lower cost should lead to greater market share which should lead to even lower costs and even greater market share.

Effective competition must lead to concentration. Failure to do so is a failure of competition. Failure to do so is a failure of the whole concept of free enterprise. This concentration requires government-business policy coordination and cooperation. If this is achieved, then the result is greater productivity for everyone. Japan has demonstrated how effective and productive this kind of economy can be.

If competition leads to concentration, it also leads to monopoly. Yet failure to concentrate is failure to compete with many of the same consequences as monopoly but without the cost benefits of concentration. Public policy must encourage and guide concentration, not prohibit it.

Business can help itself by adopting policies that focus on competitive cost differentials and return on equity instead of on margin and return on assets. But real competition must be delayed until anticompetitive legislation and interpretation of antitrust policy is modified.


Bruce D. Henderson

Perspective #103

A longer version is available.

BOSTON • LONDON • MILAN • PARIS • TOKYO
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Miller: Computers Menace Privacy

(Continued from Page 4)

Throughout his talk, Miller interspersed examples of the uses of technology with examples of potential abuse. This suspicion of the benefits of technology led ultimately to the statement "I suspect even the wheel is a mixed blessing."

However, Miller concluded, it is not possible to do without the computer "in an urbanized, complex, troubled, mass society such as ours." There exist no systems within his knowledge, Miller stated, "that haven't been undertaken with a socially desirable objective in the first instance." The problem then, is to engineer the use of the technology so as to maximize its social benefit and minimize its deleterious side effects.

The specific bad effects of unregulated computer use that Miller saw were associated with its effect on privacy, decision-making, information out-of-context, and the possible "chilling effect" of information technology on the exercise of constitutional rights.

Energy Shortage Leads To Lower Temperatures

(Continued from Page 1)

temperature during the day will be 70° due to the Day Care Center.

Dormitory temperatures will remain at 68° seven days a week with the temperature falling to 65° after 10 p.m. Library temperatures will be determined after Librarian Morris Cohen returns from a conference.

Bruce said that the Law School has invested \$76,000 in a computer control terminal to automatically regulate temperatures as described above. Based on last year's fuel costs it will pay for itself in two and one-half years.

Other energy conserving measures being considered include abandoning Christmas lighting this December. At the present time there are no plans to turn off the outdoor lamps and lighting around campus, but Dean Bruce indicated such a step might be taken if the situation warranted it.

Miller traced the government's increasing interest in its citizens back to the New Deal and said a kind of Parkinson's Law Effect governed the collection of information. As soon as new technology — from the quill pen to typewriters to reprography — made increased information handling possible, that capability was put to use.

This proliferation of information, Miller suggested, has caused people to "lose the ability to function independent of the record." Miller called this the Pontius Pilate effect: "I wash my hands of individual responsibility for this decision" and lamented the failure to look behind the data in large scale information systems.

This obsolescence of one-on-one, face-to-face individual evaluative decisions, Miller said, raises the threat of "social alienation on the part of those groups in society who feel disabused by the record."

Contextual inaccuracies may also result, Miller suggested, noting the example of the National Crime Information Center which records arrest record information but in over 30% of cases fails to show disposition.

Noting that an arrest record virtually disables an individual from working in the New York securities industry, Miller pointed out that in the inner city, for a black male of 20 years of age, the odds are over eight out of ten that an arrest record will exist. Miller questioned whether this represented equal opportunity.

The military intelligence system unleashed by President Johnson after the inner city disturbances of the 1960's collected over 7 million names of individuals in five years, causing the comment, "They had run amok. No external restraints had been placed on them." Besides the Weathermen, SDS and KKK which Miller suggested were probably already adequately documented, groups surveyed included civil rights workers, protesting students, and liberals of all descriptions. "It would have made a marvelous mailing list," Miller

quipped.

"If the price of signing a petition or attending a rally or writing a letter to the New York Times, let alone the President, is to call yourself to the attention of the U.S. Army, for some people that is too high a price."

While offering no firm solutions, Miller proposed five ideas, "Miller's Platitudes," for dealing with the problems and opportunities presented by information technology.

(1) Develop the principle of behavior that any person who deals in information about another person, owes a duty of care to the individual to deal fairly with that information, a duty enforceable through sanctions.

(2) Ask the policy question "Is this piece of information really necessary?"

(3) Establish that an information user has an obligation to safeguard data from an unauthorized person.

(4) Establish a right of access or correction for an individual to insure that basic due process guarantees in information handling occur.

(5) Provide for information expungement and destruction when its maintenance is no longer necessary.

In summary, Miller quoted e.e. cummings: "Progress is a terribly comfortable disease."

Cox Will Present Courses In Spring

(Continued from Page 1)

year. According to Sacks, Cox's plan to teach in England had been made before he had been named Special Prosecutor.

