

HARVARD LAW RECORD

America's Oldest Law School Newspaper

© 1977 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

VOL. 65, NO. 9

DECEMBER 9, 1977

TWENTY CENTS

Judge Says Test Lacks Redeeming Social Value

By Larry Vilardo

The obscenity test used by the United States Supreme Court "ought only to be advanced by depraved, mentally deficient, mind-warped queers," according to the Chief Justice of the Utah Supreme Court.

In the majority opinion handed down on October 28 in *Salt Lake City v. Piepenburg*, Chief Justice A. H. Ellett found constitutional a Salt Lake City ordinance that prohibits exhibition of movies which depict obscene sexual conduct. The ordinance defines as obscene a performance which "in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse . . ."

"A more sickening, disgusting, depraved showing cannot be imagined," Ellett wrote.

"However, certain justices of the Supreme Court of the United States have said that before a matter can be held to be obscene it must be . . . 'when taken as a whole lacks serious literary, artistic, political or scientific value' " (sic).

Justice Ellett takes issue with this obscenity doctrine. "Some state judges," the opinion continues, "acting the part of sycophants, echo that doctrine." Ellett called for the resignation or impeachment of such judges.

"Judges who seek to find technical excuses to permit such pictures to be shown under the pretense of finding some intrinsic value to it are reminiscent of a dog that returns to his vomit in search of some morsel in that filth which may

(Continued on Page 13)

HLS Lecturer Presses Appeal Of Media Case

By Tammy Jacobs

By all accounts, William B. Turner, '63, a lecturer on law and resident fellow at the Center for Criminal Justice, had a rugged day on Tuesday, November 19.

That was the day he argued the case of *Thomas L. Houchins, Sheriff of Alameda County, Calif., v KQED, Inc. et al.* before the Supreme Court.

The case involves questions of the press's access to the Alameda County jail and Turner argued for the radio station and the Alameda and Oakland branches of the NAACP.

Turner has been working with the case since it was first brought in U.S. District Court in June, 1975, when Turner was working in California as an attorney for the NAACP Legal Defense Fund.

KQED, in bringing the suit, alleged that the sheriff had denied the press access to the jail, following the suicide of an inmate. After the suit was filed, the jail was opened to the public for bi-monthly tours, and prisoners could receive mail, telephone calls, and visits during visiting hours.

The District Court granted a preliminary injunction requiring the sheriff to admit reporters at "reasonable times." The Court of Appeals for the Ninth Circuit affirmed.

The order has been stayed for over two years pending the appeals process.

(Continued on Page 7)



Aaron E. Tauber, D. Russell Morgan, and Steven Karel didn't win their first round in the Law School Trivia Contest, but why should a trivial thing like that bother them? Finals for the contest will be held Thursday, Dec. 15 at 8 p.m. in the Ames Courtroom. Trivia-loving audience is welcome.

Dorm Council Changes Room Lottery System

By Gary Betow

Next year's 1L's should find it a little easier to get a room in the law school dorms as a result of action taken at the Nov. 28 meeting of the Dorm Council. At the same time, there will be fewer total spaces available for 2L's and 3L's next year.

In a related change, the room draw procedure will follow a new priority system, radically affecting the balance between 2L's and 3L's in the dorms. The plan will virtually guarantee that any 2L or 3L who has never lived in the dorms, or has lived there only one year, will be offered a room.

Any student who has already lived in the dorms for two years will be placed in the lowest priority category and will not be offered a room until all other applicants have picked among the 2L and 3L rooms. The present system, now superseded, allowed equal priority to 2L's and 3L's regardless of how many years they had lived in the dorm.

The Dorm Council voted to recommend that only 40 percent of the total rooms available next year be allocated to 2L's, 3L's, and special and graduate students. Members of these groups make up 45 percent of dorm occupancy this year. Since there are 553 dorm rooms, the five percent decrease translates into 27 fewer rooms available to these categories of applicants.

The recommendation would also enlarge the percentage of 1L's in the dorms from 41 percent to 46 percent of total occupancy, or an increase of 27 rooms for 1L's. The percentage of rooms allotted to international students is not affected by the plan and would remain at 14 percent.

Several persons appeared at the Council meeting to urge that only 1L's be allowed to live in the dormitories. Cindy Hora, 1L, pointed out that most incoming 1L's are not familiar with the Cambridge housing market and have to take time off from work in the middle of the summer to locate an apartment after they are shut out by the room draw. She argued that those who are living in the dorms now are in a better position to find apartments for next year.

Dorm Council President Kathi Kowalski said the administration would not accept a recommendation to make the dorms available to 1L's only. Kowalski said it is generally agreed that it is better to have upperclassmen living near the 1L's, partially in order to advise and reassure them.

Hora replied, "Who's going to reassure someone like me who is forced to live off-campus? How reassured do you think I felt when the housing office told me I'd have to come up here during the middle of summer if I wanted to apply for an apartment, or else take my chances after classes started?"

According to a report by Carole Costa, director of the dormitory office, to Vice Dean William L. Bruce dated Oct. 27, 1977, approximately 57 percent of the current 1L's who applied for housing received it. 405 incoming 1L's applied for 229 available spaces.

In the 2L and 3L dormitory lottery held last March, approximately 69 percent of the applicants received rooms. There were 355 applicants for 245 available spaces. Costa recommended that a greater percentage of rooms be turned over to first-year students so that the ratio of available rooms to number

of applicants will compare closely to 2L and 3L chances of getting a room.

In theory, this reallocation of dorm rooms would give 1L's, 2L's, and 3L's each a 62 percent chance of receiving a dorm room. However, since the total number of rooms for 2L's and 3L's is allocated together in one pool, but the new priority system operates to give all 2L's a room before 3L's, the new system may produce a ratio of 62 percent successful 1L applications, 100 percent successful 2L applications, and less than 25 percent successful 3L applications.

The dormitory office rejected a high percentage of 1L's seeking rooms this past year because a larger than usual number applied. The room draw committee proposal to limit upperclass spaces to 40 percent was adopted by the Dorm Council in an effort to alleviate part of this inequality. The Council voted down by nine to 13 an amendment from the floor to limit the number of upperclassmen even further, to 25 percent.

Under an aspect of the room draw plan which will remain as it has been in the past, some 50 students will receive special housing preferences because they are resident assistants, dorm council representatives and officers, athletic commissioners, or handicapped students. Therefore, the proposal for limiting upperclassmen to 25% would have left as few as 90 total rooms available for 2L's and 3L's not having special priority.

