

Law School Delays Final Exams, Weighs Shutdown in February

By Kermit Kubitz

The faculty voted at a special meeting last week to move the beginning of January exams back one week as part of a plan to save energy. Further energy cutbacks might force a two-week closing during February and March.

The postponement of exams will result in the elimination of the reading period and intersession that would normally have preceded and followed exams.

The faculty unanimously approved the measure designed to allow the Law School to achieve a 30 per cent energy reduction for

January by virtually closing down many facilities and lowering dormitory heat to 60° during the extended Christmas vacation.

While, according to Professor James Vorenberg, who is coordinating energy conservation efforts at the Law School, "there
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TWENTY CENTS

89% in Poll at HLS Support Impeachment of Pres. Nixon

By Bill Kenety

More than 86% of the over 400 Harvard Law students who participated in a RECORD poll feel that President Richard M. Nixon should resign. The poll also showed that an overwhelming 89% favor impeachment of the President by the House of Representatives, while an almost equally large majority of 78% feel that if impeached Nixon should be convicted by the Senate.

The 1L class led the way in demanding the

Rosenberg Argues Before High Court

By Cynthia Cannady

Special To The Harvard Law Record

Washington — What single event would draw 20 Harvard law students away from their books, Tuesday classes and library carrels at unusual expense and with no promise of consideration? To any astute observer of the Law School, the answer would be "nothing". However, at least 25 such students and several recent alumni gathered Tuesday morning in the cold marble halls of the United States Supreme Court to witness the oral argument of David Rosenberg, director of the Legal Methods Program, in *Johnson v. Robison*.

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President's resignation, with even a majority of those 15 1Ls voting for Nixon in '72 agreeing. Huge majorities of the other classes also favored resignation with the totals reading 387 (86%) in favor, 62 (14%) against, with only five expressing no opinion.

Judging from written comments, the wording of the next question apparently disturbed some of those polled. Final results show four people believed that a President should be impeached for "political reasons only"; 291 believed for "high crimes and misdemeanors only"; and 143 elected "both political reasons and high crimes and misdemeanors".

The demand for Nixon's impeachment was even more overwhelming with an even 400 (89%) students favoring it while only 36 (8%) were against. 14 (3%) expressed no opinion. Not surprisingly those who voted for McGovern led the way with a 339-11 tally. Nixon voters were narrowly against impeachment by a vote of 21-19. The 1L class again had the highest class anti-Nixon margin, this time 150-10.

Approximately 55 of those polled apparently felt that they could not say whether the President should be convicted of impeachment until after the trial. Of those willing to prejudge 347 (90%) said conviction should follow while only 40 (10%) disagreed. The McGovern voters and 1Ls were the strongest opponents of the President, while Nixon voters showed their strongest support of the President on this question.

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Berman Advocates Trades Normalization With USSR

By Mark McNeil

The time has come for the United States to extend normal trade privileges to the Soviet Union, Professor Harold J. Berman said last night in his appearance on WGBH-TV's "The Advocates." According to Berman, the establishment of more liberal trade relations with the Soviet Union, even to the extent of allowing "most favored nation" treatment to that country, is necessary to promote the current American policy of detente. Granting most favored nation status requires the granting nation to treat the recipient nation in a manner no less favorable than that enjoyed by any third nation.

At present the United States has most-favored-nation agreements with most of the countries of the world other than China, the USSR, and certain Eastern European countries.

Berman argued that the increased trade between the United States and the Soviet Union which would result from a liberalization of American trade relations would be of direct economic benefit to the U.S. and would tend to ease political tensions between the two countries.

Opposing Berman in the quasi-trial format of the program was William Rusher, editor of the conservative magazine, *National Review*. Rusher took the position that extension of favorable trade and credit terms to the USSR would place an overwhelming burden on the American taxpayer, because of the credit transactions which would be financed by the American financed Export-Import Bank. He also urged that if liberalization is to occur, it should be conditioned on liberalization of Soviet emigration

policy. The USSR has at present a highly restrictive policy regarding emigration of its citizens.

Berman's argument was supported by two witnesses, Harold Scott, President of the US-USSR Trade and Economic Council, and Robert Kleiman, of the New York Times Editorial Staff.



Mark McNeil

Professor Harold J. Berman

Supporting Rusher's position were Marshall Goldman, Professor of Economics at Wellesley College, and Dmitri Simes, a recent emigre to the U.S. who was formerly associated with the Institute of International Economy in Moscow and is now with the Georgetown University Institute of Strategic and International studies.

Goldman observed that American attitudes toward the USSR display the characteristics of a manic depressive; "We love them or we hate them, and right now we love them."

The program will be televised again Sunday.

CLE Postpones Its Vote on Pass/Fail Until Late January

The Committee on Legal Education decided at its meeting Tuesday to delay a vote on whether or not to recommend that the faculty reconsider the pass/fail option until early January. The committee will consider the issue again at its meeting next Tuesday, but will not make any decision on the question until its first meeting in January. The first opportunity for the faculty to reconsider the option will be at its January 25 meeting.

Timothy J. Sheeran 2L, told the RECORD Tuesday evening that he and the other students present had agreed with the decision to delay the vote. He said that the agenda for today's faculty meeting was crowded, and that the chances of the option's restoration would be substantially increased by waiting for the January faculty meeting.

In response to a request made by Committee on Legal Education Chairman Robert E. Keeton at that committee's last meeting on December 4, student representatives of the Law School Council and the Board of Student Advisers had prepared an extensive memorandum outlining the reasons for reconsidering the option. They presented that memo to the committee on Tuesday, and Sheeran indicated that the committee members had seemed generally impressed with the arguments advanced by it.

Besides Sheeran, students participating in the preparation of the memorandum and its presentation to the faculty included Patrick A. Shea 2L, a member of the Committee on Legal Education; Jeffrey F. Reiman 1L, a member of the Law School Council; and Carolyn Lewis 3L, and Richard F. Ziegler 2L, members of the Board of Student Advisers.

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Harris Surveys Alienated America

By Michael Bowen

A seven-year trend of increasing popular disaffection with the basic institutions of American society is now approaching a dangerous crest, pollster Louis Harris said in a speech here last Friday before approximately 150 listeners. The alienation, Harris noted, affects not only politics and government, but business, the professions and the private sector establishment in general as well.

Supporting his conclusions with data compiled in a comprehensive survey of American attitudes conducted by his firm for Congress this year, Harris said that "the leadership of America has never been so out of touch with, or has so underestimated, the public as in the last decade."

"The institutions of this country are in trouble, at least the leaders are, right across the board," Harris claimed. "Persons engaged in garbage collection have more respect than the President."



Pollster Louis Harris

Mark McNeil

Collating this information with data collected in earlier surveys, Harris concluded that the country's cynical mood was not the product of the recent scandals afflicting President Nixon, but was consistent with a pattern prevalent since the mid-'60s.

"This did not just happen after Watergate or in the course of the Nixon regime," he said. "It has shown a steady, upward trend since 1966."

Harris did identify one phenomenon — "a tremendous shift in values" — as a direct result of the Watergate crisis. He noted that in 1968 a majority of those surveyed had classed student protesters, prostitutes, homosexuals and atheists as the groups most dangerous to the country. In a similar survey in 1973, respondents had named "private investigators hired by politicians, generals who conduct illegal bombing raids and then try to cover them up, people who use the CIA to gather domestic intelligence, and corporations which make illegal campaign contributions" as the most dangerous groups.

Despite the gloominess of his overall conclusions, Harris found some cause for optimism. "The people may be turned off on the leadership, but they haven't lost faith in the government," he said, noting that "less than five per cent" of the people are revolutionaries.

Further, Harris remarked, although the country's mood has changed from an overwhelmingly positive to a generally negative one in the past decade, civil liberties "have made a tremendous comeback" during the same period. He noted that a large majority of people oppose both censorship and the banning of radical newspapers, and that private investigation of public officials' private lives is disapproved by an overwhelming 83% to 8% margin. Harris said that these positions represented a polar shift in attitude from those held 10 years ago.



