

HARVARD LAW RECORD

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TWENTY CENTS

HLS Refusal to Mail Letter Sparks Feud with Council

By Arnold S. Rosenberg

Dean Albert M. Sacks' refusal in June to permit the mailing to prospective 1L's of a letter written on behalf of the Law School Council by Council President Jeff Reiman, 3L, constituted "a political maneuver on behalf of the administration," Reiman charged this week.

The letter, reproduced in this week's RECORD on page 5, was one of several submitted by Law School extracurricular organizations for transmission to 1L's during the summer, but was the only one not sent out by the administration.

In his letter, Reiman accused the faculty of "insensitivity toward student concerns," manifested, he said, by the revocation of pass/fail grading and inaction regarding the written work requirement. The letter also included a "playing down of clinical education," "racist and sexist hiring practices," and "oversized" first-year classes in his list of student grievances.

Reiman's letter was initially rejected by Law School Registrar Mary D. Upton. In a letter dated June 17, Upton wrote, "The mailing to incoming students . . . has not been used as a forum for political statements or for attacks by any member of the Law School community on any others. Since your material constitutes such a statement and attack I would not publish it even if it were edited down to one page." In a

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HLS Students Still Seeking Public Service

By Jim Kainen

In an attempt to offer 2Ls and 3Ls a full array of employment opportunities, the Placement Office in conjunction with the Dean's office has undertaken a drive to expand the *pro bono* bulletin board.

The bulletin board was initially established as an aid to the student who sought public interest

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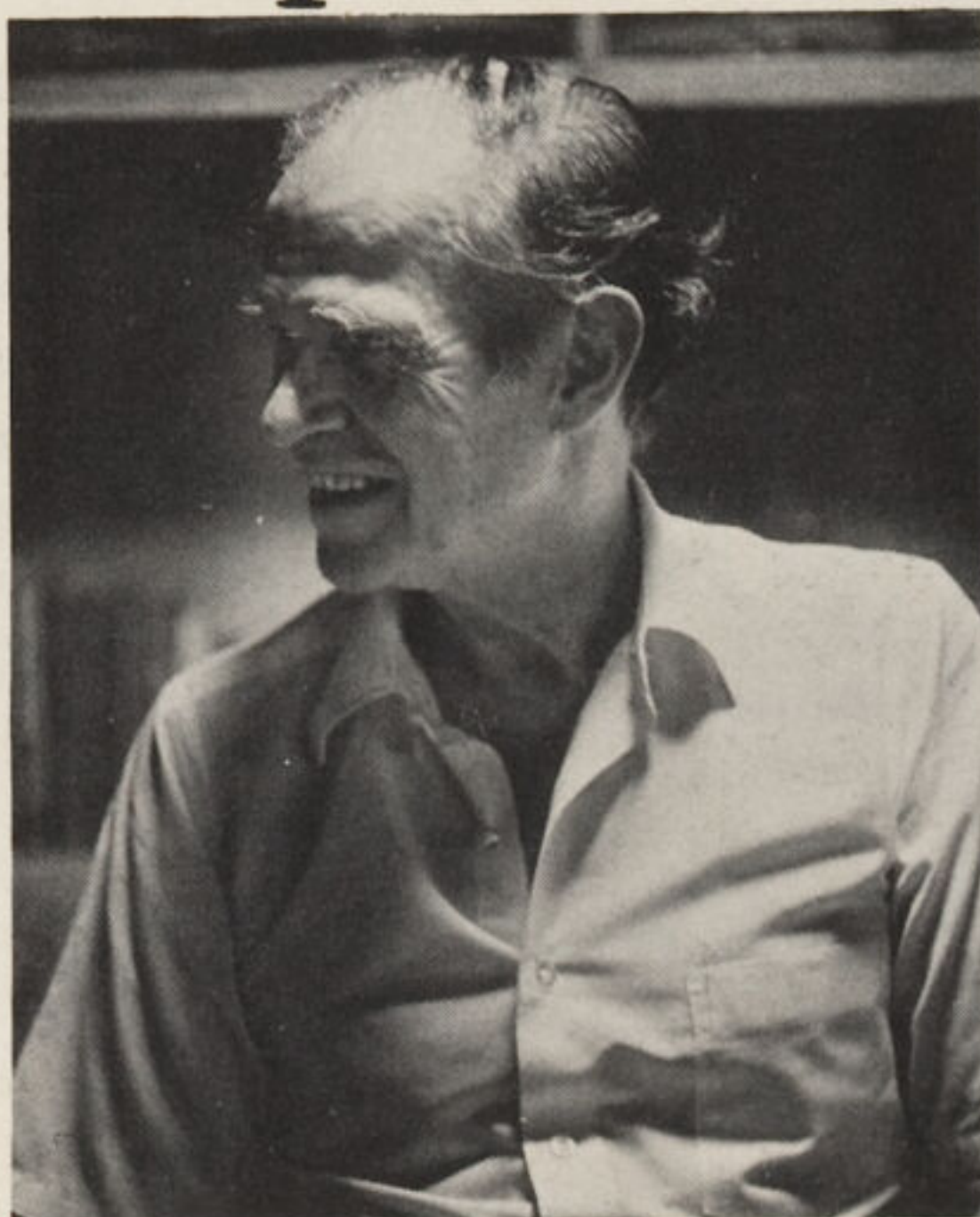
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Hiss Case Spurs Reflections

By Maurice deG. Ford, '62

Ed. Note: This is the first installment of a three part report on the reinstatement of Alger Hiss contributed by the author to the RECORD.

On August 5, 1975 the Massachusetts Supreme Judicial Court approved the readmission of Alger Hiss to the bar of the Commonwealth. Twenty-five years had elapsed since his conviction of perjury on the testimony of Whitaker Chambers at the height of the McCarthy era. This Hiss case had been the vehicle which Richard Nixon, then a young



Bradford D. Herzog

Alger Hiss, '29

member of the House Committee on Un-American Activities, had used to gain national prominence. Now the era is different, and events seem to have come full circle. Former President Nixon rests in disgrace within the seclusion of San Clemente. Alger Hiss's reinstatement at the bar, almost on the first anniversary of the Nixon resignation, provides us a chance to reflect on the Red Scare of the McCarthy era and on where we have come as a nation. It is also the first step in redressing a grievous individual injustice.

Not that the question before the Massachusetts court was cast in

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Pro Bono Recruitment Expanding

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employment announcements within the stacks of letters from the private firms. Although it is now easier to find an announcement, the basic problem still exists: there are not enough of them.

Traditionally, the Placement Office has had far greater success in placing graduates who are immediately available for

employment in public interest jobs than in placing current students. *Pro bono* offers are often not definite until the last minute and students are simply not willing to wait. In addition, interviewing, the most popular means of finding jobs, is not available to public interest organizations who have neither the time nor the money to jour-

ney to Cambridge.