As a further response to the 1L housing situation, the members agreed to send representatives to the University housing office to try to initiate procedures which would make that office more responsive to requests from 1L's who need assistance in locating apartments.

The Council adopted a recommendation concerning released rooms that will also benefit next year's 1L's. According

(Continued on Page 8)

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$2.80 semester, \$5.60 year mailed; \$8.00 year mailed outside U.S.; students \$3.00 year distributed at the Law School. Individual copies including back issues: 20 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1977 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

Andrew Young Discusses Mideast, South Africa, Panama, and United Nations

By Larry Zelenak

"It's hard for the average politician or bureaucrat to understand Sadat's visit to Israel," declared U.S. Ambassador to the United Nations Andrew Young. "It takes awhile to get used to people acting on their convictions."

Young made that remark in the course of an hour-long question-and-answer session sponsored by the Harvard Institute of Politics and the Harvard Radcliffe Black Students Association Tuesday at the Harvard Science Center. Topics covered included South Africa, the Panama Canal treaty, the role of the United States in the United Nations, the problems and accomplishments of the Carter administration, and the situation in the Mideast.

The specter of hostility between Egypt and the rest of the Arab world bothers Young less than it does many other observers. "I think the other Arabs have nowhere to go," he said. "They can't make war without Egypt. They've got to come along eventually."

Despite Sadat's initiative, Young feels any lasting peace agreement still requires the participation of the United States and the Soviet Union. He explained, "Precisely because Sadat has stepped up the pace, he needs America's help all the more. And including Russia as much as possible is in everyone's interest. The peace will be subtly undermined unless you get them committed to the process and give them a stake in it."

When asked if he was personally satisfied with this country's response against South Africa to the death of Stephen Biko, Young "confessed" that he was. He pointed out that the problems in South Africa are long-term and certainly will not be solved in the next few years.

"We shouldn't get self-righteous about South Africa," he emphasized. "A nation that experienced Attica a few years

ago doesn't have any right to be self-righteous. Emotional reactions don't help our policies or the interests of South African blacks. We've put most of our energy into Namibia and Rhodesia, feeling if we can get majority rule there first it'll be easier in South Africa."

"The other Arabs have nowhere to go. They can't make war without Egypt."

In line with this policy of moderation, Young does not favor government pressure on American corporations to divest their holdings in South Africa. He thought it was simply not realistic to expect them to do so: "Did you ever hear of anyone picking up one or two billion dollars in investments and just moving it? They'd just work out some sort of paper change, like selling through a foreign subsidiary. Nothing would change except that a lot of people wouldn't have to feel guilty. And I'd like America to feel guilty because that guilt is our best lever for change."

Young believes the U.S. really has no choice about ratifying the Panama Canal treaty. In fact, he says he refuses to consider the possibility the treaty won't be ratified, because the effect of a failure to ratify on America's credibility with the Third World would be disastrous.

As Young sees it, the question of the Canal treaty is inextricably bound up with the question of the effectiveness of the U.S. in the United Nations. The U.N., he explained, operates on the basis of moral credibility, a commodity this country has lacked in the wake of America's operations in Southeast Asia and Latin America.

"This administration has really turned things around, though," Young opined. "President Carter wants to restore our credibility in the U.N. For the first time in I don't know how long, we are able to count on Latin American votes for our U.N. resolutions." He made it clear that all that would change if the Senate fails to ratify the treaty.

The fact that the United States has had nine "permanent" representatives to the United Nations in the last ten years is evidence of this country's disregard of the U.N. "It's almost impossible to get to know enough about that organization in one year to make it work for you, no matter how brilliant you are," Young stated. But he emphasized that the Carter administration intends to work on eliminating the effects of that neglect.

Asked how he felt about having to reconcile his personal moral positions with his job of representing a nation "not morally conscious," Young replied that he did not agree with the questioner's assumption that this country lacks a sense of morality.

"When I look at the people who put us in power," Young mused, "I see that many of them came out of movements that were very morally conscious — the Vietnam protests and the civil rights movement, for example. It was easier being out in the streets protesting. Now that we are the government, we've got no one to fuss with."

Young left his audience with the observation that the last time he was at Harvard the students seemed to have segregated themselves into foreign students, blacks, northern whites, southern whites, and so on. "You're paying so much here to learn about things you ought to learn something about people too," he remarked. "If I had to make an A and stick to the books or make a B and get to know some folk, I'd say you're a lot better off with B's and people."

Public Interest Law Practice Full of Conflicts and Rewards

By Terry Keeney

Public interest and legal services practice pose a completely different array of challenges and frustrations than traditional private practice, a panel of past and present public interest lawyers said Monday.

The panelists, Law School professors Derrick Bell and Elizabeth Bartholet, and Brian Olmstead, an attorney with the Greater Boston Legal Services, emphasized that the rewards of practice in what they termed "law reform" outweighed the lack of financial reward. But they noted that such public interest practice, especially in such public interest agencies as Legal Services Corporation pose ethical conflicts between the interests of the client and the agency and may not have a substantial impact on social issues.

To Olmstead, a career in public interest has enabled him to lead a comfortable life at a \$21,000 annual salary. "I get something else though," he said, in an impassioned address to the crowd composed mostly of 1L's. "I get my conscience. With all the frustrations it's still worth it."

Olmstead, who represented the tenant in the landmark case *Edwards v. Habib* which held retaliatory eviction unconstitutional, urged students to consider legal services and other public interest careers immediately after graduation. "Beware of the tendency of so many people who say, 'I'll do it later.' Take the gamble now," he urged.

Bartholet, former attorney with the New York Legal Services Corporation and the NAACP Legal Defense Fund, tried to dispel four widely-held myths about public interest practice. Those myths are: 1) that there are no public interest jobs available; 2) that public interest jobs are a dead end for a career; 3) that private law firms provide the only good training grounds for

young lawyers; and 4) that public interest jobs involve a limited legal subject matter.

"There are hundreds of what I would call public interest organizations," she said. The problem facing HLS students is finding those jobs. "What is thrown at you are these hundreds of private law firms who come here to interview you."



Brian Olmstead

She noted that public interest law is not a "dead end" for a lawyer seeking to move from public interest into other practice.

Bartholet said the major "non-myth" of legal services was the low salaries, but legal services work is "at least as well-paying as teaching at Harvard Law School."

What Bartholet liked most about legal services was the "game of litigation" along with the long-range goal that some good would result from that litigation. "It's nice to have a real enemy to fight, and not just another side in which it doesn't matter who wins," she said.

