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Council Awaits Student Opinion On Sub-sections

By Marc Lauritsen

Anonymity, quiet despair, and trenchant cynicism have long characterized the first-year experiences of many students at Harvard Law School—so say its critics, including vocal members of the Law School Council.

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Miller Incident Leads to Birth Of "Section V"

By Bruce Howard

A group of first year students calling themselves "Section Five" has begun organizing meetings, workshops, and a publication in an effort to "humanize" the first year experience.

The group will discuss such problems as classroom intimidation and ethical education, with the hopes of designing alternatives to current practices, according to a spokesperson for the group.

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HLS Professors: Euthanasia Decision Not for the Courts

By Charles Jordan

The respirator sustaining Karen Anne Quinlan's comatose existence will continue to run, by virtue of Judge Robert Muir's order. The New Jersey Superior Court judge denied the Quinlan petition to authorize discontinuing use of the respirator in a 44-page written decision handed down Monday, November 10.

With the decision, Judge Muir batted the "passive euthanasia" ball back into the medical court. But the opinion skirted the crucial issue of when passive euthanasia might be sanctioned by law:

"The judicial conscience and morality involved in considering whether the court should authorize Karen Quinlan's removal from the respirator are inextricably involved with the nature of medical science and the role of the physician in our society and his duty to his patients.

"There is a duty to continue the life-assisting apparatus if, within the treating physician's opinion, it should be done."

Mr. Quinlan had petitioned the court to be appointed guardian for his 21-year old daughter for the express purpose of authorizing her doctor to discontinue all treatment, including

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Professors Charles Fried and Alan A. Stone, M.D., discuss decision of New Jersey court not to allow artificially sustained Karen Quinlan to be passively terminated.

Sub-section Referendum Distributed

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As the latest in a series of attempts by faculty and students to remedy this perceived institutional failure, the Council is considering a proposal which, if acted upon favorably by the faculty, would establish "sub-sectioning" of one of the first year required courses into classes of approximately 35 students each.

Prior to advocating such a

proposal, the Council plans to tap student opinion in a school-wide referendum next week. A fact sheet outlining the arguments for and against the adoption of a sub-section system has been placed in each student's Langdell mailbox and meetings have been set up for the purpose of debating the issue in a public forum.

Jeff F. Reiman, president of the

Council, emphasizes the importance of wide debate and a substantial response from students. "We're trying to make this referendum as unbiased as possible," he said, noting that such objectivity is a prerequisite to serious consideration by the faculty. He finds it unfortunate that the students are the ones who usually have to generate this sort of creativity.

A similar proposal was implemented between 1966 and 1970, but it was decided that the value of the program did not justify the cost. The plan was superseded by the present spring semester elective system.

Opponents of the new proposal argue that its implementation might require the hiring of additional professors, with a consequent rise in tuition, or, alternatively, would diminish the number of faculty members available to teach second and third year electives.

Proponents of sub-sectioning suggest that lack of administrative enthusiasm deprived the earlier implementation of a fair chance to prove its merits and that the spring electives with which it has been replaced have not produced their intended results of smaller and more interesting classes. They see the proposed system as a way to provide a healthier adjustment to the law school for incoming students, allow needed exposure to the faculty (thereby encouraging closer faculty-student relations), test alternatives to the Socratic method, increase contacts among students in the classroom, and institute a meaningful legal writing experience with faculty supervision prior to the third year paper. They contend that any additional expense would be minimal, and well worth its cost.

Ballots for the referendum will be dropped off in mailboxes over the weekend and students are asked to return them by Wednesday. The Council hopes students will take advantage of this opportunity to have an impact upon the process in which they are the primary participants.

Hope Has Vanished— But Show Must Go On

By Beth Emery

A story line more closely connected with the Law School experience and the desire to involve more "local" talent are two important elements in the planning of the 1976 Law School Show, according to Charles J. Janoff, 2L board member of the Harvard Law School Drama Society.

The Society, producers of the original musical comedy, will start its talent hunt soon in preparation for the March opening.

Janoff said students are currently writing the script, which involves a Walter Mitty-type law student who moves back and forth between dream and real-life sequences.

The plot features an alleged, reputed, and so-called libelous story in the Normally blemish-free *Harvard Law Record*.

A general meeting to recruit production crews will be called at the end of November, Janoff said, adding that casting should be around the first of December.

"It's the Law School Show and

we'd like to see lots of students try out," he said. "We know there's talent out there."

Janoff said there is a special need for students interested in helping to compose the musical score, explaining that the major composer for the last three shows, Richard F. Hope, '75, is now in Alaska.

"You don't lose a person of his caliber and just find a replacement quickly," Janoff said. "So we will have several people working on the music this year."

Janoff added that students are also needed for production crews. "We have names of interested 1L's but it's been hard to get to the 2L's and 3L's," he said.

"But we want 1L's, especially, to realize that law school doesn't take 24 hours a day," he said. "This show can be a very enjoyable and worthwhile undertaking."

The full-length musical will be presented in the Pound Multi-Purpose Room March 11-14 and 18-21.

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Impertinence Conceals Contempt

Ed. Note: This is the final installment of a three part article submitted by the author, a criminal lawyer from St. Paul, Minnesota. The article was published in the November-December 1974 Hennepin Lawyer, published by The Hennepin County Bar Association.

By Jack S. Nordby, '67

The Art of the Close Call: Or, How to Avoid Being Held in Contempt, Barely

Some lawyers, and an occasional specimen outside the profession, have a miraculous facility for saying precisely what they mean with maximum effect and without being understood. This ability probably cannot be learned or acquired. It is not mere blinding quickness, as in Shaw's immediate response to the question:

Mr. Shaw, did you know that "sugar" and "sumac" are the only two words in the English language beginning with *su-* but having an *sh-* sound?

A: Sure.²¹

Nor is it merely the painstaking discovery of the devastating *mot juste* for the occasion, as in drama critic Walter Kerr's description of an actor: "He has delusions of adequacy."²²

Or Churchill speaking of Sir Stafford Cripps, Chancellor of the Exchequer: "There but for the grace of God, goes God."

Nor is it the same as the art of epigram, or the witty saying, however profound:

Nature has given women so much power that the law has very wisely given them little. (Dr. Johnson)

The Puritan hated bear-baiting, not because it gave pain to the bear, but because it gave pleasure to the spectators. (McCauley)

My only regret is that I am not someone else. (Woody Allen)

Nor is it simply the thrust and parry of inspired and venomous repartee:

Alfred Hitchcock to Shaw: One look at you and I know there's famine in the land.

Shaw: One look at you, Mr. Hitchcock, and I know who caused it.

Or:

Lord Sandwich: Really, Mr. Wilkes, I don't know whether you'll die on the gallows or of the pox.

John Wilkes: That depends, my lord, upon whether I embrace your principles or your mistress.

Or, when Shaw wired Churchill:

Sending you two opening-night tickets to my new play. Bring a friend, if you have one;

Churchill wired back:

Unable to come on opening night. Will come second night, if you have one.

The phenomenon we are exploring is something more; it is a genius for saying the impertinent thing so rapidly, spontaneously and pertinently that its very brilliance defeats effective response, all in the volatile equilibrium of the courtroom.

As when Oscar Wilde, being cross-examined during his notorious trial, alluded irrelevantly to certain instructions from his doctor. "Never mind your doctor's instructions," he was impatiently directed. "I never do," said Wilde.

Or the classic response, attributed variously to a number of well-known lawyers, to the judge who asked:

Counsel, are you trying to show your contempt for this court?

A: Certainly not, Your Honor. I am trying to conceal it.

The English are much better at this sort of thing than we are, and more subtle. Is it possible to improve upon, is it possible for the judge and his dignity to have emerged victorious from the exchange when, His Honor having testily asked the future Lord Birkenhead at a tense juncture in a trial:

What do you suppose I am on the bench for, Mr. Smith?

he received this inimitable reply:

It is not for me, Your Honor, to attempt to fathom the inscrutable workings of Providence.²³

Or this:

Sir Ethelred Rutt, K. C. (for the prosecution): The prisoner in the dock is indicted for libel, for that he did compose and publish in the *Evening Standard* certain defamatory libels concerning certain well-known statesmen and politicians . . .

