

HARVARD LAW RECORD

America's Oldest Law School Newspaper

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VOL. 62, NO. 3

FEBRUARY 13, 1976

TWENTY CENTS

HLS Scholars Aid in School Busing Strains

By Barbara Moore

Boston Mayor Kevin H. White has sought the help of an informal group of advisors, including two Harvard Law School scholars, to clarify the problems involved in Boston's desegregation orders.

Raoul Berger, Warren Senior Fellow of American Legal History and Paul Freund, Carl M. Loeb University Professor were among the group of 12 to 15 lawyers and non-lawyers with whom White met February 3. "We simply talked all around the problems of desegrega-

(Continued on Page 6)

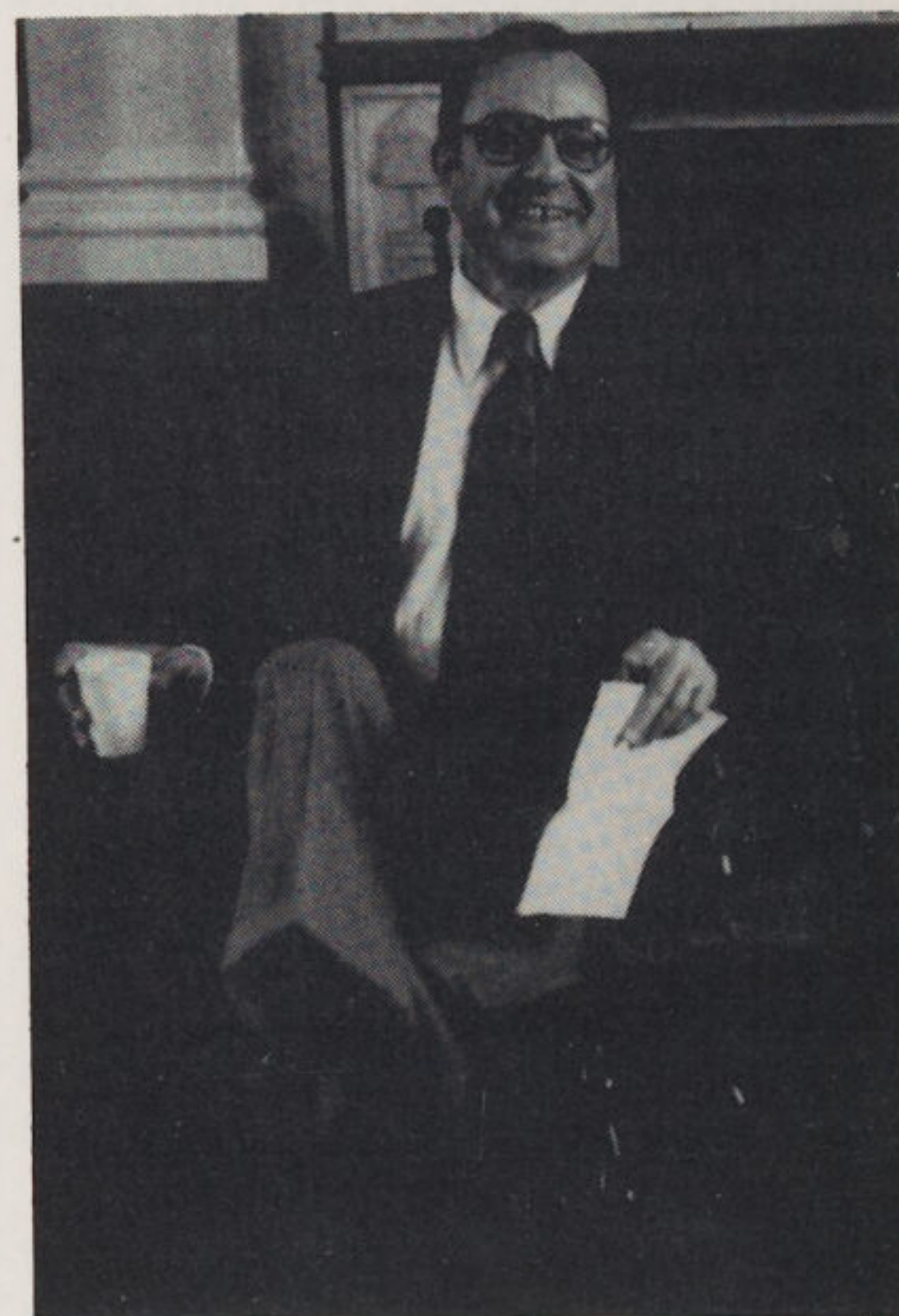
Spicy Reforms Revealed During Legal Ed Session

By Bruce Howard

Third year papers in the second year? Absolute blind grading by professors? Constitutional and administrative law classes limited to fifty students? One semester versions of corporations, commercial transactions, and estate planning? Two month Christmas vacations?

These were just a few of the spicy reforms presented as real possibilities to the sparse showing at Monday's Root Room meeting of the Legal Education Committee.

Members of the committee, which is made up of students, faculty and administrators, outnumbered non-committee stu-



Professor Abram J. Chayes ^{LL}

Loss Exam Leads to Ire; Students Protest Re-run

By Roger Evans

A swell of student protest has arisen as the result of an exam administered in Professor Louis Loss' *Securities Regulation* course.

According to students and university officials, Loss gave a final exam for the fall course in which eighteen of twenty questions were the same as those which appeared on his 1972 exam. The exam was composed of multiple-choice questions, averaging four choices per question. Students were given an opportunity to explain each answer. Many students have complained to Registrar Mary D. Upton and are seeking redress through Law School channels for what they see as "the latest slap in the face" by a professor "who no longer cares about teaching," according to one student.

Many test-takers apparently had answers to the *Securities Regulation* exam. Some had worked them out for themselves by studying from old exams. Others had copies of Loss' answers

(Continued on Page 7)

dents at the special session, which was held to allow interested students to learn about, and comment on the current activities of the committee.

But the turnout, while slight, was active, with most of those in attendance vehemently challenging the law school's curriculum and grading system.

Even the chairman of the committee, Professor Abram J. Chayes, who moderated the discussion, participated in the at times airy visions of a future Harvard Law School. At one point Chayes even mentioned the "theoretical possibility" of eliminating the third year, though he quickly qualified the speculation

(Continued on Page 9)

IN THIS ISSUE

Expert Witnesses Attacked	3
Legal Aid Law Reform	5
Mongoose Device	8
Guatemala Disaster	13

Daley Patronage Colorful Paper Topic; Research Being Used as Case Appealed

By Susan Gillette

"Chicago politics is nothing if not colorful," quips Gary T. Johnson, 2L, who, like many other Democrats of that city, is cashing in on the political games played in the Chicago government.

Johnson will reap a trip to the Supreme Court, a third year paper, and experience working with lawyers from the Chicago firm of Jenner & Block as the results of his participation in a case which could scuttle the political patronage system of the Windy City and many other municipalities.

In a *pro bono* case, Jenner & Block, with Johnson's help as a representative of the Harvard Civil Rights-Civil Liberties Research Committee (CRCL-RC), seeks to maintain a class action to secure [the] jobs of Republican employees of the sheriff of Cook County. The current Democratic sheriff is trying to fire the Republicans and replace them with members of his own political party.

Defendants in the case are Richard Elrod, the sheriff; Mayor Richard Daley, and the Cook County Democratic Organization. They are represented by Thomas Foran, a Chicago lawyer and "friend of Daley." According to Johnson, Foran also prosecuted the "Chicago Seven."

Jenner & Block lawyers on the case include Douglas B. MacDonald '73, a former CRCL-RC member with whom Johnson developed a "close relationship" this fall, after the case was assigned to him by the CRCL-RC. Johnson also worked for Jenner & Block in Chicago during the Christmas holidays.