Bell warned that public interest law poses new ethical dilemmas

and may not effect as widespread social reform as many lawyers would like to believe. Based on his experience as a civil rights lawyer for the NAACP, Bell noted that clients who cannot pay for legal services often rely completely on the judgment of the legal services lawyer. The lawyer, in return, tends to think less about the interests of the client.

"You have a lawyer who may be dedicated but who has very little concern that the client's rights need to be protected," said Bell. The client often thinks that since the lawyer has volunteered his or her time, the lawyer must be right."

The interests of legal services organizations and the actual clients often conflict, he said. The legal services organization often has a serious stake in the litigation: fund-raising, competing with other organizations or establishing a legal precedent.

"The bigger the case, the more likelihood the clients are told, 'Maybe you want to go all the way,'" Bell said. He cited the problems experienced by the ACLU in Illinois, which has recently been asked to represent a neo-Nazi group seeking to organize and demonstrate in suburban Chicago. Since accepting the client the ACLU has had many members resign.

Bell cautioned public interest lawyers not to rush to take credit for social reform that results from their litigation, and not to expect such reform to result automatically. Although *Brown v. Board of Education* engineered the demise of dual system school segregation, Bell argued that segregation would have collapsed anyway.

"The only time social change really happens is when the structure you are attacking is virtually ready to topple," he said.

Public interest lawyers cannot "ride off on their white horse," said Bell, but must rely on client contact, especially with leaders of the community in suits like the desegregation cases he handled. "There was clearly not enough community participation in the policy process," he said.

Proposed Criminal Code Blasted As Repressive

By Bill Ross

A Senate bill to re-codify criminal law is a civil liberties nightmare, Visiting Prof. Carole Goldberg and Frank Wilkinson, executive director of the National Committee Against Repressive Legislation (NCARL), told students here on Tuesday night.

The legislation, Senate Bill 1437, is largely a reincarnation of Senate Bill 1, the legislation that died in the last session of Congress after civil libertarians vehemently opposed it, according to Wilkinson. "They ought to have changed the name to Senate Bill 1984," he said.

"S. 1437 is fraught with serious omissions, uncertainties, deferrals, lost opportunities and reductions in civil liberties," according to Goldberg.

Goldberg and Wilkinson blasted Sen. Edward Kennedy, D-Mass, and Atty. Gen. Griffin Bell for keeping the legislation alive. "The ball has been carried entirely by Kennedy and Bell," Wilkinson said. "This thing would be dead tomorrow if Kennedy said 'I was wrong.'"

According to Goldberg, "it is possible that Kennedy wants to shed his image as a liberal and appeal to a national constituency on the law and order issue." She said that he previously justified his support for the proposed legislation on the grounds that it was necessary to compromise with Sen. John McClellan, D-Miss. But although McClellan died last week, Kennedy still supports the bill, she said.

"The idea behind the bill is solid," Wilkinson said. "Our criminal law needs not only re-codification but reform. It is filled with redundancies. It was last seriously re-indexed in 1909." But he argued that the bill not only perpetuates many existing injustices, both in the statutes and the common law, but adds many dangerous follies of its own.

Wilkinson said that the bill compromises free speech interests in its

provisions relating to conspiracy. Co-conspirator liability extends to all acts that are "reasonably foreseeable results of the conspiracy." A criminal conspiracy can be complete even though there has been no substantial step taken toward the completion of the crime. The legislation likewise extends liability for solicitation.

The bill defines sabotage to include any incidental damage occurring in the course of a public demonstration, he went on to note. It also contains a vague new provision "obstruction of a government function by fraud." According to Wilkinson, legal scholars have construed this to mean that one could be criminally liable for giving wrong directions to a postman.

"There is no justification for such an amorphous offense," Wilkinson said.

The bill also "enshrines in statutory law" recent attenuations of the Miranda doctrine by the Supreme Court and re-enacts the most repressive features of wiretapping statutes, he said.

Goldberg said she is particularly troubled that the bill avoids sentencing reform by delegating criti-

cal sentencing decisions to a sentencing commission. It also provides that a judge can designate a sentence with no possibility of parole, in contrast to existing law. "The idea is to eliminate the inequities of indeterminate sentencing, but sentencing could be substantially higher than under existing law," Goldberg said.

Wilkinson pointed out that the bill emasculates the exclusionary rule by providing that items of evidence that cannot be considered in conviction can be considered by a judge in passing sentence.

Goldberg credited Wilkinson with helping to kill Senate Bill 1, but both warned that unless civil libertarians organize quickly to alert the public to this bill's dangers, it has a substantial chance of becoming law.

"We need to wage an identical campaign to the one we waged against Senate Bill 1," Wilkinson declared. "But I don't know if we will have time to stop it. Its proponents have a jump on us. The bill has got to be stopped and it will be stopped but only if the public gets the information that it needs."



Law students who can't pass a bar, check out the brew at Georgie's last week, part of their weekly extracurricular Somerville Bar Review activities.

SS

Galbraith Assails Carter Tax Cuts

By Charles Johnson

President Jimmy Carter, by giving in to his economic advisers and agreeing to seek business tax cuts, will sacrifice the nation's economy to maintain business confidence, economist John Kenneth Galbraith told a Law School Forum audience last week.

"They're serving him very badly," he said of Carter's advisers. Galbraith spoke to a crowd of about 150 in the Ames Courtroom.

The tenor of his remarks was low key and familiar, but the Harvard professor emeritus spoke with a touch of urgency when criticizing the current administration's attempts to deal with the country's greatest economic woes — inflation and unemployment.

He said the question facing the administration is whether it listens to "the voice of affluence or the voice of the masses."

According to many businessmen, corporate and income tax cuts are necessary to maintain business confidence, which businessmen say is necessary to stem inflation and reduce unemployment, but Galbraith disagrees.

"Such a tax cut would not, in fact, have any motivating effect on the modern organization man," he said, adding that it would have no long range effects on either consumer spending or business investment because "much of it will be saved."

"When, as now, profits are reasonably high, no tax cuts are needed to encourage investments," he said.

Instead of tax cuts, Galbraith advocates the traditional Democratic party remedy: large-scale public expenditures to reduce unemployment and direct controls on wages and prices to slow the pace of inflation.

Whatever is good for economic performance will almost always be considered bad by business and industry, he said of his plans to reduce unemployment and inflation.

Large-scale expenditure, for ur-

ban redevelopment, for example, would have a detrimental effect on business confidence even though it would benefit the nation's economy, Galbraith said. Such action to increase employment best serves the weaker groups in society and is less inflationary than tax cuts, he added.