The Judge [interrupting, sensing a redundancy]: What is the difference?

Sir Ethelred: Milord, by statesmen I mean leaders of my political party, and by politicians I mean the leaders of yours.²⁴

From this it is clear that judges, and not only cross-examiners, should never ask a question to which they do not confidently know the answer.

English Judge: Are you sure?

Barrister: Cock, my Lord.²⁵

I could go on.

I believe I shall. Irish Barrister

23. Lord Birkenhead: *Life of F. E. Smith*.

24. Herbert, *Uncommon Law* (London 1970), at 207.

25. Turner, *May it Please Your Lordship* (London 1971), at 12.

(Continued on Page 14)

21. I offer no citation for this quotation and others to follow because I have not bothered to seek out the sources. I should, of course, be delighted to be accused of having made them up.

22. Kronenberger, *The Cutting Edge* (New York 1970). I am fully aware that this is irrelevant to the present study, but mere irrelevancy cannot disqualify a stroke like that.

Cohen: On Suicides and Seoul

By Steve Miller

The prominent young legal scholar had just finished his law school class at Seoul National University when he was picked up by the Korean Central Intelligence Agency on October 17, 1973. A few days later the South Korean authorities announced that Professor Tsche Tchong Kil, accused of being a communist spy, had jumped to his death from the seventh floor of the interrogation center. Some people did not believe the authorities. Professor Jerome Alan Cohen of HLS is one of the skeptics.

The death of Tsche, an outstanding scholar who had just spent two years at HLS on the prestigious Harvard - Yenching fellowship, jolted Cohen from scholarly silence into outspoken criticism of the repression of human rights in Asian countries.

Cohen feels the considerable responsibilities to speak out for human rights are not being met by legal scholars, law schools and the legal profession. In a recent interview with the RECORD, the Asian scholar and activist expressed some of his concerns about Harvard Law School, human rights and Asia.

"One of the things I worry about is whether we are too exclusively turning out lawyers for the wealthy. Of course it is important to have advisors for wealthy persons, important for the advisees and the advisors. It helps insure the most efficient use of the world's resources with the least friction."

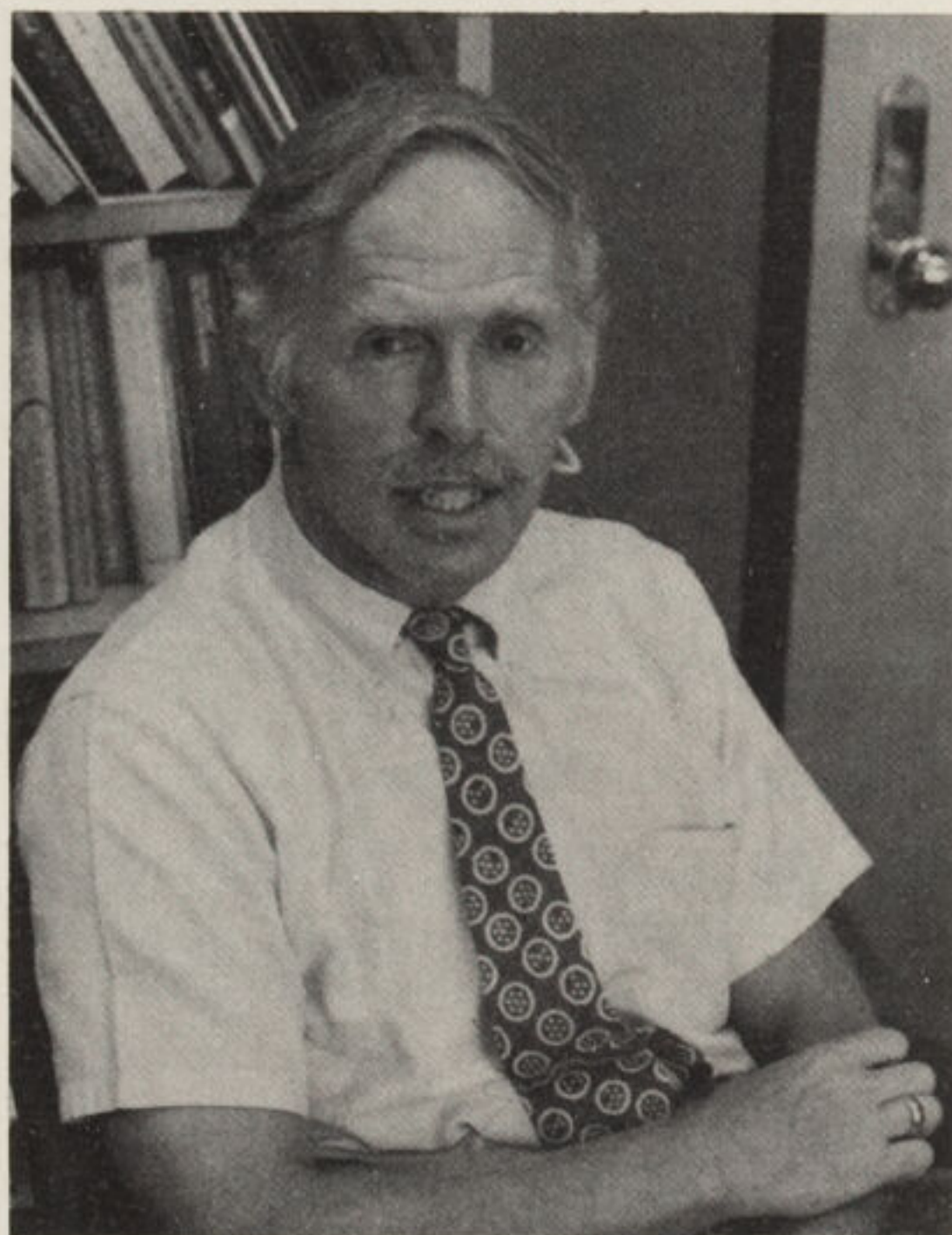
"But," suggested the chairman of the Graduate Program at HLS and Director of East Asian Legal Studies "turning out master plumbers may not be the most important function the Law School can perform."

The problem of sensitizing individuals to human rights, Cohen readily concedes, is not a simple one when the task requires examining diverse cul-

tures and traditions.

"How do you focus on human rights in a total society? A system which may not provide many traditional Western human rights, especially political and civil liberties, may make up for it, not only in food, clothing and medical services, but in personal security. A regime which eliminate bandits and civil war and arbitrary impositions of power may have done more for enhancing personal security than a regime which institutes model criminal procedure."

The answer is not giving up the inquiry, but broadening the dimensions of the question of human rights. Cohen cautioned that western institutions have little business



Professor Jerome A. Cohen

training Asian students if it can only give them an inapt yardstick to judge their own society. Such graduates may be disqualified from participating in their own culture and may be in actual physical danger for "not bending with the wind."

As Cohen surveys Asia, Communist and non-Communist, he sees little political freedom. "Nowhere except Japan can one find a regime sensitive to political rights," he concludes. Nonetheless, he believes that at least among the urban poor there is an inchoate consensus that there should be certain standards of procedure for an individual who is charged by the state with anti-social conduct.

Some of the HLS graduates have returned to Asia to become Ministers of Justice; others have been imprisoned for their beliefs in civil and political rights. It is only natural that Jerome Cohen should get involved.

South Korea has become a special responsibility. President Park Chung Hee has tried to silence his Korean critics abroad by making it a criminal offense to insult, slander or spread distorted facts about any agency of the Government or to act in any way that may harm the safety, interest or dignity of the Republic of Korea while abroad.

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Quinlan Decision Spurs Reactions

(Continued from Page 1)

use of the respirator. Without the machine, Karen would die. She is now only dependently functional and authorities say she has little chance of recovery.

The Quinlans will likely appeal the judge's decision although the publicity that "test" cases generally attract has made their participation in the trial a grueling emotional experience.

Though *Globe* and *Times* reporters elicited a variety of comments from the religious, medical and legal communities, reaction to the *Quinlan* decision at the Law School was guarded.

Dr. Alan A. Stone noted Judge Muir's difficult position: "Hundreds of years of criminal law doctrine condemn the voluntary taking of human life as homicide. Could we expect the court to reject that history, and sanction passive euthanasia? The only out the courts have in this situation is a redefinition of legal death. But doctors want a clinical definition that will keep the issue open, allowing them some discretion."