Rule 26: Saturday Classes?

By Bill Kenety

Q. Are we really going to have Saturday classes?

A. Possibly. According to Law School Council President Jamienne S. Studley, 2L, and Vice Dean William L. Bruce the idea has been considered but no decision will be made unless energy considerations warrant it. A possible plan calls for a two week vacation in the end of February and the first week in March. One week would count as Spring vacation; the other would be made up with Saturday classes, probably in April and May.

Q. Will there be any Christmas lights at the Law School?

A. The word from Dean Bruce's office is no.

Q. Has there been any response to the RECORD'S articles last week on women students?

A. It appears that there was some sort of communications failure between the Admissions Office and the WLA. The Admissions Office told the WLA that Colquitte Meacham and Jeanne Kettleson were available to help recruit women students. The Admissions Office apparently believed that the WLA would assume control of recruiting, particularly in scheduling Meacham and Kettleson. The WLA contacted Kettleson for the first time last week and asked if she would help recruit at Wellesley.

Q. Where is Professor Archibald Cox now?

A. Resting and writing in Maine and frequently commuting to Cambridge.

Q. Who is "Fenno"?

A. Fenno's identity remains unknown.

Faculty Reschedules Exams

(Continued from Page 1)

would have been easier ways to achieve this reduction" the extended vacation was necessary because of the possibility of further decreases in the steam supplied to the University by Cambridge Gas and Electric later in the academic year.

The energy conservation measures were discussed at both the special faculty meeting last Friday and an open meeting of the Law School community Monday in Langdell South Middle attended by about fifty students, faculty, and employees.

Vorenberg, who was introduced at the faculty meeting as the "energy czar" of the Law School, began by explaining the nature of the Law School's heating system and the difficulties involved in any energy conservation measures.

The last building to be closed in any energy pinch would apparently be Langdell, he said, since the bulk of its heating comes from otherwise unused

warm air in the tunnels beneath it which is blown up into the library and classrooms. It is contemplated that at least one set of classrooms, possibly the Austin Building or the second floor of Pound, will be closed during the next few months to reduce heating requirements.

In addition, the faculty library will probably be closed for the winter, as will most other offices after 6 o'clock p.m. and on weekends. Vorenberg suggested that to the extent certain offices were unavailable at various times because of lack of heat, arrangements could be made to use offices in Langdell, which will be heated.

Students who remain in the dormitories over Christmas vacation will bear the brunt of energy conservation measures, as temperatures in the dormitories will be reduced to 60°. The dormitories will have hot water during this period, although at a reduced temperature. In addition, efforts are being made by a student and faculty committee

to find space for some dormitory residents in homes of faculty or students who will be gone during vacation. Vorenberg emphasized in both the faculty meeting and the open meeting the determination of the Law School to provide some amenities to students who do not choose to spend their time in either the dorms or in Langdell library.

Professor Alan Stone and International Legal Studies Secretary David Smith are coordinating efforts to find living space for dormitory residents during this period. On the other side of the river, Business School students have been informed that the temperature in residence halls there will be reduced to 40° from December 21 to January 12. One hall is being maintained at normal temperature for students who desire on-campus accommodations during that period.

The revised exam schedule means that exams will begin on Tuesday, January 15, have a break on Friday, and continue on Saturday and Sunday. It was felt that a Tuesday beginning would allow students to return to school without feeling that they must arrive three days early to avoid weekend travel. As a result, there will be virtually no intersession for upperclass students. Take-home exams previously scheduled for the reading period have been rescheduled during the exam period. At the behest of students who participated in the planning, it was suggested that no professor should give out a take-home exam early to avoid pressuring people who were not at the school prior to the exam period.

As in fiscal matters, energy conservation in the various schools of the University has been an every-tub-on-its-own-bottom matter. Law School officials are uncertain of the University's overall energy plans beyond their own contribution, although Vorenberg commented that improving energy usage was a difficult task when dealing with the Buildings and Grounds "bureaucracy."

Breyer, Heymann, and Owens Study Nations Energy Crisis

While most faculty members must contend with the energy crisis only at the exam and vacation level, three professors at the Law School are studying the impact of the oil shortage on Massachusetts and the nation. Professors Stephen G. Breyer and Philip B. Heymann are serving on Governor Francis W. Sargent's Emergency Energy Committee; Professor Elisabeth A. Owens will study the oil shortage as part of her spring term course on *Oil and Gas Law*.

The nation faces a predicted 2½-3-million barrel a day shortfall of oil and, according to Breyer, "the burden of that shortfall falls overwhelmingly on New England," which being far from the gas fields depends disproportionately on foreign oil for heating. Breyer noted that the fuel oil problem involves two grades, No. 6 residual oil, which is used for hospitals, schools, housing projects, and

generating plants, and No. 2 home heating oil. "The No. 6 shortage," says Breyer, "will be worse than the No. 2 shortage," thus hurting the very poor — who tend to live in housing projects — worse than other consumers. "The federal regulations don't take care of this."

Breyer, who has been studying the problems of natural gas regulation for the past two years, notes that the energy crisis problems are "different for oil and gas." He believes that "regulation has held the price of gas too low," thus discouraging new discovery and production.

Owens believes that one issue raised by the current shortage is "the government's right to collect information": "Decisions have been made in the past based on simple acceptance of what industry provides — that can't go on."

Students View Exam Change

By Patrick Kennedy

The announcement that exams will be moved forward a week to cut down on fuel consumption has been greeted by mixed reactions from those students affected by the change. In a telephone survey of dormitory residents conducted by the RECORD earlier this week approximately half of the 25 students contacted indicated they thought the calendar change was reasonable and necessary. A large minority contingent, however, expressed the view that a vacation that comes before exams is really no vacation at all. Many others expressed concern for the welfare of students who had planned to stay in the dorms over the Christmas break.

The poll, taken on Monday and Tuesday of this week, asked dormitory residents whether they felt the actions by the school were reasonable and necessary in light of an impending crisis. They were also asked to make any observations or comments they deemed relevant to the problem.

Many students said they did not know enough about the situation to offer more than an opinion. Those supporting the Administration's measures cited the large cutback in Harvard's fuel supply to demonstrate that some decisive steps would have to be taken and claimed that all of the alternatives would inconvenience part of the school's constituency.

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The majority of those objecting to the school's decision did not feel that adequate justification had been made for the change and felt that the university had underestimated the inconveniences such a change would entail. There was no general consensus, however, about what would have been a more feasible plan. Quite a few students ventured the opinion that as many students would be away for intersession as the week before reading week and thought that a similar energy saving might have been attained without the calendar change simply by reducing dorm temperatures over the intercession to 60 degrees.

Other students said that they would have rather seen the college administer pass-fail exams at the end of December classes or take-home exams over the Christmas break. This, they claimed, would have been the best way to save a substantial quantity of heating oil.

Aside from the abolition of the intersession, the next most frequent complaint came from those students who were planning to stay in the dorms over the Christmas break. Most viewed with skepticism the attempts to find temporary housing in Cambridge. They appreciated the effort but continued to feel that they were being asked to bear a disproportionate share of the burden. Very few thought the dorms would be liveable at the proposed 60 degree level.

Several other students voiced support for raising temperatures in the dorms a few days before the

exams begin — in effect, reinstituting part of the study week. They maintained that the study week is a crucial part of the school's calendar, explaining that the opportunity to test ideas out in discussion sessions with other proven students was a primary purpose for attending Harvard.

Finally, there were a number of students who felt that students had not been adequately consulted upon the matter. These malcontents, however, were outvoiced by those students who applauded the administration's efforts as decisive, claiming that this was helpful to those who had to make new plans.

Perhaps the most humorous remark, aside from the witty but repeated "everyone should find a friend to sleep with," came from a 3L. "I've always thought the dorms and classrooms too warm anyway; this is the first time in three years I've been comfortable." If only everyone felt that way.

'And I Didn't Even Study...'