"Income, I might add, is also a useful antidote for poverty and all of its related tensions," he said.

Galbraith cited two strategies for meeting inflation — considerable unemployment or direct restraints to control wages and

"Without its genius for inspired banality, Washington would be a dull place," said Galbraith.

prices.

"Direct restraint is inescapably a part of any inflation strategy that does not rely on unemployment," he said, but such controls pose a major conflict with business, which rejects this successful method for coping with inflation.

What is good for the poorest of people is worst for business confidence, he said. But he predicted that the reliance on unemployment as a means for dealing with inflation "will sooner or later arouse amused contempt."

Although his support for the Humphrey-Hawkins Bill, the proposal to reach full employment through government expenditures, is limited, Galbraith said the bill is useful for the attention it focuses on the extent and persistence of unemployment today.

For October, the nation's unemployment rate was right at 7 per cent. But it was 15 per cent for blacks, and 40 per cent for black teenagers.

Legislators should realize, however, that high employment cannot effect a reduction in inflation, he added.

But Washington has always had difficulty for understanding and dealing with economic problems, Galbraith said in a passing reference to Gerald Ford's Whip Inflation Now campaign during the fall of 1974 which led the country into a period of recession.

"Without its genius for inspired banality, Washington would be a dull place," he said.

Although he concentrated on current economic issues, Galbraith's 45-minute talk ranged over 20th century American history, reflecting his wealth of experience in academic and public life.

He served as a professor of economics at Harvard from 1949 until his retirement in 1975, with time out to serve as Ambassador to India from 1961-63. During World War II he was an official with the Office of Price Administration, and he also served as Director of the Office of Economic Security Policy in 1946.

He prefaced his remarks about the current state of the economy with "a brief excursion into history" in which he criticized prevailing attitudes of economic theory during the Great Depression.

During the mid-1930s agriculture was bankrupt and unemployment was at 25 per cent, he said. By March, 1933, 9,000 banks had failed.

Yet, "the great economists reacted to these misfortunes with great calmness" with only a few exceptions, Galbraith said. "Above all there was emphasis upon patience as a therapy."

This was easy for professors who had tenure and fixed incomes to say, he said, but "there were a few exceptions to this movement — the professional eccentrics and deviants."

He credited two outspoken figures, John Maynard Keynes and Irving Fisher, with doing the most of anyone in the period to further

(Continued on Page 13)

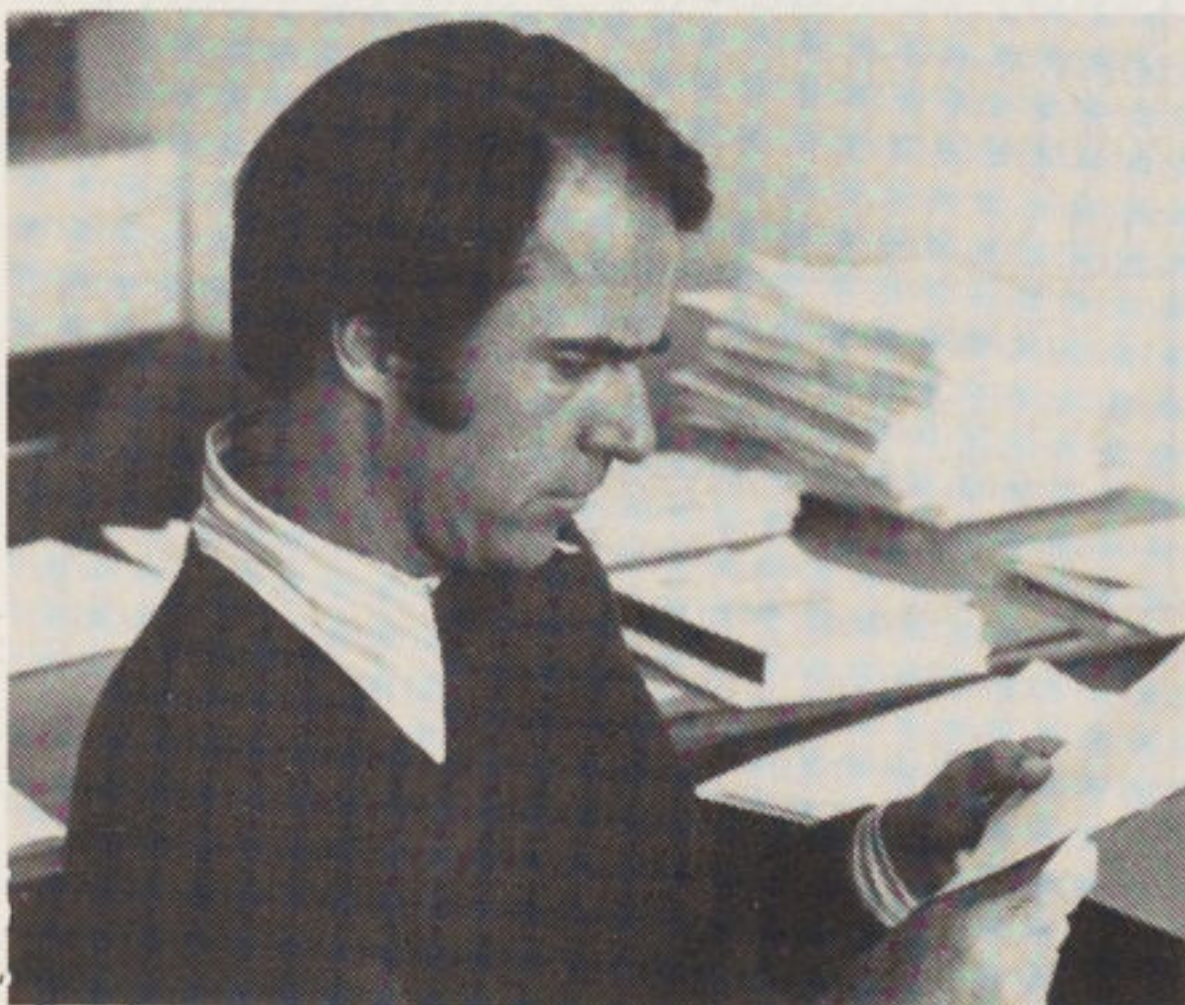
HLS Lecturer Turner Takes Press Case to Supreme Court

(Continued from Page 1)

According to a column by Anthony Lewis, who teaches a course on *Constitution and the Press* at the Law School and writes for *The New York Times*, Turner's First Amendment arguments last week "drew from the bench extraordinarily open expressions of scorn and hostility."