Johnson said he began working with the firm on the case shortly after *certiorari* was granted by the Supreme Court this fall. "A lot of what I wrote went into our brief," he said, but added he didn't have any final responsibility for the brief since

it was prepared during his exams.

The appeal concerns the defendants' motion to dismiss, which was granted by the federal court in Chicago. Judge Julius Hoffman (of Chicago Seven trial fame) presided. But the 7th Circuit reversed and the plaintiff class will try to hold onto its victory in the Supreme Court. "It would be nice if they'd give us some legal help," Johnson reflected.

In his work on the brief and in his third-year paper Johnson developed the theme that, for jobs not related to policy-making, basing tenure upon political affiliation is a violation of 1st Amendment guarantees of freedom of speech. He relies upon the 1972 Supreme Court case, *Perry v. Sindermann*. Justice Potter Stewart wrote the opinion, and his clerk at the time was Richard Parker, now an assistant professor here. Johnson explained it was easy to settle upon Parker as the adviser for his paper.

The 7th Circuit accepted the distinction between policy and non-policy jobs, Johnson said, adding that with Supreme Court approval, the opinion will have importance to "process-servers, janitors," and other government employees "all over the country."



Gary T. Johnson, 2L

While obviously unable to give an unbiased statement of the other side's argument, Johnson did illustrate the defense strategy as depending upon arguments of waiver of rights, history, loyalty, and the well-known political tradition, "to the victor belongs the spoils."

The defense argues that the Republicans who would be displaced by Democrats cannot argue against political patronage since it was the patronage system which got them their jobs in happier Republican days. According to Johnson, it is also argued that since patronage has been here "since the days of the Founding Fathers," the court "shouldn't overrule 200 years of American history." And finally, it is contended that the sheriff needs loyal employees, he added.

Johnson's position is that although the patronage system may be the quintessence of 200 years of American urban history, it was never sanctioned by the Founding Fathers. He also says the argument of "loyalty" requirements is undercut by the prevalent practice of retaining a job after a change in the political affiliation of city bosses by securing a document certifying a switch to membership in the new ruling party. This is called the "re-patronage system," he said.

The plaintiffs' arguments will be buttressed by an *amicus* brief filed by the Ralph Nader organization, Johnson added.

Whatever the outcome when the case is heard in Washington in March, it's certain that Johnson, if he were on the bench rather than in the spectators' section, would hold for the plaintiffs.

And that wouldn't really be political back-stabbing. Although he's a Chicago Democrat, Johnson says he is an "Independent Democrat." And, he added, in Chicago that term signals that you're against machine politics.

Role of Scientific Expert Examined

By Edward Groth III

The scene: a courtroom. A defendant on trial for bank robbery has been identified as the thief by an eyewitness. The first witness called by the defense is a professor of psychology at a respected university, who describes research studies showing that human memory can "play tricks," and that eyewitness accounts may be unreliable.

Another scene: a hearing before a regulatory body charged with the control of pollution. A professor of environmental medicine, speaking for a citizens' group, states that chemicals released into the environment by a local factory can cause cancer. A medical researcher employed by the industry testifies that studies have shown that no one in the community has been harmed by the discharges.

These and similar scenes are becoming more familiar parts of the contemporary legal process. As scientific questions are more frequently included in adversary proceedings, lawyers have found it necessary to turn to scientists as pre-trial advisors, consultants during the proceedings, and witnesses.

The participation of an expert can greatly strengthen the case an advocate can present for his client. At the same time, however, the growing trend toward the use of expert testimony has posed important problems for both the legal and the scientific professions.

Basic differences in the philosophical foundations of the scientific and the legal systems can produce strong tensions between the ethical imperatives of the two professions when a scientist is thrust into an adversary situation. At its simplest, the highest goal of science is to uncover the truth; and the highest value of the legal system is to win on behalf of one's client. Indeed, in the adversary system of courts and regulatory decision-making, the truth may be incompatible with victory for (at least one of) the parties in the dispute.¹

If the ideal of science is to find truth, truth is still an ambiguous and elusive beast. Many scientists may agree on what the evidence is (what has been shown by reliable methods to be true), but may disagree over inferences which may be drawn from the data.

Such inferences depend on judgments: both the scientific judgments of an expert, and value judgments of the sort that anybody makes. Scientists whose judgments differ may become active partisans of a point of view. Experts tend to be just as biased as the next fellow, and just as defensive of their opinions.

No matter how strongly scientists may disagree, however, the pursuit of truth stays on course because of two basic tenets of science. First, it is always assumed that the intellectual antagonists are more interested in the truth of the facts and the interpretations involved than in winning the argument. Second, all scientists are aware that virtually nothing in science is absolute; hardly a statement or an interpretation can be made that does not need to be qualified by reference to contradictory evidence or differing but also potentially valid interpretations.

Important matters are almost inevitably complex and uncertain; and scientific integrity demands that these qualities be recognized.² Schopenhauer captured the essence of scientific responsibility when he said:

"The value of what one knows is doubled if one confesses to not knowing what one does not know. What one knows is then raised beyond the suspicion to which it is exposed when one claims to know what one does not know."

In contrast to this ideal, the public often looks upon scientists as omniscient, and sees scientific issues as black-and-white, simple, and certain. The objectivity of expertise is usually taken for granted. When this image confronts the real-

ity of responsible scientific equivocation, the result is likely to be frustration. Senator Muskie lamented, after hearing an array of experts testify that "The evidence on the one hand indicates thus-and-so, but on the other hand . . .," that what the nation needs is more "one-armed scientists."

One can sympathize with the sentiment: legal and social decision-making would be far simpler if science could provide unequivocal "facts" that would absolve policymakers of the need to make difficult trade-offs among important values.

The adversary nature of the legal process, with its emphasis on victory, exerts a strong distorting influence on the scientific pursuit of truth. At best, the search for the truth is secondary, and the effective lawyer seeks to present ". . . not the whole of the sprawling and unmanageable truth, but the portrayal that is most convenient and useful."³ Experienced trial lawyers coach expert witnesses never to volunteer information, and not to "weaken" their testimony by acknowledging the existence of contradictory or ambiguous evidence.⁴

One attorney advised potential witnesses that the best attitude for the expert in court was to be found in this parody of the 23rd Psalm:⁵

"Lo, though I walk in the shadow of the valley of the skeptic and cross-examiner, I shall fear no evil, for integrity and knowledge are my staff. And besides, I am the only man in this whole damn valley who really knows what all these data mean!"

The arrogance of this attitude and the humility of the earlier quotation make a stark contrast.

The "one-armed scientist" and the attorney looking for an edge on his adversary are natural allies. In a legal or regulatory dispute, the testimony of a balanced, objective scientist who scrupulously qualifies

(Continued on Page 15)

History of French Judicial System, Civil Liberties Subject of ILS Talk

By G. Bruce Kuehne

"French Judicial Review in a Nutshell" might have been a more appropriate title for a recent evening meeting of the International Law Society which featured Roger Errera, jurist and author, who spoke on "Civil Liberties and the Legal and Political System: The French Case."

Errera introduced his discussion with several fundamental observations about the development of civil liberties in French society. As most Americans know, he said, the French liberal school of thought was comparable to and part of liberal thought in America and Britain. But liberal speculative thought had little practical effect on political and social life in France. Perhaps as a result of the tradition of the omnipotent sovereign, acts of the legislature were seen as final and non-reviewable, he said.

France has had several constitutions, none of which provided a declaration of rights as such, Errera explained. Instead, protection of civil liberties has originated and developed within the system of administrative law.