In addition to the medical community's justifiable self-interest, Dr. Stone mentioned the cost of respirator machines and the possibility of transplant as considerations which often enter into the decision of whether to continue sustenance of machine-dependent patients.

Dr. Stone also noted the importance of heightened visibility of the issues: "Doctors are becoming increasingly aware of their legal liability. The *Quinlan* case focuses that awareness. But what is more important is what the decision will not mean. It will not mean that the practice of passive euthanasia will become more common, or that doctors will exercise more discretion."

The decision, Dr. Stone continued, could have some backlash effect on the medical community. "Doctors could begin to exercise less discretion, to avoid coming within the scope of prosecutorial discretion."

On the issue of a possible increase in prosecution for passive euthanasia, Professor Charles Fried called attention to the political import of the *Quinlan* decision. "Right to life is a hot political issue, and many public prosecutors are elected officials. Doctors have no reason to expect that they would be reasonable, even in dealing with obviously humane decisions to discontinue life support."

"The *Quinlan* case was a sideshow for the right to life people, much as *Edelin* has been. . . . They claim that the court had an oppor-

gans before they were injured by lack of oxygen. There *could* be another change now, but it would be difficult for the courts—different definitions would start to crop up in different jurisdictions."

Professor Richard Parker called attention to the role that legislatures might have to play. "Doctors and courts are in much the same position . . . each group seems to be abdicating final responsibility for defining death. The problem can't be passed around the triangle [doctors, courts, legislatures] much longer. Maybe the *Quinlan* decision

"The Quinlan case was a sideshow for the right to life people, much as Edelin has been. . . ."

tunity to drive into the law the entering edge of a wedge of Nazi atrocities. Trials like these are unreasonable situations all around."

Commenting on the impact of *Quinlan* on the medical profession, Fried predicted a "deleterious effect." Confronted with the *Quinlan* petition, Judge Muir had no alternative but to "remove the ambiguity in an area of the law which is not suited to hard and fast definitions."

"The definition of death has changed once already, from a respiratory basis to a brain-wave basis. This was a result of the needs of the transplant people, who wanted legal access to various or-

will pry some legislatures into action."

Parker was skeptical of the Quinlans' lawyer's approach to the case which asserted Karen's constitutional right to die and the right of her guardian to decide her fate for her. "There's not much doctrinal basis for that . . . and besides, I don't want anyone exercising my constitutional rights for me."

Dr. Stone was equally nonplussed by the issue. Referring to a comment by Boston University's George Annas, he said, "it is terribly important that doctors are defined as being on the side of life. But courts also should err on the side of life."

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LM Orients 1Ls to Tactics, Not Ethics

By Carl Oxholm, 1L

By now, everyone in the Law School has heard of Jack Katz or has visited the Jack Katz Memorial Lounge on Story 4. Jack Katz is the rallying cry of 1Ls, for he is the symbol of how we are learning to do what lawyers do.

Legal Methods is designed "to help orient first year students toward their work by acquainting them with legal reasoning; by exploring how the legal system uses litigation to resolve personal and social controversies, how lawyers use litigation in pursuit of client objectives; and by exploring questions of the lawyer's professional responsibility in dispute settlement." But Legal Methods taught us more than merely "what lawyers do": it reinforced the very proclivities of the profession that are primarily responsible for the low esteem in which lawyers are commonly held today.

We began the course with a few readings, mostly innocuous and rarely worthy of more than a few minutes of class time. Among our earliest assignments was an excerpt from the book *What Every Lawyer Knows*. In the chapter entitled "The Lawyer: Mogul or Stooge?" We got, I think, our first taste of legal ethics.

In between statements such as "good clients—by which we lawyers usually mean the most profitable ones," would come an occasional snippet of ethics. We read that "the customer is *not* always right," that "the lawyer must refuse his client's demands that *ought* not to be granted," and that "that refusal is expected and *required* of every lawyer." But what did the author mean by these platitudes? In an example, the ethical lawyer is presented as a conscientious individual dissenting to a client's proposal, saying that he will put his dissent in writing, but nonetheless complying with the client's unethical and perhaps illegal requests. The moulding of conscience into legal ethics began early, though quite

unnoticed at the time.

First step along the road to defending the elusive Mr. Katz was, of course, discovery. We learned how to plead, file interrogatories, and take depositions. Along with this taste of the procedural, but well hidden behind the spices of strategy and cageyness, came our dish of ethics.

Reading the *Legal Services Training Manual* (hereinafter: *Manual*), which served as our textbook of sorts, we ran across this statement: "Assuming, then, that the goals of investigation and discovery are to assemble evidence to prove the client's case and disprove that of the opponent. . . . I began to see myself as my client's "bedfellow." I was led to

"My purpose, as I had once seen it, was to serve justice."

assume that my ethical duty was to serve my client first, and had forgotten that my purpose, as I had once seen it, was to serve justice.

The discovery-related materials were ethically a disaster. We learned how to stop just short of harassment, to use deception to motivate unwilling witnesses to talk, to influence and color the facts that were divulged, to string witnesses along and help them build their stories until they are lying and repeating merely what you are saying, to push witnesses into bragging and exaggeration by playing with their vanity, and then, finally, how to slip all this unsworn information into the court record.

We learned how to evade interrogatories. In a later handout we read: "First, be wary of admissions and as a general rule, deny anything which might be harmful." Our B.S.A. summarized it this way: "Deny anything that is not on the public record." If it is true, but if you know they can't prove it, DENY!

"New lawyers," we read again in the *Manual*, "need to be aware that an important purpose of the

deposition is to obtain contradictions and inconsistent statements." The idea became readily apparent as we read on that an effective deposition not only wore down the witness to the degree that he "may be more prone to lie," but also ran up sufficient costs as to make the opposing side willing to settle merely because the individual was no longer able to afford the legal fees. The lesson: justice is expensive, and your duty is to make it as expensive as possible.

Then came pre-trial negotiation, the really exciting part since it was our first real chance to see how shrewd we could be.

While we were told that filling a client with false fears of how badly

it could go just to make us smell sweet when we came out with *something* "presents serious ethical problems that should be explored," we read eight pages later: "Indeed, since the attorney has often manipulated the client's perception of what is possible and has obtained authority that will cover the worst that can happen, he has guaranteed success in that sense."

And isn't "success in that sense" what it is all about? Isn't "success in that sense" the measure of the "good" lawyer who has the "good" clients?

In an article entitled "Negotiation Tactics for Legal Services Lawyers," we learned how to arrive at the conference with psychological superiority, to "be tough—especially against a patsy," and to "appear irrational where it seems helpful." Our last direction, though by no means the least, was: "After agreement has been reached, have your client reject it and raise his demands." Although in all fairness to the article it did note that "this is the most ethically dubious of the tactics listed," it continued by say-

(Continued on Page 15)

Ely Supports Warren Report But Questions Its Fact Basis

Professor John Hart Ely, in a New York Times article, reaffirmed his belief that the Warren Commission (on which he served in 1964) produced a "good report."

Ely, on leave from the Law School for the year while serving as general counsel for the United States Department of Transportation, termed the report "the only coherent account that has been put forth" regarding the assassination of President John F. Kennedy on Nov. 22, 1963.

While conceding that the 26 volume report contained "inevitable loose ends," Ely criticized those who summarily dismiss the Commission's work without having read it. The Commission's conclusion was that Lee Harvey Oswald acted alone, and that the assassination was not the result of a conspiracy. Ely stands by those findings "although it is vogueish to say otherwise."

But Ely was less willing in the October 30 article to defend the information-gathering methods of the Commission. He noted that the Commission was organized as an analytical body rather than an investigative agency. While this limitation was recognized in 1964, Ely commented that "that simply seemed to be that."

"We have learned, contrary to what once seemed common sense, that persons in high places will, at substantial risk to themselves, cover up for the misdeeds of subordinates who seem of little consequence," wrote Ely.

He added: "We have learned that investigative agencies are not the monoliths we once thought they were. . . ."

Ely refused to accept the idea that Government agencies were somehow involved in the assassination, but conceded the possibility of "suppression of nothing more sinister than evidence of inadequate vigilance on the part of the agency or agencies concerned."

