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TWENTY CENTS

Kaufman Orders Review Outline Be Withdrawn

By Daniel M. Taubman

Professor Andrew L. Kaufman has ordered the Library to make the *Harvard Law Review* outline for *Commercial Transactions* unavailable to his students, due to the outline's obsolescence and inaccuracy.

Kaufman said he made the decision several weeks ago after several of his students began requesting to use the 1964 *Commercial Transactions* outline in preparation for an optional, graded exam Kaufman gave last Saturday.

According to Kaufman, Librarian Morris L. Cohen called him and asked if he wanted the outline made available to his students. Terming the *Law Review* outline "very misleading," Kaufman said he ordered it made unavailable to students

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DeFunis Case to Test Law School Standards

By Kermit Kubitz

Special to the Harvard Law Record

Seattle — The minority admissions policies of most American colleges and universities were this week in a position about as stable as the massive iron sculpture, bal-

anced on its point, which frames the view of the law school from the University of Washington's Red Square. The challenge to preferential treatment of minority applications which created this situation was raised in the case of *DeFunis v.*



Kermit Kubitz

Condon Hall, site of the University of Washington Law School, from which Marco DeFunis will graduate in June despite controversy.

3L Seeks Mini-Graduation

The Law School Council is presently considering the feasibility of a "mini-graduation" ceremony in May for third-year students who will be unable to attend the University Commencement in mid-June. According to Council member William O. Ligon, 3L, the ceremony would take place immediately prior to the start of reading period, perhaps in the Ames Courtroom.

Ligon discussed the mini-graduation last week with Dean Albert M. Sacks, who stated that he and the Law School would be willing to cooperate fully so long as the ceremony does not purport to confer

degrees.

Many law students must leave Cambridge well before the June 13 University Commencement for jobs or bar review courses. Ligon noted that the mini-graduation would be primarily for the benefit of students and spouses who would like to look back on some sort of final ceremony capping their Law School careers.

Comments or proposals by Law School students are urgently requested. Ligon requests that students call him at 498-4806 or place comments in his mailbox in Langdell basement.

Odegaard, argued before the Supreme Court Tuesday.

Meanwhile, the student who made that challenge and won is about to graduate from Condon Hall, the 40-year-old building which houses the law school, and most students there seemed more concerned about the tight job market than admissions standards.

"No, I wouldn't have sued," was the answer of the half-dozen students who were asked what they would have done if they had not been admitted. But most of those stated that they could see DeFunis' point.

The University was represented in the trial court where DeFunis won and the Washington Supreme

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Ford Foundation Grant to Harvard To Fund Basic Research in Law

By Paul Weiner

The Ford Foundation has funded a new program at Harvard to support basic research in law and related fields. The Program for Basic Research in Law will receive \$550,000 for initial funding over a three-year period, under a grant that was made final in October.

According to Professor Laurence H. Tribe, director of the Program, "there have been increasing opportunities and temptations" in recent years for lawyers to become involved in research projects aimed at solving specific policy problems or other short-term goals, rather than basic research. The Program will seek "to redress that imbalance by facilitating long-term non-applied research relating to law." This "basic research" could include jurisprudence, legal history, and legal philosophy and doctrine, but the Program is in no way limited to those fields. There are only four conditions on the fields of study for grants: they must be related to law, long-term, "non-applied", and not readily funded elsewhere.

According to Tribe, the Program might encourage some professors to pursue new lines of research, "but for others [the Program] would merely facilitate more intensive devotion to work they would have considered doing in any event."

No appropriations, said Tribe, have yet been made for research projects, and the method of appropriation has not yet been fixed. The supervisory Committee on the Program for Basic Research in Law, appointed by Dean Albert M. Sacks, chaired by Professor Stanley S. Surrey, and including Associate Dean Paul M. Bator and Professors Abram J. Chayes, William D. Andrews, and Tribe as members, met for the first time on January 21.

Tribe doubts that there will be an excessive number of applicants for funds, because "the commitment is so enormous." Professors working under the Program will be expected to devote virtually all their non-teaching time for two years to their basic research project. Out of these two years, the Program may pay for one semester on leave from teach-

ing, which could be combined with other research leave or sabbatical time. The Program's funds will pay the professor's entire salary during this nonteaching time not covered by research or sabbatical leave, and also for research assistants and secretarial help.

Tribe added that the Program might pay for empirical research, but that the Program is primarily oriented towards "think-work, rather than observational or empirical research."

Tribe noted that research funds would not necessarily be limited to professors at Harvard Law School or even Harvard University, although "the bulk of the expenditures will surely go to persons with a Harvard affiliation." This is in line with one general purpose of the program, which seeks a "more intense opportunity for collaboration" throughout the faculty, not simply for those receiving funds.

In accord with this goal, advance planning for the Program began in the spring of 1971. Approximately a dozen professors exchanged and discussed papers on basic research in 1972; among them were Associate Dean Bator and Professors Stephen G. Breyer, Alan M. Dershowitz, Charles Fried, Philip B. Heymann, Lance M. Liebman, and Tribe from the Law School; Professors Robert Nozick (philosophy) and Stephan A. Thernstrom (history) of the Graduate School of Arts and Sciences; Professor Richard J. Zeckhauser of the Kennedy School; and Professor David Rothman (history) of Columbia. This informal collaboration has continued through a series of lunch-time discussion meetings.

At the Ford Foundation, interest in the Program was generated by Foundation President McGeorge Bundy, former Dean of the Harvard Faculty of Arts and Sciences, Christopher Edley, who is now head of the United Negro Fund, and Edley's successor, Sanford Jaffe.

Tribe expects that the first grants will be made for the summer of 1975 and the first research leaves take effect in the fall of 1975 or the spring of 1976.



The selection of the team which will represent HLS at the regional round of the International Jessup Moot Court Competition at Boston College March 8-9 has been completed. Pictured (left to right) are the five 1Ls who participated in the final HLS round on February 25: Howard O. Boltz (on the brief), Peter M. Olson, Greyson L. Bryan, Hanson Y. Huang, and Ralph B. Palmer. The HLS oralists selected were Bryan and Huang, with Palmer as the alternate.

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Langdell Boxes Contain Grades For First Year

First-year grades were placed in the mailboxes in Langdell instead of being mailed both for reasons of speed and privacy, according to Registrar Mary D. Upton. Grades for *Criminal Law* and *Torts* were given out February 18.

"Our experience with the Post Office was a disaster," said Upton, citing a five-day delay between mailing and delivery to Law School dorms.

"We wanted to avoid handing them out in a room with 500 other students," Upton continued.

When incidents of students finding that their grade envelopes had been opened were mentioned, the Registrar replied, "We're almost 100 per cent sure they were opened by mistake. Someone reached up or down from their box."

The fact that grades could be distributed in half an hour through use of the Langdell facilities also weighed in the decision. No decision has yet been made on how grades will be distributed to 2Ls and 3Ls.

"If we consult as far as our own interests and those of the students go," said Assistant Dean Stephen M. Bernardi, "we would love to use those boxes."

Any student whose grades were opened or were not received may report the matter to the Registrar. Upton and Bernardi also mentioned that the Law School Council had raised the question of whether grades should be distributed at one time or serially. Since a mailing to the student body presently costs a minimum of \$120 and will increase with postage rates, mailing a series of grades could be expensive.

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Kaufman Orders Outline Of Com Trans Removed

(Continued from Page 1)

because it "was just full of mistakes," was related to the course as formerly taught by Professor Emeritus Robert Braucher, and was correlated with a casebook no longer in use.

Kaufman said Monday, however, that he is now willing to alter his position. "If any student really wants it (the *Law Review* outline), I wouldn't object, but I would advise them in the strongest possible terms not to use it."

Since Kaufman helped negotiate the original agreement between the *Law Review* and the faculty in 1969, under which the *Law Review* agreed to cease making outlines and make available its existing outlines to all law students, he was asked by Dean Albert M. Sacks to oversee the Law School's present renewed concern over the outlines.