The result is that the interested student, even with the *pro bono* bulletin board, is typically left on his or her own. According to Miss Eleanor R. Appel, director of the Placement Office, only the most committed actually stick it out in the hope that jobs will come through in June. Lkening the 3rd year employment syndrome to pregnancy, Miss Appel stated that the problem results from students' wanting to know nine months in advance whether they will have a job.

Assistant Dean Alfred Daniels, who with Professor Phillip B. Heyman will be attempting to beef up contacts between public interest organizations and HLS, identified the problem as making *pro bono* opportunities competitive with the lure of private practice. A visitation series, in which lawyers with public interest careers will be invited to HLS, is planned for the current year.

Although students with loans to repay or students worried about cutting off their options tend to take a more lucrative private job before seriously considering public interest law, the current problem is more with supply than demand. Miss Appel estimates that nearly four times as many students as now take public interest jobs would do so if they could be certain of employment well in advance.

The Placement Office is currently sending out letters seeking permanent and summer positions, including questions about opportunities for 1Ls. Nonetheless, certain factors point to a less than hearty response. Many public service jobs are contingent upon funding information which is not known until late in the academic year; the current recession has also clouded the funding picture.

While the Placement Office continues to increase the supply of *pro bono* opportunities, actually landing a public interest job will still take grim determination on the part of the student.

HARVARD LAW RECORD

Bruce: Athletic Fee Hike Can't Excuse Flabbiness

Vice Dean William L. Bruce has termed the sharp rise in the cost of Harvard athletic participation cards for law students "an undesirable state of affairs" necessitated by "the iron laws of economics."

The cards entitle the holder to unlimited use of most of the University's athletic facilities, such as tennis courts, swimming pools, weight rooms, and basketball courts. Without the card, the student must pay \$1.50 per use (as compared to \$1 last year). The cost of the card jumped from \$50 to \$80 per year effective this fall.

According to Bruce, the Law School has in the past paid \$6,000 per year ("money well spent") to the University as an athletic subsidy. As a result, intramural basketball has been available at Hemenway gymnasium to all law students without additional charges. This year, the Law School is being required to foot a substantially larger bill for athletics.

Robert Watson, a director of the University's Department of Athletics, was quoted in the *Gazette* as stating: "Increases in operating costs have made it necessary for

the Department to generate additional income. The Standing Committee on Athletics voted a revised rate structure last spring that goes into effect this year." Student monitors have replaced some of the regular custodial staff at Hemenway gymnasium as part of the effort to cut costs.

While Bruce recognizes the relationships between "a healthy mind and a healthy body," he does not believe that the radical fee hike will keep law students of lesser financial security out of shape this winter. "Certainly the increase is a deterrent to playing squash but it is not a deterrent to keeping in shape. A pair of jogging shoes is all that is required," explained Bruce, who runs a mile and a half every morning year-round.

Students who cannot afford to meet the hike are advised by Bruce to consider "inexpensive" exercises. Bruce recommended Canadian exercise programs or even "running in place in front of the TV" as effective means for students to achieve adequate exercise without leaving their residences.

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Nine New Teaching Fellows Join Staff

By Fairlea Sheehy

Nine new teaching fellows have joined the staff for the 1975-76 year. Four are teaching in the Legal Methods program; the others participate in clinical courses.

Nathan Crystal, the new director of Legal Methods, describes the teaching fellows as coming for the most part from legal services or law reform backgrounds. They have practiced three to eight years and are new to teaching.

Brief biographies of the new fellows follow:

DAVID COBIN received his J.D. from Boston College Law School. He has been in private practice in his own law firm in Berkeley, Ca., concentrating initially on criminal defense work and subsequently on domestic relations, mental health and military problems.

CARL COOPER received his J.D. from Howard Law School. From 1973 to 1974, he was Assistant City Attorney for Benton Harbor, Michigan, and is currently City Attorney. He has been responsible for the prosecution of all misdemeanor cases and the defense of all civil suits against the city.

ANN GREENBERG received her J.D. from Wisconsin Law School. She has served as a staff attorney with Seattle Legal Services and with the Center for Law and Education, where she has worked with busing/desegregation problems and education for children with special needs.



Nathan Crystal,
New LM Director

KENNETH MACIVER received his J.D. from Boston University. He has been a staff attorney with Rhode Island Legal Services. He served as head of RILS's Employment Law Project, developing remedial legislation for the unemployed, and as RILS's specialist in welfare law.

FREDERICK MOSS received his J.D. from Villanova. For two years he worked as an attorney in the Judge Advocate's Office of the U.S. Army; since 1971, he has served as an Assistant U.S. Attorney for the District of Columbia.

DEAN RIVKIN received his J.D. from Vanderbilt. From 1971 to 1972 he was *pro se* clerk to the United States Court of Appeals for the Second Circuit. Since 1972 he has worked with the Appalachian Research and Defense Fund of Kentucky, first as a fellow and then as the directing attorney.

STANLEY TAYLOR received his J.D. from Tulane Law School. Since his graduation he has worked with North Mississippi Rural Legal Services, first as a fellow and then as a staff attorney. He has also handled a substantial amount of federal civil rights litigation.

TIMOTHY WILTON received his J.D., cum laude, from Harvard. He practiced in his own firm for one year and then joined the Roxbury Defenders Committee as a staff attorney. Since December, 1973, he has worked as a staff attorney at the Prisoners' Rights Project.

MICHELE HERMANN has been appointed as a one year non-degree teaching fellow. She received her law degree from Yale University. From 1969 to 1971, she was *pro se* clerk for the United States Court of Appeals for the Second Circuit. Subsequently, she served as Associate Director of the ACLU's National Prisoners' Rights Project. From 1972 to 1974 she worked with the Legal Aid Society of New York City. Last year she was a lecturer and clinical teaching fellow at Yale.

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SJC Didn't Retry Hiss's Conviction

(Continued from Page 1)

such encompassing, global terms. Chief Justice Tauro's opinion for the Supreme Judicial Court makes it clear that it did not consider itself the forum to retry, or even review, Alger Hiss's original conviction:

At the outset, we stress that we are not here concerned with a review of the criminal case in which Hiss was tried, convicted and sentenced. . . . Basic respect for the integrity and finality of a prior unreversed criminal judgment demands that it be conclusive of guilt. . . .

Indeed, given recent evidence which has come to light concerning the strength of the evidence behind Hiss's conviction — a matter which will be dealt with later — the Supreme Judicial Court's opinion seems unduly severe.

. . . Hiss comes before us now as a convicted perjurer, whose crime, a direct and reprehensible attack on the foundations of our judicial systems, is further tainted by the breach of confidence and trust which underlay his conviction. His convictions and subsequent disbarment are "conclusive evidence of his lack of moral character at the time of his removal from office."

Nor was the McCarthy era, as a whole, on trial. Courts — and this is perhaps their strength — deal with much more concrete, narrowly defined cases and controversies. The precise issue before the Massachusetts court was whether, under Section 18 (4) of Rule 4:01 (relating to rein-

statement) Alger Hiss could *now* meet "the burden of demonstrating that he has the moral qualifications, competency and learning in law required for admissions to practice law in [the] Commonwealth, and that his resumption of the practice will not be detrimental to the integrity and standing of the bar, the administration of justice or to the public interest."