Ely, while opposed to a re-

analysis of the information before the Commission in 1964, would not be against an investigation of how the Commission got its information and of what "was and was not provided."

Though recognizing the possible futility of such an exercise ("perhaps there is no realistic possibility that those in possession of the facts bearing on this issue will ever reveal them"), Ely stressed the right of Americans "to be angry about the recent disclosures and accusations" and could imagine no reason for former Commissioners to resist such investigative efforts.

Sports Answers

We apologize for the absence of a grading scale—our co-author is on trial in Minnesota for assaulting the readers' intelligence.

- Bonus Question:** Loren Wings.
1. Phil Esposito, Ken Hodge, and Fred Stanfield went to the Bruins; Pit Martin, Gilles Marotte, and Norris to the Black Hawks.
 2. Milt Schmidt.
 3. Great Britain.
 4. Jacques Plante.
 5. The Boston Bruins in 1924.
 6. Sid Abel won the Hart Trophy and Ted Lindsay won the Ross.
 7. Chico Maki.
 8. Bill Masterton of the Minnesota North Stars, who died after hitting his head on the ice in 1968.
 9. Keith Magnuson.
 10. Marcel Dionne of the Detroit Red Wings.

How's Your Political Know-Who?

By Tom Burroughs

1. There have been two Vice-Presidents of the United States to serve under two different Presidents. Who were they?
2. Which President appointed the greatest number of Supreme Court Justices?
3. Elliot Richardson recently served as Secretary of HEW, Secretary of Defense and Attorney General. Name the famous American who served as both Secretary of State and Secretary of Defense in the Truman Administration?
4. Gladstone's Midlothian Campaign of 1880 was directed against what foreign event?
5. The same man was the Vice-Presidential nominee of the Constitutional Union Party in 1860 and the main speaker at the dedication of the Gettysburg Military Cemetery at which Lincoln delivered his Gettysburg address. Identify this Massachusetts politician.
6. The first woman member of Congress also had the distinction of voting against U.S. entry into both World Wars. Identify her.
7. Sam Rayburn's predecessor as Speaker of the House of Representatives was the father of a famous actress. Identify father and daughter.
8. Sargent Shriver's addition to the Democratic Party ticket in mid-campaign was not unprecedented. In 1912 the Republican National Committee met for the same purpose. Who was replaced and by whom?
9. In the past 20 presidential elections (since 1896) no state has a perfect party-line voting record. However there is one state which has only voted Democratic once, and another which has only once voted for a Republican candidate for President. Identify these two party loyal states.
10. One President was the father-in-law of another. Identify them. (This is a tricky one!)

(Answers on Page 12)



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Pitofsky Proves Antitrust's Glamour

By Bob Rizzi

Visiting Professor Robert Pitofsky says he's teaching a "glamour subject"—antitrust. The course has attracted 600 second and third year students who will sit in four sections this year. Pitofsky attempted to explain this bull market in trade regulation as he discussed his own career as an antitrust lawyer and teacher over a bowl of mediocre hot and sour soup at House of China.

The roots of the new growth in antitrust enrollment lie in students' perception of antitrust as a discipline that combines public policy and public law with "bread and butter" problems, Pitofsky said.

The "bread and butter" problems open the way to jobs with private law firms, a consideration particularly attractive to current law students for whom vocational prospects are perhaps more important than they were to their counterparts five years ago.

Pitofsky's own career lends support to the view that antitrust lawyers can have an intellectually interesting private practice while they serve the public good.

When he was teaching at New York University Law School Pitofsky was asked to represent players in the National Basketball Association in a suit against the reserve clause in professional basketball. The case, *Oscar Robertson v. NBA*, tried before Federal Judge Robert Carter in the Southern District of New York, resulted in a judgment that ended the reserve clause in basketball.

Although the case in being appealed, the injunction providing relief to the players has been in force for almost six years. According to Pitofsky, one consequence is that basketball players are now more highly paid than professional athletes in any other major league sport.

Among practicing lawyers Pitofsky is perhaps most wellknown (some would say notorious) for his work as director of the Bureau of

Consumer Protection at the Federal Trade Commission. During his tenure there from November 1970 to January 1973 the Bureau was especially active in challenging false advertising practices and forcing full disclosure by major American companies.

The lasting effects of the policies Pitofsky imposed are somewhat intangible, and similar challenges have not been brought since he left the Bureau, but Pitofsky does see some moderation in the level of commercial prevarication in recent years.

Pitofsky now views himself as a "part-time lawyer"; in addition

to being a full-time teacher. He taught law at the Georgetown University Law Center and served as a "quasi-partner" at Arnold and Porter in Washington, D.C., after leaving the Bureau in 1973.

In addition to these responsibilities, Pitofsky has co-authored a casebook on antitrust law; serves as chairman of the Board of Directors of the Institute for Public Interest Representation at Georgetown; and is a member of the Board of Governors of the Society of American Law Teachers, and an avid basketball fan and father of a daughter and two sons.

84 N.H. 114

The room was quiet; the class was tense
Apprehension mixed with high suspense.
Then just like the scene in the Paper Chase,
Mr. Holmes, please state the facts of the case.

His classmates breathed a sigh of relief
And Holmes, in panic, consulted his brief.

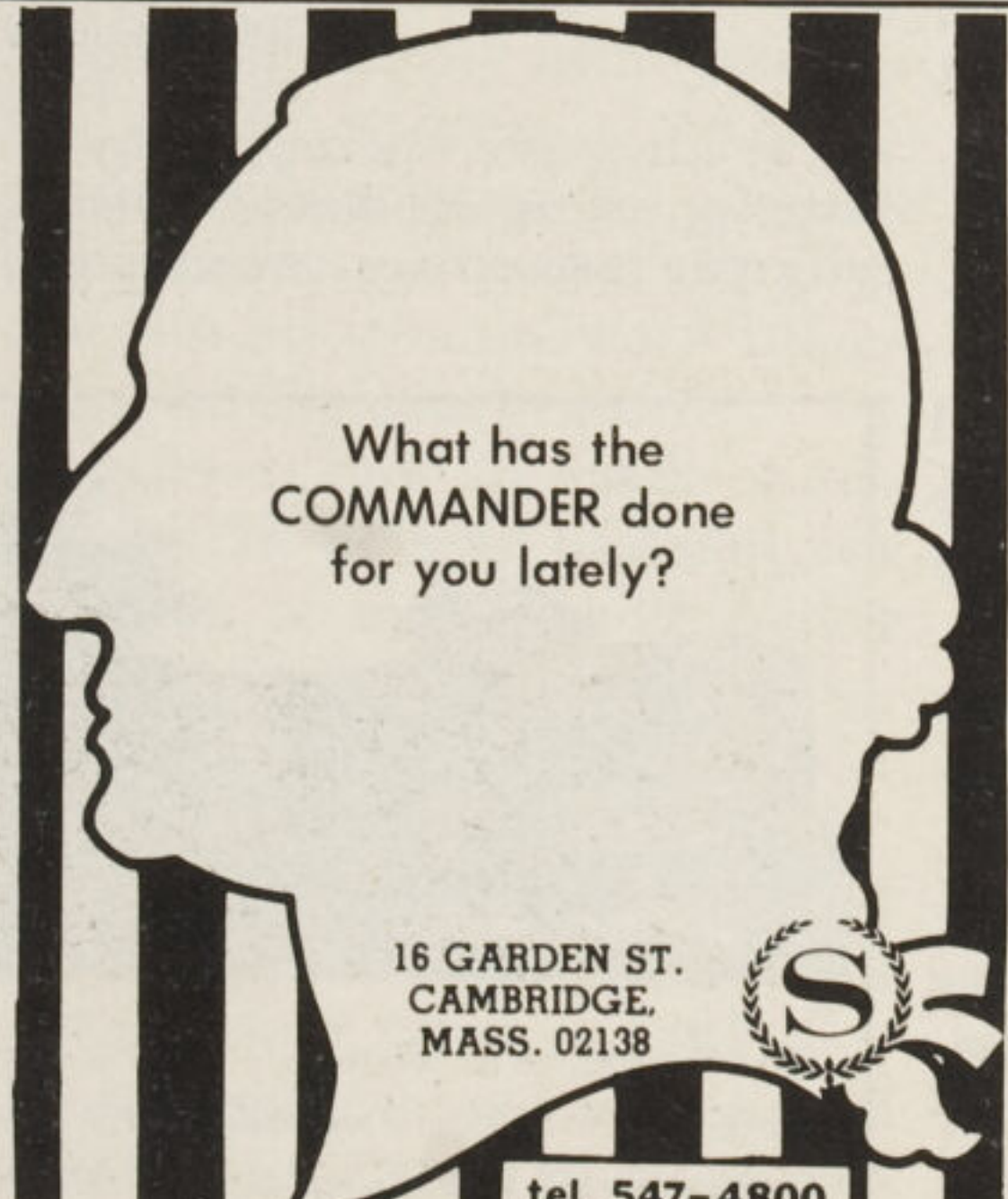
A boy, he began, was guaranteed
His hand would be mended — with all due speed.
The doctor swore to fix the scar
But things being the way things are
The skin which was grafted to the hand from
the chest
Fit loosely; a tort of mental distress.
The hand would be perfect the doctor had said
But the hand was imperfect and hairy
instead.