That concern arose three weeks ago when an article in the Harvard Law RECORD revealed that many of the Law Review outlines at the library were obsolete and missing pages, and that none bore a warning from the faculty.

Since delegated this task by Sacks, Kaufman has made available to Cohen a "caveat lector" from the faculty which was formerly attached to all *Law Review* outlines. That warning will soon be placed on all copies of *Law Review* outlines at the library, Cohen said Monday.

In addition, Cohen indicated that the library plans to contact all faculty members who teach courses for which there are outlines on file to determine whether those faculty members wish the outlines to remain on file at the library. If any faculty member wishes the outline to be removed, that will be done, unless there are two or more professors who teach a course for which an outline is available and there is a disagreement between them. However, if the professor contacted indicates his desire to leave the outline on file, his wishes will be respected.

According to Cohen, the professors also will be asked to indicate whether the existing outlines are obsolete, and whether or not they pertain to a

casebook still in use. This information will be used to appropriately label the outlines.

Mary Fisher, Assistant Librarian for Public Service said Monday that she would be contacting professors this week about the outlines. She also said that she expected all missing pages of the outlines to be replaced within a week or two.

Kaufman said that he felt that the *Commercial Transactions* outline had fallen below a certain "minimum standard." Consequently, he said, he told his *Commercial Transactions* students that he felt they wouldn't "be doing themselves justice" by using the outline.

The warning that all the Law Review outlines will soon bear indicates that "this outline has been made available by the Harvard Law Review for use of students generally at the Harvard Law School."

In addition, the warning states that "Students will be able to assess for themselves the helpfulness of the outlines as study aids, but the quality was reported to vary greatly. Even the most accurate and complete outlines are not, and do not purport to be, substitutes for reading and thinking about the materials, attendance at class, and preparation of one's own outline."

Presently, more than 40 per cent of the outlines at the library are at least a decade old, the RECORD article reported.

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Weinberger Backs Administration Policies

Secretary of Health, Education and Welfare Caspar Weinberger '41, declaring that he is "unequivocally delighted and honored" to be part of the Nixon Administration, defended its policies both in theory and in detail in a speech to

Weinberger criticized the problem-oriented federal subsidy programs of previous Administrations and praised revenue sharing as a more efficient and wiser use of federal funds. Discussing the "change

ject mentioned by several questioners, saying that after a trial of several years this concept had shown itself to be a failure. He said that 60-70% of the money going into Community Action programs went to "overhead, administrative expenses, and community organization expenses." He disagreed with the view that a basic motive of the Community Action program was or should have been to bring political power to poverty groups.

Weinberger said that he would advocate regulation of the rate structure of the health care and health insurance industries, but that he favored federal regulation only if state regulation proved inadequate. He asserted that "there is nothing in the Potomac that gives any superior knowledge or ability in these matters." He said that his experience in California state government suggested that the states were capable of managing such tasks, saying "I don't have that fear of state governments" that some exhibit.

Weinberger said that the number of suits instituted against him in controversies over the impoundment of funds has made him one of the most-sued officials in the government. He was recently told by Chief Justice Burger that he was becoming the Supreme Court's "best customer." The Secretary defended the Administration's failure to spend "every nickel that was appropriated," saying that impoundment had precedent in the actions of every President since Jefferson, who declined to spend a Congressional appropriation for a gunboat for use in the Indian wars.

He said that some Administration action was necessary to counteract the "inherent conservatism" of Congress in matters of reducing spending. As an example of a desirable impoundment, he gave the Administration's refusal to release money appropriated for new hospital construction, in view of what he described as a surplus of available beds leading to increased hospitalization costs.

Mr. Weinberger, who attended Harvard College as well as Harvard Law School, has been Secretary of Health, Education, and Welfare for slightly over a year.



Secretary of Health Education and Welfare Caspar Weinberger '41

the Harvard Law Forum Wednesday night. In addition to discussing the President's health care insurance proposals, Weinberger contrasted the Administration's policy on social welfare spending with that which prevailed during the 1960's. Drawing on his experience with the federal Office of Management and Budget, he began his speech with some remarks on general budgetary policy, organized around the theme "why I am not a Keynesian."

Weinberger praised the Administration's health care proposals as designed to "intrude at a minimum" on the private health care system now in operation and said the program's cost of "a little less than \$6 billion" could be absorbed by the government without new taxes. He criticized the "first dollar coverage" concept of health care, saying that the elimination of cost-sharing would remove a salutary control and tend to "overload the system," leading to the displacement of the really ill by "people with more or less imaginary ailments."

Saying "you don't really have to think if you think that you can solve all problems by putting in more federal money," Secretary

in directions that we have tried to put in, and the reasons for it," Weinberger described the present H.E.W. attitude as one of "let's send the money to state and local governments," leaving them free to set priorities and determine the uses of funds. He said that local governments would be more responsive to popular desires than federal agencies.

The Secretary characterized the Keynesian approach to "fine-tuning" the economy, by means of alternate increases and contractions in the amount of government spending, as a "splendid theory," but said that he had become convinced that political realities made it unfeasible. He said that while Congress is generally happy to increase spending, it is hardly ever possible to get its agreement to the reverse adjustment. He also mentioned the difficulty of making changes in spending levels felt rapidly enough to affect the situation desired to be controlled.

The H.E.W. chief responded vigorously to generally hostile questioning concerning Administration actions in the welfare field. He defended the discontinuance of the Community Action program, a sub-

Law Firm Jobs Taken by 72% Of '74 Grads

By Mike Bowen

More than seventy-two per cent of the members of the class of 1974 have taken jobs with law firms, a survey by the Placement Office indicated.

Two hundred sixty-six of the 368 third year students responding to the survey said they had accepted offers from various firms. Seventy-two 3L's will serve judicial clerkships next year, while 15 will work for the Federal Government. None of the other 11 employment categories drew as many as five respondents.

Three students said they were taking positions with public interest or legal services groups. Four expect to work for corporate legal departments, and none took jobs with state or local governments.

The data supplied by the Placement Office broke the survey results down as follows:

Employment Category	Number Taking Jobs	Percentage
Law Firms	266	72.3%
Judicial Clerkships	72	19.6%
Federal Government	15	4.1%
State & Local Governments	0	—
Corporation (Legal)	4	1.1%
Graduate Study & Research	4	1.1%
Legal Services	2	.5%
Public Interest	1	.25%
Corporation (Non-Legal)	1	.25%
Teaching	1	.25%
Banking, Consulting, Other	0	—

Eighty per cent of those surveyed will be working in one of nine states and the District of Columbia. Two hundred fifteen '74 graduates — nearly 60 % of those responding — have found jobs in five cities, New York, Boston, Washington D.C., Chicago, and San Francisco.

Police Captain Allen Scores Public Employment Suits

By Ricardo Hinojosa

The people now involved in the field of civil rights in public employment are judges and attorneys "and those might not be the right people to solve these issues." That was the view expressed by San Jose Police Captain Robert L. Allen, a Criminal Justice Center Fellow, February 15 at a lecture on "The Mixed Record of Public Employment Civil Rights Litigation" in the Pound Building.

Allen started his discussion by making clear it was not intended as a "how to to civil rights litigation" and that he didn't have many solutions to propose but would discuss some of the issues.

There are few members of "protected classes" — Blacks, Spanish-Surnamed Americans, Indian Americans, Asian Americans and Women — in public sector employment according to the San Jose Police Captain. He stated that "some improvements have been made" but that you don't find members of these groups in the higher paying jobs. For instance, he said, you might see a "Chicano patrolman, but you don't find Chicano police chiefs, or you might find a Black typist but not a Black librarian."

Allen admitted that, initially, people in charge of public sector employment did not want to hire members of the protected classes, but in recent years there have been recruiting efforts directed at hiring more people from these classes.

However, he said that now the barrier to hiring these groups has sprung up in the testing area. He cited as examples, some agility tests that eliminate women and height requirements that tend to eliminate members of certain races.

These problems, according to Allen, should have been addressed by police administrators in conjunction with social scientists. But, he said that before this occurred the federal government stepped in with guidelines and then the "program for recruiting minorities ended up being put into law"

which was "designed to protect the protected classes."