I.

Alger Hiss submitted his application for reinstatement in November, 1974, two and one-half months after President Nixon had lifted off, for the last time, from the White House lawn. His lawyer then, as well as for his original trial, was Claude Cross, who, sadly, was not to live to see his client vindicated. His affidavit, accompanying the application, recounted a distinguished career — membership on the *Harvard Law Review*, selection, upon graduation from Harvard Law School in 1929, as law secretary to Justice Oliver Wendell Holmes, and a stint on the staff of the Solicitor General (and later Supreme Court Justice) Stanley Reed, one of the most sought-after legal opportunities open to a bright young man.

Then followed ten years in the State Department. He was with President Roosevelt at Yalta and instrumental in the founding of

the United Nations. In 1946, he was elected President of the Carnegie Endowment for International Peace (of which John Foster Dulles was then Chairman of the Board). He retained this post until his indictment on two counts of perjury before the Grand Jury. After a hung jury in his first trial, Hiss was convicted and sentenced to Lewisburg federal penitentiary, where he served from March, 1951 to November, 1954.

Along with the ordeal of Julius and Ethel Rosenberg, the trial of Alger Hiss was perhaps the most sensational event of the McCarthy period. There is little need to recount it here. Most of us remember the accusations of Whittaker Chambers, who testified that, while employed by the State Department, Hiss had allegedly passed Chambers (alias George Crosley) and his wife secret government documents when both were underground members of the Communist Party. Microfilmed copies of some of these documents were produced, almost magically, out of the famous hollowed-out pumpkin on the Chambers farm; other copies in Chambers's possession had allegedly been done on a Woodstock typewriter belonging to Mr. and Mrs. Hiss (although the latter protested that the typewriter had been out of their possession at the time). And we remember the waffling testimony of Alger Hiss's superior at the Carnegie Endowment (shortly to be Eisenhower's Secretary of State), John Foster Dulles.

Following his conviction, and solely because of it, Alger Hiss was disbarred from practicing in Massachusetts, New York and before the Supreme Court of the United States. Hiss's responses to the reinstatement questionnaire accompanying his application set forth, perhaps more dramatically than any other document, the sharp decline of his fortunes since his release from Lewisburg penitentiary. He first worked for a manufacturer of women's hair ac-

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HLS Bans Letter, Council Ired

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subsequent letter, Upton revealed that Reiman's statement had been rejected only after consultation with Dean Sacks and Assistant Dean Stephen Bernardi.

No set of guidelines as to what material is suitable for dissemination to prospective 1L's has ever been formulated by the administration.

Sacks insisted this week that his decision was justified. "The problem was that the letter made a number of claims or charges which were rather obviously of a kind that would invite response if made during

the school year." Under these conditions, said Sacks, communication of student criticism to prospective 1L's would not be "meaningful."

Sacks additionally questioned Reiman's submitting the letter without first having it formally approved by the Law School Council as a whole.

The Dean added that he might consider releasing the names of prospective 1L's to students wishing to send out mailings on their own.

Bernardi and Sacks further objected to portions of the letter they considered "incorrect

and misleading." Bernardi pointed out that the faculty has not "remained silent" regarding the written work requirement, having adopted a resolution on that subject in the spring, and Sacks denied that the Visiting Committee of Overseers had recommended "sweeping changes" in that requirement, as alleged in Reiman's letter.

Reiman disputes the Dean's facts. "Every member of the Council I've consulted has been shocked by the administration's action," he said. "Sacks is not objecting to my personal sentiments. Also, I was informed of the Visiting Committee's recommendations by one of its members, who characterized them as 'sweeping changes.'"

Reiman takes issue with the deans on policy as well. "The purpose of the packet sent during the summer is to tell first-year students about organizations on campus. Once Harvard undertakes to provide such information, it shouldn't distinguish the information students receive on a political-vs.-non-political basis." He sees in Dean Sacks's rejection of his letter another instance of the administration's "refusing to believe that students can make intelligent decisions," and finds support for this view in the Dean's refusal to consider sending out his letter even if enclosed with an administrative response.

A request by Reiman for permission to present his criticisms orally at the time of the Dean's address to the first-year class during orientation was denied by Sacks, on the same ground as the publication of the letter. Reiman wonders, "Why does the Dean claim to welcome criticism after school starts — for example, in the first issue of the RECORD — and yet refuse to provide a forum for it a week or two earlier? What revelation occurs during those two weeks that suddenly makes discussion 'meaningful'?"

When I came here as a first-year student, I was very apprehensive about the students I'd be meeting. I felt they would be some sort of a cross between preppies and legal geniuses, neither of whom I expected to feel particularly comfortable with. Fortunately, it turned out that my expectations were quite misplaced. Most of the students I've come across have been warm and responsive. I find them very human.

My expectations were wrong as well with regard to the faculty. I had fantasized Harvard as being a place where students and professors had much contact in an atmosphere of mutual respect. This unfortunately proved to be quite off the mark.

I found rather that the Harvard faculty had a penchant for making decisions that vitally affected the lives of students without any more than token efforts at facilitating or accepting student input. For five years, first-year students were allowed to opt to take their grades on a pass/fail basis. This privilege was revoked by the faculty at a meeting during finals week in May, 1973 — on a day when all first-year students were taking their Civil Procedure exam and virtually all second-year students their Corporations exam. Conveniently, this was the only faculty meeting all year at which no student was in attendance.

When the student body learned of these changes the following fall, numerous protests were lodged with the administration. A petition seeking a reinstatement of the pass/fail system was signed by 80% of the first-year class of 1976. The student uproar was insufficient to convince the faculty. Pass/fail is currently a thing of the past.

This is not the only instance of faculty insensitivity toward student concerns. The written work requirement has been a constant object of criticism these past few years. Last year, 85% of those third-year students polled said that there was an inadequate commitment among faculty members in their supervision of a student's written work requirement. Indeed, not only students object. Harvard commissions a group of its most outstanding alumni to engage in an annual evaluation of the law school. This Visiting Committee of Overseers has for the past three years recommended sweeping structural changes in the written work requirement. Still the faculty remains silent. Last year the faculty even rejected a proposal whereby each student would be guaranteed a minimum of two meetings with his or her faculty adviser with regard to the written work requirement.

These are but two areas of large problems that plague a student's life at the law school. There are many others: overemphasis of the corporate model and a playing down of clinical education, racist and sexist hiring practices, an absence of student input into hiring and tenure decisions, oversized first-year classes and the school's failure to grant first-year students access to Placement Office facilities. This list is far from exhaustive.

The Law School Council is the student governing body on campus. The Council is responsible for encouraging and channelling student attitudes with the hope of structural reform at the law school. Established by the faculty (of course) a few years ago, even the student government was not free from the omnipresent faculty — faculty members were voting members of the Council, and the student government's Constitution had no provisions for amendment other than faculty approval. This past year the Council finally asserted its own independence. The result is that the faculty are no longer voting members, and the Council has obtained full powers of constitutional amendment.