How tortious. Malpractice. The class
screamed with glee.
Sue for a million and ten percent fee.
Prosecute. Litigate. Embarrassment for life.
Think of the suffering. Think of the wife.

Yes, screamed another incensed by the
crime.
A poet he put his emotion to rhyme.
There must be a recourse somewhere in the
law
For a man who must live with a monkey's
paw.

Outraged by injustice at Doctor McGee,
And conscious, of course, of the 10% fee,
The class took to study the case and its
nuances
To learn what a reasonable man could sue in
the circumstances.

(Anon)



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"Section Five" Forms Goal: "Humanizing" of First Year

(Continued from Page 1)

The first issue of the informational bulletin, scheduled for distribution this week, deals with the question "Do you want to be a Harvard lawyer?" It describes certain courses and situations at the law school, and asks students concerned about these issues to attend the Section Five meeting next week.

The meeting, open to all interested students, is scheduled for 4:00 p.m. Tuesday in the Pound student lounge.

"We're trying to help each other think about the different ways we're being affected," one Section Five member said. "By the time most 1L's get things into focus—usually after they get their first grades—it's too late to do anything about reforming the first year."

The Section Five project grew out of an incident several weeks ago in the civil procedure class of Professor Arthur R. Miller. According to students in the class, Miller harshly chided a student who answered a question by saying "unprepared."

More than 100 of the section three students met after class and again the next day to discuss the incident. Finally it was decided to draft a letter protesting Miller's conduct.

The letter, hand-delivered to Miller after a later class, was signed by 28 students. "We cannot by our silence tacitly condone the treatment

to which one of us was, we think, needlessly subjected," the letter said in one part.

According to students, Miller made no response to the letter, and has not mentioned it in class. The RECORD was unable to contact Miller for comment.

The letter concluded: "It is our sincere hope that we will be able to arrange our study time in such a way that we can achieve maximum benefit from each of our courses. We ask, however, that, should Wednesday's rare circumstance arise again, your's be a more restrained response."

Although certain members of Section Five are also active in the Harvard Law Guild, representatives of the group said the two organizations will remain distinct. Some members of the group commented privately that they felt a need for a group such as Section Five partly because they felt the Guild was not doing enough to alleviate and reform conditions in the first year.

"At this point we're a lot like a support group," said one member. "Each week we'll research and discuss a different problem at the law school, including teaching techniques, ethics, and course content."

The Section Five spokesperson said that one of the purposes of the Tuesday meeting would be to organize other "support groups" of about 20 students each to focus on particular conditions in the different sections.

Cohen's Topics Include Korea, Seeking Funds

(Continued from Page 4)

Penalties of up to seven years in prison and a ten year suspension of civil rights are possible. Cohen has responded by increasing his own involvement. He has written biting criticisms of the regime for newspapers, popular magazines and scholarly journals. Last spring in testimony before Congress, Cohen said that there is a real link in the long term between respect for human rights and military security. South Korea was undermining its own viability. The U.S., Cohen proposed, should cut its military assistance to Korea to communicate our dissatisfaction with political repression.

Cohen dislikes the double standard that is applied to different countries. "We know about the Soviet Union and its horrible treatment of dissenters, but we hear nothing about similar problems in China. Because of the greater degree of regimentation in China, we don't even know the names of their writers."

A conflict of interest is a problem for the academic. As Cohen noted, "Legal scholars who also wear other hats as writers, political activists, fund-raisers, and consultants have to have a firm set of values. If I want to be taken as a consultant to the Canton trade fair, I want to be effective. I might believe that I better not be critical of China in public. But that can't take precedence over my role as a teacher and scholar. I have to be honest and hope the Chinese understand. So far they are pretty realistic."

Cohen openly admits that what he has said has decreased his fund-raising potential and some of his colleagues are annoyed. On the other hand, accepting money offends others. For example, some Japanese academics are historically hostile to business. "Besides," Cohen asked, "If I who have a tenured position at Harvard won't speak out, who will?"

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The Law School Council will be distributing forms to students to gauge support for a proposal that one of the first year required courses be sub-sectioned into 35 student classes. All are encouraged to make time during this eventful period of the year to complete the forms.

We feel that the proposal should be supported. It is true that implementation of the program would entail cost increases and a further drain on faculty time. But the time has come for a serious review of the efficacy and desirability of the Law School's teaching methods, and citation of such problems should not bar a close look at alternatives for the future. Teaching methods which were quite effective 50 or even 10 years ago may require some degree of modification given the change in student background and character and in the needs of society and the legal profession in intervening years.

Those of us who have been through the experience of large first year classes remember how inaccessible and remote the professors seemed, and how strange and intimidating those first few weeks were. Of course, we had been somewhat prepared for a culture-shock — the size of the Law School has never been a secret. "Legal Methods" did provide some relief from the fray (though somehow it never seemed like a real course). Admittedly, the first year did have its positive effects on all of us, and on the whole was a unique and rewarding experience.

But the suggestion that one of the required first year courses be broken down into smaller sub-sections would seem to offer a means to mitigate the negative aspects of the first year at Harvard Law School. The proponents of the Socratic method would not see its disappearance — three "large" classes would still exist, and in some sub-sections it might actually have a greater impact. And the opportunity for the Law School to use the sub-sections to experiment with modifications of current techniques should be carefully weighed.

In view of the importance of such a change, any "increased cost" argument should not be overpowering, though, of course, it still must be a consideration. Let's not sacrifice quality for a few squandered dollars.

We urge all students to take a stand on the issue, and hope that many will see the poll as an opportunity for pressuring for strict review of the forces of educational inertia at Harvard.

HARVARD LAW RECORD

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Fenno

"Well," Fenno said to the 2L, "did you find the books you were looking for?"

"Eventually," the 2L responded. "But it took a little bit more time than I thought it would."

"What was the problem?"

"Well, I looked in the card catalogue, and discovered that the reference number was US 817.033 NH. Then I looked in the Reserve Alcove and the stacks."

"And couldn't find the book?"

"Find the book? I couldn't even find the 800's."

"Ah ha," Fenno said sagely. "That's when you should have gone to the reference librarian."

"I did. Unfortunately, it was his coffee-hour, so it took me a while to find him."

"But when you finally did find him, you asked him where the 800's were?"

"Mm hmm. He said, 'You 1l's can't seem to remember anything. I've told all of you a dozen times that 800 comes right in between 700 and 900.'"

"Right. He said they were either in the stacks or the reference alcove."

"What did you do then?"

"I went to the Circulation Desk and asked where the book was. The student there checked the cards and said the library had no such book. I pointed out that the book was listed in the card catalogue."

"What did the circulation clerk say to that?"

"She said, 'In the alternative, the library has the book, but it's been checked out by a member of the faculty and is therefore untouchable until June 15th or until the faculty member is denied tenure, whichever comes first.'"

"That seems fair," Fenno commented.

"I was pretty upset by that point, so I asked to see Professor Pohem."

"Did he clear things up?"

"Actually, I couldn't see him. He was busy making the tapes for the 1979 first-year library tours and looking up some Yiddish axioms to replace the Latin inscriptions in the Reading Room."

"But you finally got the books?"