Allen said that presently the problem of employing members of minority groups is being solved through litigation without police administrators and social scientists having much to say about it.

In three recent suits involving the San Jose Police Department, Allen felt that both the city and the protected class lost because "each one made it less likely that a minority would get hired."

He expressed a view that "people who go to court are sincere and their motives are pure" but the result is that if a standard is lowered for the plaintiff's class, it is also lowered for the white pool making that pool much larger and the competition for jobs just as great.

Professor Derrick A. Bell, who was in the audience, challenged some of Allen's assumptions and stated that if courts have come into civil rights litigation in public sector employment it is because the police departments showed they could not deal with the problem.

Allen answered that the leadership in his police department had shown that it could solve the problem at the time the litigation era started. The problem, he said, is not only recruitment but assimilation and where there is a difference in competence "we tend to arm the bigot" who points to unqualified minority recruits.

Allen asked that he not be misunderstood, stating that he was a police administrator and "I am interested in talent where I find it, and getting it as cheaply as I can find it." He stated that he was for minority recruitment in his police department because he would rather not spend his "time in San Francisco defending what I did the week before."

Allen suggested one possible solution is selective recruiting among qualified minority members rather than widespread advertising for jobs. Allen feels widespread recruitment of minorities builds up expectations among a lot of applicants, who are not qualified.

'Paper Waste' Opens March 14

The 13th annual Harvard Law School Show is being billed as a "glittering extravaganza." *The Paper Waste* will be performed on March 14-17 and 21-24 at 8:00 P.M. The show's book is by Chris Harding, Dana Shilling, 2L, and Robert E. Mack, 2L, and the music is by Richard F. Hope, 2L, and lyrics by Harding. Musical director is Lawrence E. Strickling, 1L, costume designer is Anne-Marie E. Rhodes, 1L, and set designers are Gerry and Deana Jenkins.

The show's plot concerns some Hollywood has-beens who team up with some half-baked HLS students to make a Busby Berkeley type extravaganza about a madcap student who went to HLS in the 50's.

Paramour Pictures, purveyor of Linda Shoelace's (Colleen McMahon, 1L) films is being sued by their lawyers as well as the government and Female Defamation League for the outrageous *Long Tonsils*. Producer Roman Bodoni (Toby Webb, 1L), who romances the scriptwriter Alice (Sheila O'Shaughnessy), gets conned into making one last try to recoup his fortunes (*The Paper Waste*).

Shoelace, a sexy but bibulous starlet who falls for Harv L. Rev (David Fritz), plays her first straight dramatic role, while a has-been composer Otto Ding (John H.F. Enteman, 2L) writes all the music for the lavish dance numbers. These grandiose ideas don't quite jibe with scriptwriter Alice's conception of hard-hitting realism. When the filming starts in Cam-



Professor Arthur R. Miller exhorts 'Paper Waste' cast.

Mark McNeil

bridge, the producers and cast are confronted with the grasping Dorm Council, which is reluctant to lend them money, the nasty Professor Griller (Richard H. Rubin, 3L), who wants the release of the film enjoined and the process server W. C. Weatherwax (Gene Bauer).

Other featured actors are Hal M. Mickelson, 3L, who plays H. H. Dewey, senior partner of Dewey, Cheatham and Howe, New York's most corrupt and lucrative law firm and he is pursued by the nosy gossip columnist Rona Parrott (Bonnie Davis).

Also in the show is Professor Arthur R. Miller as Judge Miller, Nancy E. Holland, 2L, as the epitome of Law School singing and dancing talent and Debbie Luth, 1L as "Deuce" Tecum.

Sports Quiz

Name the Alma Mater of each of the following sports figures:

1. Don Nelson
 2. Arnold Palmer
 3. John Unitas
 4. Elijah Pitts
 5. Elgin Baylor
 6. Sonny Jurgenson
 7. Zelmo Beatty
 8. Peggy Fleming
 9. Stan Smith
 10. Phil Jackson
 11. Lou Gehrig
 12. Vince Lombardi
 13. Red Berenson
 14. Tom Seaver
 15. Bob Gibson
- (Answers on Page 16)

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'DeFunis' Splits Government Agencies

(Continued from Page 1)

Court where it won by Senior Assistant Attorney General James B. Wilson, who also prepared the brief for the U.S. Supreme Court. The number of minority students has "greatly improved since they have had the minority admissions program," said Wilson.

Wilson referred to the requirement of the federal government that the University undertake an affirmative action program in employment, noting that there had been, "threats of holding up contracts requiring federal compliance."

"There probably is some validity about their complaints as to our employment practices," he continued, but added that he was slightly annoyed by pressures on the University to improve racial balance in one area while its minority admissions program was being attacked in another area.

The Washington Attorney General saw a link between the admission of minority students and the affirmative action program, in that, if the minority admissions program was invalidated, "we can't bring people up to qualify so it (affirmative action in hiring) can be employed."

Harvard University Counsel Daniel Steiner, "made the generous offer that Professor Cox was available to assist in any way we felt would be appropriate," said Wilson, including arguing before the Supreme Court. The oral argument before the Supreme Court was presented by the Attorney General of the State of Washington, Slade Govton.

"It was not a class action," said the University of Washington counsel, emphasizing that the University still has a minority admissions program. The remedy sought by DeFunis, Wilson pointed out, was, "just a mandatory injunction ordering his admission."

The case had been imitated in other jurisdictions, including one suit in Colorado thrown out on a technicality and a medical school case in New York. "It's been notorious from the beginning," said Wilson.

Lyle Iversen, who together with Josef Diamond of the firm of

Lycette, Diamond and Sylvester has represented DeFunis from the beginning, said that the large number of amicus briefs filed with the Supreme Court was not surprising: "we went through the same thing in the Washington Supreme Court." Diamond argued for the appellant before the Supreme Court.

As to other attempts to gain entrance to the law school by suit, Iversen said, "there were a number who wanted to do it. We discouraged them." He indicated that potential clients were advised to await the outcome of DeFunis.

The source of this controversy,

would return to the University discretion as to whether to admit him. He was admitted by force of a court order."

"We would treat it like a transfer application," the Dean continued. However, the University's discretion, "would not run to retroactive cancellation of existing registration."

Thus, even for the technical purpose of avoiding mootness, the issue is very close, since DeFunis may have registered for his final quarter by the time of oral argument and indeed, may have been awarded his law degree by the time the Supreme Court has a decision ready. And Dean Roddis points out



Kermit Kubitz

Washington Assistant Attorney General James B. Wilson.

Marco DeFunis, is now a third-year student at the U W law school and works for a local firm. At the time the RECORD visited the campus, DeFunis was about to register for his final quarter, which raised the possibility that the case was or would be moot.

"The Court, prior to granting cert, asked for special briefs on mootness," said Iversen. The brief for DeFunis made the point that "If the Petition should be denied, the injunction and stay would cease to be effective and there is nothing that would prevent the University from terminating his enrollment."

As far as the mootness issue for the Court is concerned, Dean Richard S.L. Roddis of the law school agrees: "A final termination of litigation in our favor

that, "We've always tried to make it clear that we would not penalize him by interrupting his education."

Both Dean Roddis and Assistant Dean and Director of Admissions Robert S. Hunt agreed that admissions standards at the University of Washington Law School had been modified since DeFunis to give more weight to grades and LSAT scores than before.

A new set of standards, voted on by the Washington faculty in December, require, according to Roddis, "more strict adherence to rank order of PFYA's (predicted first year average) except where it is felt that the numbers wouldn't predict accurately."

But Roddis emphasized that the

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Labor Law Specialist Dunau

By Bruce Kuehne

"I became interested in law in my fourth year of college. I looked around, saw that I'd better make some decisions about how to make a living, and selected law. It was cold blooded. I've never had a love affair with the law. It's a job. It wouldn't bother me at all if none of my four children were to enter the profession. I imagine I could do as well in other fields, but if I had it to do over again, I'd probably do the same. It's something at which I'm competent, something I enjoy."