The implications of this are by no means small. The results are being felt already. By next fall, a Grievance Committee, composed of one student and one faculty member, will be established and in working order. Any student grievance — against another student, a professor, or the law school — will be heard by the Committee. A public report will be made containing the Committee's recommendations. You will be hearing more about the Committee in the fall.

There remains much work to be done. At issue is the quality of a student's life while at Harvard Law School.

/s/ Jeff Reiman, President, Law School Council

The above letter, drafted for the packet of introductory materials to be sent out to entering students last summer, was rejected by the Registrar's Office as being too long—and too "political."

God and Law Share Platform

By Wendell Robert Carr

The Law School and the Divinity School are sponsoring a series of public lectures — and a new course — on theology and law.

The lectures, to be given during the fall semester, encompass subjects ranging from the relations of church and state to liberation theologies and legal positivism. Each lecture except the last will consist of a presentation by two faculty members, one from the Law School and one from the Divinity School, plus discussion from the floor. The last meeting will be a panel discussion on family law featuring representatives of the Protestant, Catholic, and Jewish faiths.

The public lectures will also serve as the nucleus of a new course: "Law and Religious Institutions in Relationship to Social Conflict." Students enrolled in the course are expected to attend the lectures and read widely on the topics discussed there. They will also attend bi-weekly discussion meetings led by Professor Dieter Georgi of the Divinity School and write a paper. The course may be taken for two credits by law students and as a regular half course by students in the Divinity School. Enrollment is limited to 20.

The impetus behind the lectures came from students. The idea originated last year in weekly luncheon conversations among Frank Alexander, a divinity student and now a 1L; Scott McLennan, J. D. and Master of Divinity '75; Kevin C. Leitch 2L; and Luther Jones, a divinity student.

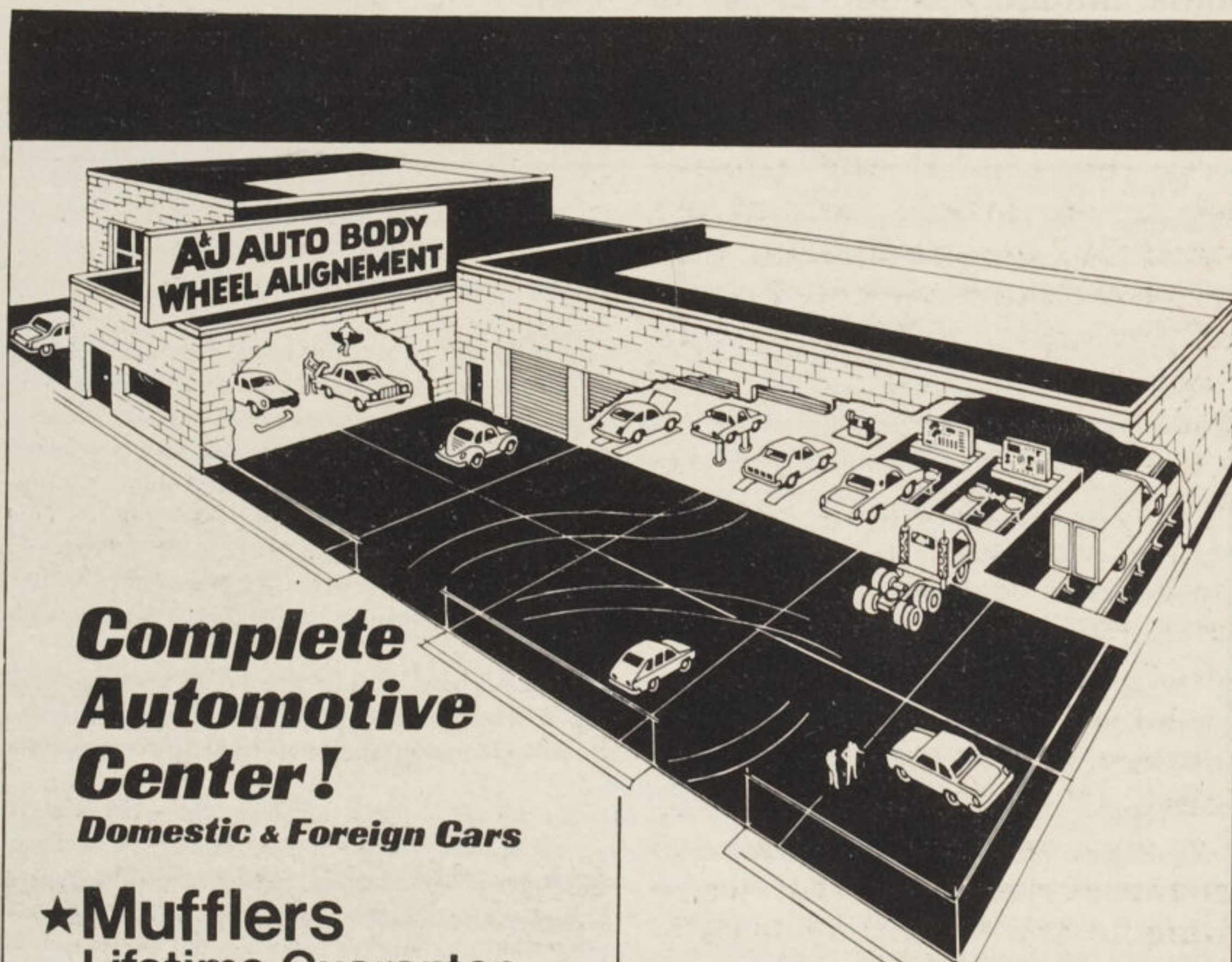
In the spring the group began to meet with interested faculty members, including Professors Harold Berman, John Mansfield, and Derrick Bell of the Law School, and Dieter Georgi and Patricia Kepler of the Divinity School. Together, they formulated detailed plans for the lectures and the course.

Interest in exploring the relationships between theology and law is not limited to Harvard. Alexander's research indicates that at least five major universities—including Berkeley, Ohio State, and the Catholic University — have developed courses or programs in religion and law.

According to Professor Georgi, the coordinator, the course and lec-

tures are intended to be an important first step in creating an interdisciplinary dialogue." Whether they will be followed by other formal offerings depends on the interest they generate. "The important thing," Professor Georgi emphasized, "is to get people in the disciplines of religion and law talking to each other."

The schedule of lectures is posted on the bulletin boards.



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Journal Plans to Expand, Expose

By Bruce Howard

An expose of white collar crime in the Massachusetts nursing home industry and a search for alternatives to forced busing are among the dozens of projects and articles planned by the Harvard Journal on Legislation for this year.

Bolstered by a staff three times the size of last year's, the 1975-76 Journal, published in conjunction with the Harvard Legislative Research Bureau, has already begun some of the most ambitious and controversial projects in its 30 year history.

At the top of the project list is an article, tentatively scheduled for the February issue, which newly-elected Journal President Kevin J. O'Connor, 3L, described as "an undisclosed bombshell".