But for historical reasons, Errera explained, France has lacked the tradition of a strong judiciary, or of a judiciary with functions beyond that of application of the law. Such a tradition, combined with the absence of express provisions for civil liberties in the constitutions, has led to judicial self-restraint, he added.

Paradoxically, Errera said, the origins of modern judicial review lie in the Declaration of 1789, adopted after the Revolution by the Constitutional Assembly, not as part of the Constitution, but as a statement of philosophical principles considered as "*la base necessaire des institutions humaines*." Among these principles are the political equality of citizens, property rights, and freedom of speech, of the press, and of religion.

A subsequent constitution, adopted in 1875 at the commencement of the Third Republic, still contained no declaration of civil rights, but adopted the Declaration of 1789 as a preamble, he said, adding that in 1946 a new constitution was adopted at the beginning of the Fourth Republic including the Declaration of 1789, but again without delineation of civil liberties.

In Errera's opinion, the most interesting aspect of the debate preceding the adoption of the constitution of the Fourth Republic was the attempt by conservative forces to create constitutional guarantees of civil rights and the power of constitutional review.

The stimulus for this movement was the nationalization of crucial industries after the war, which raised the spectre of destruction of property rights, he explained.

Freedom of the press was considered endangered by the fact that newspapers which had collaborated with the enemy were suppressed and the publishers' businesses seized, he added.

The reason this movement failed, according to Errera, was that the Left combined with the conservative forces to defeat it. Both the communists and the socialists feared that constitutional review would thwart the basic reforms they planned for the country.

He said that despite the absence of constitutional guarantees, the French Parliament has from time to time enacted statutes protecting basic civil liberties, such as freedom of religion and expression. In order to ensure that government action comported with these statutes, Parliament created a system of administrative courts, including the *Conseil d'Etat*, an administrative supreme court.

Any individual might complain to this court that a decision of an administrative court violated a statutory right, Errera explained. If the *Conseil d'Etat*

found that the decision complained of had violated the law, damages caused by such decisions were compensable.

Over time, this process of review resulted in judicially-created principles of equal application of the laws and nondiscrimination, which were interpreted as being an implicit part of the statutes involved, he said, adding that increasingly, administrative courts looked to the principles embodied in the Declaration of 1789 as a basis for their interpretation of statutes.

But, until recently, according to Errera, no judicial body could legitimately challenge a legislative enactment itself as contrary to the constitution.

The two developing threads of implicit court review and the legislative movement for constitutional guarantees merged in the Constitution of 1958, Errera said. That document incorporates the basic principles of the Declaration of 1789 and its progeny.

At the same time, the new constitution created a "*conseil constitutionnel*" as a means of enforcing the limitations on the legislative power of Parliament, he explained. The prime minister, the president and the speaker of each house have been given the right to refer any new law which has been passed, but not promulgated, to this new court for a test of its constitutionality.

Errera noted that the first real test of the power of the constitutional court came in 1971, when Parliament passed a law which effectively declared certain groups illegal, even before they had engaged in illegal activity. The law was referred to the *conseil constitutionnel*, which declared it contrary to a fundamental right guaranteed by the constitution.

Errera emphasized that this system of constitutional review has several inherent defects, and said he looks forward to its

(Continued on Page 14)

Legal Aid To Pursue Law Reforms

By Philip Heagney

Members of the Harvard Legal Aid Bureau have elected nine second-year students as their new officers and adopted a proposal to change the operating policy of the Bureau so that work on law reform projects will be required in addition to the handling of cases for individual clients.

At a general meeting held Monday, February 9th, the Bureau elected Sidney D. Watson its new president. Robert S. More was elected vice-president, Steven M. Collins was elected executive director, Sarah L. Reid was elected secretary, Thomas E. McCreadie-Albright was elected treasurer, and Jonathan I. Blackman was elected research director. In addition, Valerie A. Leopold, Trent W. Orr, and Marc R. Lauritsen were chosen as new associate directors of the Bureau.

At a general meeting held in late November last semester, Bureau members considered three proposals for increasing the amount of law reform work handled by Legal Aid. At a second meeting a week later, a plan requiring every Legal Aid member to take on one law reform project as part of his or her regular caseload was approved by a two-thirds majority of the members present.

Carol Kellerman, 3L, the outgoing president of the Bureau, explained that Legal Aid has always taken on public interest projects, but only on a voluntary basis by members who continued to carry full caseloads. Robert More, the Bureau's new vice-president, said that "basically, everyone in the Bureau supports the shift to more law reform work. The real issue was whether we should make the work mandatory or optional for each member."

Helen Trilling, 3L, outgoing executive director of Legal Aid, noted that the question of how the Bureau should allocate its resources has been debated within the

organization for some time. She added that poverty law lawyers have considered the issue of how much time to devote to law reform work, as opposed to the day-to-day needs of individual clients, as one of the leading practical problems in their field.

LEGAL AID BUREAU STATEMENT OF POLICY

The Harvard Legal Aid Bureau is a student organization committed to vigorous and effective advocacy for the poor and to training its members in the skills of the legal profession. This commitment is based on an awareness of the great disparities of wealth and power in this country and of the ways in which the lives of most Americans are shaped by economic and political forces beyond their control. It is further based on the hope that members will be trained in skills which they will use to make the law serve the end of greater social and economic justice.

The dual goals of effective advocacy for the poor and training of Bureau membership can be fully met only through a combination of individual client representation and other forms of advocacy on behalf of the poor community. An institutional commitment to a wide range of advocacy, including individual client representation, impact litigation, legislative reform and representation of low income groups, will increase the effectiveness of our work so that as many people are helped as possible; such a commitment will also provide Bureau members with a more varied exposure to all aspects of legal work. To implement these goals, the Bureau should be organized so as to insure that each member participates in individual casework and a broader form of advocacy.

Sidney Watson, the new Bureau president, said that due to unfavorable or nonexistent precedents in many areas of poverty law, Bureau members often feel that "they are beating their heads against a brick wall" in many of their individual cases. "There is only so much you can do in law reform through trial court advocacy," Watson commented, "and so we need to take advantage of other kinds of advocacy that lawyers can use to change the law."

Kellerman and Trilling agreed that the goal of the new policy was to maximize the Bureau's impact in the poverty law area. They felt the emphasis on law reform projects would improve the Bureau's service to the community and would give Legal Aid members a wider variety of lawyering experiences.

Watson and More have been given responsibility for proposing new structures that the Bureau can use to implement its policy change. Watson mentioned litigating test cases, lobbying, commenting on proposed administrative regulations, providing community education programs, and representing groups like tenants' unions as the kinds of projects the Bureau might undertake once the new structure has been worked out.

All of the Bureau officers involved in the policy shift agreed that the change will cause some decrease in the number of individual cases the Bureau handles. Trilling noted that physical space limitations prohibited Legal Aid from expanding its membership to offset the smaller case loads Bureau members may carry under the new system.

Although the law reform project requirement does not become effective until next fall, there has been some speculation that its approval caused several resignations from the Bureau. However, both active Legal Aid members and several recent resignees agreed that the policy
(Continued on Page 6)

LAB Changes Policy

(Continued from Page 5)

change had strong support within the Bureau and that the resignations had resulted from personal choices by the individuals involved.

Kellerman explained that the Bureau has lost six or seven members so far this year and has traditionally lost at least four or five

people by the end of the fall semester. Two second-year students who recently left the Bureau said that they had resigned for personal reasons and regretted that they had had to give up their membership. Both of them mentioned that they had actively supported the increased Bureau commitment to law reform work.