Zealously guarding his reputation as a young Turk, Professor Duncan M. Kennedy brightened an otherwise dull Tuesday morning by inviting Section II of the 1L class to participate in a happening, to wit, a surprise practice exam.

Three groans, a few panicked laughs, one total collapse and a general murmur greeted his announcement.

The insouciant chalk-tosser, fresh from a Monday disquisition on the pleasures of sheer competence which can be enjoyed by those who have attained that state of grace known as comprehension of the complexities of contract law, characterized the event as optional. Although a half-dozen students rushed off to contemplate the law or enjoy a late breakfast, the unstudied majority toughed it out in consideration for Kennedy's promise to grade the exam himself.

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Larry & Joe

HLS Women Employees Organize

By Bruce Kuehne

To combat perceived and alleged discrimination against women at Harvard, more than 100 women employees at the University, including the Law School's two women professors, have combined to form Women Employed at Harvard.

The members include Professors Elisabeth Owens and Diane T. Lund, *Harvard Law Bulletin* Editors Patricia Moore and Ellen Weisman, and Law School teaching fellow Grace Blumberg. The total number of members at the Law School could not be determined, however.

The organization's objective is to represent women employees' interests, especially in such areas as job appointment and promotion, job classification, pay, day care facilities, and opportunities for long-term employment.

The group, formed last spring, has encountered some major problems in getting started. One of these arises out of WEH's membership. As Teaching Fellow Blumberg puts it, "The problem is discontinuity. Women work in all departments of the University, at many different jobs. There's a high rate of turnover. Trying to organize and communicate with such a disparate group is a huge problem. Sometimes it's hard to find out what's going on."

The second problem, which aggravates the first, is that the University administration has apparently made no effort to support the group actively.

Walter J. Leonard, Special Assistant to the President, said that Harvard could not recognize WEH as a representative organization because "it does not in fact represent all of the women employed here, from housekeepers to faculty members. The University cannot confer de facto union status on any self-proclaimed spokesmen."

Despite its problems, WEH is organizing itself well. The group has managed to contact most of the University's female emp-

loyees, has set up an office (in Fay House) and has established committees to attack specific problems. They've also scored a major triumph — spurring the Department of Health, Education and Welfare to review and reject Harvard's Affirmative Action Program as inadequate to deal with discrimination.

Attacking specific problems, while important, is not the sole or ultimate purpose of the group. As Delda H. White, current chairperson of the group, puts it, "Our main grievance is the poor attitude on the part of so many males. There

are many intelligent, well educated people working at Harvard who are locked into dull secretarial-typist jobs, with no opportunity to improve their position. Most of our beefs also apply to men who have similar jobs. Yet the attitude of men is the main obstacle to reform."

Changing attitudes will require skill and perseverance. But cracks in the wall are beginning to show. Women Employed at Harvard seems determined to probe at the weakest points until "the professor ... she" is no longer a shocking phrase.

Sports Trivia Buffs Huddle With Mark and Fast Eddie

The first meeting of the Harvard Law School Sports Trivia Society ("We're going to call ourselves the STS," said an organizer) was a resounding success as more than 50 students packed themselves into the Mallory Smith room Wednesday.

The motivation for the crowd was the appearance of two of Boston's most iconoclastic sports commentators, Mark Witkin and "Fast Eddie" Andelman of WEEI's Sports Huddle Show.

The faculty advisor of the newly formed group, Professor Andrew L. Kaufman, although unable to attend the meeting because of his duties as an energy planner for the Law School, reportedly had proved his bona fides to the group by reading from the *Redbird Express*, the national St. Louis Cardinals newsletter, the day before.

The objectives of the collection of sports fact enthusiasts will be (1) to have a monthly speakers' luncheon, including such Boston standouts as Red Auerbach and Hazel Wightman; (2) to sponsor a Sports Trivia Competition Team

for possible competition with such area heavyweights as the Norfolk Prison Trivia Team; (3) to seek to have a Sports Trivia Quiz published in the RECORD and (4) to organize a Sports Law Seminar.

The statement of objectives concluded with the sports law quote of the week:

"I always read the sports page first and the front page last. The front page is a record of man's failures, while the sports page is a chronicle of man's achievements." — Earl Warren

After these preliminary diversions, the program was turned over to Witkin and Andelman who revealed the seamier side of sports. Attorney Witkin stated that if a law graduate had the choice of a career in sports broadcasting or real estate development, the choice should be real estate because "If you go into sports you'll probably meet the biggest bunch of bastards."

Andelman commented on the mentality of sports fans: "Hockey's getting less and less barbarous as some people learn how to read and write."

Police Officer Describes Professional 'Subculture'

By Ricardo Hinojosa

"You come into your own world so to speak" said San Diego Police Lieutenant John Mansfield describing what he perceives as the police subculture which has developed in this country. Mansfield, a Criminal Justice Center Fellow, spoke in the first of a series of colloquia sponsored by the Center last Friday afternoon on the fifth floor of the Pound Building. He said he was speaking on the subject, not as an expert or for his police department, but from the experience of "having been through it."

Mansfield asserted that every profession has its own subculture. He said that any job develops "a callousness or cynicism" after workers have been engaged in it for long periods of time.

Discussing his perceptions of the police subculture, he said it has its beginning in the hiring practices which "to a great deal police have nothing to say about." The hiring in large metropolitan police departments is usually done through some form of civil service. Consequently, he said most large police departments are composed of lower middle-class to middle-class whites, with a high school education or a few years of college. Many are veterans and most are married. "You've got one class of people" continued Mansfield, and then they are put in a police academy

where "they are trained to be what you want them to be."

Mansfield feels that if one person does not fill the mold he will eventually become acculturated into the subculture because of "peer group pressure."

One problem with the subculture according to the police lieutenant is that "we've built cops and robbers into them" and yet a great majority of police work involves services which unrelated to criminal activities. He said that in performing these services a policeman because of his subculture may be prejudiced against some societal groups because "any group that does not meet their norm, they will categorize."

Mansfield said policemen are trained not to trust other people and they consequently turn to themselves and the people they work with for their social activities. He termed this a "cyclical effect" which reinforces the police subculture. He cited as other supports for the subculture, the practice in police departments to give "more credit for criminal aspects rather than non-criminal aspects" of police work.

Admitting that "I don't have the answer to this subculture thing" Mansfield discussed some changes which have been made in training by his police department. As far as his own men are concerned he said he encourages them to keep non-police friends.

HLS Students Heavily Favor Nixon's Ouster

(Continued from Page 1)

Some of the more interesting comments included opinions that a President may be impeached for treason and bribery, violations of the public trust, and incompetence. Suggestions were also made that Nixon's lawyers should be cited for contempt or disbarred.

One 1L McGovern voter noted that "any law student worth his moral salt should hold to the belief that one is innocent until proven guilty" while a 3L Nixon voter simply stated "Nixon should be hung". One comment on impeachment was that we should "wait for completion of Sirica hearings."

Another person suggested a "compromise solution" between resignation and impeachment — Nixon "should drop dead". A 2L compared Nixon to Gerald Ford and sadly concluded "Better a crook than a clown".

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Some Cases Holmes Didn't Hear

By Paul D. Gutierrez

Anyone who, for one reason or another, has toiled over a Federal Supplement, Pacific Reporter 2nd, or a mere casebook must understand how incredibly boring 99% of the cases are. It is the unique individual who can maintain a high degree of excitement throughout the reading of a tax case or a lease dispute. While there will occasionally appear a *Sherwood v. Walker* (Rose of Aberlone), 33 N.W. 919 (1887), to create a mild chuckle inside the reader, to suggest that legal reading is always so pleasurable would be a bum steer. Unfortunately, a person may find a few interesting controversies but will seldom have an opportunity to explore the universe of cases to find others. How many times can you read legal pornography like *Lason v. State*, 12 So.2d 305 (1943), and still become sexually aroused? You want more? Read on.