The new "adventurous" projects are part of O'Connor's attempt to "radically shift the purpose of the Journal from surveying present legislation to initiating new laws."

"All the other journals in the country, including even the old Journal," O'Connor said, "simply reviewed and commented on the current law. But we're going to try to initiate legislation by publishing model acts and critiques of current law. Our purpose is to have an impact on pending and future legislation." Because lobbying is prohibited under the Journal's tax-free status, the magazine will stop short of advocating any particular legislation.

Still, O'Connor concedes that the Journal's shift in policy may mean a political shift "if only because most of the legislators in-

terested in new legislation are progressive." But he insists that the other half of the Journal, the Legislative Research Bureau, will continue to cover a broad range of political sentiments, including those of some of the most conservative people in the government.

While some Research Bureau projects are rewritten and published in the Journal, their main purpose is to provide information to legislators who specifically request it. Requests for research are accepted from any state or federal legislator, regardless of party or politics. The only criterion for acceptance is the seriousness of the request, according to Jim Burling, the Bureau's director of legislation.

Some of the research requests recently accepted include:

- research for Senator Edward Brooke (R-Mass.) on removing restrictions on the investment activities of commercial banks
- research for Senator Paul Laxalt (R-Nev.) on limiting federal action regarding medical malpractice insurance
- an investigation of white collar crime in the state's nursing home industry for the Massachusetts Legislature's Joint Health Committee. (This investigation, begun by journalists in the Boston area, was to be undertaken by a special investigatory committee under Governor Michael Dukakis. But when the Legislature's Health Committee, which licenses the nursing homes, decided the budget could not afford the

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Journal on Legislation staff meets to plan this year's strategy. The HJL has been asked to study alternatives to forced busing.





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Hollings Raps Ford Energy Plan

By Frank E. Sisson

Kicking off the thirtieth season of the HLS Forum, Senator Ernest F. Hollings criticized the President's energy policies, recommended the establishment of a Council on Energy Policy, and urged the attainment of conservation through regulation.

The Democrat from South Carolina, with an air and an accent which left no question of his home state, summed up his speech on "The Politics of Energy" as "a few offhand remarks to get academia going on this problem."

Frustrated by the achievements of Congress and the policies of President Ford, Hollings cited many facts and offered a few suggestions on the energy crisis which has been felt across the nation since the Arab oil embargo of 1973.

"We have to look at the problem in terms of a 30 year supply of oil and a 15 year supply of natural gas," explained Hollings, in emphasizing the urgency of the issue. "Trying to see who's going to wink first" between "Big Oil" and government is not the proper approach, according to the Senator.

Hollings noted that "there is nothing un-American" in the activities of oil companies in taking advantage of a greater profit margin enabled by the high per-barrel OPEC price for oil, currently \$13.50 as compared to a \$2.00 world price before OPEC. Big Oil simply is practicing "durned good business" and recognizes OPEC as "the best thing we've had since sliced bread."

But Hollings did criticize the response of President Ford to the problem, and the response of Congress to President Ford. Ford's policy of "just setting prices" has been "highly inflationary" and his "energy czars" substantially ineffective. "We don't have a real policy on the executive level," explained Hollings, who advocated the establishment of a Council of Energy Policy to collect and coordinate energy information.

Hollings recounted a time early in the embargo period when he had attempted to gain an audience with Ford to brief him on the facts necessary to rationally formulate a policy. Hollings's call was not returned, despite the Senator's broad experience in energy matters.

Since it is evident that the voluntary W.I.N. ("Whip Inflation Now") policy has yielded minimal results, it is time to achieve conservation through regulation, according to the Senator. Comment-



Senator Ernest F. Hollings

ing that there is going to be "a change of life" by necessity, Hollings queried: "Can't we move from here to there without socialism?"

Hollings cited several concrete examples of means to cut down consumption of energy. If the 55 miles per hour automobile speed limit were strictly enforced, a million barrels of oil per day would be saved. Due to inefficient insulation, the World Trade Center towers in New York City consume as much fuel per day as the entire city of Syracuse. The Automobile Fuel Economy Bill would, according to Hollings, save 220 thousand barrels of oil per day by 1977, and 2 million by 1985.

Hollings was not overly enthusiastic about the Alaskan pipeline, which would produce only 2 million barrels a day after its 1980 establishment, and would still leave the United States in the position as an importer to the tune of 6.5 million barrels per day.

Armed with such striking examples, Hollings stressed the need for governmental response. He described with approval the Oregon Bottle Act, which would save 6.3 million barrels of oil if implemented in all 50 states, as well as contribute towards aesthetic improvement. He argued against the substitution of a progressively lower windfall profits tax for the old oil depletion allowance of old and against "Big Oil controlling government" in general. Hollings noted that advances against Big Oil do not come easily, adding flippantly that "all good Harvard lawyers go to Big Oil."

Hollings, involved in politics since 1948, a Senator since 1966, has devoted a great deal of time to study of safety of nuclear power plants. He espoused the increased establishment of such plants and recommended the use of a "standardized" model to avoid the extended amount of time — three or four years — now required to check each new plant off as safe.

The Senator conceded that there is no safe way in which to store nuclear waste materials, though recent legislation has saved the oceans from becoming atomic waste baskets.

Questions from the Langdell North Middle audience, numbering approximately fifty on the rainy Friday evening, took Hollings away from energy issues on some points. Hollings termed Henry Kissinger "a lousy negotiator." The proposed Sinai settlement contains "no formulative agreement" and is "inequitable, expensive, untrustworthy, and misleading," according to Hollings.

Free Speech?

The letter drafted by Jeff Reiman on behalf of the Law School Council for the entering student packet may have contained strong language. But whether it merited labelling as "political" or an "attack" to the extent that it would mislead soon-to-be 1Ls is a question which should be seriously reconsidered. The sanction of barring use of the HLS packet was perhaps extreme, especially in light of the lack of formulated standards. The critical question should be raised whether the Law School was overly sensitive to potential public criticism. Self-criticism by an educational institution is vital to its integrity and improvement. And entering students are mature enough to make "meaningful" evaluations of critical commentary.

Free Ex?

The University's decision to increase the cost of graduate students' athletic participation cards is a big step in the wrong direction. The cards are necessary for the use of all University athletic facilities. College undergraduates are not charged for participation cards and Arts and Sciences graduate students pay a nominal fee. In these cases, the cost is spread among the many, with alumni gifts helping to cover expenses. But the law student at Harvard this year finds himself faced with an eighty dollar charge for the privilege of keeping in shape. A fifty dollar fee was bad enough, but the University has now set a price high enough to deter a number of law students — especially those financing their legal education through loans and tight budgets — from buying the cards.

The economic efficiency of the price increase is questionable: the jump is so large that the number of lost purchasers is likely to more than counterbalance any gains. That, however, is beside the point. The University should be doing all that it can to *encourage* athletic participation. In the cold bleak weather of Cambridge, indoor gym facilities are no luxury. They are essential to the physical and mental well-being of any student. The reservation of the more effective and enjoyable active-sport athletics to those to whom eighty dollars is just another check is, to say the least, inequitable. Shall Harvard be known henceforth as the alma mater of flabby attorneys? Or perhaps the last resting place of promising law students who caught pneumonia while jogging through the snow? Surely law students are a part of the University. Let's have some distributive justice.