"Actually, my roommate got them. When I left for the library, she walked down to the square, took the subway to the Boston College Law Library, found the books, obtained a temporary card, checked them out and got back to school while I was still listening to the circulation clerk's exercise in alternative pleading."

"I guess it'll be a long time before you use the library again," Fenno commented.

"It would have been a long time before I'd have used it again anyway," the 2L said. "After this experience, though, it'll be a very long time before I feel guilty about not using it."

Letters to the Editor of the RECORD

No Vindication Coming to Hiss

To the Editor:

Your final installment of the Maurice de G. Ford '62 report on the reinstatement of Alger Hiss was captioned:

"Hiss: Is Vindication to Come?"

Vindication, as it can be defined — i.e.: "to [be] free[d] from all suspicion of wrong, dishonor, or the like", will never come to Hiss, but of course the re-working and manipulation of the historical record of his case is well advanced on the part of those whose intellectual milieu, shared by Hiss, was tarnished by his downfall.

Why nibble about the edges of Hiss's conviction? Friends of his resurrection could administer a lie detector test to him, his successful navigation of which would go a long way toward establishing his rehabilitation. After all, the "innocence by association" attempted by writing about "... his [Hiss's] old mentor, Justice Oliver Wendell Holmes, again looking down from his portrait [on Hiss's swearing in last August]" ... is only a nice touch of rhetoric. So are all the references to "witchcraft hysteria" and a "transient need" of "our country — to pounce upon a nonconforming group and label them as deviants". These descriptive touches really don't get the job done.

Of course, non-conforming groups are deviants by definition, and anyway, Hiss was very much establishment at the time he was tried. Name *anyone* else who had the likes of Adlai Stevenson II, Stanley Reed and Felix Frankfurter as character witnesses at their trials, from that or any other era. That's establishment *qua* establishment, even without the invocation of Holmes (Oliver, not Sherlock).

Hiss is not a tragic figure like Joan of Arc and sainthood for him is beyond reach. Hook up the machine and ask him if he really did it. When we get that answer it will be time to look away and time for the "ad Hoc Committee to rehabilitate Alger Hiss" to find some new cause. How about Patty Hearst, guys?

John E. Fick, '65
Decatur, Illinois

Ed Note: The articles mentioned in the above letter and the one following were contributed by a reader of the RECORD and were not editorial statements.

The RECORD invites members of the legal profession and community to offer for publication articles regarding current legal controversies or general problems of the law.

NOVEMBER 21, 1975

Hero Worship Wasted on Hiss

To the Editor:

I was impressed by the lengthy articles simultaneously appearing in your journals [RECORD and Bulletin] concerning Mr. Alger Hiss's reinstatement to the Bar and particularly by your writers' unquestioning endorsement of Mr. Hiss's personal and professional character. Undoubtedly, Mr. Hiss is as charming, capable and courageous as his friends claim, and his adversaries (particularly Mr. Nixon) were all blackguards. (Mr. Lionel Trilling, however, refused to testify against Mr. Chambers' character at the trial). However, this hero worship is bothersome to say the least. If Mr. Hiss was indeed substantively guilty of perjury, he was also arguably guilty of other more heinous crimes against the Republic upon which prosecution was barred by the statute of limitations.

If your writers insist upon making Mr. Hiss a hero, they should have seriously addressed themselves (at least in part) to the question which will plague Mr. Hiss until he or his friends can demonstrate his innocence, to wit "Was Alger Hiss Guilty?" This is the subject of the lead article by Irving Younger of Cornell Law School in the August, 1975 issue of Commentary Magazine. Prof. Younger makes out a strong (perhaps overwhelming) case for Mr. Hiss's guilt in both the technical and substantive sense. It would, indeed, be a service to your uninformed but interested readers if both the Younger article and rebuttals on behalf of Mr. Hiss could be presented in your journal rather than your recent self-serving reports by Mr. Hiss's friends.

Maurice S. Binkow, '57
Detroit, Michigan

Baseball Justice Is True Justice

To the Editor:

Barnett did not blow the call in the third game of the series. He merely administered speedy justice. It is unfortunate that the professors and other contributors to the RECORD do not see this.

If the procedures of baseball were adapted to our judicial system, that system would serve the public better.

"Justice delayed is justice denied".

Robert Lebovitz, '54
Hartford, Connecticut

Fenno, The Wife, Is She Our Knife?

To the Editor:

I am wondering about the origin of the name of your "Fenno" column, as that happens to be my wife's name.

Henry R. Lord
Baltimore, Md.

Ed. Note:

The etymology of "Fenno" is something of a mystery, even to us. Some claim that it is derived from John Fenno, a Federalist editor of the Gazette of the United States during the Washington-Adams era (see RECORD, letters page, February 14, 1975). Still others claim that the name of a nearby street may have something to do with it.

Regardless of the origin, the identity of Fenno is a closely-guarded secret. We are not in a position to guarantee that Fenno is not your wife.

Petty Bureaucrats And Real Issues

To the Editor:

Dean Sacks' prohibition on distribution of Law School Council President Jeff Reiman's letter to 1L's in Registration materials is yet another example of the Administration maneuvering to keep students divided and cowed. The Dean and his minions depend on the likelihood that 1L's will be cautious, 3L's will be preoccupied with the future, and 2L's will be 2L's, after all, for only a year.

By placing obstacles in the way of inter-student communication and by keeping students embroiled in petty bureaucratic conflicts (viz. the current flap over sign-ups for third-year papers), the Administration hopes that otherwise obvious inequities at the Law School will be ignored.

Dean Sacks, like Richard Nixon, believes that his student constituents are like children, who need to be told what to do and firmly squelched when they show signs of rebellion. As a result, the arena of conflict shifts ever more to the disadvantage of student interests.

When I was in my first year, in 1971-72, 1L's overwhelmingly endorsed the expansion of pass-fail grading to all classes. Now they are vainly petitioning to have pass-fail restored to their class only. Will the reimposition of 0-100 numerical grading and the mindless hairsplitting that entails be next?

The Law School continues to refuse to address the racism and sexism in its hiring, the 19th century academic theories utilized in its classrooms, and the corporate bias of nearly every course offered. Unless students in this

(Continued on Page 12)

most intellectually gifted of student bodies can organize around these vital issues, the Law School Administration will continue to ignore grievances and suppress expressions of dissent, both by overt means such as the censorship of the Reiman letter and the more subtle weapon of intellectual hauteur.

Get your stuff together, folks, and stand against the madness!

Glenn A. Stover, '74
Washington, D.C.

SPORTS QUIZ

By Katz, Noto, & Zagrans

1. The recent trade of Phil Esposito was the second deal involving him in his career. What five other young players were exchanged in that first trade, which must rank as one of the great steals of all time for the Bruins?
2. Who was the Boston general manager who made this trade with the Black Hawks for Esposito? Hint: he was probably the greatest center in the Bruins' history before Espo, leading the famous Kraut line with Bobby Bauer and Woody Dumart on wing, as Boston won the Stanley Cup in 1939 and 1941.
3. In the years immediately after hockey became an Olympic sport, Canada, of course, dominated Olympic play, winning gold medals in 1920, 1924, 1928, and 1932. Which country broke the victory string by winning the 1936 hockey gold medal?
4. The Vezina Trophy is presented to the goalkeeper who has allowed the opposition the least number of goals over the season. For a while, the Canadiens dominated this award. The great Bill Durnan won it six times in seven seasons, from 1943-44 to 1949-50. Durnan holds the longest shutout string in modern hockey history — 309 minutes, 21 seconds, including four shutouts. But another Canadian goalie won the Vezina seven times in a row from 1955-56 to 1961-62. Who was he?
5. What was the first U.S. team to play in the N.H.L.?
6. The Detroit Red Wings finished first in the N.H.L. for seven consecutive seasons from 1948-49 to 1954-55, and won the Stanley Cup four times. They were led by Terry Sawchuk in the crease and defensemen Red Kelly, Bill Quackenbush, and Jack Stewart. On offense, there was, of course, the great right-winger Gordie Howe. With him were two other forwards nearly as great: one won the Ross Trophy as highest scorer in the league in 1949-50, and the other won the Hart Trophy as Most Valuable Player in 1949-49. Name them.
7. Fights have become such an integral component of N.H.L. action that many have become legendary over the years. Who battered Teddy Green over the head with his stick in the brutal fight which almost cost Green his life, and which caused Green to wear a metal plate in his head when he courageously resumed his career two years later?