Most people may not realize that there is case law to support many fundamental principles of society which are seldom questioned. For example, in Texas, a Court decided that asking a young woman for an overnight interlude did not constitute an assault, *Loid v. State*, 116 S.W. 807. The full impact of such a holding may not have been realized until the entire male population of Texas breathed one massive sigh of relief.

Those with a pedagogical or personal interest would naturally ask: what *does* it take? Those people may rest comfortably with the knowledge that making a "kissing sign ... consisting of puckering (one's) lips and smacking them" is not enough, *Fuller v. State*, 72 S.W. 184 (1903). Of course that court's holding may have been influenced by the remark of the prosecuting witness who at the time commented: "If that's the best you can do you had better go home."

In 1923 the same court decided in *Clancy v. State*, 247 S.W. 865, that, in certain instances, placing one's hand on the leg of a young lady seated in a theater may be insufficient to show an assault unless she suffers some "sense of shame or

other disagreeable emotion". This triumph of justice was assisted by the diligent efforts of the local sheriff who, upon hearing of the case, went to said theater to conduct experiments of his own. However, before attempting to duplicate the sheriff's trials, remember one should recall that evidence of one's proclivity for "running after women" may be admissible *Balkum v. State*, 22 So. 532 (1897).

Again, a Texas court decided in *Kiersey v. State*, 22 S.W. 37 (1893), — the case of the persistent kisser — that after having been denied a kiss by a lady four times in a row, a

think I can guarantee that the remainder of the evening will not be dull."

On the other hand, if expressed properly, almost anything can get into court. Consider, if you will, the efforts of one Gerald Mayo who brought suit against Satan two years ago, *U.S. ex rel. Gerald Mayo v. Satan and His Staff*, 54 F.R.D. 282 (1971). He claimed that Satan "placed deliberate obstacles in (his) path and caused his downfall." The District Court, after suggesting the possibility of a class action, refused a prayer to proceed *in forma pauperis* on the grounds of inability

Bedeviled Court Wonders 'Where in Hell

Can You Go To Serve Process On Satan?'

finding of assault against the unrequited suitor would add insult to injury.

It is unfortunate that the reader may not take such legal precedents seriously, especially when you consider all the effort that goes into arriving at legal decisions. Certainly, every law student can appreciate the highly complex and intricate maneuvers required of both counsel and judge. Compare the analysis of Judge S. J. Silverman, 8 Columbia Law Alumni Bulletin 10 (1966) writing of questioning by attorneys: "If you want to know whether the witness left the building, you don't ask, 'When did you leave the building?' That might assume a fact not in evidence. And you don't say, 'Did you leave the building?' Because somehow there is a feeling that that is leading. So up we come with this bright one: 'Did there come a time when you left the building?' Boy, would I love to hear a witness answer 'No' to that question, and let counsel try to figure out how the witness ever got out of the courtroom.

"Some evening when things are rather dull at home, as happens in all families, why don't you ask your wife, 'Did there come a time when you got out of bed this morning?' I

to complete service of process or to obtain personal jurisdiction over the defendant. After a case like that you've got to wonder just where in Hell you can go to get jurisdiction.

Legend is also told of a prominent Orange County, California attorney who once brought suit against the Pope and to attach the collection plate of a church. The plaintiff had purchased a St. Bernard puppy from a monk in a European monastery, yet never received the merchandise. According to the story, the Pope lost.

California may also go down in history for having the most generous courts in the country. Rumor has it that it awarded damages (in five figures) to a young woman who claimed that a fall from a San Francisco streetcar caused her to become a nymphomaniac.

There should be no doubt by now that reading cases can, if you're lucky, lead you to new and unexplored areas of legal research. Of course, few will be as unusual as *Lason v. State* but, then, who knows?

The author is compiling an anthology of interesting cases and will appreciate all contributions sent in care of the RECORD

Watergate Staff Discusses HLS, Ethics

By Ira Nerken

The author, a 2L, interviewed members of the Senate Select Committee on Presidential Campaign Activities in Washington in September.

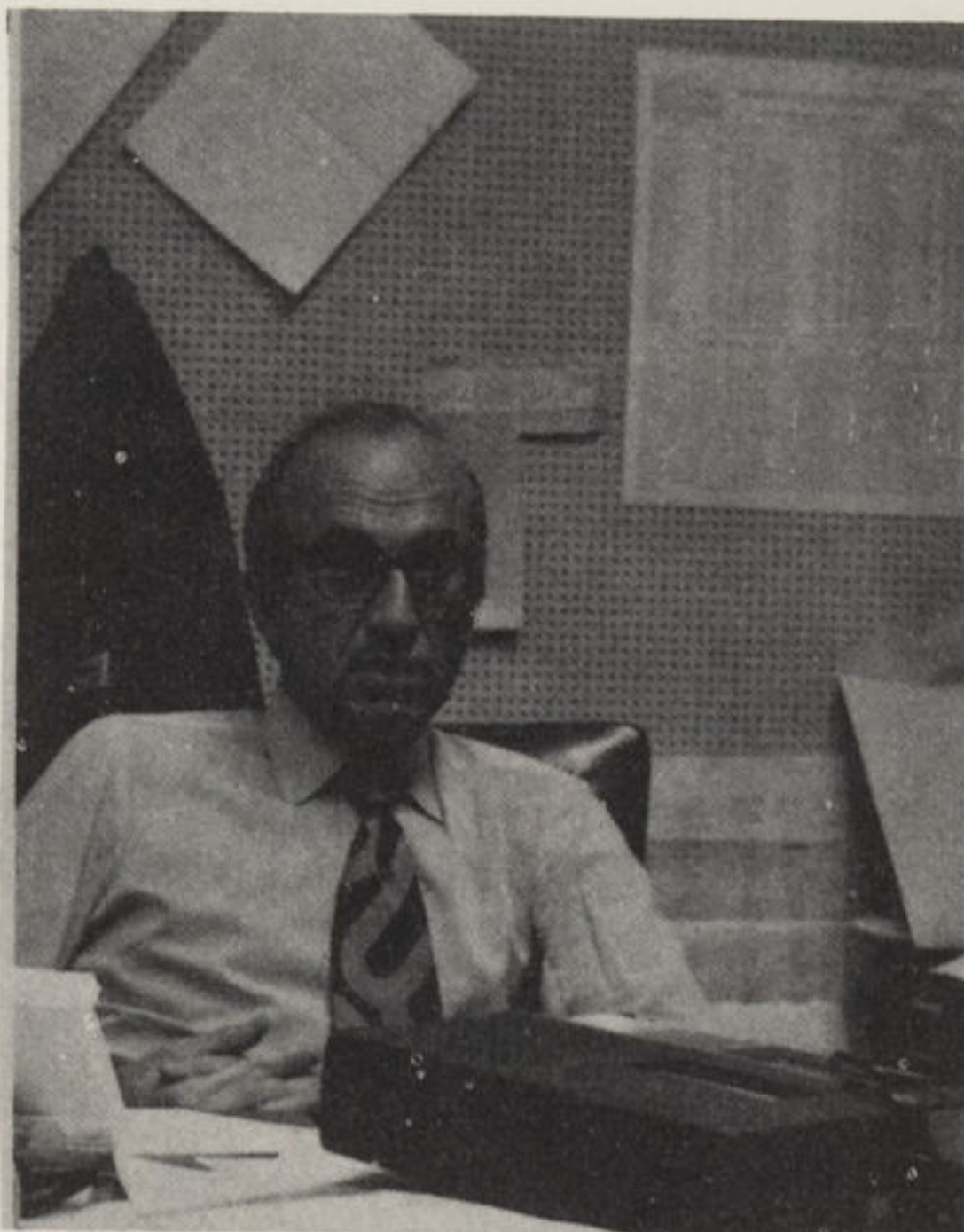
Ever since Senator Howard H. Baker, Jr. (R.-Tenn.) revealed that Senator Sam J. Ervin, Jr., '21 (D.-N.C.) was a Harvard graduate — and Ervin retorted "Yes, Howard, but nobody can tell it" — it has seemed reasonable to wonder what *does* clue someone in that you graduated Harvard.