One could probably place the speaker without ever having met him. He's a successful Washington attorney with his own practice. But it would not be so easy to guess the whole truth — the speaker is also a teacher of law, and a man far more complex than his speech reveals.



Mark McNeil

Visiting Professor Bernard Dunau

Bernard Dunau (*Doo-now*) is a Visiting Professor of Law at Harvard, teaching his labor law specialty. He's "visiting" in a quite literal sense, however, since he commutes between his private practice in Washington, D.C. and Harvard to teach classes every Friday. During other years, Dunau shares his time and talent between his private practice and teaching classes at the University of Virginia.

Dunau received his A.B. degree in 1940 from New York University and his LL.B. three years later from Harvard, where he was a member of the *Law Review*. After

several years in the Army, he practiced with the National Labor Relations Board until 1954 and since that time has been in private practice specializing in labor law. He has been a Professor of Law at the University of Virginia since 1967, where he teaches his speciality.

Dunau grew up on the lower East Side of New York where his parents ran a bakery. "Actually, I don't know why I settled on the law rather than something else. The notion wasn't around in a family sense. But in the milieu in which I was reared, being a professional was a worthy end. I attended Stuyvesant High, which was a school for science. What I learned there was that I had no aptitude for science. I had to work at it. I've always thought that if you have to work at something, you just haven't got the basic equipment. It amazes me today that my children seem to do math by inhalation; I don't know where they got it from. Anyway, my lack of interest in science ruled out being a doctor. So I selected the law."

Dunau majored in English literature at New York University, and he's still amazed at what he calls the "legalese patter" which seems to appear in every decision or government brief. "The amount of turgid prose in legal documents is fantastic. Some of it is not even competent communication. There's a jargon and style which is incomprehensible except to those schooled in its hidden meanings. But I suppose it comes down to the fact that writing is a skill and some people just don't have what it takes to be competent at it."

Dunau's first contact with the law after he graduated from Harvard was not as an attorney, but as a criminal investigator. "I got my induction papers immediately after my diploma and I was sent to England, and then to Normandy at D plus 9. We followed the battles for about six weeks through France, Belgium and into Germany. We never saw any actual combat and when we were in Belgium, I was transferred out of supply into criminal investigations. That was a very interesting introduction to the practical side of the law. I learned

how difficult it can be to get the facts, to follow leads, to interview people and let them do the talking when you feel like talking yourself. We gave Miranda warnings long before anyone had heard of Miranda, but even then it was obvious that they could be given in such a way as to amount to no warning at all."

After spending two and a half years with the Army, Dunau returned to the United States hoping to find a job in New York, but he found that most of the firms had filled their vacancies with returning veterans who had worked for them before the war. So he accepted a job with the enforcement section of the National Labor Relations Board in Washington, D.C. He stayed with the NLRB until 1954 when he opened his own practice.

"I didn't want to make government service a career," he says. "At the Labor Board, you see only a confined part of the labor universe. You tend to specialize in a particular aspect of the law and your vision becomes narrow. On top of that, it's hard to overemphasize how much sheer accident determines the aspect in which you specialize. After eight years with the Labor Board, I felt that I was too limited. Since I've started my own practice, I see a greater diversity of problems."

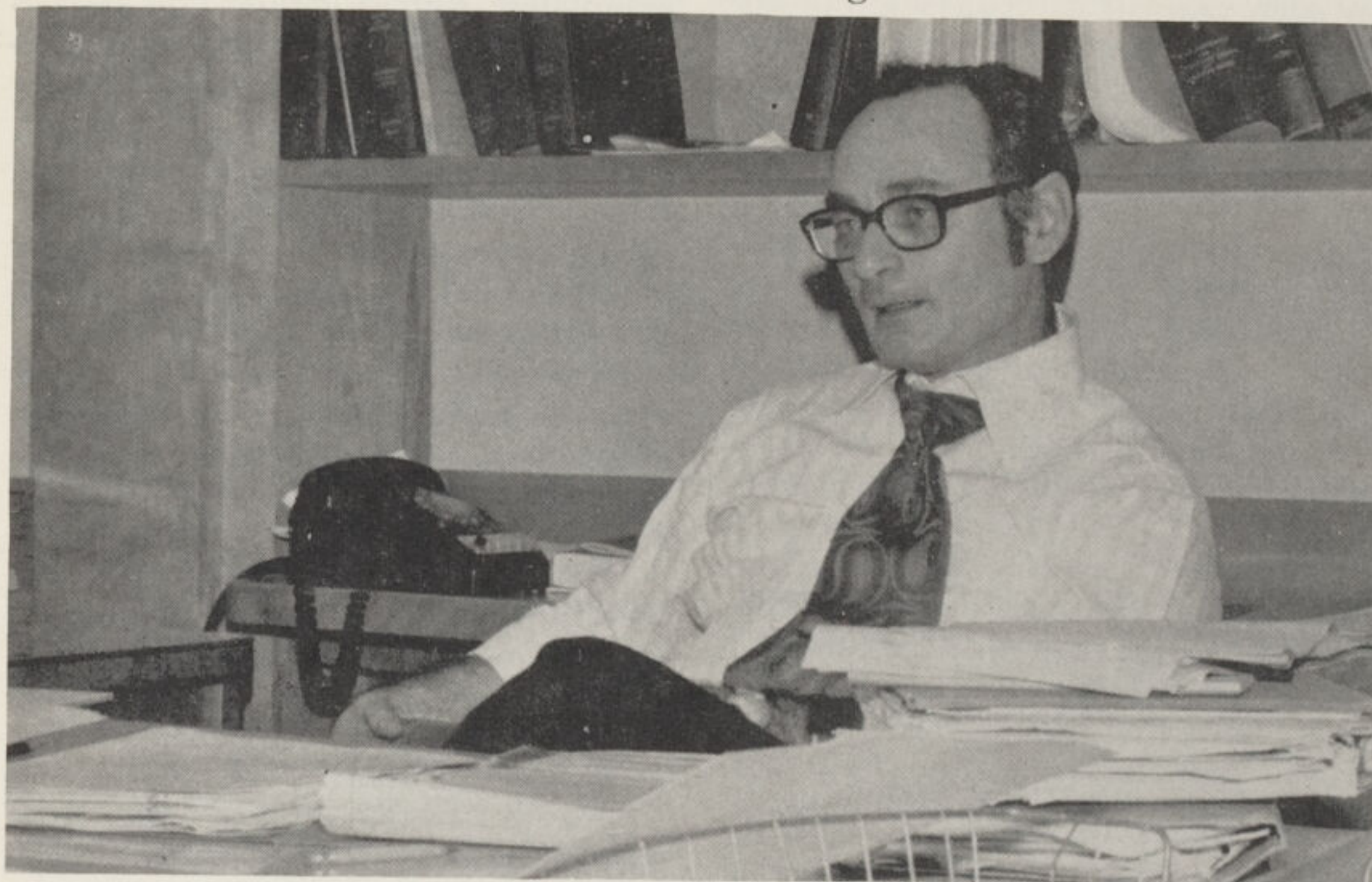
Professor Dunau includes among his activities litigation, consultation on legislation, trial of arbitration cases, acting as arbitrator, collective bargaining, negotiation and grievance handling. "But I do litigation primarily. From the little I've seen of negotiation, I think I'm better off where I am. I don't think I'm suited to be a negotiator."

Besides the diversity of the labor problems themselves, Dunau finds that he has to keep current on other aspects of the law in working within his specialty. "If I'm dealing with some problem concerning anti-racketeering, I'm immediately immersed in such a topic as the common-law definition of extortion. I soon find myself roaming all through the criminal law. For another example, I was recently involved with an action seeking to revoke the tax exemption status of labor unions and I had to suddenly school myself in taxation."

Travels from Court to Class

Dunau has usually been on the labor side of the legal fence in his work. "Only rarely have I done any work for management. As much as the lawyer might like to do so, its very unusual to find someone who represents labor in some cases and management in others. The clients soon identify you and

with the legal system often. These people are quite sophisticated politically and they appreciate the fact that the world can't meet their every desire. There's a big difference between this sort of client and the type who is involved for the first time in his life with the legal system and hopes never to be in its toils again."