The column, said Turner, "was quite an accurate description of what went on."

Neither Turner nor Lewis would speculate, however, on the outcome of the case, nor would Kelvin H. Booty, Jr. senior deputy counsel of Alameda County, who argued the case for the petitioner and who agreed that Turner "had a difficult time."



William B. Turner

"It was not a terribly encouraging impression that the Justices left," said Turner, "but I've learned over the years not to predict how they'll actually come out."

"Don't anticipate what the decision will be," cautioned Booty, reached by telephone by THE RECORD. "I don't (anticipate)."

While emphasizing that he was making no predictions either, Lewis discussed the ramifications of a decision adverse to KQED. He drew a distinction between the current case and the cases relied upon by petitioners, *Pell v. Procter* and *Saxbe v. Washington Post Co., Inc.*, in which the Court held that the First Amendment

does not "require government to accord the press special access to information not shared by members of the public generally. . . ."

In *Pell* and *Saxbe*, Lewis said, "the ramifications were not very severe — there the press had some access and was asking for more, which it didn't get."

"Mr. Turner's argument was based on the premise that there was no access, that the sheriff excluded virtually everybody. If the Court makes clear that zero access is constitutional, I would regard it as very unfortunate."

"I'm against press exceptionalism," he added, noting that the decision affects the rights of both press and public.

Turner also answered questions on the ramifications of the case if KQED loses. "If all that is required is equality between press and public access, the equality can be set at zero — that's exactly what they have in South Africa when it comes to reporting about prisons and I think it would be unfortunate to have that here. I would think that the First Amendment would preclude that kind of thing."

"In a situation where you can't let the public at-large roam around, you can have a subgroup acting as the eyes and ears, as the agent of the public," he added. "We argue that that is the function of the press."

On the other hand, if the Supreme Court were to affirm the lower court rulings, "it would let a little sunlight in," Turner said, quoting from his appellate brief.

"Legally it would give some independent meaning to freedom of the press under the First Amendment," he added. "If all we're talking about is freedom of speech, then freedom of the press doesn't add anything."

Booty, arguing for the equal access to press and public interpretation, said "there was never any intention to conceal, and when you have some ac-

cess, you can find out what you need."

He said that the mail, phone and visiting privileges of the prisoners as well as the tours given to the public and the special press tours offered by the sheriff, are adequate access. The KQED-NAACP brief argues that scheduled tours are no aid to news gathering in the face of breaking stories.

Surprisingly, Booty said, he "was not asked one question of why the access should be equal. We anticipated that, and no one asked." Justice Potter Stewart did, however, ask Booty whether the logical extension of his argument could be made to allow zero access and Booty said, "I said that isn't our position, and that question isn't before you. It isn't an issue in this case."

Whether the test of press access should be equal access with the public, and what that would mean if access to the public is zero, are the key questions, Booty said. The county's brief also talked of a need to balance the right of the press and public against the rights of the sheriff."

"One of the key issues," said Turner, "is whether the First Amendment protects the acquisition of information prior to publication. Everyone agrees that the government can't censor content. I was hoping the Court would assume there was some protection for the gathering of news."

"People, including judges, have become fearful of the power of the corporate media," he added. "Nobody thinks they need any special favors from the courts, they have enough power already. I happen to share that belief but there are some situations where you'll have to make provisions for the press or you won't find out what's going on."

"Not all media are CBS or The Washington Post. There are local television stations, local media, just trying to do their jobs and cover the news."

KQED, he added, "has been waiting to get into this jail for two and a half years."

And now, pending the decision of the country's highest court, the wait continues.

Changes in Dorm Allocations

(Continued from Page 2)

to Bruce Ryder, Dorm Council Vice President, in the past some students have signed contracts for rooms and later released the rooms, timing their decision so that their friends who had worked to the top of the waiting list were due to receive the next room available. To correct this abuse, the Council voted to recommend that any room released after its selection in the 2L and 3L lottery but before June 1 will not be available for selection by a person who will be a 2L, 3L, or returning special or graduate student.

Carole Costa made an additional recommendation that the number of rooms assigned to women be increased, so that the percentage of accepted applications would be equal for men and women. She calculated that 17 rooms currently allocated to men need to be assigned to women in order to make equitable treatment possible. Therefore, Shaw 3, with 20 rooms, will become a women's dormitory floor next year, Kowalski explained.

A further provision of the room allocation procedure will ensure that all students will receive notices in their Langdell mailboxes announcing the room draw and informing them of the deadlines for application. Copies of the selection procedure will be given to every person who picks up an application. Kowalski said one of the biggest complaints about last year's 2L and 3L lottery was that there was no notice of procedures or deadlines.

Another change in the procedure raises the penalties for releasing a room after signing a contract. Many people presently sign up for a dorm room as insurance in case they are not able to locate an apartment. However, those who do find apartments often release their dorm rooms so late in the summer that those on the waiting list have given up on getting a room and have signed leases for apartments. As a result, there are dorm rooms that remain

empty all year. The Council recommended that any student who releases a room after signing a contract be assessed a penalty of \$50 if the room is released before June 1, \$150 if released on or after June 1 but before September 1, and \$250 plus pro-rata rent charges if released on or after September 1.

Another change raises the penalties for releasing a room after signing a contract.

The entire room allocation procedure adopted by the Council must now be approved by Dean Bruce and the dormitory office. Ryder, who headed the committee that drafted the room draw proposal, stated that the administration normally approves whatever proposal the Dorm Council recommends.

In reference to the 553 rooms available Kathi Kowalski remarked, "Basically, we're dealing with a scarce commodity. We have tried to adopt a system which people won't be able to manipulate in order to get preferential treatment."

Nothing is currently being planned to alleviate the real problem, which is a lack of dorm rooms to accommodate applications 50 percent in excess of the space available.

Two Unbeaten Teams Reach Ames Semifinal

Two undefeated teams representing the Marshall Club and two independent teams with 3-1 records won the qualifying round of the Ames Competition and advance to the semifinal round in the spring.

Patricia A. Brannan, David L. Lillehaug, Robert S. Osborne and Craig R. Spiegel compiled a 4-0 record representing the Marshall Club. The other undefeated team consisted of P. Michael Jung, Milly A. Whatley, Arthur H. Bryant and Daniel F. Small.

David R. Hammond, George M. Garvey, John G. Gellene and Dan Waters had a 3-1 record. Joel R. Levin, Roger D. Townsend, Michael G. Psareas and Juergen O. Skoppek also advanced.

The semifinal argument is currently scheduled for March just before spring break. Records for the competition will be issued near the end of January.