I did broach the question one day in September with Mark Lackritz '73, an assistant to Terry F. Lenzner '64, over lunch. First I asked him what advice he had for young men and women entering public service. While in cynical moments he admits he has thoughts of telling them to stay away from the Senate ("seriously, though, it's a terrific job") his basic advice is to avoid the Senate Cafeteria. "The food is equally bad as Harkness Commons, and there are no pinball machines," he noted.

Ronald D. Rotunda '70 was presently engaged in witness immunity work and the suit for the tapes, and had little time to ponder the secret of how people could hide their Harvard identity—but he had a theory. "You don't wear a ring," he opined, "I wear a ring, that's how people can tell...I'm not ashamed of my school..."

But David M. Dorsen '59 — the committee's well-known look-alike of Samuel Dash '50 and a person who could be as jocular as anyone when he wanted to be — thought there might be a serious reason why Ervin has been able to keep his past an open secret for so long. "Part of it is his Southern accent. Part of it is his humaneness and gentlemanliness. I think that one of Harvard's faults is that it tends to put out people who stress analysis and 'hardnosedness' ... I think Senator Ervin's warmth and humor are all too rare and, unfortunately, not associated with Harvard."

Dorsen had been out of Harvard the longest of the staff people I spoke to. Since graduation he had served in private practice for a time, then specialized in white collar crime under then U.S. Attorney Robert Morgenthau and gone on to become the First Deputy Commissioner of the New York City Department of Investigation. In that



David M. Dorsen '59

Ira Nerken

time he believes Harvard has changed, and all to the good: "When I was a student I felt that the emphasis in law school was not at all in the direction of criminal law and public service. It was a few years later that it started I think the goal at that point was to prepare lawyers for private practice. The opportunities for electives in criminal law and related areas was very slight."

I asked Ronald Rotunda whether he felt Harvard had helped or hindered him in any way. "Nothing hindered me. I mean we didn't have a special course on immunity — the statute hadn't been written then — but all the courses were helpful in one phase or another of the hearings or the law practice I had prior to the hearings." James C. Moore II '71 had served as Vice President of Voluntary Defenders and clerked before becoming a chief staff member. He felt the first year's "analytical approach" and the

clinical work were "probably quite helpful ... I can't say Harvard hindered me, but I don't think I can write as well as I used to."

There is also a common bond among members of the committee staff in their concern over questions of legal ethics and public service — though their views on what role the Law School can or should be playing differ widely. Moore and Rotunda generally praised the Law School in this regard. Noted Moore, "I don't think legal training should be coming in for the kind of criticism it has received from some quarters ... It seems to me that, as I look back on law school, several of the professors who most impressed me stressed very much the questions of honesty, integrity, and ethics in the legal profession. On the other hand, you do learn a lot about the law, and how you can get around things. If you want to use information in that manner I don't think there's any way to teach the ethics of how not to do it."

Mark Lackritz admitted that the "ends justify the means" notion could be a corrupting factor in legal education, "but I don't think that was a strong principle in my legal education." Yet, Lackritz wonders if law school shouldn't be doing more: "I never had a course in legal ethics, nor much instruction on the responsibilities — legal or ethical — of an attorney to his client or law enforcement officials ... I know I thought, as I saw young lawyers parade before the committee, that possibly law schools do have more of an obligation to go into one's professional responsibilities."

Dorsen commented that while "some people say that you can't teach morality, I do feel that you can point out to people that there are moral decisions in connection with their work I think that ambition and success have been distorted so that the individuals who are most highly regarded are those who have the most influence and money, not those who have the most integrity or honor. And this again is a deficiency."

That Was The Year That Was

As 1973 fast draws to a close, this is perhaps a fitting occasion to review the events of the past year and their effect on us at the Law School. While we can often separate events in the "real world" from those at the Law School, this year the two areas have become intertwined. Having previously been in the limelight of Washington politics, Professor Archibald Cox was again plucked from the Law School environs to serve as Watergate Special Prosecutor. After serving effectively and admirably in this difficult task, he was summarily dismissed. Others from the Law School — Professors Philip B. Heymann, Stephen G. Breyer, and James Vorenberg — joined Cox in his prosecutorial work. Now two of them — Heymann and Breyer — have turned their energies to the governor's emergency energy committee, while Cox relaxes in Maine before returning to his familiar surroundings at the Law School.

Despite claims that the Law School's first year class is more conservative than the senior classes, all three classes seem overwhelmingly in favor of President Nixon's impeachment and resignation, according to a RECORD poll taken this week. Yet other than this showing, student reaction to the Watergate affair and its reverberations has been rather tame.

The "real world" has harshly and abruptly intruded into the Law School during the last month as a result of the energy crisis. Students shiver in cool classrooms and dormitories, and despite an occasional overheated classroom, we expect that things will get worse before they get better. When students are heard to talk about the "chilling effect" of things at the Law School these days, we know the phrase has taken on new meaning.

On a more parochial level, the faculty completed a year's deliberation on evaluation of the new pass/fail grading system, concluding, not surprisingly, that mandatory pass/fail for the first semester was an idea whose time had not yet come. To everyone's amazement, however, the faculty also managed to abolish the existing pass/fail option, thus assuring itself of at least an additional semester of pass/fail debates.

This year, too, the format for Legal Methods was revised drastically, with a probably beneficial increase in work for 1Ls, and the transfer of the Ames Competition to the spring semester. While it is still too soon to assess these innovations by new Legal Methods director David Rosenberg, it appears that they may well set the format for the future.

We note with pride too that Rosenberg had the honor of arguing this week before the United States Supreme Court. We wish him well.

And we wish all those at the Law School Happy Holidays and a Happy New Year.

HARVARD LAW RECORD

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Fenno

Fenno settled into his chair, shivering, but nonetheless grateful for the relative warmth of the examination room. Unlike the dormitories lately, the classroom buildings at least benefited from the heat generated by the presence of several hundred warm bodies.

He glanced at the warm bodies filling this room. Some were winding their watches so they could budget their time down to the second. Some were doing writing-finger exercises to avoid the catastrophe of a sudden cramp. Three were frantically reading squib cases. One was talking, apparently to himself.

His own book already filled out and opened to the first page, Fenno began writing mechanically the formulistic skeleton on which he would shortly hang his answers.

"The first issue," he wrote, "would appear —". Then, skipping a few spaces, he penned, "Although it might seem clear —". New paragraph: "Superficially —". Indenting again, six lines down: "On the other hand —". Fourth paragraph, eight lines down: "Further —". Fifth paragraph, five lines down: "Finally —". Then, four lines below that: "On balance, then —".

So much for the analytic question, he thought. Now for the laundry list.

"The facts suggest the following offenses," he wrote below a bracketed II. Then, remembering that this was *Torts* and not *Criminal Law*, he crossed out 'offenses' and substituted 'causes of action.' Then he skipped thirty-eight lines.

The last question, he knew, would be intended to force the students to think, as that term was rather loosely used by law school professors. He speculated about what form it would take.

"What problems would be created if all U.S. courts followed California precedents?" Or, "Tort law should impose strict liability on fuzzy-minded judges who ignore precedent in an effort to write swinging, a go-go decisions." Comment." Or, perhaps, "Why is efficiency never a substitute for justice, no matter what certain people at Yale insist on believing?" That one would set you Free, Fenno muttered to himself.

For a moment, Fenno considered the type of rhetoric that would be appropriate to any answer he might have to write. He toyed with, "Three questions present themselves—", an assertion that was inevitably safe. If he wanted to be snide, he reflected, he could begin the second paragraph with, "The first question isn't important because it isn't what I want to talk about."

But Fenno's inherently cautious nature and fundamental good sense reasserted itself.

Sighing, he turned to the front of his blue booklet. There was just no guessing at a think-question: he really *would* have to think before answering it. At least until the exams had been passed out.