Mark McNeil

Professor Bernard Dunau discusses commuting from Washington.

you're just not asked to represent the other side after that. The same goes for arbitration. Once you're pigeonholed, only rarely will you be acceptable to both sides as an arbitrator. That's why you'll find that most arbitrators do that exclusively or are academicians working on an isolated case.

Despite the tendency of clients to type-cast their lawyers, Dunau finds his relationships with them one of the most satisfying parts of his specialty. "There's a misapprehension about lawyers' relations with clients. Once you are in contact with them enough for them to develop trust in you and a knowledge that you will do your best for them, they're likely to be as accommodating and sympathetic to your problems as you are yourself. We lawyers like to think that we always have to hold the client's hand and comfort him. But in labor law, I've often seen a client consoling the lawyer who's lost a case, telling him to forget the failure, that it's not so important. But this can only be true of institutional clients, or individuals who deal

Dunau doesn't find the weekly journey to Harvard particularly taxing. He's had a lot of experience with travel in his practice. "Traveling around the country, or the world, becomes almost second nature to any practitioner whose practice is not strictly local. The cases I'm involved with virtually never originate in Washington, D.C. I have to travel where the case is. So I'm used to it. I don't find it onerous."

Like the other decisions of his career, Dunau's entry into the teaching profession was not the result of long planning, but of sudden impulse. He had known several teachers at the University of Virginia Law School for several years and had expressed an interest in what they did. When the University was faced with a sudden vacancy in 1967, the friends recommended Dunau to fill it. He's been there ever since.

He admits that it's hard work trying to split his time between two occupations, but "you have to decide what you want to do, and then make every effort to do it well.

Sure, it's hard, but it also makes for a much fuller life. Restricting myself to a full-time practice in litigation is no less demanding. For the few brief moments of glory, there's a lot of tedious detail, a lot of hard work."

"The reason I accepted the job at Virginia in the first place was that I was sufficiently bored with practice that I welcomed the variety. I found it then and still find it great fun, although its hard for me to say just why. I guess it's an ego serving thing. It's nice to think that you're opening a field for students of which they're hardly aware. I think all of us have an affinity for communicating with people. Then of course there's the notion that you've got something to say about a job you've been doing for 25 years."

Dunau says that he'd be willing to consider teaching as a full time occupation, although he doesn't know now if he'd actually do it. "I'll cross that bridge if and when I come to it."

Dunau's attitude towards his job in class is as practical as towards his work outside of class. "I'm trying to get across to the students the manner in which a lawyer copes with a problem. The problem solving approach will hold generally true for most other fields of the law. But labor is an especially apt vehicle for this approach. It's still very fluid and the process is more visible. There are few set rules or premises and we can't take much for granted. Instead, we've got to look for premises from which to reason. On nearly every issue, we're faced with choices, many of which could be made differently. We have to ask why we take this approach rather than another. As of now, there are no good hornbooks for labor law, and I don't know how anyone could write one. I've known a few people who've tried, but none who have succeeded."

Dunau feels that there is a tangible difference between the way strict academicians treat a legal problem and the way practitioners tackle it. He sums up the difference as "less abstract. On the brief of a problem, you'll find the practitioner driving as hard as he can at the conclusion. The identification of the problem and the premises have

(Continued on Page 15)

The Flood

The flood of attorneys which is being turned out by the nation's law schools is both a threat and a challenge to the profession and the schools. It tempts the schools to overexpand until the surplus of lawyers backs up into the law schools and forces sharp cutbacks in faculty and facilities.

It may cause a sharper division within the profession between the attorney's dual role as officer of the court and advocate of the client's interests as economic pressures become greater.

ABA President Chesterfield Smith estimates in the current *Intellectual Digest* that there may be jobs in the legal profession for less than half of law school graduates at some point in the future. With a current population of 350,000 or so lawyers, the legal establishment is hardly prepared to handle the influx of upwards of 25,000 new graduates each year.

Already many cities popular with young attorneys are over-lawyered-San Francisco and Boston being examples. The expectations of many entering law students will be dashed by the economics of supply and demand if changes are not made both in the legal educational system and in the method of providing legal services.

The form of legal education has a critical effect on the expectations and career patterns of law school graduates. *Argersinger v. Hamlin* promised to extend the right to counsel to new levels. It is unlikely that the promise will be fulfilled by graduates of a three-year law program at places like Harvard.

The turn-out for the presentation by two public interest lawyers mentioned by Dean Williams in his letter in this issue is indeed dismal, but what more could be expected of a school that requires more than \$15,000 in expenses and three years of study as the price of a diploma?

It is far more likely that students who graduated from a two-year program would be receptive to the demands of public interest law, both because of the lower cost of their education and the earlier entrance into a productive career.

Serious investigation of a two-year legal curriculum should be initiated with both faculty and student input. Many students find that they can handle legal problems competently during their second-year clerkships, and some find the third year to be a needless pause before beginning their permanent employment.

The concentration of legal education in two years of law school would have the corollary benefit of increasing the emphasis placed upon continuing legal education.

The law schools of the nation may be preparing new kinds of lawyers, but even more important may be the forms for delivery of legal services now being developed within the profession. Specialization, as California now allows in tax and litigation, is one such development and perhaps the third year of law school might enable those who desire to do so to qualify for such a specialty.

The prepaid legal services program attempts to provide legal services on a reasonable basis to millions of Americans to whom legal advice has previously been available only on rare occasions and at a high price. The ability of the profession to absorb large numbers of new graduates will in large measure depend upon the success of this experiment in broadening the market for legal services.

But external changes in the practice of law will be futile if the law schools continue to be remiss, indeed, negligent, in their failure to adapt their programs to the economic environment of the law in the 70's.

HARVARD LAW RECORD

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Fenno

"What the hell is happening?" the 2L asked Fenno, as she dodged eccentrically through the stream of first year students who were moving with undisguised haste through the corridor.

"The first year grades are out," Fenno answered.

"Oh."

Fenno and the 2L watched with interest as the stream gradually diminished. A few minutes after it had died completely, a much gentler flow started in the opposite direction. It began with two 1L's who walked rigidly, staring glassily straight ahead.

"They must have gotten four C's between them," the 2L said knowingly.

"You can't be too sure," Fenno cautioned. "A lot of first-year students react the same way to A-plusses."

The next group of 1L's was much more relaxed. They congregated casually in the lounge area, exchanging carefully crafted hints about the grades they had just picked up.

"Well," a first year student suggested tentatively to one of his companions, "I imagine everyone's relieved, anyway."

"I don't know," the other 1L said, shaking his head dubiously. "I don't think an A in Torts means anything at all."

"Maybe you're right," the first speaker said evenly. "I heard Keeton gave almost everyone an A."

"I had Steiner," the 1L who didn't think an A meant anything quickly observed, as if to correct a mistaken impression.

"That was subtle," the 2L remarked.

But he had spoken too soon: another first-year student with an A in Torts had joined the 1L conversation.

"How about Fried?" the interloper asked, a bit too eagerly. "Did he give many A's?"

There was no satisfactory answer to this, so the 1L's moved on to Criminal Law.

"The policy question was pretty difficult," one of them said delicately after a few moments of desultory sparring, being careful not to say whose exam he was talking about.

"Yeah," another 1L responded, ignoring the lack of identification. "If I hadn't gotten lucky on the conspiracy question, the policy essay would have dragged me to a B-plus."

"That was not subtle," the 2L remarked.

The other 1L's apparently felt the same way: the confabulation rapidly broke up.

"There's just one thing I don't understand," the 2L said to Fenno as the knots of first-year students disintegrated. "Last year, some of us got B's."

Fenno shook his head. "They must have changed the curve," he said.

Letters to the Editor of The Record

Notes From A 'Harsh Mean World'

To The Editor:

Having read Donald Solomon's polemic in the RECORD in December, and the cries of fellow alumni whose oxes have evidently been gored, I think that Don's point is well taken.