Important Harvard Posts Draw Several Candidates

The nominating committee of the Associated Harvard Alumni (AHA) this week announced names of 10 candidates for election to the University's 32-member Board of Overseers and 12 candidates for election to the 76-member AHA Board of Directors. An eleventh candidate for the Board of Overseers has been nominated by petition.

The candidates — all University graduates — will run for five places on the Board of Overseers and six AHA Director positions. Elected Overseers serve six-year terms; elected AHA Directors serve three-year terms. Altogether, 18 Director positions and 30 Overseer positions are elective.

The nominating committee, chaired by Peter S. Heller of New York City, considered candidate suggestions by University officials, Harvard clubs and classes, and individual graduates.

Nomination by petition this year requires certified signatures of 261 alumni for Overseer and 257 alumni for AHA Director (each figure represents three-quarters of one percent of the average number of alumni voting in the last three elections). Such nominations must be received by the Secretary of the Board of Overseers no later than March 1.

Nominated by the committee for Overseer are:

John T. Connor, J.D. '39, Morristown, New Jersey, Board chairman, Allied Chemical Corporation.

Jill K. Conway, Ph.D. '69, Northampton, Massachusetts, President, Smith College.

Leo Goldberg, S.B. '34, A.M. '37, Ph.D. '38, Tucson, Arizona, Astronomer; Director, Kitt Peak National Observatory.

Elizabeth Holtzman '62, J.D.

(Continued on Page 14)

White Talks To Berger, Freund

(Continued from Page 1)

tion," said Freund.

Robert Schwartz of the Mayor's office explained that the meeting was "generally on the issue of what tact, if any, makes sense" in challenging the "Phase Two" busing orders of Federal District Judge W. Arthur Garrity, Jr. The meeting was especially useful, according to Schwartz, in light of Garrity's order being recently upheld by the U.S. Circuit Court.

The question on the Mayor's mind is whether or not the issue should be appealed to the U.S. Supreme Court, and how to do it, continued Schwartz, adding "It is likely that we will appeal."

Schwartz stressed that the February 3 meeting was "informational," and that none of the participants has been asked to construct a brief for that appeal. In the event of appeal, Schwartz said, the Mayor's office will probably retain "reputable, Washington-based counsel" to develop the brief.

Reports of "more political" involvement by Berger probably stemmed from an "ill-informed column in the GLOBE," Schwartz said. And behind that may have been an article in the QUINCY PATRIOT LEDGER quoting Berger as saying that Garrity went way beyond his jurisdiction with the busing orders. Both of these articles misstated the situation, Schwartz concluded.

Freund described the meeting as "nothing special — simply a dinner," and stressed that he is not "part of any team or involved in any brief." He said the group talked about the problems White faces, especially financial strains imposed by busing.

Schwartz and Freund agree that the meeting was meant as a "one shot operation" to discuss the situation, and will not be an ongoing advisory group. Berger was not available for comment.

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Loss Exam Draws Student Ire

(Continued from Page 1)

which had been on reserve in Langdell for the year following the 1972 examination.

"This will certainly shift the curve upward . . . it's grossly unfair," exclaimed one disgruntled third year student.

Other students viewed the problems with the final exam as only one more indication that "there are problems with the whole course."

A joint program student felt that difficulties lay with the fact that "Loss gives the same course over and over again . . . he puts no effort into it anymore. The lectures are good but the textbook is just a cut and paste job from his treatise."

Loss has sent a letter to all students enrolled in the course, as has Upton (see boxes). The solution offered is that students may choose either to take the course on a credit-no credit basis or to retain their grade.

While reluctant to take another exam in the course, many students

are left dissatisfied by this solution. Some feel that the "faculty should take him [Loss] out of the course and put in someone who cares."

One student averred, "Loss has forgotten about teaching . . . the faculty should not only step

on his toes, they should light a fire under him. The faculty should stop this benign neglect and get him working for his students again."

According to professors con-
(Continued on Page 16)



LL

Professor Louis Loss

To the students in
Securities Regulation:

This letter concerns a number of complaints that have come to my attention with respect to the recent examination.

All examinations are, of course, on file in the Library. And in modeling the recent examination on the one given four years ago, I apparently underestimated the extent to which some students prepare on the basis of old examinations. For I gather that some of those who took the examination believe that some of their colleagues were unfairly advantaged by their study of the 1972 examination, particularly since the instructions permitted the use of "your book and notes, any outline in whose preparation you played a substantial part, and all materials that were distributed."

I extend my sincere apology to any members of the class who feel put upon. In the future, it goes without saying, I shall try to remember that equity must also be *seen* to be done.

For the rest, in an attempt to *do* equity insofar as the circumstances permit, the Dean, after appropriate consultation with myself and others, has authorized me to give each student an opportunity, after the grades have been distributed, to be graded on a "credit" basis rather than having a letter grade recorded on his or her transcript. The Registrar will be mailing the Securities Regulation grades by the end of the week. Enclosed with the grade will be a form on which you may indicate your grade preference.

With every good wish,

Sincerely
Louis Loss

MEMORANDUM

FROM: Mary D. Upton, Registrar

Since you have a special option with respect to your Securities Regulation grade, I am releasing this grade to you now, before grades are generally available.

Your grade in Securities Regulation is: _____

As Professor Loss has explained to you in his letter of February 2, you have the option of having this letter grade recorded on your transcript or a notation of "Credit" in its stead.

If you wish to have a "Credit" recorded on your transcript, you must complete the form on the bottom of this letter and return it to my secretary, Bonny Marks, FOB 105 by February 20, (If you do not return the form to this office by February 20, the letter grade shown above will be recorded on your transcript).

After you have made your election, the grade in this course will be recorded along with all your other grades and will be available on your transcript as soon as all the grades in all other courses have been submitted to and recorded by this office.

If you have any questions about this election, please feel free to drop by.

I would like "Credit" recorded on my transcript for Securities Regulation.

NAME & YEAR

DATE

Squib Research: Tale of a 'Mongoose'

By Frank E. Sisson

What is a mongoose device?

A short case squib in the Keeton and Keeton *Torts* casebook (1971) informs the law student that: "Employee whose duty it was to place coin-operated piccolos in restaurant . . . was engaged in horseplay outside scope of employment in frightening customer outside restaurant with 'mongoose' device."

The reader gets the gist of the law (though arguably a 1L on page 17 of his torts book will suffer from haziness and misconstruction) but must undoubtedly panic as the professor approaches the case for fear that the godly command "state the case" will be uttered in his direction; he'll be forced to confess in utter embarrassment that in his limited life he has not been exposed to the understanding of mongoose devices.

It must be remembered that looking up a squib is second only to citing a law review article in class on the law student's hiss list. Thus, the reader is truly in a dilemma.

It seemed that an explanation of such a mysterious invention in the pages of the RECORD would be an altruistic gesture (though one might wonder how many future 1Ls subscribe to the RECORD); reading the RECORD is much farther down the hiss list.

A concerted 15 minutes research (nearing the mdr for a 3L) yielded the answer (to be found in *Lane v. Modern Music*, 244 S.C. 299, 136 S.E.2d 713 1964):

McCall and Powell worked for Modern Music, a coin-operated piccolo (i.e. jukebox) company. Their duties included collecting the machines' money and changing the machines' records. Mildred Lane, an insurance agent, was discussing business (over a sandwich and milkshake) with W. B. Lester (manager of Carter's Cafe) when Powell and McCall entered. Lester was asked if he needed any new records; Powell agreed to bring "White Christmas" on the next trip. Powell went back to the pickup truck and then returned to the door of the cafe, telling Lester: "I want to show you my snake killer." Lester,

being a curious soul, went outside and observed a cage two feet long, one foot high, half wire and half solid. On the cage were painted the words "Snake Killer," "Danger," and "Mongoose."