HARVARD LAW RECORD



Mark McNeil

Dorothy Leonard and Phil Hunt perform in the Law School Early Show continuing tonight and tomorrow.

Letters to the Editor of The Record

No 'Attack'

To the Editor:

Elision is a traditional trait of the press, so I was not surprised when the Law RECORD of December 7, 1973 chose to portray my recently published opinion in the *Republican View* as an "attack" on Raoul Berger. This does not represent fairly my statement, which was that: (a) due to recent fortuitous circumstances, Berger has come to be perceived as the preeminent interpreter of constitutional history as it pertains to executive privilege; (b) his interpretation of the result of the dispute over the subpoena *duces tecum* issued to Jefferson by Marshall during the Burr treason trial has been given great reverence by members of the courts, the Congress, and the press; (c) Professor (William M.) Goldsmith has criticized severely Berger's conclusions and, possibly more im-

portant, his methods and motives as an historian; (d) it is imperative that other historians speak out on the issue of the subpoena, of its effect, and of Berger's judgment; (e) such a discussion would be good both for the country, whose institutions have been forced to interpret the Marshall-Jefferson incident, and for Berger, who has had doubts cast on his discernment as an historian.

My primary intention throughout has not been so much to "criticize" Berger as to criticize those historians and constitutional scholars who, unlike Goldsmith, have maintained a silence in the face of Berger's generally blindly accepted view that executive privilege was a matter settled conclusively at the Burr trial in favor of the privilege's opponents.

Robert E. Mack, '75



Oliver Wendell Holmes - Pinball Wizard?

Mark McNeil

RECORD Board Votes Kubitz New Editor

After serving an unprecedented three years in various editorial positions, Kermit R. Kubitz, 3L was elected Monday by the RECORD board of directors to serve as Editor-in-Chief, President, and Chairman of the Board for the spring term, 1974 (Volume 58). Kubitz, the current Editorial Manager, hails from Janesville, Wisconsin, Cal Tech, the University of Wisconsin Law School (one semester), Viet Nam, HLS, The Business School, HLS, and Oxford Street (Somerville), in that order.

Paul J. Weiner, 3L, of Narberth, Pennsylvania and Hastings Hall, currently Senior Editor, will serve as Editorial Manager to prevent that position from becoming vacant.

Daniel M. Taubman, 3L, of Baldwin, New York and Dana Street (Cambridge) will retire from the Presidency to serve as Senior Editor.

Ricardo H. Hinojosa, 2L of Rio Grande City, Texas and Hastings Hall, a delegate to the 1972 Republican Convention, steps up to become Associate Editor.

Robert G. Flanders, Jr. 3L, of Massapequa, New York and Peabody Terrace, the Sultan of Swat in the off season when he is not the RECORD'S Rajah of Writ, perseveres as Arts Editor. Photography Editor Mark S. McNeil, 3L, of Gallup, New Mexico and Hastings Hall, retains uncontested possession of the RECORD darkroom. Business Manager Kenneth D. Nyman, 2L of Casa Grande, Arizona and Lee Street (Cambridge) will continue one-man rule of the RECORD'S fisc.

In addition, the following staff members were elected to the RECORD'S board of directors: Michael A. Bowen, 1L, of Kansas City, Missouri; William H. Kenety V, 2L, of Cockeysville, Maryland; Paula W. Bonnell, 1L, of Houston, Texas; Arnold S. Rosenberg, 1L, of Rochester, New York; Patrick F. Kennedy, 1L, of Wayne, Pennsylvania; James B. Stewart, Jr., 1L of Quincy, Illinois; Karen D. Bier, 2L, of Freeport, New York; and Richard B. Stoller, 3L, of Lowell, Massachusetts.

Growth and Taxes

The present form of income tax on corporations is hard to justify. It takes money from the wrong companies at the wrong time. It produces less revenue than it could or should while interfering with the productivity of the economy.

Successful businesses must grow. Growth takes capital. Capital is primarily retained earnings. An income tax is a withdrawal of capital from companies who use capital most effectively. This is doubly detrimental since the ability to borrow depends on the amount of retained capital.

Most fast growth economies have tax structures that provide added capital to successful businesses. In Sweden the company itself decides how much depreciation to take. It need pay no income tax until all investment has been recovered. In Italy the tax is effectively a turnover tax, not an income tax. Since these taxes are collected several years later than an income tax, the effect is to supply large amounts of capital to growing businesses. In Japan the government-banking-business relationship results in large amounts of capital being provided as debt to successful companies.

Almost all fast-growing economies find ways to uncouple the growth rate from the level of profitability. The result is lower prices for consumers, more net tax revenue, and a more dynamic economy.

The U.S. might be well advised to tax dividends instead of income. A relatively low tax on undistributed profits would pay the interest on the deferral of cash receipts. No company would keep funds on which it could not earn more than the cost of interest, but companies with investment opportunities above that level would be encouraged to invest rather than pay the funds out as dividends. The government would, in effect, be lending money to successful companies in return for both the interest and half the profit earned on the capital.

Why not? The real beneficiary would be the consumer and society as a whole.

Prosecutions Survive End of Draft

Mabry Rogers

The Vietnam War continues to take its toll in American courts. On November 19, 1973, the Boston Grand Jury issued 37 indictments to 30 area men.

Ed Siegel, *Real Paper* TV writer, is charged with failure to show up for his 1968 induction, along with 14 others. He, like most of them, refused to cooperate with the system when the issues surrounding the war burned in the consciousness of much of the nation. Now that the war, the draft, the Movement itself, have 'died' only federal district court Judge Frank Friedman and a panel of 12 of the good and true will listen to his indictment of the United States government.

It's not clear how many of those men will stand trial. The U.S. Attorney times draft indictments to coincide with the year-end vacations (this year Thanksgiving; last year, 50 in-

dictments issued December 20, 1972) to pick up expatriates slipping back into the country from Canada to visit their families in the area. At least two of the recent indictees are presently in Canada, while 15, and perhaps 21, of last December's indictees are there.

Of the other 35 men indicted last December, one has been acquitted, eight have been found guilty (although only one has actually been sentenced to prison), 17 have been dismissed, and three await trial. Only three of the dismissals resulted from legal arguments; the others resulted from plea bargains whereby the accused agreed to undergo induction processing in exchange for the dropping of charges. Since about 25% of the men flunked the physical, they were out.

In August, however, the Army refused to continue this process, for fear the presence of draft-dodgers in the new All-Volunteer Army

(VOLAR) would tarnish its image. The Department of Justice has responded with gusto, issuing guidelines for U.S. Attorneys to push remaining cases with full vigor.

The 37 indictments, even pressed vigorously, reflect the slow-down in area draft prosecutions, since there were over 100 indictments last year. But indications are that there is a significant upsurge in charges in the Midwest: Chicago, Milwaukee, St. Louis, Detroit, Cleveland, and Gary. And we can expect a tragic increase in indictments under the current draft law next year, since Henry Peterson's policy has been to show no leniency to young men — mislead by the death of the draft — who failed to register for the draft or to keep their local boards apprised of a current address.

The author is a 3L and a member of the Committee on Military Justice.