I have been, for the past three years, out in the cruel harsh world which my fellow alumni would like me to think they have been improving from the seats of their partnerships in large and generally business and corporate-oriented practices.

Sure there are personal injury practitioners and union lawyers and even firms which have *pro bono* departments, but all of the changes for the better have only come when the Donald Solomons of this world have gored oxes (or is that oxen?) and made people feel guilty about their cushy practices and their fat private asses.

I think, in reading the hysterical and reactionary letters of Messrs. Johnson, Cooper, Shults and Kane that they are protesting just a little too much. It has been my experience that most large firms do generally represent the slumlords and the polluters and the "bad guys" and this is true for the simple economic fact of life that the "bad guys" have the money, and lawyers, especially in large private firms, are in business to make money, and a lot of it.

So I think my fellow alumni should come clean. It's a harsh and mean world out here and there are not many of my fellow classmates, or Cooper's or Johnson's or Shults' or Kane's, that are making it a better place.

Scott J. Tepper '71
Los Angeles, Cal.

Colson, Calley, and Corporate Law

To The Editor:

Four columns of reaction in your February 1 issue to my views on vocational goals virtually compel a brief response to some of the points made.

1. I am not, as Mr. Cooper suggests, "unaware that private law firms may also represent good guys." But I *am* aware that whether they represent "good" or "bad" guys (to adopt his idiom) is all too often a purely random occurrence, even when not skewed toward the wealthy by the size of one's fee.

2. Mr. Johnson's picture of lawyers spread all over the length and breadth of the profession is not one that I share. It may be true of his Law School class, but the unfortunate fact is that those firms favored by the presence of '73 alumni are overwhelmingly the mammoth East and West Coast firms that recruit heavily at the school. If more

alumni went into smaller firms, this might be all to the good, but it is not occurring.

3. Mr. Shults errs when he asserts that it is my first priorities that are proffered as moral goals. The problem is not that I disapprove of my classmates' choice of jobs, but that they have chosen jobs as to which the very concept of moral approval is meaningless. As has been documented elsewhere, the typical large firm adopts a "morally neutral" stance in which it purports to value pure competence for its own sake. The trouble is that *someone else* at the firm decides which members of society will benefit from that competence.

Mr. Shults also sounds the familiar theme that "good" lawyers can work within a firm to improve their clients' morals and thereby mitigate the effect of the true dinosaurs. While tempting, this overlooks the fact that the lawyer's moral options are never so great as at the stage of client selection, since "[a]fter accepting employment, a lawyer should refrain from ... assuming a position that would tend to make his judgment less protective of the interests of his client." ABA Code of Prof. Resp. EC. 5-2.

4. Mr. Kane also mentions the praiseworthy efforts of the private bar in the *pro bono* area, although he avoids comparing them with profitmaking endeavors in terms of billable time. But he misses the point that a lawyer is not a "public interest advocate" merely because he handles workmen's compensation cases. The lawyer who makes millions by handling disability claims—and such cases have been cited in the media — has simply found a new racket with which to play the same old game. The key factor overlooked by all four writers is commitment, a concept that is quite easy to ignore in a milieu that professes value-neutrality. There is nothing wrong with private practice *per se* except that those who stumble into it without the same sense of purpose that accompanies a prosecutor or public-interest lawyer often lack the means to resist the nominally neutral pressures of clients and seniors who are in fact highly committed to their own interests. That Mr. Kane's firm has allowed him to pursue *pro bono* cases with a free hand is entirely commendable, but one wonders why an attorney must place himself in a position where permission must be asked.

The striking thing about all four letters is that they continue to urge us to suspend judgment, see the other side, and indulge the fiction that the lawyer as employee is absolved of responsibility for what he is asked to do. The reference to Colson and Dean implies that they tried to impose their philosophy on others, when in fact they had no philosophy save unquestioning loyalty to the Nameless One who employed them as "associates."

This false equation between moral abdication and intellectual independence is what makes it easy to see Dean and Colson — and Calley — toiling for their "client" as they did. Quite difficult, though is to imagine such moral intransigents as Solzhenitsyn and Howard Levy obeying such orders.

Don Solomon '73
Stamford, Connecticut

Starkman Included

To The Editor:

The title of our newly issued casebook is *Cases and Comments On Criminal Procedure*. There are five authors. Your article omitted the name of Gary Starkman. I hope you will take this incident as a reminder when you enter the practice of law, to look closely at the things people show you.

Please don't take this as a personal complaint, since you did spell my name correctly.

James B. Zagel
Chief, Criminal Justice Division
Office of The Attorney General
State of Illinois
Chicago, Illinois

Student Response 'Great Restraint'

To The Editor:

Only the exercise of great restraint has kept me from responding to previous articles in the RECORD which I considered to be less than full contextual developments of statements, however, recent student turnout on the occasion of the visit by John J. O'Hare, President of the National District Attorney's Association, James Flug, Executive Director of the National Legal Aid and Defenders Association and James Manak, Project Director of the National District Attorney's Association leads me to write. In my responding memo to the Law School organizations letter I apprised them of the upcoming visit (a copy of which the RECORD received); a subsequent memo went out to all of the signatories of the original student letter, the *Adviser*, and the RECORD informing them of the time, date and place for the meeting and notices were conspicuously placed around the Law School. Seven students showed up for the presentation of Mr. Flug and Mr. O'Hara.

Robert A. Williams
Assistant Dean

Law Notes

Elections for the 1974-75 HVD officers were held on February 13, 1974. The new officers are: Susan Studlien - President, Steve Fleckman and John Sturc - Operations Officers, Jeff Lewin and Leo Slaggie - Research and Appeals Officers, and Art Wilmarth - Administrative Vice-President.

Judge Hastie Delivers First Biddle

By Joseph Rafalowicz

On February 19, a near capacity crowd, including a substantial portion of the Law School Faculty and members of the Biddle family, filled Ames Courtroom to hear The Honorable William H. Hastie, Senior United States Circuit Court Judge of the U.S. Court of Appeals for the Third Circuit, deliver the first Francis Biddle Memorial Lecture entitled "Free Speech: Contrasting Constitutional Concepts and their Consequences."

The Biddle Lecture Series is designed to focus on contemporary issues of Civil Liberties and Civil Rights. The First Francis Biddle Memorial Lecture was made possible through the generosity of Mrs. Katherine Garrison Biddle and Family.

The fact that Judge Hastie gave the first Biddle Lecture is a nicety that Francis Biddle would have appreciated. The two men knew one another slightly when, as a civilian aide to Secretary of War, Henry L. Stimson (1940-42), Hastie was involved in efforts to fairly integrate blacks into the U.S. Army. He and Biddle have also shared another bond; both have served on the same court. In 1949, President Truman appointed Hastie to be Judge of the Third United States Circuit Court of Appeals. Biddle was appointed to the Third Circuit bench in 1939 and became Solicitor General in 1940. In 1967, Hastie was appointed Chief Judge and retired in 1971 to become Senior Judge.

William Hastie graduated from Amherst College in 1925 and received his LL.B. cum laude from the Harvard Law School in 1930. For two years, he practiced law in Washington, D.C. and then returned to Harvard on a fellowship where he received the S.J.D. degree in 1933. Again, Hastie returned to Washington, this time as Assistant Solicitor to the Department of the Interior from 1933-37.

Shortly afterward, Hastie was appointed Judge of the District Court of the Virgin Islands. Two years later, 1939, he returned home to become Dean of Howard University Law School, a position he held

until 1946 when he was appointed Governor of the Virgin Islands for three years. For several years, he was also Chairman of the Legal Committee of the National Association for the Advancement of Colored People (NAACP).

After speaking briefly on Francis Biddle, Judge Hastie



Mark McNeil

The Honorable William H. Hastie

launched into a thorough and careful analysis of contrasting approaches to the problems of free speech and press. He indicated that First Amendment problems have, generally, been covered, "in terms of negative postulates, in terms of how much abridgement is permissible and not in terms of what subject matter was protected, in terms of where and when free speech and press may be exercised and not in terms what may be said or printed."