Powell tried to persuade Lester to step in front of the cage, but he "stepped over to one side of it." Powell then began beating on the box, and invited Lester to do the same. Ms. Lane, understandably interested, left the cafe and stood next to the other side of the box where she was able to see "a furry tail therein."

At that point Powell, finding his audience rather captivated,

beat on the box still more, then tripped a hidden mechanism thereby releasing a spring-propelled "mongoose" — described at trial by Lester as "some kind of an animal tail with a ball on the end of it." Ms. Lane colorlessly testified "that in trying to get away she stumbled and fell flat on her back, with resulting injuries."

(Powell's "trick mongoose" was shown only to Powell's "good friends who could take a joke.")

A lesson is to be learned from this endeavor regarding what is contained in a squib: the fact is that the facts aren't.

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Committee Airs Reforms, Criticisms

(Continued from Page 1)

by adding that committee discussion of such broad reforms would not be attempted for a while yet.

In the meantime, Chayes said, the committee was investigating several specific small steps in a variety of student-encouraged directions.

Specifically, Chayes said that the committee was planning to respond to the recent Law School Council poll (showing student support for smaller classes in the first year) by proposing a fifty-student limit on the size of constitutional and administrative law classes.

However, Chayes said that the committee, for the present, had decided against recommending reducing the size of first semester first year classes.

Chayes statement was the occasion for a rare burst of debate between committee members. Professor Duncan Kennedy sharply disagreed with the committee consensus that reducing second semester class size was an adequate initial response to the problem. "I think we have to break up the monolithic character of the first semester," Kennedy said, "and abolish all 140-student classes."

Chayes added that the committee proposal dealing only with the second semester should be viewed as merely a first step, which, if successful, "may make it more possible to reduce class size in the first semester."

But committee members indicated that this year they would be shifting their emphasis to improving the second and third years of the law school.

"Overall, the level of student commitment, intensity and preparation falls off pretty sharply after the first year," Chayes said, "and this is something that concerns us very much."

In attempting to improve the "educational impact and student experience" in the second and third years, Chayes said, the committee was considering reducing the "semi-required" second and third



Students and faculty in sparse attendance at Legal Education committee meeting.

year courses to three hour, one semester versions.

"This would make the student's schedule more flexible," Chayes said, "since less time would be sopped up by these courses." Chayes said the committee hopes the student might be able to use the extra time to experience a "progression of learning" rather than the "smorgasbord most students have now, where there's little difference between one sandwich and the next, or one pickle and another."

Chayes said the committee was also considering methods to maximize the clinical and writing programs, perhaps by offering more such work earlier in the student's experience.

To further increase flexibility, Chayes said, the committee was even flirting with the idea of changing the basic calendar. Emphasizing that such changes were still a

long way off, Chayes said possible options included a trimester, year-around calendar, or a two month break between semesters to allow students to work at jobs and faculty to do research.

Much of the criticism from students at the meeting focused on the grading system. Several students challenged what they called the school's overemphasis of one-day or four-hour exams, instead of more reflective or in-depth papers.

Faculty members of the committee partially agreed with the contention that such papers would be a better gauge of a student's ability, and perhaps a better learning tool, but noted that the major problem was faculty time.

"Reading student papers takes up an enormous amount of faculty time," Chayes said, "and we have to

(Continued on Page 16)



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The Sting

Professor Louis Loss gave students in this year's *Securities Regulation* course an exam which was nearly the same as one given four years ago. Twenty multiple choice questions were offered for solution, eighteen of which duplicated those on Professor Loss' 1972 exam. Many students had either worked out the answers to the questions or had the answers in their possession, perhaps passed down from older students. The curve in the class was clearly affected by this.

Many professors "alter the vehicle" — change the fact situation — for the presentation of *similar* exam issues. This is the case with most essay exams, particularly when a professor has taught for several years. Yet this is substantively different from giving the *same* exam, especially when that examination is a multiple choice test.

The Law School should not condone Professor Loss' laziness. To give students the option of taking a grade or receiving credit for the course is no solution to the basic problem. The grade may or may not be the result of a student's grasp of the subject. A mark of "credit" may be interpreted as a "C" or a barely passing grade. Some students had an unfair advantage (although none can be said to have "cheated"). What of the student who studied very hard for his "B", "B+", or "A"? Is it not worth more than the mark of someone who inadvertently knew the answers? What about the student who didn't know the subject, received a "D" and can now get a "Credit" on his or her transcript?

Admittedly, no solution to this situation is perfect. Students should not have to sit for a re-examination. Perhaps a grade of "Credit" should be given to all. The fact remains with the present "solution" that some students are still benefitted at the expense of others. All have lost out to some extent.

Student dissatisfaction with Professor Loss should be explored by the faculty. Those taking his *Corporations* class as well as those who took *Securities Regulation* should be queried. Is Professor Loss, from most reports once a very good teacher, resting on his laurels? How much time should a professor spend teaching and how much on his research? On visits to Washington, D.C.?

There are no clear answers to these problems. Perhaps each individual must decide for himself. The questions have been raised; now answers must be sought.

HARVARD LAW RECORD

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Fenno glanced up from the "Personals" section of the *Read Paper* just as the 3L strode purposefully into view.

"Hey I've got one here for you," Fenno called to the third-year student. "You're into mayonnaise, aren't you?"

The 3L stopped at Fenno's table and read the classified ad Fenno indicated intently enough to establish genuine interest.

"It doesn't look like I'll have time for the next few weeks," the 3L said, although Fenno could tell he had memorized the box number, just in case.

"Why not?" Fenno demanded. "What's occupying your time that could be more important than salad dressing?"

"Oh, I don't know. I've been thinking of taking some courses at the Free University."

"How many times can you take *Creative Frisbee Throwing* and still get something out of it?" Fenno asked. "Especially since they'll be watching you this year and you won't be able to walk off with the Frisbee?"

"This year's different," the 3L protested. "They're offering some very practical courses. Like I'm thinking of taking *Consumer Protection II: The Difference Between Grass and Oregano, and How to Tell It.*"

"I can see where that would come in handy," Fenno admitted. "What else are you thinking of taking?"

"Well, there's *Alternative Uses For Legal Training: Taking LSAT Tests for Undergraduates with More Money Than Brains*. Then there's the course offered by the Harvard Law Community Association: *Keeping Up With Your Non-Law Spouse: Re-Introduction to Newspaper Reading*. But that's only for first-year students."

"None of those really seem right for you," Fenno suggested tactfully. "Are they offering anything that you might be able to use?"

"Well, I was originally attracted to *Accounting II: Counting Everything But the Kitchen Sink in Earnings in Private Offerings*. But then I noticed that a required pre-requisite was *Criminal Process II: Applying for Parole*."

"I can see where that would put you off," Fenno said.

"It seems like the most interesting courses are only available to 1L's."

"Like what?"

"Well, they have *Preparing for the BSA: Justifying Your Existence Without Doing Anything Right*. They're only letting 1L's take that."

"It would be redundant for the rest of us," Fenno pointed out.

"The other course offered only to 1L's is *Preparing for the Law Review: Obscuring the Difference Between Tedium and Significance*."

"I'm afraid to ask if anyone's signed up for it."

"It's oversubscribed."

Letters to the Editor of the RECORD

Cohen on Unger: "Broad Horizons"

To the Editor:

Professor Roberto Unger is doing much to broaden our horizons, in part through his stimulating presentation of the ideas and experiences of other lands. I therefore find it ironic that James Feinerman should charge him with the narrowest Western ethnocentrism on the basis of his January 23 talk to our East Asian Legal Studies program. I believe that there has been a misunderstanding.