HARVARD LAW RECORD

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Fenno

The 3L shifted the bulky load of papers uncomfortably to his right arm as Fenno approached.

"What do you have there?" Fenno asked warily, conscious already that the question was a serious mistake.

"What I hope is a marketable commodity," the 3L replied. "It's the work-product of my first year. You know: Me on Torts, Me on Contracts, Me on Civil Procedure. You get the idea."

"I certainly do," Fenno said, "but are you sure the Lesley paper drive will pay you enough for them to make it worth your while?"

"For the sake of our friendship and in view of the Law's increasingly narrow-minded approach to justifiable homicide, I'll ignore that," the 3L said evenly. As a matter of fact, I'm going to sell them to a 1L study group."

"Well," Fenno conceded grudgingly, "at least you'll be performing a service by giving them a concrete example of *prima facie* fraud."

"Where's the misrepresentation?" the 3L demanded.

"I'm not trying the case," Fenno answered, "but if I were, I think I'd be inclined to find an implied representation that the outlines were worth something. And in your case, that's misrepresentation *per se*."

"How can you say that? What's wrong with my first-year outlines?"

"You mean aside from the fact that you confused collateral estoppel with comparative negligence, and that your analysis of the Rule in Shelley's Case was that Papal Bulls are state action under the Fourteenth Amendment?"

"Why bring that up?" the 3L asked.

"And did you ever figure out the difference between *res judicata* and *res ipsa loquitur*?"

"Anyone could have made that mistake."

"But no one else is trying to unload the fruits of his genius on a covey of unsuspecting 1Ls."

"Wait a minute," the 3L said. "1Ls they may be, but unsuspecting they are not. In keeping with the spirit of several rules I learned the night before my Corporations exam last spring, I've told them about every error."

"And they still agreed to buy them?"

"Sure. Nothing in the world's easier than selling course outlines to 1Ls."

Now it was Fenno's turn to shake his head. "How do you do it?" he asked.

"Easy. I just threaten to sell them to another study group. Then they buy them so quick you'd think I was selling the Restatement of the Law of Pornography. It's just like you've always told me: 'fortunately, some things never change.'"

Letters

Harvard Law Students: A Limit to Crassness?

To the Editor:

There is an interesting juxtaposition of material in your May 2 edition. On page 4, Ralph Nader is quoted as describing "Harvard's courses on Corporations as a stroll through the Delaware statute, the least common denominator in corporate regulation." He suggested that the course be taught "at least in part from the point of view of the worker, the consumer, and the political system". Who would disagree? On page 2, the fact is stated that "For the second straight year, Professor Detlev F. Vagts is the most sought-after professor with both his Accounting and Corporations courses oversubscribed." How crass can the Harvard Law student be? Or are the students saying something about what they want to get in law school, however well or ill-developed may be their social consciences? The students may not, of course, know what is good for them. But...

Seymour J. Rubin '38
Washington, D.C.

P.S. Not to fail in full disclosure, I must reveal that I am not only the holder of two degrees from Harvard Law School, but was even an editor of the Review; and, that after many years in private practice and government, I have been teaching Corporations (with due attention to Berle and Means, Galbraith, Nader and Green, et al.) for some three years.

Law Notes

The Law School Council has revised its procedure for **appointing students to Faculty committees**. Any 2L or 3L (who is not a member of the Law School Council) interested in serving on any one of the following committees: Placement, Library, Financial Aid, or Legal Education should submit his/her name to Nora Wallace (423 Ames) or Tom Burroughs (412 Hastings) by Wednesday, October 1. Present student members of these committees who wish to continue their service are also requested to signify their interest by re-applying. Anyone with questions should contact Tom Burroughs or Nora Wallace.

* * * * *

An informal weekly **colloquium on Indonesia** is being formed at the Law School. Anyone with any interest is invited to participate. Please contact Steve Miller at 492-0276 or leave a message for him in Pound 426.

* * * * *

Speaking this Friday at 4:30 p.m. in Ames Courtroom is Governor Jimmy Carter of Georgia. Governor Carter is an announced

candidate for the Democratic nomination for President.

* * * * *

Beginning today, there will be a **RECORD bulletin board** in the Hark. Its primary function is to provide a place for Law School student input regarding possible story ideas and for any other comments relative to the RECORD a student wishes to make. The board will also be used as a medium for communicating with the RECORD staff. All are encouraged to use this board or to contact Frank Sisson or Roger Evans with any suggestions.

* * * * *

Professor Austin Scott will be the year's first Root Room speaker at 4:00 on Monday, September 29 in the library's Root Room. Professor Scott will speak on his more than 65 years at the Harvard Law School. Coffee and tea will be provided and everyone is invited.

SPORTS QUIZ

By Dave Day

In last week's quiz, I managed to put Sam Cunningham and O.J. Simpson in the same USC backfield. This was a neat trick and one I am sure John McKay would like to have duplicated. However, they were not on the team at the same time and the question should have read "as Anthony Davis's running mate" and not O.J. Simpson's. I apologize for this mistake and wish to thank those who pointed it out to me. Now, to honor the opening of the pro football season, test your knowledge of the N, A, and W FL's.

1. What position and for whom did Al DeRogatis play?
2. One all-time NFL one-game passing record was set in the 1974 season. What was the record, who set it, and who was the opponent?
3. Name the leading rushers in the NFL and the WFL last season.
4. The Miami Dolphins have had two coaches during their lifetime. Don Shula is one of them. Who was the other?
5. In his long career, George Blanda has played for four teams. Name them.
6. What teams won the AFL and the NFL titles in the last pre-Super Bowl year?
7. Counting all players, who led the NFL in scoring last season?
8. Overtime has been used only twice to decide league championship games. Can you name the teams who participated in these close contests?
9. What current NFL/NFC cities have never been represented by league championship teams?
10. Who was the first player in NFL history to rush for over 1000 yards in a season?

Cryptic Law

The following excerpt from a rather dated opinion is in "judicial code." Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

L rdei er onak cduk rdu er qlbkwduf, lkf
qegur rn qnkt lr dua efukvevh er
iauruaguf. Iaena vn dua qlbkwdekt rdu er
l suau wnktuaeaur np cnnf lkf eank — lk
nafeklah ieuwu np iuarnklq ianiuvh — lr
fervekwvqh l qlkf rvabwvbau lr l
dnbru... Ek vdu olivers np qlbkwdekt
rdu auwuegur dua klsu lkf pans vdu
snsukv dua xuuq vnbwdur vdu clvua rdu
er valkrpnasuf, lkf ouwnsur l rbomuuv np
lfsealqvh mbaerfewvenk.