"Professor Cox is plainly going to spend most of the time between now and the beginning of the second semester (at his home) in Maine trying to rest," Sacks related. He will spend some of the time preparing for the courses he will teach, and some time finishing up loose ends, the Dean continued.

Asked whether Cox would grade the exams for *Labor Law* from last spring, which he had graded only on a Pass/Fail basis, Sacks said he didn't know.

'Law Review' Spawns Two Musical Satires

(Continued from Page 3)

Law School Early Show, "boasts script and lyrics written in toto by law students, music — when not stolen — composed by law students, a direction and production staff — director, choreographer, technicians, costume and prop people, etc. — almost entirely composed of law students."

"The cast of twenty includes 14 law students, one spouse, one (Law School) staffer, three semi-related individuals, and the author's dog who last year slept through many a *Constitutional Law* class," Rothschild says.

The traditional law school show is expected to hold special casting sessions for law students next month in order to give law students first chance at securing parts. An all-Law School band and technical crew are also planned, according to Law School Drama Society member Robert L. Ryken, 2L.

"The objective is to allow all law students who want to work on the show to do so; non-law student talent will be recruited only for positions that qualified law students do not take," he maintained.

The Law School Early Show, explains Rothschild, is "an irreverent comparison of various elements of Harvard Law to the United States Senate, the Roman Senate, the Watergate committee, the President, and Martha Mitchell."

It chronicles the trials of law student Archibald Wright (Daniel M. Shapiro, 2L) and his tutor-wife Rebecca (played by Daniel's wife Rhoda) at a time when women were not admitted to the Law School. To combat this invidious discrimination, property professor John Caldwell Calhoun Quagmire II (Rothschild) and his wife Federal District Court Judge Priscilla Hadley-Baxendale Quagmire (Morris), institute an underground law school to teach students' wives.

Meanwhile, Wright reaches the Ames finals, only to find his notes stolen. A Select Faculty Committee is chosen to investigate: professors Howard D. Bunker, Gunter Kaplan Void, Sanitary Landfill, Heinrich Kissingsess, Maguire Mansfield Badbore, and J.C.C. Quagmire II.

Dean I.N. Vertebrate (Robert Ryken, 2L) at suggestions of Vice Dean VD (Tim F. Cullen, 3L), commissions a special Independent Prosecutor to stop the committee hearings. The notes are then discovered in possession of the Administration which refuses on executive privilege and Law School security to part with them.

The Show features cameo roles by Connie J. Sipe, 2L, as Martha Mitchell, and Sydelle Pittas, 2L, as Emma Seepigh.

With its first performance scheduled for December 7, rehearsals are already under way. Because of the wishes of set designer Sara Rogers, the show will be performed in Langdell North Middle instead of the Pound Multi-Purpose Room, the site of traditional law school endeavors. The podium and side seats will be removed to allow greater freedom of movement, Rothschild said.

The traditional law school show, in addition to Harv. L. Rev., 3L, revolves around Linda Shoelace, sultry starlet of *Long Tonsils* and other million dollar grossers, Ryken explained.

Electronic Law Library Installs Langdell Outlets

The requested materials can be delivered as a list of citations, or the texts can be shown on a screen or printed out on paper. In addition, the user can choose to view just those parts of the text immediately preceding and following the key words, or the entire text, page by page.

Despite the system's efficiency, its users may still face problems. Students particularly noted overlooking synonyms, failing to formulate the right combination of words, and missing possible legal theories by using conceptual rather than factual key words.

At present, the materials programmed into the machine include all Ohio cases and statutes since 1821, all of the 2nd Series of the official reports of New York since 1955, and all Federal tax cases, according to Mary Kay Kane, a Research Associate at the Law School. In addition, all Supreme Court cases since 1938 will be put into the data bank by December 1, and all recent United States Courts of Appeals and District Court cases by January.

Plans are afoot to place terminals in bar association libraries. The Law School's terminals, however, are presently expected to remain only through next June.

The system is marketed on a monthly-charge basis. The cost to a firm "would be approximately \$30,000 per year, depending on how much research they do," Miller estimates.

A number of firms have already purchased terminals. However, Miller cites as a major problem "getting lawyers to change their research habits." He adds that the cost will decrease as use increases.

While some students envision a reduction in demand for young lawyers due to the system, Miller believes that it will "free up lawyers' time for creative work. It can help them produce a better product and make their work less droneful — but it won't make dumb people smart."

HARVARD LAW RECORD



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Pres. Richard Nixon: Three More Years!