On the whole, Unger did not hold forth about three thousand years of Chinese legal history but, rather, addressed himself to the specific period when ancient China was passing from feudalism to imperial bureaucratic rule. See also his recent book *Law in Modern Society*, pp. 86-109.

Nor did I understand him to assert that there was nothing of value in China's legal tradition. What Unger did do was to contrast different forms of spirituality that the world has witnessed and state that, as a philosophical matter, he believes that the view that is implicit in the transcendent religions of Judaism, Christianity and Islam is superior to both the ethical worldliness and other worldly spiritualism that have marked the culture of China and other societies.

The disagreement between Feinerman and Unger also reflects the difference in perspective between the Sinologist-historian, who sees the enormous richness and detail of China's long and complex evolution, and the philosopher-social scientist, who strives for generalizations that will encapsulate the Chinese experience and integrate it into that of the rest of mankind.

Both perspectives are needed. Their continuing interaction brings academic progress.

Jerome A. Cohen
Director, East Asian Legal Studies
Cambridge, Massachusetts

Icy Conservation Cools "Warm Feeling Inside"

To the Editor:

I am becoming quite fond of Harvard Law School, and, in fact, of the entire University. One cannot help but have a warm feeling inside when one considers the commendable efforts on the part of school administrators to try to conserve energy. What other University has demonstrated its willingness to sacrifice its students for the sake of this compelling national policy?

Take, for instance, the recently ended examination period. Could any feeling but pride reside within the students who took Prof. Nesson's Evidence exam in Langdell

South as the temperature plummeted to levels heretofore unknown at the facilities of any American university with the possible exception of a football stadium in Ann Arbor, Michigan?

Of course, cynics have suggested that the frosty temperatures during the Evidence exam were part of a scheme on the part of Prof. Nesson to limit the amount written by students.

While Prof. Nesson may have been an unintended third-party beneficiary of the decision to keep university rooms at their crisp temperature, it should be clear that this policy is part of a larger patriotic endeavor on the part of school officials to conserve our country's scarce energy resources. Thus, we should all be proud that the lights often are not turned on in the Indoor Athletic Building merely for the sake of about 60 or 70 students who are trying to see well enough to play basketball.

Similarly, the complaints of those who lament that they had to pay an \$80 athletic fee to enable them to get into Harvard's indoor tennis courts at an additional cost of \$8 per hour only to find that that white stuff next to the court is actually snow, should also be summarily dismissed. One should have little difficulty in seeing the direct benefits to our nation which result from Harvard's efforts to reduce lavish consumption of energy.

The Harvard community should feel honored to be associated with people who, except for these few loathsome critics, ask not what their law school can do for them, but rather what they can do for their country.

John Donohue, 2L
Cambridge, Massachusetts

Pacific Yalie Making Waves

To the Editor:

While I have the highest respect for "Agile George Halas," having been a fan of the once-mighty Chicago Bears since childhood, his name is not the correct answer to your 12/12/75 Sports Quiz question: "Who holds the NFL record for the longest return of a recovered fumble?" Jack Tatum of the Oakland Raiders now holds that distinction, for on September 24, 1972, he returned a recovered fumble 104 yards for a touchdown against the Green Bay Packers. To be sure, the play was disputed, and the replay suggested that Tatum's run-back should not have been allowed, but the play — and his record — stand nonetheless.

Actually, I suppose I should not be surprised that the answer listed was behind the times. That is hardly a first for that mastodonic institution in Cambridge. Indeed, even the RECORD can be a mite slow — that

12/12/75 issue finally arrived on our sunny shores today, January 30, 1976.

Richard R. Clifton
Yale Law School, '75
Honolulu, Hawaii 96813

Ed. Note: An excellent factual analysis. (And they say you guys are all theory!!)

Fast Bear or Quiz Error?

To the Editor:

For the record, THE RECORD erred on a record. The Sports Quiz in the 12/12/75 issue gave credit to George Halas for the longest return of a recovered fumble. As a Green Bay Packer fan, I remember only too well the Oakland Raider's Jack Tatum returning a MacArthur Lane fumble for 104 yards and a touchdown against the Pack, September 24, 1972. The call was questionable, but the record and the Packer defeat still stand.

Dennis W. Rocheleau, '67
Fairfield, Connecticut

The Sports Quiz triumvirate replies: "The call was questionable, but our error is not. Thanks for your interest."

Law Notes

The informal Root Room series continues next week with talks by James D. St. Clair (Tuesday, Feb. 17 at 4:30 p.m.; coffee provided) and John M. Doar, former special counsel to the House Judiciary Committee (Wednesday, Feb. 18 at 4 p.m.). The Root Room is located off the Langdell Hall Library South Reading Room.

* * * * *

Joseph L. Rauh, Jr. of Washington, D.C. will give the Francis Biddle Memorial Lecture at 8 p.m. on Wednesday, Feb. 25 in the Ames Courtroom in Austin Hall. The lecture topic will be "Felix Frankfurter: Civil Libertarian." A reception will follow in the J.C. Gray Room, which will also be the site of an informal discussion at 2 p.m. the following day (Thursday, Feb. 26; refreshments provided).

* * * * *

The Harvard Law Community Association is sponsoring a meeting on Wednesday, Feb. 18 at which two members of the Rape Crisis Center of Boston will discuss self-protection. The meeting is *not* for women only, and begins at 8 p.m. in 335 Pound. (Non-members admission is 50 cents.)

* * * * *

The East Asian Law Speakers Forum will present the following guest speakers in the next two weeks: today (Feb. 13), Professor Michael Dalbe — "The Tang Dynasty;" Thursday (Feb. 19), Jay Scarborough (Cornell 2L Vietnam specialist) — "My Six Months in North Vietnam;" Friday (Feb. 20),

(Continued on Page 12)

Law Notes

(Continued from Page 11)

Professor John Langlois — "The Sung Dynasty;" Thursday (Feb. 26), **Professor Shinya Murase** (Rikkyo Law Faculty, Tokyo) — "The Human Rights of Political Refugees in Japan;" Friday (Feb. 27), **Professor Joseph Fletcher** — "The Ming Dynasty." All talks begin at 1:10 (bag lunch at 12:45) in Pound 419.

* * * * *

Oscar Handlin, Carl Pforzheimer University Professor, will speak on "Reflections on the Jewish Experience in America" at 8:45 p.m., February 13, at PBH. (Hillel Sabbath Table Talk Series.)

* * * * *

Professor Saadia Amiel of the Long Range Planning Office of the Ministry of Defense in Israel, will speak on "The Strategy of the Big Powers in the Middle East" at 4 p.m., February 15, at PBH. (Hillel Forum Series.)

Cryptic Law

The following excerpt from a not-so-dated opinion is in "judicial code." Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

Cuyqpjcc hspdc blfj ef hvd fp yqvic ipet-
pyczvfcb yeiipqpd et zcdfvlzvtf qpivfept, vtb
zcyvez, isvtoc zcipzbd, cfi., hvd ctovocb et
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SPORTS QUIZ

By Katz, Noto, & Zagrans

1. Many Olympic skating champions have gone on to careers in show business. What former champion went on to star in the memorable movie classic *Snow White and the Three Stooges*?
2. Which of the following countries won the most total medals in the 1968 Winter games in Grenoble:
France, Russia, Norway, Czechoslovakia, Netherlands
3. The women's slalom in 1968 was won by the sister of the 1964 winner in the same event. Name the sisters. (One-third credit for naming their country.)
4. Which name does not belong, and why:
Mary Meyers, Jennifer Fish, Anne Henning, Diane Holum
5. This year's winter Olympics were originally scheduled for Denver, who was the already well-known political activist that helped lead the opposition to holding the games in Colorado?
6. When and where was the last winter Olympics to be held in the US of A?
7. Which country has won the most gold medals in Olympic hockey competition?
8. Name the Dutch speedskater who participated in the Superstars competition.