(Solution on Page 16)

Sports Answers

1. Tackle for the New York Giants
2. Completion Percentage (90.9), Ken Anderson, Bengals, against Steelers
3. Otis Armstrong and Tommy Reamon
4. George Wilson
5. Chicago, Baltimore, Houston, and Oakland
6. Green Bay and Buffalo
7. Chester Marcol
8. New York-Baltimore, Dallas-Houston
9. Atlanta, New Orleans, San Francisco, St. Louis
10. Beattie Feathers (Chicago, 1934)

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HLCA Planning Skiing, Parties And New Image

By Steven Prye

For all those who have dreamed about playing blackjack with their law professors or discussing willful rats with behaviorist B.F. Skinner, the Harvard Law Community Association might be the place.

In an attempt to escape from its image as a bridge club for law school wives, the HLCA has scheduled an ambitious array of events for this year ranging from a seminar on the Equal Rights Amendment to a cross-country skiing trip in New Hampshire.

As recently as three years ago the association was known — officially — as The Harvard Law Wives. This year the association will continue its partly successful effort to attract more male, unmarried, and minority group members.

So firmly have the forces of men's liberation taken hold in the association that, according to HLCA president Sue Joyce, a male may be elected this year to the all-female executive board.

Politics aside, Joyce noted that a primary purpose of the association remains "to accustom first year couples to the Harvard community and to provide the non-student spouses and friends the opportunity to make friends and develop their own interests."

The activities planned for this year include a boat trip and picnic to Prince George's Island; "Meet Your Neighbor" week in October; a Halloween party; a winetasting party; a crafts fair at Harkness Commons, with part of the proceeds going to charity; and a Monte Carlo Night in February, during which some law professors will deal blackjack to raise money for charity.



Jack Sidorov winds up all-star arm as Peter Wald, circuit umpire, looks on in fall, 1975, World Stickball Association All-Star Game, held last Friday. Score: Central Division, 11 – Middle Division, 8.

Free University Seeks Experts on Sex, Bread

By Charles Jordan

Informal learning is coming to the Law School. The Free University, a BSA-administered project, is organizing for its second full semester of non-credit courses.

Last spring several students and teachers decided to share their interests with the Law School community. The result was an offering of seven courses of instruction covering wildly diverse topics. There was even a quasi-legal subject, but bread-baking, sex and the stars were more popular.

Though Free U's are common on college campuses, last spring marked the first attempt here to utilize the talents of community members for the benefit of all.

In charge of this year's Free U, Greyson L. Bryan and Andria Knapp want to do more than spread the knowledge. They hope to provide an "alternate context" for students who would like to get to know each other outside of classes.

Last spring the most popular courses offered included Restitution, Beginning Seamanship, Ce-

lestial Navigation and Breadbaking For Anyone. Two were taught by faculty members and two by students.

The value of the courses was not just in the exchange of information and skills. It was also in the friendships that group members formed. And law need never have been mentioned.

Knapp and Bryan hope to have all course offerings set by the end of next week. Last spring students taught most of the courses, but all community members are encouraged to join in with their interests, ideas and skills. The classes may be one workshop in length, or may meet often during the semester. There have already been suggestions for courses in ballroom dancing and auto repair.

If a student is interested in sharing his or her skills with the community, he or she should meet in the BSA office with other prospective instructors on Monday, September 29, at one o'clock. Tired of classroom conversations? This may be the chance to create an alternative.

Kaufman Speaks on Professional Ethics

Ed. Note: This is the second article in a series of interviews with professors and articles by faculty members on topics of current legal significance.

By Roger P. Evans

"Lawyers who say they come across an ethical problem but once or twice a year, or even more rarely, just aren't recognizing ethical difficulties when they see them," averred Professor Andrew L. Kaufman in an interview last week with the RECORD.

Because of this blindness on the part of many attorneys to ethical difficulties, Kaufman believes that legal ethics must be taught in the nation's law schools. An ad hoc approach to problems of professional responsibility as they arise in classroom discussion in a Torts or Corporations course is valuable, he acknowledges, but not sufficient. "A comprehensive treatment" in a separate course, such as the Professional Responsibility seminars and the section of the Trial Advocacy course which Kaufman is teaching this semester, is necessary. In these courses, the 1954 Harvard Law graduate tries to encourage students to "think about, consider and recognize" the ethical dilemmas which may confront them in professional life.

As a teacher, he does not feel his role is to be "too preachy" or to make the decisions for students, but rather to aid them in recognizing problems when they meet them. To this end, Kaufman uses a problem-oriented approach, frequently acting one end of a typical lawyer-client confrontation himself. He will usually give his opinion on ethical issues when queried by his students but realizes that close questions must be left to the student's own conscience.

Although the Code of Professional Responsibility may be



Andrew L. Kaufman

looked to for guidance, Kaufman believes that the canons "do not begin to cover all the problems which may arise."

"Lawyers do not have any more ethical problems than members of other professions", in Kaufman's opinion, although he did not consider himself qualified to comment on the policing procedures of doctors or businessmen. Kaufman does recognize, however, that public perception of the honesty of lawyers was greatly affected by the Watergate scandals. Nevertheless, he sees those attorneys convicted of Watergate-related crimes as acting primarily as politicians in a political milieu and not as attorneys. Whether a legal ethics course would have

helped Richard Nixon was a question which the Law School professor did not feel capable of answering categorically, but Kaufman did opine that Nixon was probably too far removed from his education and the legal world for such a course to have much effect. However, it is Kaufman's opinion that solid grounding in professional responsibility might have led to wiser decisions by some of the other attorneys implicated in Watergate.

Pressure for the inclusion of more courses on professional ethics in the curriculum and the recently-enacted requirement of an ethics course for students entering the law school has come more from accrediting agencies than from bar associations, in Kaufman's opinion. Yet some state bars, most notably Ohio's, require a law school course in professional responsibility. Many attempt to test ethics on bar examinations, a procedure that Kaufman finds hopeful at best. It does seem clear that questions of legal ethics are of increased concern to members of the legal profession, spurred at least in part by public concern over the involvement of lawyers in practices of dubious legality or outright illegality, particularly in the political arena.

Yet, as Kaufman freely admits, most unethical activity by attorneys goes undetected, taking place in offices and courts across the country, as conflicts of conscience and professional responsibility are waged in the minds of individual attorneys. It is to help future attorneys at all levels to recognize ethical dilemmas that Kaufman and others teach courses on professional responsibility. How successful law professors and law schools are in this effort will become increasingly apparent in coming years and will shape public perception of attorneys, for better or worse.

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Does Evidence Support Hiss's Conviction?

(Continued from Page 5)

cessories, followed by 15 years as a salesman of office supplies. His commissions have totalled \$6,000 to \$12,000 annually, supplemented recently by small amounts from speaking and writing.