By Ricardo Hinojosa

The events of recent weeks have a tinge of familiarity to students of American history. In the early 1950's, President Harry Truman fired a popular war hero, General Douglas MacArthur. Truman's Administration had already experienced more than its share of scandals, including some in the State and Justice Departments, and in the Internal Revenue and White House staffs.

Anti-Truman radio commentators broadcast nightly news of an impending impeachment. The hardliners in the Congressional opposition warned the lonely figure in the White House to get out before he was thrown out. The people who eagerly waited a resignation or impeachment were disappointed and Truman served out his term.

In the past few weeks several politicians, news commentators, and newspaper and magazine editors have urged President Nixon to resign. Such calls for resignation are unwise and unfair both to the President and to the country.

A Presidential resignation would be viewed as an admission of guilt. To some the appeal of resignation is, precisely, that it requires no charge, no evidence, no investigation, no due process, and no specific grounds. The President stepping down under such conditions is both unnecessary and divisive.

The argument for resignation is usually based on the assertion that the "President has lost his capacity to govern." This comes as a surprise to people who have watched the President settle a Middle East crisis abroad and develop plans for an energy crisis at home in the past few weeks. It must come as an even bigger surprise to Congressmen, who have been able to override only one Presidential veto during this session in Congress.

Another argument used for resignation is that the President's popularity is at an all-time low. But our Constitution did not set up a parliamentary form of government, where

a shift in public opinion will cause the government to fall. It would indeed be a dangerous precedent if the Chief Executive were to resign because his popularity was low. This would alter the system of government which has existed for about 200 years.

In our system the President can be forced to step down through impeachment and conviction. The Constitution explicitly states the President can be removed "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Some politicians and news com-

mentators have called for the President's impeachment. They have stated reasons, based on political decisions that the President has made in the last five years, why the President should be impeached. These reasons are based on political opposition and have nothing to do with the explicit impeachment requirements in the Constitution. In our system, political opposition is shown at the polls and not through impeachment proceedings.

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'No future President will be safe,' Trumbull said, voting against impeachment of Johnson

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It would be wise to remember the words of Senator Lyman Trumbull of Illinois, one of the seven brave Republicans who voted against the conviction of President Andrew Johnson. He said, "Once set, the example of impeaching a President for what, when the excitement of the House shall have subsided will be regarded as insufficient cause, no future President will be safe who happens to differ with a majority of the House and two-thirds of the Senate on any measure deemed by them important. What then becomes of the checks and balances of the Constitution so carefully devised and vital to its perpetuity?"

So far there has been no evidence

that President Nixon is guilty of any high crimes and misdemeanors. If the House of Representatives feels that it has such evidence it should either come forward with the information or drop the impeachment proceedings. The country can expect no less.

In the weeks and months ahead the President will be attempting to regain the confidence of some segments of the American public. The segment that he most needs is his natural constituency — Middle America. President Nixon's biggest allies in his latest struggle have turned out to be some of his old enemies — the national press, Eastern intellectuals, the ACLU, and the old and tired labor bosses. In the past few weeks there have been constant barrages from these segments for the President's resignation or impeachment. These same people have often succeeded in helping President Nixon capture the support of Middle America by their opposition to him.

This past week the President showed signs of more openness with members of Congress and has promised to attempt to regain public confidence. With help from his enemies and a little effort on his part, President Nixon will continue to carry out his duties and serve out his term just as President Truman did 24 years before.

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Schools also have been invited

Rule 26: Hot Enough For You?