Sports Answers

1. Carol Heiss.
 2. Norway (they also won the most gold medals).
 3. Kristine and Marielle Goitschel of France, in 1964 and 1968 respectively.
 4. Anne Henning does not belong. She won a gold medal in speed skating in 1972. The other three tied for the silver medal in 1968 in the 500 meter event.
 5. Sam Brown, student leader for McCarthy and now state treasurer.
 6. 1960, Squaw Valley.
 7. Canada, with six golds. The U.S.S.R. has won four golds.
 8. Ard Schenk.
- Instead of a grading scale, we are performing a public service to our readers this week. To test whether you have been overexposed to sports in the atmosphere, administer this simple test in the privacy of your home: Name the coach of the U.S. luge team. (If you knew that it was Piotr Rogowski, you have obviously been ignoring work, family and friends. You have become a SPORTS ADDICT. Turn yourself in for treatment, for the sake of yourself and your loved ones.) We now return you to your regularly scheduled sports broadcast.

THE RACE

By Nancy Bowker, 1L

"You are all here because you run well,"
They said at the very beginning.

Then we were given numbers,
and told to compete hard against the others,
To beat them, and to win the race.

One day I stopped running and
took a look around at all the things I was missing.
Why! there were snow-covered trees,
and smiling faces, and warm hearts.

When I stopped still, I made a full turn 'round.
Now I am running in my own race,
where there is no winner or loser
Just racing because of the joy there is in it —

to see if I can capture & train the words of others
to make strong or graceful movements & take pride in them
to feel, to touch, to love.

When the sun rises on the first day of summer
There will be a lot of numerical people standing around waiting for the outcomes
of the race.

I will still be running, having learned to take joy from motion & change.

Earthquake Hits 3L's Former Home

By Philip Heagney

The two major earthquakes and multiple aftershocks which devastated Guatemala last week have had a special impact on John F. McKenzie, 3L, who lived and worked as a Peace Corps volunteer in rural areas of the country for three years before coming to law school.

After joining the Peace Corps in 1969, McKenzie went to rural Guatemala to assist with the development of agricultural cooperatives. He worked primarily in areas around the town of Aguacatán in the highlands, a section of the mountainous country that was particularly hard-hit by last week's earthquakes.

McKenzie said that because

Guatemala is so mountainous and because communication lines into many of the rural areas are not well developed, it is unlikely that anyone has an accurate estimate of the extent of the devastation the multiple quakes and tremors have brought to the country. The most recent reports estimate that as many as 20,000 persons may have been killed and perhaps a quarter of a million more left homeless in what appears to be the worst disaster in the recorded history of Central America.

Though he has been able to gather little more information to date than has been reported in North American newspapers, McKenzie said that he has been in contact with several organizations that are trying to bring relief to Guatemala. He asked that interested members of the Law School community send contributions to the Care/Guatemala Earthquake Fund (660 1st Ave., NY, NY 10016), the American Red Cross (C.A. Disaster Relief Fund, 99 Brookline Ave., Boston), and the Catholic Relief Services (c/o: Maryknoll Fathers, 50 Dunster Rd., Brook-

line).

McKenzie added that he would provide information to and channel donations for anyone who called him at 495-4425 or 926-5339. He said that he was also exploring arrangements for doing volunteer work in Guatemala and should soon have some information about available programs.

Wolfman Named HLS Professor

Harvard University has approved the appointment of Bernard Wolfman as Fessenden Professor of Law. His tenure will commence on July 1, 1976.

Wolfman was formerly the Dean of the University of Pennsylvania Law School, serving in that post from 1970 to 1975. At Pennsylvania he also was the Kenneth W. Gemmell Professor of Tax Law and Tax Policy.

During the 1964-1965 academic year, Wolfman was a Visiting Professor at Harvard Law School.

A graduate of Pennsylvania in 1946 and of its law school, Wolfman was Note Editor of the University of Pennsylvania Law Review. He is presently a Fellow at the Center for Advanced Study in the Behavioral Sciences and was in private practice in Philadelphia for a number of years.

The new professor serves on the Editorial Board (Law Division) of Little, Brown and Company and the Editorial Advising Board of the Journal of Corporate Taxation.

Wolfman has been the General Counsel of the American Association of University Professors and a Consultant to the American Law Institute Income Tax Project.

He has also been a Visiting Professor at Stanford Law School, in 1966.

David F. Cavers was previously the Fessenden Professor of Law and now holds that chair in an *emeritus* position.

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Many Candidates Seek Important Alumni Posts

(Continued from Page 6)

'65, Brooklyn, New York, and Washington, D.C., Member of U.S. Congress.

Frank Sidney Jones '50, M.B.A. '57, Cambridge, Massachusetts, Ford Professor of Urban Affairs, M.I.T.

Christopher H. Phillips '43 ('47), Washington, D.C. President, National Council for U.S.-China Trade.

Joseph Pulitzer, Jr. '36, St. Louis, Missouri, Editor and Publisher, St. Louis Post-Dispatch.

Richard S. Salant '35, LL.B. '38, New Canaan, Connecticut, President, CBS News.

Robert C. Seamans, Jr. '40 ('39), Washington, D.C. Administrator, Energy Research and Development Administration (former Overseer).

Lewis Thomas, M.D. '37, New York, President and chief executive officer, Memorial Sloan-Kettering Cancer Center.

Nominated by petition for Overseer is:

Sharlene P. Hirsch, Ed.M. '66, Ed.D. '69, New York, National Director, Executive High School Internships.

Nominated by the committee for AHA Director are:

Gordon Abbott, Jr. '50, Manchester, Massachusetts, Conservation/preservation; Director, Trustees of Reservations.

Katharine M. Bullitt '46, Seattle, Washington, Former Radcliffe Trustee.

Thomas Ehrlich '56, LL.B. '59, Palo Alto, California, Dean and

Professor of Law, Stanford University.

Rosalind E. Gorin '66, Ed.M. '69, Boston, Real estate; President and principal, H.N. Gorin and Leeder Management Company.

Gordon Gund '61, Princeton, New Jersey, Investments; Partner, Gunwyn Ventures.

Diana Hartridge McSherry '65, Houston, Texas, Medical physics; Executive Vice President, Digisonics.

Stanley Miller '52, M.B.A. '54, Newton, Massachusetts, Managing Director of private holding company.

Roderic B. Park '53, Orinda, California, Professor of Botany, Provost and Dean of the College of Letters and Science, University of California at Berkeley.

David E. Place '43, J.D. '48, Cohasset, Massachusetts, Lawyer; Gaston Snow & Ely Bartlett.

Harold Scott '57, Orange, New Jersey, Director, actor, instructor in theater arts.

Donald M. D. Thurber '40, Grosse Pointe, Michigan, President, Public Relations Counselors, Inc.

Sheila Tobias '57, Columbia, Connecticut, Associate Provost, Wesleyan University.

Approximately 135,000 University degree-holders are eligible to vote by secret mail ballot during the period April 15-June 11. Results will be announced on Commencement Day, June 17.

Author Discusses Limitations Placed On French Court

(Continued from Page 4)

continued development. He said the chief problem is the *conseil's* lack of power to review legislation on its own motion. And once the law is promulgated, no one has power to refer it for review.

Errera noted that this limitation is aggravated by the fact that laws are often not fully understood until in effect for a time.

He said, however, that the ordinary administrative courts will be inclined to interpret such laws as consistent with the constitution. Thus a serious problem can only arise where a law which is unconstitutional on its face has not been referred to the *conseil constitutionnel* before being promulgated.