TGIF: Friday, Dec. 9 from 4-6 p.m. in the Hark.

"IT HAPPENED ONE NIGHT"

Saturday, Dec. 10 at 8:00 p.m.

and 10:00 p.m., in the

Harkness Commons Dining Hall.

Admission: \$1.00 or \$.50 with
HLSDC Activity Card

CHRISTMAS PARTY: Friday, Dec. 9 from 8:30 p.m.-12:30 a.m. in Wheeler Room, Holmes Hall. All you can imbibe for 50¢ (25¢ with HLSDC Activity Card). Music and Dancing; Good Friends and Good Cheer.

MEETING: Monday, Dec. 12 at 6:15 p.m. Mallory-Smith Room.

Apartment insurance, in a low-cost package.

Our single, low-cost coverage protects all your personal property, including credit cards. And not just in your apartment, but world-wide.

W. T. Phelan & Co.

Insurance Agency, Inc.

11 Dunster St., Harvard Square (next to the Holyoke Center).
876-0876. Representing Aetna, Travelers, Hartford.

Committee Proposes 4-1-4

On Wednesday, Dec. 7, the Committee on Legal Education presented a proposal to the faculty to change the Law School calendar to a 4-1-4 system, with fall semester exams held before Christmas vacation.

The fall semester will begin the day after Labor Day and include 13 weeks of class, a six-day reading period and a week of exams. After returning from Christmas, students would spend January taking an intensive or clinical course for two or three credits. Class instruction would last for three weeks with the 15 days corresponding to the traditional 15-week semester.

After two days of scheduled exams, there will be a five- or six-day vacation before the start of the spring semester, which will parallel the structure of the

fall.

The new schedule would apply only to 2L's and 3L's. 1L's would remain on the present schedule to allow them the two-week Christmas vacation for study.

The proposal, supported by the Committee on Legal Education, a majority of the faculty ad hoc committee set up to consider the 4-1-4 plan, and the Law School Council, will be further discussed by the faculty on Dec. 12.

ADVERTISEMENT

WASHINGTON, D.C. LAWYER
(L.L.B. Harvard Law School, Martindale-Hubble A.V. rating) with 13 years federal court litigation and regulatory agency experience.

Interested in affiliation with out-of-town firm desiring to establish Washington office.

Contact: Box 1
c/o HARVARD LAW RECORD

ADVERTISEMENT

Cryptic Law

The following excerpt from a recently published Torts casebook is in "judicial code." Professor Kennedy's 1Ls should enjoy this week's selection. Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

"[S]negkpgij, e Xend enflkfq, zeq ceho gk
Kdz Readk ep rgq jmtpgdpr tdfkgmk.
Etmfkb pzm m'hnmo gk prd lmtkgki rd reb
mhheqgm k pm ftgkepd. . . . [R]d qmfirp
tdngdj gk zrep essdetdb pm cd qmld kdetcx
cfqrdq. . . . Zrep snegkpgij prmfirp zeq
qrtfcctx ehpfennx zeq pms mj e ptdd zrghr
zeq itmzgki fs jtml prd itmfbk pdk jddp
cdnmz prd ndadn mj prd nezk. . . . [M]fp mj
e qdkqd mj bdnghehx zrghr zmfmb read cddk
dyptdld dadk jmt e Retaetb lek, prd snegkpgij
eppdlspdb pm zenr gkpm prd "qrtfcq" ekb
ptgssdb madt [e] qlann zenn, jenngki bmzk
cdnmz ekb cdgki rftp."

(Solution on Page 16)

DECEMBER 9, 1977

EARLY ENROLLMENT DISCOUNT

SAVE \$125.

When you register early for BAR/BRI's 1978 Massachusetts Bar Review.

You get your materials—NOW

Your "early bird" lectures—NOW

And the nation's largest and most successful bar review course

and

you save \$125 off the \$325 Massachusetts course price.

Your School Representatives are:

Diane Pierce-Gonzalez	262-3156
Jim Kahn	492-9104
Randy McLaughlin	864-0441
Jane Owens	547-4001
Marc Poirier	661-8074
Deborah Post	498-7485
Lou Prosperi	498-5055

REMEMBER:

The last day to save \$125 off the price of your course is December 20.

barbri 29 Commonwealth Avenue
Boston, Massachusetts 02116
617/261-2430

©1977 BAR/BRI

Wrong Reasons for 4-1-4?

The proposed 4-1-4 calendar reform is being supported by some persons for all the wrong reasons. Some advocates believe the plan would enhance the present educational format by providing clinical experience to more students than currently receive it. Others clamor for any calendar change that will schedule exams before Christmas, in order to avoid feelings of compulsion to study during the break and subsequent guilt about not doing so.

The 4-1-4 plan must stand on its own merit and not win approval merely because it is a convenient means of having pre-Christmas exams without starting before Labor Day. The 4-1-4 plan has much to commend it. Proposals for the January mini-semester curriculum include clinical work, intensive courses to be offered complete in January, and intensive introductory components for courses continuing on a normal timetable in the spring. If such course innovation actually materializes, the program will be an improvement on the current system.

However, it would be a serious mistake to approve the 4-1-4 plan just because some view it as the only politically viable alternative which will allow HLS to schedule exams before Christmas. The 4-1-4 plan deserves serious consideration totally separate from discussion of when exams will be given. It is too important an experiment in legal education to begin for all the wrong motives.

The success of any 4-1-4 plan is entirely dependent upon whether each faculty member is willing to propose course offerings for the January term. Professors understandably may be reluctant at this time to plot out innovative course outlines for a mini-semester that may never come into existence. Yet this is exactly what is needed. Without tentative commitments for such revamping, the majority of course offerings could turn out to be identical to existing courses in all but time compression.

We suggest that evaluation of the 4-1-4 plan rest solely upon the quality of January course proposals, not on the acceleration of fall exams. However, should the faculty vote down the 4-1-4 plan, the next item on their agenda must be scheduling exams before Christmas. And if the only remaining way to achieve that is to begin classes at some time in August, we support that alternative.