Yet, as his friend, Eli Whitney Debevoise (a founding partner in what is now one of New York City's most distinguished law firms) put it in his affidavit on behalf of Alger Hiss's readmission to the bar, those days, despite financial impoverishment and sometimes loneliness, were not without their indications of character, and even greatness, as a man. "During the period since his release from prison," Debevoise wrote, "[Alger Hiss's] manner of life, including his acceptance of a job available to him as a way of earning his living in a field much less interesting or demanding on his intellectual powers than the positions he had prior to his conviction and his steadiness in sticking to it . . . show moral stamina and moral qualities which are important requisites in the practice of law. He has not lost a broad interest in other matters and in current events and continues to be an unusually able and intelligent man." His life has been exemplary, free from arrests or convictions, save one, as his reply to the reinstatement questionnaire notes, poignantly:

In 1955, I was fined \$5.00 in a Magistrates Court in New York City for playing catch with a baseball with my son in Washington Square Park.

Shortly after the submission of his application for readmission to the Massachusetts bar, the Supreme Judicial Court ordered that the state's Board of Bar Overseers hold a preliminary hearing and present a report to it on the Hiss case. After examining Alger Hiss personally and sifting through evidence on his behalf (including strong support from Erwin Griswold, former Dean of the Harvard Law School and Solicitor General of the United States, and retired

Supreme Court Justice Stanley Reed, for whom Hiss had once worked when the latter was Solicitor General), the Board of Bar Overseers admitted that, in all his dealings since his conviction, he enjoyed "an excellent reputation for honesty and integrity." The Board also found that Hiss had continued to pursue his scholarly interests and had kept up with developments in the law. Moreover, it was impressed that:

"He shows no bitterness toward those who were involved in his trial, and he accepts the American judicial system as the best, although he feels that he, personally, is the victim of a miscarriage of justice."

Despite these findings, the Board of Bar Overseers unanimously felt forced to conclude that "Mr. Hiss's readmission to the Bar would have an adverse effect on the administration of justice, the public interest and the standing of the Bar" and recommended that the Massachusetts Supreme Judicial Court not reinstate him. The reasons for this perplexing negative recommendation appeared to rest primarily on the Board's interpretation of previous decisions of the Supreme Judicial Court relating to the readmission of attorneys. The Board believed that once an attorney had been convicted of a serious crime "little less than absolute assurance of a complete change of moral character" was required in order to readmit him. At the minimum, this seemed to demand that the disbarred confess his original guilt and vow repentance.

However, since the time of his indictment on the perjury charge levied against him by Whittaker Chambers, Alger Hiss has maintained his innocence. He continued to do so during the proceedings for reinstatement. The Board did not feel able to reopen or question the justness of Hiss's original conviction, especially since the major witness against him, Whittaker Chambers, was deceased. ("It is surely not for the Board, as

the petitioner suggests, to determine whether or not, in view of the political atmosphere of the so-called 'McCarthy era,' the verdict of the jury may be regarded as so suspect that we may disregard it or minimize it.") And, since the verdict, accordingly, stood and Hiss refused to recant, the Board found no way in which he could be deemed to process the requisite moral character of readmission:

Accepting, then, the finality of the judgment and of the verdict in Mr. Hiss's case, it follows logically that, even admitting the possibility of a failure of justice, the petitioner cannot show that he repents or has reformed so long as he continues to insist on his innocence. Strict application of logical principles might, in fact, lead to the conclusion that the petitioner gives evidence of his present lack of moral character when he again testifies to his innocence of the original charge, in the face of a conviction which this Board, for the purposes of its deliberations, must accept as establishing the fact of his guilt.

The Board of Bar Overseers admitted that, "if it were free to consider the matter in the absence of the only evidence to the contrary (the conviction), [the Board would] unanimously find that Mr. Hiss is presently of good moral character and that he would almost certainly not commit any serious crime if readmitted to the bar." And it showed an awareness that "[t]he logic stated may sound mechanistic — at least syllogistic. . . ." Nonetheless, despite its "personal sympathy for Mr. Hiss, his upright and persuasive bearing, humility and reasonableness," the Board felt "bound to approach this problem in the manner indicated."

(Next week: The Reinstatement Hearing)

Ed. Note: The Harvard Law RECORD invites members of the legal profession or the legal community to offer for publication articles regarding current legal controversies or general problems of the law.

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Rule 26: Papers Chased

By Rick Carter

Ed. Note: In an effort to keep the Law School community informed, the RECORD will attempt to answer questions from readers concerning life at HLS. Like practice under Rule 26 of the Federal Rules of Civil Procedure, our "discovery" will be limited only by the effectiveness of your questions and the evasiveness of questionees. Bring or send queries to our offices at 23 Everett Street, Cambridge or leave them with a RECORD staffer.

Q. What happened to the paper towels that were provided last year in all dormitory bathrooms? We're all running around with wet hands!

A. Vice Dean William L. Bruce attributes the lack of towels to abuse of the amenity in years past. Due to use of the towels by students in their rooms for cooking and cleaning, the Law School last year found itself paying over \$4,000 to keep the bathrooms stocked. Bruce feels that "several hundred dollars" would have sufficed to provide towels for the purpose for which they were purchased — to dry wet hands. Bruce advises the cookers to invest in a roll of paper towels. But since the towels probably *won't* reappear, dorm students might avoid being introduced to people in the washrooms; short-term visitors should remember to pack a towel in their brief cases. In any event, the Law

School should wipe up on averted cost leakage.

Q. How do you get a new bursar's card if your's has expired?

A. Apparently only 3Ls have this problem. Other cards are good until the bearer's anticipated graduation date. New cards are distributed in exchange for old cards on the 3rd floor of Holyoke Center. This is another in a series of card tricks being exhibited by the University this Fall.

Solution to "Cryptic Law"

183 U.S. 424, 438 (1902).
Tucker v. Alexandroff,

"A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron — an ordinary piece of personal property — as distinctly a land structure as a house. . . . In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction."

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HJL Expands, Plans Heading More Exposés

(Continued from Page 7)

probe, the Journal offered to do the work free. The committee's chairman readily agreed.)

- research for Rep. Christopher Dodd (D-Conn.) on equal rights for the emotionally and physically handicapped
- possible drafting of legislation for Rep. Gary Myers (R-Penn.) on the balancing of rights between senior majority ethnic workers and recently hired minority workers and applicants
- an investigation of possible alternatives to forced busing for Rep. John Rhodes (R-Ariz.)

Other projects include research into educational revenue sharing, the nationalization of railbeds, and the legal ramifications of government attempts to reduce the 40-hour work week.

Much of the impetus for the Journal's new scope and direction comes from O'Connor, the new president and only elected officer. O'Connor, who specialized in economics in undergraduate and graduate work at the University of Wisconsin, hopes to invigorate the Journal by recruiting more first and second year law students and by obtaining more research requests from federal legislators. Last summer, for the first time in its history, the Journal sent a letter to every legislator in Washington inviting them to use the Journal and the bureau.

But the Journal's new philosophy regarding first and second year law students is perhaps the most significant change and the main reason for its sudden expansion. "The old Journal only used 1L's and 2L's when they were desperately needed, and even then, only to do menial tasks," O'Connor said. "But we want the 1L's and 2L's to write and edit the articles. In our last issue we had two student pieces—both were by 2L's. It was an experiment, and it worked."

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