The Judge urged a new approach in determining what free speech and press the First Amendment protects. He pointed out that in early First Amendment cases, courts often suppressed free speech and press in the interests of a national war or post-war effort or national unity.

The efforts of Justice Holmes and Brandeis and the advent of the "clear and present danger" test helped to curb and invalidate much of the earlier governmental suppression of the freedom of speech and press. However, even those dis-

tinguished early civil libertarians assumed that the Government had the power to abridge free speech and press and they directed their efforts merely toward confining or restricting that governmental power.

Judge Hastie suggested an entirely new two-tier approach to freedom of speech and press involving the Fifth and Fourteenth Amendments as well as the First Amendment. Within the first tier, the First Amendment guarantees "absolute, uninhibited free communication of political ideas and information and nothing else."

The First Amendment is specifically designed to protect this free and uninhibited communication of political ideas and information amongst people and between people and their government, which is essential to free self-government. Other ideas, information or modes of expression fall into the second tier and are protected by the Fifth and Fourteenth Amendments, due process of law guarantees.

This approach to examining what the First Amendment protects, first suggested by Professor Alexander Meiklejohn, differs from the conventional civil libertarian view that the First Amendment affords absolute, unqualified protection to all modes of free expression. It affords increased protection to freedom of speech and press within, however, a more limited area of expression.

The Meiklejohn theory, in effect, attempts to extend the same absolute protection that Congressmen have when exercising their duties in legislative debate and discussion to the rest of the citizenry when the people exercise their rights of self-government by way of political self-expression and communication.

Within the second tier, fall all other modes of personal and non-political expression which are protected, among other things, by the Fifth and Fourteenth Amendments' due process of law guarantees, rather than by the First Amendment. The distinction here is crucial. While the First Amendment absolutely protects all free political expression, the Fifth and

e Talk on First Amendment Limits

Fourteenth Amendments' due process guarantees protect nonpolitical free speech and press, though not absolutely.

The Fifth and Fourteenth Amendments do not absolutely guarantee life, liberty and the pursuit of happiness, rather, they guarantee no deprivation of same without due process of law. Similarly, the interests of personal and nonpolitical expression which are among other things, protected by the Fifth and Fourteenth Amendments, are not absolutely guaranteed. Such interests, unlike the First Amendment interest, are not absolutely essential to free self-government and therefore can be balanced off against other legitimate public interests.

In protecting free personal and nonpolitical expression, unlike free political expression, the unqualified First Amendment protection can be relaxed. A more balanced approach under which the Government can show that other compelling public interests outweigh the interest of free personal or nonpolitical expression is acceptable. Under the traditional approach, Judge Hastie explained, all modes of free expression are weighed against other interests in society and the former all too often lose out. Under his suggested approach different types of expression with diverse underlying interests are differently treated and also protected. The First, Fifth and Fourteenth Amendments are also utilized in a different, though, complimentary manner.

The Supreme Court first seemed to embrace this new approach to free speech and press in its 1964 *New York Times v. Sullivan* 376 U.S. 245, and *Garrison v. Louisian* 379 U.S. 64 decisions. There, the Court held that the constitutional protection for speech and press limits a State's power to award damages in a libel action brought by a public official against critics of his official conduct.

In *New York Times v. Sullivan*, Justice Brennan, writing for the



Mark McNeil

Judge Hastie meets with Dean Sacks before his talk.

majority, afforded almost absolute protection to commentary on public officials and public affairs in ruling that a public official is prohibited from recovering damages for a defamatory falsehood relating to his official conduct unless he proves the statement was made with "actual malice". A concurring opinion by Justice Goldberg, in which Justice Douglas joined stressed the connection between maintaining the absolute right of comment on the conduct of public officials and affairs and the underlying interest of free self-government. Six subsequent cases confirmed the almost unqualified right of free public comment on the conduct of public officials and public affairs.

In recent cases, however, the Supreme Court seems to be returning to the balancing approach in deciding free political expression cases. In *United States Civil Service Commission v. National Association of Letter Carriers*, AFL-CIO, 93 S. Ct. 2880 (1973) the Court ruled that Section 9(a) of the Hatch Act, which restricts classified civil service employees from working for partisan political candidates, was not unconstitutionally vague nor fatally overbroad. The Court apparently balanced the interests of the Government as an employer in efficiency,

against the interest of the employee, as a citizen, and found the latter wanting.

The logical outcome of the *New York Times v. Sullivan* line of cases, Judge Hastie suggested, would be to afford absolute constitutional protection to anyone desiring to work for a partisan political candidate, one of the purest forms of political expression.

Judge Hastie noted the current trend of balancing of interest in free speech and press cases and the passing of the almost absolute protection of free speech and press started with the *New York Times v. Sullivan* decision. He closed the lecture by suggesting that civil libertarians accept the fact that, historically and otherwise, "the First Amendment protections of free speech and press have never been unqualified" and that it would be better to limit the First Amendment free speech and press protections only to areas involving free expression of public affairs and to rely on the Fifth and Fourteenth Amendments due process guarantees as the basis for protection of all other areas of free expression.

After the lecture, a reception for Judge Hastie was held in the Student Lounge on the Second Floor of the Pound Building, where an informal session with the Judge was also held the following day.

'DeFunis' Splits Government Agencies

(Continued from Page 7)

system which DeFunis challenged had allowed discretion only for a "midrange of students" and that other factors were applied only to achieve a "refined judgement of academic potential."

Iversen, however, said, "At the time of the DeFunis application there were virtually no standards at all." He referred to an article in the *Washington Law Review* by Professor Morris criticizing the operation of the minority admissions program.

The case also provoked a split within the federal government, as the EEOC sought to file an amicus brief on the side of the University, at the end of January. Solicitor General Robert Bork, according to a report in the *University of Washington Daily*, sent a memo to the Supreme Court clerk contending that the EEOC had not been authorized to file the amicus brief and urging the Court to disregard it.

The case has apparently caused a controversy among the EEOC, HEW, and the U.S. Civil Service Commission in which the Justice Department does not want to get involved.

"After extensive consultation with the several federal agencies and departments whose interests might be affected by the Court's decision in the above case (including the Equal Employment Opportunity Commission) it has been decided," Bork wrote, "that the government will not participate in the case."

In a reply to Bork's letter, EEOC

attorney William A. Carey stated, "It (the EEOC) does not purport to represent the view of the United States or any other government agency, but merely to present to the Court its concern as to the possible effects of a decision in this case on



Kermit Kubitz

Condon Hall, Seattle, Washington

the matters which have been specifically entrusted by Congress to its expertise as an independent agency."

The Supreme Court rejected the EEOC's brief.

"It seems the U.S. government ought to be on our side," said Washington counsel Wilson.

It was the contention of DeFunis' counsel that a decision in favor of his client would not jeopardize all affirmative action programs. "It would open these

things to everybody. The Italian American gets cut off. The Chicano gets these privileges. The disadvantaged white is entitled to the same privileges as the black. I don't think it will cut out affirmative action."

It was the feeling of Dean Roddis, however, that a decision in favor of DeFunis would invalidate the law school's current admissions policy, because it would mean, "we cannot consider race as one of the factors for admission."

Roddis felt that Harvard's admission policy, reflected in the brief prepared by Cox and Steiner, was to use a broader discretion to achieve a mix of students in the entering class.

"Our view is if you pick on the basis of academic potential, you get," the Dean explained, "a random mix of all the other factors ... political, activities...."

"We all want a broadly representative student body," he continued, noting that in spite of pressure from the legislature, the law school did not discriminate for or against non-residents of the State of Washington.

A major source of controversy within the law school had been a proposal, within an admissions scoring system, for a five point bonus for women. This proposal was rejected, so that both sexes are considered in the same admissions pool. The percentage of women admitted was 30% last year and 25% this year.

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Also on sale in the Hark March 6 through 8, 1974.

Dorm Council Votes to End Housing Quotas

The Dormitory Council Monday voted unanimously to recommend an end to discrimination by sex in next year's allocation of dormitory housing. It proposed that the percentage of women residents in each of Hastings, Wyeth and the new dorms next year be proportional to the percentage of women in the overall pool of students seeking dorm housing.