HARVARD LAW RECORD

TERRY KEENEY	<i>Editor</i>
CHARLES E. CHEATHAM	<i>Managing Editor</i>
BILL ROSS	<i>Associate Editor</i>
PAUL COADY	<i>Senior Editor</i>
CHARLES JORDAN	<i>Senior Editor</i>
ANDREA BROWN	<i>Executive Editor</i>
LARRY ZELENAK	<i>News Editor</i>
TONY LICATA	<i>Photography Editor</i>
VALLI LONG	<i>Business Manager</i>

Staff: Gary Betow, Jay Darby, Jim Delphey, Elaine Exum, Howard Gutman, Pat Hanifin, Tammy Jacobs, Charles Johnson, Madison King, Barbara Kritchevsky, Jeri Macon, J. Ezra Merkin, Randy Phillips, Steve Prye, Robert Reznick, Joan Shear, Scott Sherman, Michael Smith, Ellen T. Taylor, Randy Testa, Hayden Trubitt, Larry Vilardo, Robert A. Williams, Jr., Howard Zaharoff.

Fenno

Fenno glided silently down the dimly lit predawn tunnel. All around him there was silence. But passing the darkened Copy Center and the vacant mailroom with its vacant mailboxes, Fenno became acutely aware that the calmness and tranquility was misleading. He could feel the presence of hundreds of pairs of beady little eyes awake in the void beyond the tunnels — the eyes of hundreds of beady little 1L's scared as hell about their approaching finals.

Fenno first saw the tips of the 1L's skis as he rounded the gentle bend by Langdell South Middle. The 1L was sitting on the bank of lockers — above Fenno's locker, in fact — applying a layer of wax with great care.

"I know it's bad outside," said Fenno, "but these old walls should be able to hold out for a few more hours."

"A few more centuries is more like it, I'm afraid," said the 1L without looking up. "What I'm actually doing is beginning to prepare for my finals."

"A little early, aren't you?" asked Fenno.

"A good wax job takes time," replied the 1L seriously.

"Law School exams admittedly have much in common with a giant slalom," said Fenno, "but I still venture that you're going about studying the wrong way."

"You don't understand," said the 1L to Fenno, who actually did understand. "I live off campus. This little wax job could save me precious minutes of travel time during my take-home. Simply a competitive edge."

"A silver medal maybe, if you practice," said Fenno, "but a competitive edge, no."

The 1L frowned. "What about this, then?" he said, exposing a holster into which Hi-Liters of different colors had been slipped in lieu of shells. A *Criminal Law in a Nutshell* had been folded into the pouch usually occupied by the six-shooter.

Fenno frowned. "If that were able to help one bit," he said, Gilbert's would have had a set on the market months ago."

"How about this?" said the 1L, producing a small piece of paper. "I've condensed Kennedy's torts lectures onto a 4" x 6" index card."

"Hmm," said Fenno. "You must write large."

It was the 1L's turn to frown. "You keep talking as if you know," he said. "What's the right way to study?"

Fenno put on the face he reserves for the imminent revelation of great truths.

"I can't tell you much," Fenno said. "And if you have gone to class even once this semester, I can't tell you anything at all."

Letters to the Editor of the RECORD

What About Self Defense?

To the Editor:

Wolfe v. Feldman, 158 Misc. 656, 286 N.Y.S. 118 (1936), is hardly the "run-of-the-mill dental malpractice case" where the only thing grabbed "was a root canal" which Mr. LePygian describes it to be.

According to the report of the case, the dentist defendant had anesthetized the plaintiff patient with nitrous oxide, strapping her arms tightly enough to the chair to prevent her from causing trouble during the "excitement stage" of the anesthesia, but not too tightly to impede circulation. However, plaintiff's arms still had sufficient freedom of movement that she "clutched his testicles with a painful grip, which required the use of great force to release." 286 N.Y.S. at 119. In short, plaintiff yanked, defendant yanked back, and defendant fractured plaintiff's finger. The court found that the dentist was under a duty to refrain from placing his body in such a position as to allow plaintiff's hands to interfere with him to such an extent as to require the application of force sufficiently severe to cause her physical injury.

Collateral source buffs will recall that *Wolfe* is cited in Prosser's 4th Edition of *Law of Torts* as "the extraordinary case of the unfortunate dentist" in footnote 94, p. 215.

Norman C. Ankers, 2L
Cambridge

P.S. I hope that Professor Keeton is proud of me.

Is He Serious?

To the Editor:

Jay Darby's article "Learning to Think Like a Lawyer" in your Nov. 4th issue impels me to comment.

True it is that language and thought are closely interwoven. But to confuse "thinking like a lawyer" with thinking in "legalese" is to miss a vital point. A lawyer who thinks in legalese may be a very ineffective lawyer indeed. Not only may he have difficulty in communicating with clients (and others) but he is likely to appear very much like a phoney. Success and effectiveness as a lawyer involves, among other things, learning to speak and write in language which is easily understood by the one to whom you are communicating. That doesn't mean non-use of words peculiar to the law, but it does mean an ability to explain those words to non-lawyers in language they can comprehend.

What then does or should it mean to "think like a lawyer"? This can best be described by considering the qualities

of thought which a lawyer should cultivate, such as being well-informed, clear, well-balanced, fair-minded, unprejudiced, perceptive, analytical, accurate, logical, precise, flexible, etc etc. Show me a lawyer who manifests the opposites of these qualities and I'll show you one who is a misfit in the profession.

Darby says "thinking like a lawyer requires the ability to reproduce certain patterns of thought." What a narrow view! Rather might it be said that "thinking like a lawyer requires the ability to break out of rigid thought patterns." Darby says "Fluency in the legal language is an artificial skill" which he compares to a tiger jumping through a ring of fire. Perhaps it can be said that all linguistic skills are "artificial" and it is certainly true that lawyers have to learn to use such useful phrases as "per stirpes" correctly and not, as one lawyer did, in a way that made no sense so we had to consider a construction proceeding to determine what his document meant.

I commend Darby for one statement in which he was really "thinking like a lawyer." He said "I . . . advocate that students make a sound and reasoned choice of occupation." Perhaps this letter will help Darby make such a "sound and reasoned" choice and help him to decide whether to go forward and learn to really think like a lawyer or whether to take his law career and "punt it to the winds" now.

E. Merritt Weidner '34
Sun City Center, Florida

Ed. Note: We recommend this letter to all 1L's who wish to see an interesting application of the *res ipsa loquitur* doctrine.

Dante, or Faust?

To the Editor:

Jay Darby may be his own best example ("Learning to Think Like a Lawyer," November 4. One of the attitudes that people who are to think like lawyers are encouraged to develop is the belief that lawyers can master any subject because The Law alone comprehends the sweep of intellectual endeavor. Bakers bake, plumbers plumb, but only lawyers *think*. So say the law professors and so, in the following quotation, says Mr. Darby: "The lawyer's 'skill' is his ability to think in a certain manner, and this ability is qualitatively different from other professional skills." Proud of his intellectual battle-scars, Darby explains that other professionals learn "trades" in ways that do not disquiet their minds, while only the legal novitiate knows the terrible rigors and awful mysteries which come before legal ordination. One might well sympathize with Darby, Scott Turow, and

Aeneas, as all three complain that the common lot just don't understand what a heavy trip a real education can be.