8. Who is the only N.H.L. player ever to die as the result of injuries sustained in a league game?
9. Who held the league record for most penalty minutes in a single season before it was shattered by that fanatical beast known as Dave Schultz of the Philadelphia Flyers?
10. With the emphasis on violence, enforcers, and fighting, the Lady Byng trophy has been often overlooked or denigrated. The Lady Byng is given each year to the player who has exhibited the best sportsmanship and gentlemanly conduct combined with a high standard of playing ability. Who won it last year?

Bonus Question

What is Gump Worsley's real first name?

(Answers on Page 4)

Law Notes

Sherrod McCall, Fellow of the Center for International Affairs of Harvard University, will discuss **China-Watching from Hong Kong**, on Tuesday, Nov. 25, at 1:10 p.m. in Pound 419.

* * * * *

Harvard history professor Peter W. Stanley will discuss **"Imperialism and Martial Law: Changing Sanctions of Elite Rule in the Philippines"** at 1:10 p.m. Thursday, Dec. 4, in Pound 419.

* * * * *

Harvard Law Community Association will sponsor its **annual Crafts Fair** on Saturday, Dec. 6, in the Hark. Anyone interested in selling their crafts should get in touch with Linda Rusthoven, 219 Harvard St. #20, Brookline 02146, tel. 738-8498.

* * * * *

A program on **Broadcasting in Asia, illustrated with film clips**, will be presented at 4:10 p.m. Friday, Dec. 5, in Pound 410.

* * * * *

An exhibit on **American Indian Court Systems** is being shown in the second floor foyer of Langdell Hall and the foyer of ILS until Jan. 31, 1976.

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.)

"Hu, wfyizip hr yipi qpfzij dl ryigrldhowfqrwsr ihrwip qsprl, ywig wi noij rwi yfpjo hgrigij ofairwhgc ieoi rwsgrwi nonse aisghgc ywhtrwi esy haqfoio nqfg rwia wi yfnej orhee di wiej, ngeioo rwipi yipi ofai anrnse ahorsbi. . ."

Political Trivia Answers

1. George Clinton (Jefferson and Madison) and John C. Calhoun (J.Q. Adams and Jackson).
2. George Washington (12)
3. General George C. Marshall
4. The Bulgarian atrocities
5. Edward Everett (he was also U.S. Representative, Governor of Massachusetts, Secretary of State, Ambassador to Great Britain, U.S. Senator and, last but not least, President of Harvard)
6. Jeannette Rankin
7. William B. and Tauliullah Bankhead
8. Vice-President James S. (Sunny Jim) Sherman died in the closing days of the campaign. President Nicholas Murray Butler of Columbia University was chosen to join President William Howard Taft on the ill-fated Republican ticket.
9. Vermont left the Republican column in 1964 to vote for LBJ; in 1972 Arkansas voted Republican for the first time (although it had voted for Wallace four years earlier).
10. Zachary Taylor was the father-in-law of Jefferson Davis, the President of the Confederacy. (I told you it was tricky.)

Solution to "Cryptic Law"

"If, however, it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake. . . ."

Hotchkiss v. National City Bank, 200 F. 287 (D.C.N.Y. 1911) (Justice Learned Hand's famous "twenty bishops" rule regarding unexpressed intent in contract law).

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Contentiousness or Contempt?

(Continued from Page 3)

Curran, excepting to a ruling in a case on trial, said to Lord Clare, who was presiding:

The error is in its nature flip-pant and compendious; it hops with airy and fastidious levity over proofs and argument and perches upon assertion, which it calls conclusion.²⁶

Curran also said, more solemnly, on an occasion when the Judge pointedly alerted the Sheriff to arrest anyone whose behavior disturbed the court's decorum:

Do, Mr. Sheriff, go and get ready my dungeon; prepare a bed of straw for me; and upon that bed I shall repose with more tranquillity than I should enjoy were I sitting upon that Bench with a consciousness that I disgrace it.²⁷

And, when Mr. Justice Robinson told Curran, "If you say another word, I shall commit you," Curran replied, "Then, my Lord, it will be the best thing you have committed this term."²⁸

Judges, to do them justice, occasionally get the last word. A convicted defendant said at sentencing to Sir Norman Birkett:

As God is my judge, I am innocent.

Lord Birkett: He isn't, I am, and you're *not*.

Or, the English judge who responded gently to the timorous young barrister, who in his nervousness stammered:

My Lord, this case is — it is a case in which — The case is a case that — That is to say, this is a case — it —

The Judge: I'm with you so far.

Some Concluding Ruminations Upon Where We Have Gone Wrong, If We Have

As we have seen, contempt of court is a most difficult and solemn

business. Fortunately it rarely occurs, as Cecil observes:

It should never be necessary for a judge to abuse his power. He is in such a strong position. He can fine or send to prison anyone who misbehaves. . . . In fact people in court behave themselves extremely well. It was an isolated occurrence when a man threw tomatoes at the Court of Appeal. And he missed.²⁹

Nevertheless, even an occasional show of disrespect for a court is unfortunate, and it behooves us to examine ourselves and speculate upon what it is that has brought us to a state where lawyers and litigants alike may not only with impunity express dissatisfaction with actions emanating from the bench, but where the manners of advocacy and the desiderata of courtroom decorum and diffidence have deteriorated to the point where a Federal Court of Appeals can (and in fact did) say:

Attorneys have a right to be persistent, vociferous, contentious and imposing, even to the point of being obnoxious, when acting in their client's [sic] behalf.³⁰

Such words surely would be unnecessary, nay unthinkable, and contempt would scarcely ever occur at all, if we of the bar would simply remind ourselves from time to time of Fortescue's reflection that:

. . . the virtue of judges is reflected in the prosperity of their children. A greater number of leaders and magnates have sprung from the

loins of judges than from any other estate of men. This is in accordance with the pronouncement of God's prophet who says, speaking of the just, 'Their children shall be blest.' Scarcely any judges die without issue, 'which is like a great and, as it were, an appropriate benediction of God.'³¹

The medieval French scholar, Guillaume Durand of Provence, in his *Speculum Juris*, sets forth certain rules of conduct for attorneys whose exploits come down to us in the *Year Books*. Among them some seem timeless: "When the judge speaks, listen respectfully and then laud his wisdom and eloquence." Others, as might be expected, are largely outdated: "If the judge be literate, he may be trusted to make explanations, but if the judge be illiterate (for he may be a baron or a count) the advocate should explain the law."³²

ENVOI

"There are no bad judges. There have been bad judges and there will be bad judges, but there are no bad judges."³³

31. *De Laudibus Legum Angliae* (1468-71). As recounted by Turner, *supra*, at 31. Turner adds the observation:

Possibly these words found no great favour among childless judges.

32. Turner, *supra*, at 24-25.

33. *Ibid.*, at 10. Turner is quoting an anonymous lawyer, who really deserves not to be anonymous.

29. *The English Judge*, *supra*, at 96.

30. *In re Dellinger*, 461 F.2d 389, 400 (7th Cir. 1970). This decision is one chapter in the saga of the infamous Chicago Eight. The qualifications of the judge have had to undergo a corresponding change, to accommodate this sanctioned obnoxiousness; as the United States Supreme Court noted in *Craig v. Harvey*, 331 U.S. 367 (1946): "Judges are supposed to be men of fortitude, able to thrive in a hearty climate."

26. Turner, *supra*, at 12-13.

27. Turner, *supra*, at 175-176.

28. *Ibid.*, at 176.

Dorm Council Activities
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(movie and party)

But Is Justice the Client's Cause?

(Continued from Page 6)

ing, "but there will be occasions where a lawyer will have to . . . employ it."

So far, believe it or not, I am still nodding my head and paying close, uncritical attention to what "being a lawyer" is all about. A dissent here and there is all I have offered. The moment of rebellion came only when we returned to practice and had to deal with the problem of Jack Katz.