It is likely, Errera said, that the formal function of the court has not fully developed. For example, there was an attempt in 1975 to give the court the power to review laws on its own motion. This proposal was soundly rejected by both the Left and the Right. Instead, Parliament voted to allow a specified number of additional representatives to refer a law to the *conseil*.

The inevitable problem of the political involvement of any court involved with constitutional review is accentuated in the French system, Errera added, because the court must often review the law at the height of the political fervor which prompted it; allowing an administrative court to refer to matters to the *conseil* in a concrete context might partially alleviate this problem.

According to Errera one of the best aspects of the *conseil constitutionnel* is that its members are not typically from any particular profession. Rather, judges, scholars, former politicians and others are all to be found there. This, he said, gives the court a breadth of experience and outlook not found on courts composed entirely of members of the bar.

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Desire to Win Can Distort Truth

(Continued from Page 3)

his statements to guard against over-interpretation, is likely to be almost useless to either side. Scientists with strong biases (known in advance to be most likely to suit the interests of the client) are much more likely to be sought out, if they have the requisite respectability and qualifications.

There are incentives to the partisan/expert invited to participate: it presents an opportunity to advance one's opinions, and to apply one's training in the pursuit of a cause perceived as just; and there are the fees to consider. A highly qualified expert consultant/witness may be paid as much as \$400-500 per day.

Decisions made in the absence of relevant scientific advice might be uninformed, and therefore unjust; but it is still far from clear that the presence of experts in the court or hearing room has increased the likelihood of a fair or speedy outcome. The involvement of scientists in partisan roles inevitably makes the process more complex, the proceedings more lengthy, and the outcome less certain and less obviously "right." This is true whether scientific testimony is complete, objective, and balanced, or is polarized into vastly different expert views which could not possibly both (or all) be correct. Expert testimony serves largely to add scientific uncertainties and complexities to the many other unknowns which the jury, hearing board, or legislature must ponder and assign weights to in reaching a decision.

How much credence is given to an expert's opinions may depend more on his demeanor and the length of his list of academic and professional qualifications than on the merits of his scientific views. As it is relatively rare for the most distinguished scientists to donate their time or talents *pro bono publico*, access to top-flight scientific advice may be another "unequalizer" in the adversary process.

The growing demand for expert witnesses and scientist/

advocates in legal adversary proceedings has also shown a potential to erode the integrity of science. The expert who abandons the detached, impartial search for truth in order to present slanted interpretations and selected evidence on behalf of a partisan social goal undermines his own credibility, and to a degree, that of all scientists. The increasing dependence of legal decisions on scientific evidence has created a great incentive for "defensive" research — undertaken by parties with an interest in a pending policy decision, not to find out what the truth is, but to buttress a previously taken point of view.

Such work is often poorly done, and even if it is relatively sound, lacks credibility with those who did not pay for it. The great interest of the mass media and the public in policy-related scientific controversies insures wide publicity to diverse expert views, with a concomitant danger that the most widely reported interpretations, or the most popular ones, may come to be seen as the ones with the greatest scientific merit, though there is no valid basis for such a correlation.

Legitimate differences of scientific opinion may be accentuated and inflamed by differing social value judgments on the part of experts, to the point that the partisans lose sight of the common goal of all scientists — the illumination of the truth. The combined impact of these forces may be a loss of credibility for scientists and their institutions, and a lessening influence of scientific information in social policy decisions.

What can be done to avoid or mitigate these problems? It would be foolish to suggest that the legal process should try to get along without expert advice; some role for scientists in legal decisions is imperative. But the impact of expert participation should be to further the search for truth, not frustrate it. For that to happen, some changes might be necessary in the ways

experts are chosen, and the manner in which their evidence is presented.

If the selection of expert consultants were the responsibility of the court or the legal or political entity charged with making the decision, rather than a matter for each party to a contest to undertake on his own, the experts selected could be chosen for the breadth and balance of their views, rather than for their biases.

Choices might be made from among a list of nominees submitted by professional societies or scientific groups containing a cross-section of expert opinions.⁶ Fees would be paid by the court. The testimony of experts might be presented according to scientific, rather than legal or partisan, criteria of relevance and competence; and cross-examination, or questioning, might be conducted by other scientists (perhaps by consultants retained by the partisan parties).⁷

In these ways, misleading expert testimony could be sharply curtailed, and the legal process could benefit from the vigorous interaction of scientific peers demanding responsibility of their professional colleagues. Such reforms would enable expert testimony to serve the search for truth in the legal context to an extent not possible under the present system.

If, however, Judge Frankel's assessment is correct,⁸ and the goal of legal adversary proceedings is not truth but victory, the incentives to reform will remain inadequate, and the problems described above will

(Continued on Page 16)

Solution to "Cryptic Law"

Employee whose duty it was to place coin-operated piccolos in restaurant location, and repair, change records, etc., was engaged in horseplay outside scope of employment in frightening customer outside restaurant with "mongoose" device.
Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E.2d 713 (1964) squibbed in Keeton & Keeton, *Torts* (1971), at 17. See page 8 of the Record for the answer to the proverbial question: "What is a mongoose device?"

Scientists Use Controversial

(Continued from Page 15)

be with both science and society for some time to come.

References

1. Marvin E. Frankel, "The Search for Truth: An Umpireal View," *University of Pennsylvania Law Review* 123(5): 1031-1059, May 1975.
2. Edward E. David, Jr., "One-armed Scientists?," (Editorial), *Science* 189: 679, 29 August 1975.
3. Frankel, *ibid.*, p. 1048.
4. "The Expert Witness," *Environmental Science and Technology* 9(7): 620-621, July, 1975.
5. *Ibid.*; quoting Jerome Heckman of Keller and Heckman, Washington, D.C.
6. This idea has been suggested many times. See David R. Patterson, "What Can Science Do for the Law?," *Journal of the Forensic Science Society* 15(1): 3-6, 1975.
7. Patterson, *ibid.*, p. 6.
8. Frankel, *op. cit.*

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He welcomes reader response to this article.

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Group Ponders 'Blind' Grading, Smaller Classes

(Continued from Page 9)

ask ourselves whether that is the best use of that resource."

Other students objected to the current policy allowing teachers to alter student grades after correcting the exams. "It's become clear to me," said one student, "that the exam grades aren't a fair representation of our abilities, but it seems even less fair to allow professors to change grades because of vague personal feelings."

Chayes said that a survey of faculty he conducted showed that less than half of the faculty ever alter a grade, and that those who do claim they change only a handful which they feel are below what the student, with classroom participation, indicated he deserved.

But a student objected that classroom participation is an arbitrary and discriminatory factor for altering grades, especially because most students have complex reasons for why, how and how much they participate. Those reasons, the student said, should not be a factor in his grade.

Chayes indicated that the committee was vacillating between two options. First, the committee might recommend that faculty members altering grades would have to make a written record of the grades before and after alteration which would be available to the student. Or, the committee may recommend banning the grade altering practice and instituting absolutely blind grading system.

Exam Causes HLS Protest

(Continued from Page 7)

tacted, it is the usual practice for faculty members to look at their old exams and speak to each other about their tests. However, none could recall a case in which an earlier exam was given again.

According to Vice Dean William L. Bruce, there is "no official University position" on examinations. What type and form of exam to administer is "up to the professor." Bruce said that he felt that the "best resolution under the circumstances" had been achieved.

The Vice Dean mentioned that he had heard stories in his student days about Professor Edmund M. Morgan who had for many years given the same questions but had eventually stopped "when the students caught on."

Many students also were chagrined this semester when Loss "forgot about" a Corporations class and neglected to show up.

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