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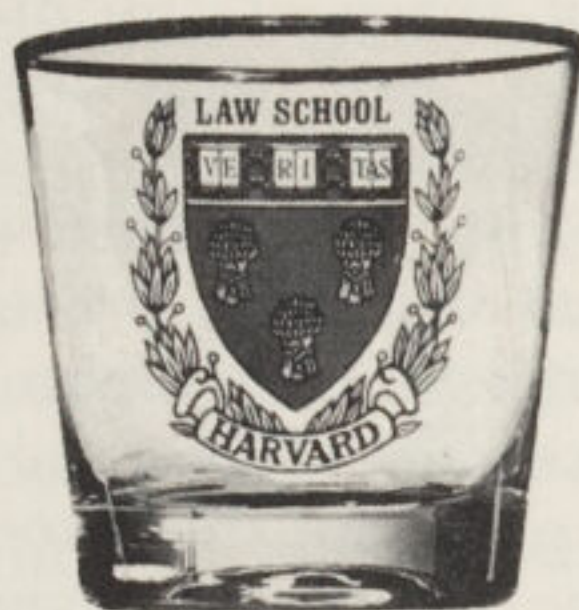
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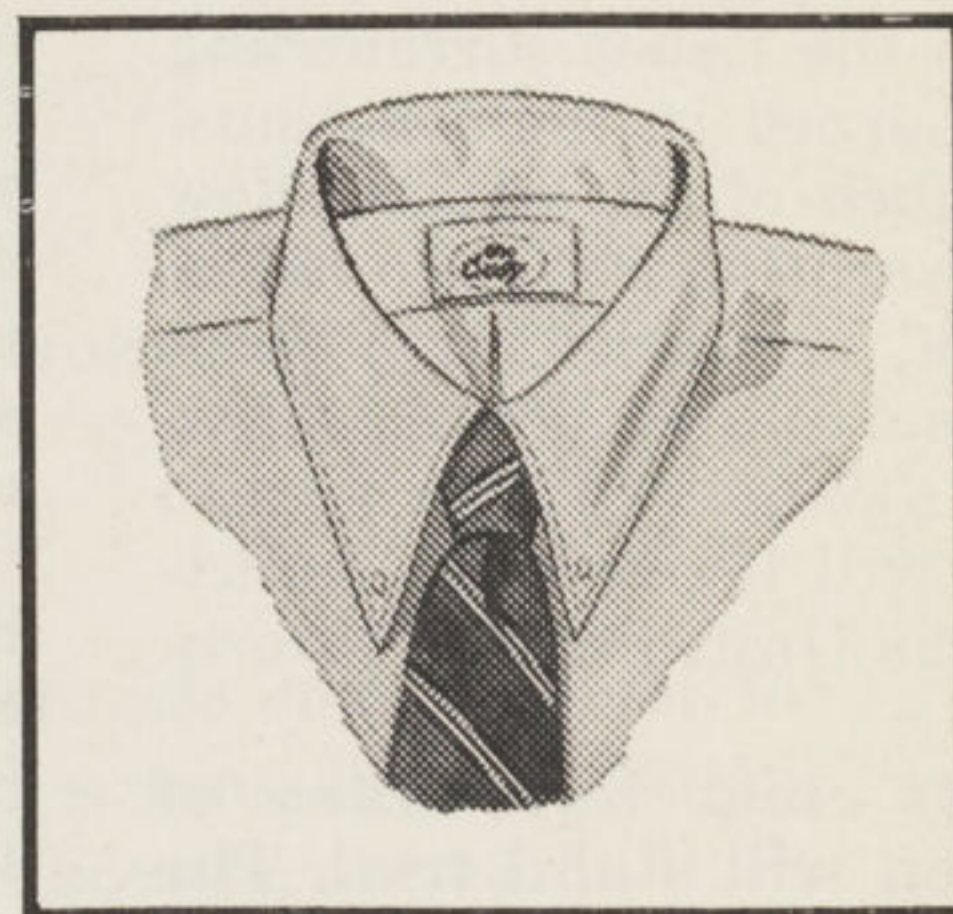
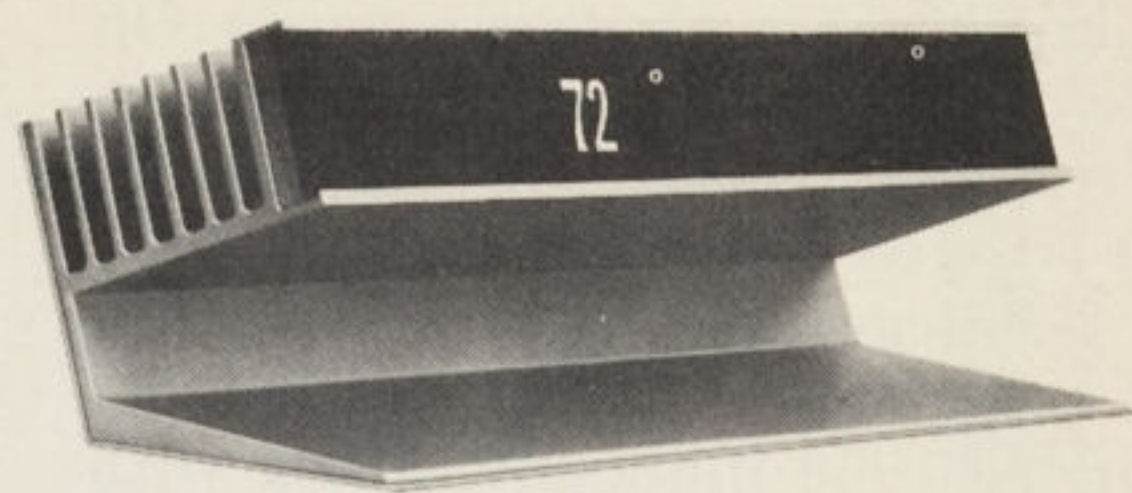


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Rosenberg Argues in D.C.

(Continued from Page 1)

Rosenberg, in conjunction with the Boston Civil Liberties Union, Professor Charles R. Nesson, and dozens of Harvard Law students, has been working on the *Robison* case apparently day and night for the last several months. The issue of the case is whether conscientious objectors who have completed alternative service are entitled to receive veterans' educational benefits.

The students and other interested spectators, after waiting in line, filing through a metal detector and past massive red velvet curtains, were escorted to their seats in hushed silence. Various lawyers, including renowned attorney and former visiting professor Leonard Boudin, chatted behind the bar until it was time for the justices to enter.

The argument opened with the statements of the two attorneys for the petitioners in the companion case to *Robison*, *Hernandez v. Veterans' Administration*. The *Hernandez* lawyers moved haltingly over the issue of the high court's jurisdiction to review challenges to the constitutionality of the Veterans' Readjustment Benefits Act of 1966.

At one point, Justice Potter Stewart, in an attempt to question the scope of the *Hernandez* jurisdictional claim, asked whether the court should have to consider a claim of AFDC benefits by a father with independent children simply because the claimant asserted a constitutional question. The counsel for *Hernandez* appeared dumb-

Profs Stage Mock Argument

To prepare for his Supreme Court argument Tuesday in the case of *Johnson v. Robison*, Legal Methods Director David Rosenberg presented his arguments last Friday in a mock oral argument before three august Law School professors.

Speaking before an audience of some 200 students, Rosenberg sought to persuade Supreme Court "Justices" David Shapiro, Paul M. Bator, and John H. Ely that conscientious objectors who have performed alternative service are entitled to receive veteran's benefits. At present, only servicemen are entitled to receive such benefits.

Before Rosenberg argued, Professor Charles R. Nesson, argued on behalf of the Veteran's Administration that the statutory purposes of the Veteran's Rehabilitation Act of 1966 justified the distinction between servicemen and conscientious objectors under the "rational basis" test. Nesson was intimately familiar with the case since he was on the *Robison* brief with Rosenberg and American Civil Liberties Union attorney Matthew Feinberg.

Rosenberg argued that it would be improper for the court to look beyond the explicit substantive purposes of the statute, and that those stated purposes warranted granting of benefits to C.O.S.

The argument was videotaped for future viewing.

founded by this question and ventured that the cases were distinguishable.

The government counsel then presented the argument for respondent in the *Hernandez* case, and then immediately afterwards, argued for petitioner Veteran's Administration in the *Robison* case. The government counsel attempted to show in *Robison* that the conscientious objector experiences a less disruptive interruption of his life than servicemen because, among other things, he may be paid a higher wage than a draftee in military service. Justice William H. Rehnquist asked whether the military serviceman's wage included room and board. In response, counsel for the government attorney vaguely replied, pointing out that a serviceman might be forced to move to another part of the country at a moment's notice.

Rosenberg then began a half hour long argument for the *Robison* respondents.