Here is the situation. Jack Katz, loyal employee of Grueman Manufacturing Co., a well-respected firm in the rain-wear business, was discharged from his duties as Comptroller, without notice, after twenty-eight years of service. Since then, he has looked long and hard for work, but nine months have turned up nothing. In his original complaint, in response to interrogatories, and in his sworn deposition, Mr. Katz has repeatedly said that he has had no luck and is quite aware that, because of his age and because of the state of the economy, his prospects for finding work approach nil. He has come to us for help.

As we were gearing up for the negotiation sessions, and with the lawyers for Grueman off in another room, we were told that Jack has finally gotten a job. Our reaction, interestingly enough, was anger, disappointment, and we talked of telling Katzie-baby to take a walk, forgetting entirely that we should be glad that he will not be starving while his house is being repossessed.

Unable to drop him, however, we were instructed to go into the negotiations trying to get as "good" a settlement for Jack as we could. Put yourself into our position. You know that the opposing lawyers are acting upon a set of facts that are no longer true. You have to get Katz as much money as you possibly can. What do you do?

By this point, the answer was never in doubt. Knee-jerk lawyers all, we knew we had to evade, circumlocute, do anything but actually tell or actually lie.

Of all the two- and three-person teams bargaining for Katz that were presented with this new fact, only one (to my knowledge) chose to disclose it during the negotiations. They rationalized that they could

not enter into such a meeting other than in good faith. This is not to praise that one group, but to bewail the fact that there was but one.

Justification from the individual level is readily forthcoming: it was only a game, and no one actually lied. Assuming this is true, however, and knowing that Katz is only a game, we must ask what we will do when real people are involved, when real people stand the chance of losing their homes, their jobs, their futures. If we cannot play even the Katz Game in good faith and with clear consciences, where have we really arrived after a mere three months of indoctrination?

One would think that, in the wake of Watergate when the legal profession was coming under heavy attack for its ethics, THE Law School, THE leading producer of the nation's finest lawyers, THE bastion of legalese would feel more of an obligation — social as well as professional — to try to turn the tide in favor of the independently conscientious lawyer. Can it reasonably be said that THE Law School has fully discharged its obligations by requiring a single course in the legal process? Need a lawyer's conscience be circumscribed and totally defined by the canons, which we all know to be only vaguely enforceable?

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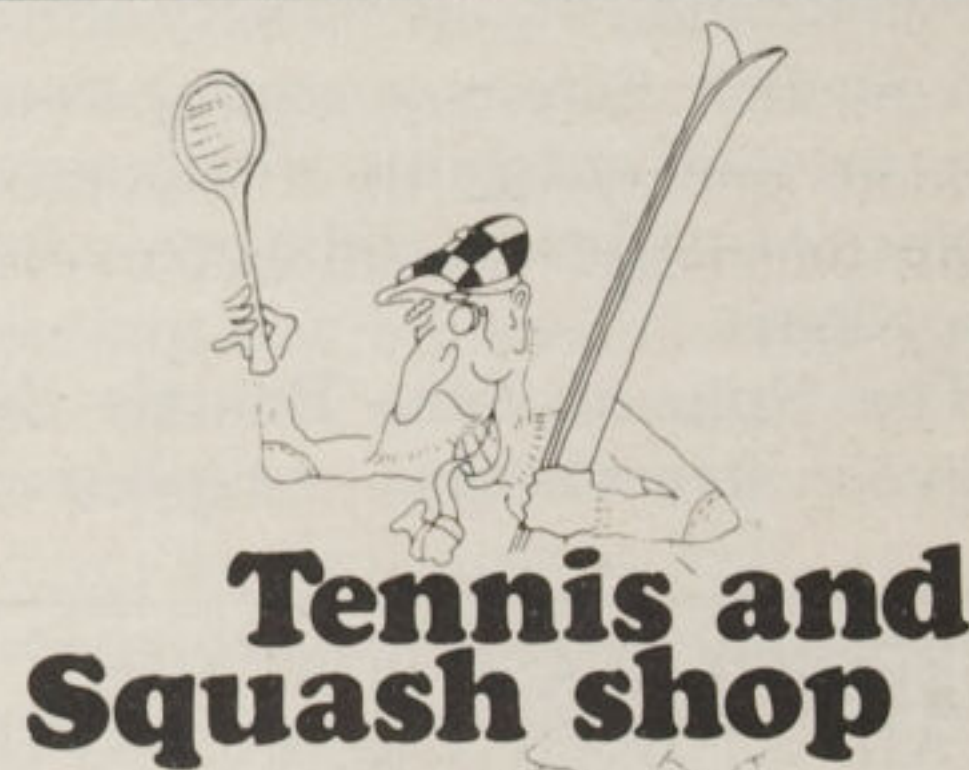
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Natural Flavors for the Cream of the Crop

By B. B. Emil

Even the most stable law student occasionally suffers some academic or spiritual lapses during his law school career and requires restorative therapy to regain his moral fortitude. Some students find solace in music, books, alcohol, drugs or sex, but we suggest still another diversion — ice cream. It is cheap, convenient and infinitely satisfying. Since, for the novice, discovering the proper ice cream to fit his or her individual needs can be a time-consuming task, the RECORD is providing this guide for the would-be ice cream gourmand.

Perhaps the best ice cream in the greater Boston area, or anywhere, is found at Steve's Ice Cream, at Davis Square in Somerville. To its large cult following, Steve's is synonymous with ice cream.

Steve's serves about six flavors of ice cream daily, three of which are the traditional vanilla, chocolate and strawberry. The other three flavors may include flavors known only to Steve's — the best of which is cinnamon nutmeg. For ten cents, Steve's will spice up a dish of ice cream with "mixins" (toppings such as crushed candy, granola or nuts).

For those in a hurry, Harvard Square offers a plethora of shops which provide a wide variety of frozen goodies. Foremost among these are two take-out joints which serve a special Cambridge delicacy — frozen yogurt.

The Spa, at Zero Brattle St., serves strawberry, raspberry,

lemon and (occasionally) banana yogurt. Elsie's, the well-known deli at 71 Mt. Auburn St., also serves strawberry and raspberry yogurt. The frozen yogurt at both places is inexpensive and excellent, with special honors going to the lemon and banana yogurt at the Spa. (The Spa additionally offers a mean chocolate soft-serve.)

Among the purveyors of more conventional ice cream in the Harvard Square area are three chains, Brigham's, Bailey's and Baskin-Robbins. Baskin-Robbins, at 1230 Massachusetts Avenue, offers the widest variety of ice cream in the Harvard Square area, and Bailey's, at 21 Brattle Street, is known for its large sundaes.

Brigham's most notable feature is that it appears to have started the local trend of putting chocolate "jimmies" on ice cream cones.

A new face at the Square is Cibo's, in the Garage, which serves "natural" ice cream, and has fruit and salad as well. Another newcomer is BIC'S, located just north of the Law

School on Massachusetts Avenue. BIC'S offers a variety of flavors, including an exceptional banana pecan and features an afternoon ice cream "happy hour."

For those seeking still more variety, the greater Boston area has numerous other ice cream emporiums. Fred's, at 962 Massachusetts Avenue in Cambridge, serves homemade ice cream, as does Kelleys, at 156 Cambridge Street in Boston. The Ice Cream Factory at 1663 Beacon Street in Brookline, has a good soft serve, which generally surpasses the quality of its other ice cream.

The Tufts University area, in Somerville has two worthwhile "homemade" ice cream parlors. Russell's, at Powderhouse Square, serves large cones for 35 cents — the largest we've seen for the money.

Joey's, at Teele Square, serves several esoteric flavors, including carrot raisin and honey walnut. It seems to be cut out of much the same mold as Steve's; it too has "mixins" and sells tee-shirts for ice cream groupies. Joey's, however, does have one unique feature, a "serve yourself" sundae bar with several toppings and mixins.

For those willing to travel a bit to treat themselves to a real ice cream "event," we highly recommend a visit to Cabot's, a fairly large sit-down ice cream and sandwich shop located in Newton.

Cabot's excels in its sundaes — for 99 c, one can enjoy a very large portion of any one of about 30 flavors of ice cream covered with one of over 20 kinds of toppings (including three types of hot fudge), plus whipped cream or marshmallow and a cherry.

The above guide is certainly not a complete listing of all the good ice cream spots in the Boston area. In fact, the authors of this article are currently planning a trek to the North End, where there is reported to be genuine amaretto ice cream. Who can beat that?

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