Irvin A. Rosenthal, 2L, who sponsored the action, stated that the Council's action would have great weight in Dean William L. Bruce's planning for next year, and estimated that using this year's figures the plan's effect would be to decrease the number of women in Wyeth (currently 58%) while placing women on about two more floors in the new dorms. Security problems were thought manageable, and one reason offered for the large number of women currently in Wyeth - "That there are kitchens" - brought convulsions of laughter.

In other actions, the Council:

- voted to purchase a telephone-message device so that there might be a 24-hour complaint line (498-4785) for reports of malfunctioning vending machines, heating, plumbing, and other dormitory problems. Comptroller Douglas L. Miller, 2L, will be on the other end of the line to troubleshoot the complaints.

- set up three committees: one to look into procedures for dorm resident assistants; one to monitor the Hark's food performance; and one to investigate the high guaranteed payments to the telephone company for the dorm pay phones and to investigate the possibility of replacing the dorm pay phones with Centrex phones or eliminating them entirely.

- funded a floor party for each entry or floor during the spring semester, at the rate of \$2.50 per dorm resident, but declined to cosponsor a party at Wellesley.

- fixed the spring semester work requirement for council members.

Dorm Council meetings are open to all students, and interested persons are invited to attend, contact their dorm rep, or contact President Andrew P. Geoghegan, 2L.

MARCH 1, 1974

Dunau Divides Time Between Courts, Class

(Continued from Page 9)

to be defined in terms of the conclusion. Your intent is to persuade to a particular end and you know you must get a result. You disserve your client if you treat the problem as a cosmic one, rather than the limited issue which is before you."

"Legal articles, on the other hand, tend to attack a problem as an 'on the one hand ... on the other hand' type of thing. The premises are more important than a result and in fact an article may conclude that the problem discussed is insoluble. The practicing lawyer can't say a problem is insoluble. He's forced to find a workable settlement."

"The result of this distinction is that articles are seldom immediately useful in the preparation of a brief. You'll almost never find an argument in an article which will be persuasive when translated into the brief. A good article and a good brief will treat the same considerations, but they do it from very different points of view."

"There are some first rate people in labor law who have contributed to it strictly as academicians, but they are the exception rather than the rule. Most of the top people have had extensive practice and they tend to approach a problem in much the same way whether in an academic or practical setting. They bring to bear a realistic understanding of the environment in which they work. And it's hard to duplicate that if you haven't actually worked in the field. You develop an intuitive sensitivity to the implications of various problems and solutions."

Despite, or perhaps because of, his sensitivity to his working environment, Dunau finds that his tastes in literature haven't changed much since his collegiate days. "I'm still in the Romantic tradition in wanting to find a good guy and a bad guy whose virtues and defects are clear. But the anti-heroic motif is predominant in the works of the popular authors of today, such as Hesse. I must admit I'm not fond of the anti-hero motif. Even though it's closer to the real world."

Pranksters Vie To Throw Pie In Millers Eye

By Jeffrey Karp

The Procedural Prosser of 1L's "took one on the chin" this past Monday from that cantankerous contingent, Section Three.

Friends of Daniel Prives, 1L had arranged with the ever-willing Professor of Pranks to make sure that Section Three sang "Happy Birthday" to Dan while backstage plans were made to perpetuate an insidious Ames Hall third floor tradition—smearing the birthday boy with a pie. What King Arthur did not know was that the knights of the semi-round tables of Langdell South were conspiring to allow their leader to participate in the fun first hand. After all, the scandalous schemers reasoned, Professor Miller had sanctioned the original antic, why not follow it to the logical conclusion?

The script of the caper was followed without flaw, until a superfluous second pie from the first row missed the desired target.

Hank Levine, a 2L mercenary with suspicious BSA connections, had arranged with Miller to make a comment concerning Ames Boot Camp Competition at the end of the class. Little did Miller suspect that Levine planned to use this ploy so he could be standing next to his "mark" where he couldn't miss. As Arthur gleefully watched Prives get his pie the conspirators rolled into action.

Suddenly a trumpeter emerged from the back bench blowing the University of Michigan fight song. As Professor Miller attempted to bring his daily inquisition to a close he was presented with a cream pie in the face.

It was at the University of Michigan that Miller received his first pie in the face, at least publicly. That time Miller's students dressed him in a judicial robe for the experience and Miller thought that approach may have been classier.

Dorm Council Activities

This Weekend

TGIF — Friday, March 1, 4-6 p.m.
Harkness Downstairs Lounge

LAW SCHOOL FLICK
"GEORGY GIRL"
with Lynn Redgrave

Saturday, March 2, 8 p.m.
Harkness Commons, \$1 or 50c
with Dorm Council Activity Card

Playoff Plans Ready

As the intramural basketball season enters its final weeks Commissioner Sheldon L. Solow, 2L, has announced plans for playoff competition.

The plan, as announced, consists of a single elimination tournament between 16 teams which will qualify according to their regular season records. Five teams from the A League will be included along with four from the B League. League leaders in C Law and Equity Divisions will be included along with the second place team which has the best regular season record. There will be two teams from the D League and one each from the E and S Leagues.

Any questions about these standings should be directed to the Commissioners, Shel Solow (498-5141) or Walt Bleil (498-4700)

STANDINGS

After Week Feb. 18

A LEAGUE

	W	L
Saints	5	0
Grovenators	4	1
Jackson Five	3	2
Longballs	2	3
Three-Fifths	1	4
Malcontents	0	5

B LEAGUE

Bureaucrats	5	0
One Buffalo Won	5	0
Frankfurters	3	2
Nunc Pro Tunc	3	2
Upstarts	3	2
Over-The-Hill Gang	2	4
Jardine	1	4
Jeff Seder	1	5
Too Late Too Soon	1	5

C LEAGUE EQUITY

King's Service Station	4	0
Big Blue Plus Two	3	1
Bucaneers	3	1

Little Big Men	3
A-Mazers	2
Duck Soup	1
From and After	1
Juggernaut	1
Law School Sucks	1
Kahouteks	0

C LEAGUE LAW

Roaches	5
Justus Blacks	4
Master-Debaters	4
Turkeywimps	4
Exhumators	3
Hoops	2
Tort-Teasers	1
Manuel's Laborers	0
Rechtswidrigkeits	0

D LEAGUE

Sons of Manslaughter	5
Slaughterhouse 5	4
Crimson Swine	2
Five Easy Pieces	2
Swordsmen	2
Paper Tigers	2
Fuck-Ups	0
Liz Lewicki	0

E LEAGUE

Big Ten	5
Elements of Style	4
Beeber's Revisited	5
Probate Prowlers	4
Beleaguered E-Leaguers	3
Screaming Meemies	2
Something Rotten	2
Boston Ballet	2
Love's Labor Lost	2
Trashers	1
None of the Above	1
Lugosi's Legions	1
Shrug	0

S LEAGUE

Strict Liabilities	4
Short Strokes	2
Sons of Puto	2
Iowa All-Stars	0

Sports Society Hosts Celtics' Red Auerbach

Arnold "Red" Auerbach, General Manager of the Boston Celtics, was the guest speaker at the HSL Sports Trivia Society meeting February 21.

The colorful Auerbach, who is best known for his brilliant record as the coach of the Celtics when they dominated the NBA in the late 50's and early 60's, answered questions from the society members for over an hour.

In response to a question Auerbach observed that a merger between the NBA and ABA is highly unlikely. At the same time he contended that very few of the ABA players would be successful in the NBA. He also observed that several star ABA players were considering moving to the NBA.

Auerbach defended his policies concerning NBA television blackouts of the Boston area, and noted the increasing importance of the legal profession in professional sports.

Sports Answers

1. Iowa
2. Wake Forest
3. Louisville
4. Philander Smith
5. Idaho State, Seattle
6. Duke
7. Prairie View
8. Colorado College
9. USC
10. North Dakota State
11. Columbia
12. Fordham
13. Michigan
14. USC
15. Creighton

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