The act, according to Rosenberg, discriminates against conscientious objectors by denying them the educational benefits received by veterans of military service. Counsel for the government challenged the jurisdictional basis for the *Hernandez-Robison* claim, contending that 28 U.S.C. sec. 211(a)

vests that jurisdiction exclusively in the Veterans' Administrator.

To Rosenberg and the *Robison* respondents were left two substantive issues: Congressional intent in passing the 1966 act; and the alleged unconstitutionality of excluding conscientious objectors from veterans educational benefits. Resisting steady challenges from Justice Thurgood Marshall to the effect that the intent of Congress in passing the 1966 act was to reward veterans who had risked combat duty, Rosenberg maintained that Congress' intent was to compensate for the disruption of life and work which military service causes. Rosenberg also maintained that the statute, when considered in the light of its birth and its legislative ancestry in the pre-World War II years, discriminates against conscientious objectors and violates their right to free exercise of religion.

The religious freedom of C.O.'s, perhaps the most salient issue in the case, was virtually ignored by everyone except Rosenberg. The Justices murmured among themselves and Justice William O. Douglas, who said nothing throughout the session, appeared to one observer to be concentrating on writing one of his dissenting opinions.

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'It's Touch and Go'

Fuller: Humanity Is Crossing Threshold

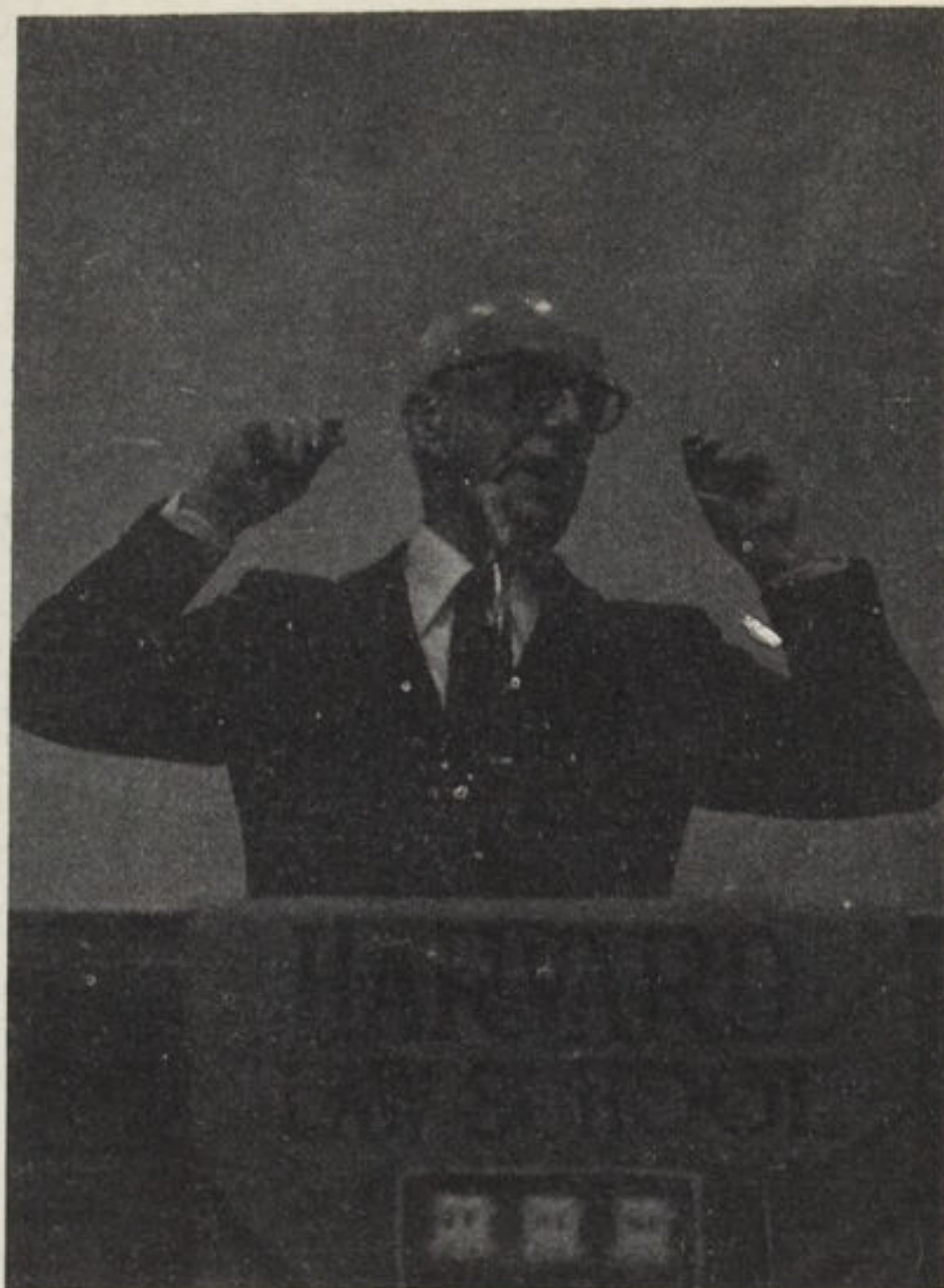
By Karen Bier

Law School Forum speaker R. Buckminster Fuller, Renaissance man extraordinaire and inventor of the geodesic dome, said Monday that humanity is "crossing the threshold. Either we're going to make good or we're not. It could be a stillbirth. It's touch and go. We do have the option to do it. It can be done."

These remarks capped a two-hour talk in which Fuller explained his method of thought and discovery to a capacity crowd of about 600 gathered in the Ames Courtroom. The 78-year-old scientist, whom many have described as a "futurist," said that at the age of 32, after unsuccessfully trying to "earn a living" in a traditional business venture, he decided that "having to earn a living" was "preposterous." Rather, he said, one "must look around to see what needs attention and attend to it."

Working his way through many examples from nature, Fuller reiterated his need to "identify the great principles of the universe in the behavior of whole systems." In doing so, he said, he has observed that all living things have a function, man included. He startled the audience with the remark that, "I'm sure we're not here just to be pleased or displeased."

Fuller believes that an organism's function is expressed by its specialized equipment, as plants by their leaves and roots, which are needed for photosynthesis. Man's specialized equipment, according to Fuller, is a mind as distinct from a brain, a mind which "subconsciously reviews special experi-



Bob Mack

R. Buckminster Fuller

ences and relates them," which is "inherently eternal." He inductively concludes that man's function is organization, developing advantage out of cumulative information and "know-how."

Fuller was critical of current business policies and political ideologies. He said that prior to industrialization, behavior was determined on the basis of "agricultural accounting, whether or not the crop came in." Now that the opportunity for organizing the future has come, he implied, business and political interests have not fulfilled their function because of "short focus — making a dollar now, winning an election now."

Fuller said that by applying technical know-how presently available, such as efficient use of resources and high-performance building, universal wealth, i.e. supporting the

population of the planet, could be achieved. He said, "It's highly feasible now to take care of all of humanity at a higher standard of living than we have ever known, and this can be done by 1985."

Denying that he is an "optimist", Fuller nevertheless disdained all credos built on the assumption that "man is designed to be a failure." He included Malthusian economics and Darwinism in this group, adding that all political ideologies embrace the concept of "survival of the fittest." He asked, "What is politics?" He answered, "Coping with a fundamental inadequacy."

After saying he was a man born "on the other side" of the line between horse and buggy and mass transit, Fuller observed that what he considers an increased social consciousness in the young can be explained by transmission of information over radio and television. "It used to be that Daddy brought home the news. Note that the Berkeley dissidents were born in the first year of TV. The voices of the news now are articulate and sophisticated, unlike Daddy. So the young world is in on information."

Fuller responded to a standing ovation by telling his audience, "I take no credit for this. What this means is that you're all standing in public and telling each other 'This could be so.' "He concluded by showing three slides of maps of the world from different perspectives: one traditionally flat and rectangular, and two geometrically strange showing the British Empire and air-ocean transportation routes.

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