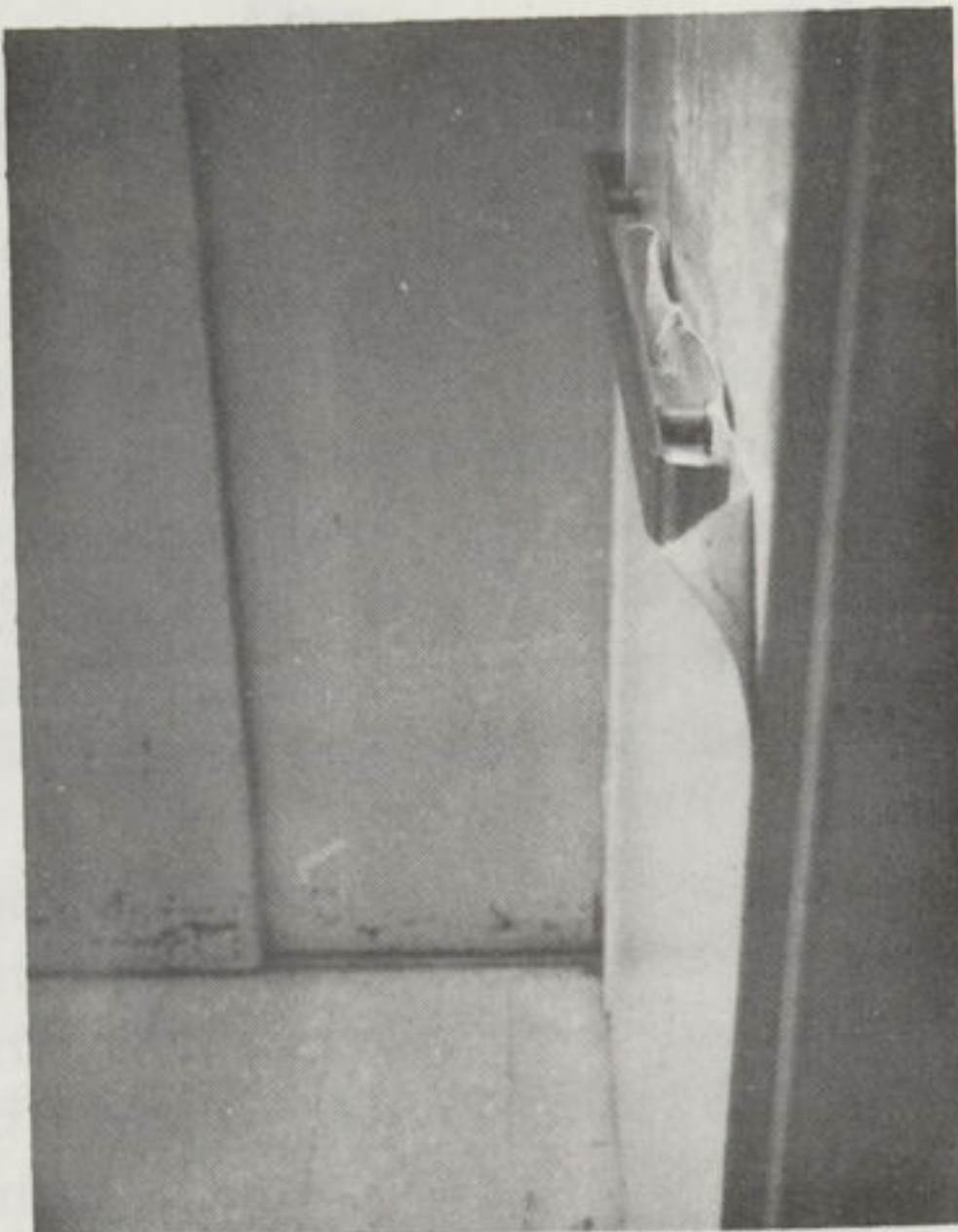
This week's Rule 26 questions were delivered by Jack Anderson in a plain brown envelope marked "Eyes Only/Top Secret/Sensitive." Future questions should be mailed to the RECORD, and should not have a security classification higher than "Confidential."

Q. Why is the fabric on the inside of the main elevator in Langdell Hall always torn?

A. According to Dean Bruce, several hundred dollars was spent when the original covering was installed. Since that covering does not seem to have held up well, buildings and grounds will be installing shortly a new cork lining that is more durable and less likely to be defaced. Additionally, the reason the Law School elevators do not have safety inspection certificates is that the City of Cambridge has not yet forwarded them to the Law School. Bruce says all Law School elevators have been inspected and approved.

Q. There seems to be a shortage of Coke machines, pay phones and the like at the Austin Hall end of the school. In fact none at all. Why?

A. Dean Bruce reports that this is the first complaint he's had on the subject. He points out that there are pay phones beneath Langdell North, Middle, and South, and notes that vending machines need a large volume of business to make them profitable. If there is enough student demand, Bruce says that he'll look into it.



Mark McNeil

Elevator with torn interior in Langdell Hall.

Q. Sometimes the Law School Coop doesn't ask for my number anymore. Is there a new minimum purchase requirement needed before they'll take it?

A. HLS Coop manager Byron Lowe replies that there is now *no* minimum purchase requirement — it used to be 25c. He attributes the problem to new employees who are not fully familiar with the system,

and to students who are too busy to give their numbers.

Q. Given the current energy crisis and the University's professed desire to cut energy consumption, why does the Law School maintain heat in dormitory rooms at levels so high (82°) that one must open a window to stay comfortable?

A. The investigation of this question resulted in the story on page 1. The Law School does seem to be making every effort to keep heat down.

about some professors using old pictures in the yearbook. Will those professors have new pictures in this year's yearbook?

A. Archibald Cox has not been around lately to have his picture retaken. As of Monday Professors Sohn, Owens, and Areeda have not attempted to get another sitting. However, Louis Loss sent the yearbook a new (well, different) picture for use in the '74 *Yearbook*. Close examination of the photo reveals a Harvard News Service stamp indicating that it was taken in May of 1968, thus making it only six years old when the yearbook comes out.

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