Law school is Hell. But we, like Dante, have survived our tour and seen the light. That's thinking like a lawyer, Jay.

Lyle W. Sparks
Chicago

But Jay Pays Well!

To the Editor:

I've noted that the RECORD has done the unbelievable in publishing not one but two pieces by Joseph P. ("Jay") Darby, III, this fall. Being familiar with Jay's writing, I can only conclude that the RECORD has been blackmailed by Jay to publish his pieces. Therefore, as a conscientious graduate of HFLS, I am offering to the RECORD several very incriminating photographs taken of Jay in a Quebec bar and a Montreal hotel last April during spring break. These should end Jay's apparent blackmail, and the RECORD can return to a more interesting use of its space, i.e., more intimate interviews with Dean Bruce, more transcripts of Forum speeches, more reports on esoteric Supreme Court cases, and more (I can never get enough) Ralph Nader articles.

Hilary P. Jordan,
HFLS, '77

Ed. note: Since we received Mr. Jordan's letter, author Darby has been in touch with us. In keeping with his past behavior, he made us an offer we almost couldn't refuse — non-publication of Jordan's letter in exchange for some candid shots of Jordan allegedly taken by Darby's roving camera over the recent Thanksgiving holiday. We must admit that Jordan has discovered some novel means for passing his vacation time.

As to Darby's reply to Jordan's demand, see Darby's interview with the RECORD, beginning on p. 15 of this week's issue.

How Could We Forget?

To the Editor:

Anyone familiar with the Supreme Court's work since 1886, when Volume I of the *Harvard Law Review* appeared, should know that the *Review* has long outranked the Constitution. Where have you been?

Stanley D. Prowse '73
San Diego

UNIQUE MEN'S GIFTS

FROM OUR OWN EXCLUSIVE EUROPEAN COLLECTIONS



FROM IRELAND

COTTON TURTLENECK JERSEYS. If he prefers a soft, comfortable turtleneck pullover, give him this one. It's pure cotton in a fine ribbed knit, form fitted to look super on, stretchable to fit sizes 36 to 48. Made expressly for us in eight fashion colors. **12.99**



FROM SCOTLAND



WOOL DRESS SCARVES. A luxurious and warming gift in traditional Scotch plaids woven of fine wool. **9.95**

Also wool solids in blue, bottle green, yellow, navy, brown, maroon, red. **8.95**

FROM ITALY

PURE SILK TIES AT AN UNUSUAL PRICE.
only **6.99**



FROM NORWAY

ALL WOOL KNIT SKI HATS. Good looking head warmers for all outdoor activities now. Assorted styles and colors in rib solids or handsome patterns. **each 5.99**

SCANDINAVIAN DESIGN SKI SWEATERS. Heavyweight knits of pure new wool from Charles Wolf of Oslo. Striking Nordic patterns including the traditional snowflake and diamond patterns. Assorted colors, including red, navy, grey, white, tan. Sizes 38 to 46. Crew or turtleneck **29.95**
Collared cardigan **49.95**

HARVARD SQUARE: OPEN EVERY NIGHT UNTIL 9 P.M. (Mon.-Sat.)



SOMETHING SPECIAL IS A GIFT FROM

**the
Coop**
HARVARD SQUARE

HARVARD LAW RECORD

Utah Court Says Obscenity Test For "Mind-Warped Queers" Only

(Continued from Page 1)

have some redeeming value to his own taste," he wrote.

The strong language of Ellett's opinion has produced a variety of reactions. John B. O'Connell, who along with Bruce C. Lubeck and Richard J. Hertzberg represented the defendant movie theater operator, was embarrassed by the opinion.

"The Utah Supreme Court provides amusement for the legal community," he said. "It's embarrassing being from Utah with decisions like this.

"It isn't funny when you live here."

Roger F. Cutler, the case's chief prosecutor, explained Ellett's strong reaction to the film as "striking out at a lot of technicalities and at what he would view as political decisions by other justices."

"He [Ellett] saw the other judges as trying to stretch the record and the law to rely on technicalities in order to rule the film valid and justify their decision," Cutler said.

Not everyone involved with the case was willing to try to explain Ellett's opinion, however. The two dissenting justices in the case, Justice D. Frank Wilkins and Justice Richard J. Maughan declined to comment on the strong language which was directed at judges like themselves who have chosen to follow the Supreme Court's guidelines.

"I suppose I don't want to comment," Wilkins said. "The opinion and the dissent speak for themselves."

"It's like getting a statement from someone that doesn't merit a reply," Maughan echoed. "In writing my dissent I particularly avoided any reference to the language [in Ellett's opinion] for the reason that I didn't think it deserved any comment."

Chief Justice Ellett stands by his strongly worded opinion, and says that most Americans stand with him. "I've received a thousand let-

ters which say 'thank God that someone is standing up for what America stands for,'" he said.

"People are just plain sick of this stuff — or at least the decent people are," he continued. "Pimps and prostitutes who think the film might arouse some erotic desire might want it for business reasons."

Ellett said that he used such strong language in his opinion because "we've got a lot of filth going on here, and I don't know how else to get people's attention."

"It's embarrassing being from Utah with decisions like this."

There is no question that the Supreme Court's obscenity test is a bad one, according to the Utah Chief Justice. "It's none of the Supreme Court's business and it's wrong," Ellett stated simply. "Some justices might be looking at a Supreme Court appointment for the future and might just decide their cases on the basis of this without regard to what's right," he explained.

Ellett, who was described by one attorney as being part of "the conservative wing", called the film "the rawest, filthiest thing you could ever imagine." The plot centers around a young girl who goes insane and subsequently gets involved in various sexual acts with various people, according to one lawyer.

"The film really isn't that bad," said one of the defense attorneys. "It has more literary value than most of them."

Justice Ellett disagrees, calling the film "deformed matter," and holding it to be unquestionably obscene. He hopes that other state court judges will follow his example and "put those guys (who show obscene films) in jail."

Galbraith

(Continued from Page 6)

economic theory even though they were held in disrepute at the time.

Today Keynes and Fisher are remembered, he said. Of the others, "their negativism and inaction has become part of the intellectual history of the period," said Galbraith.

Generally, it has been the younger, less established economists who have challenged the status quo because they had less to lose, he said.

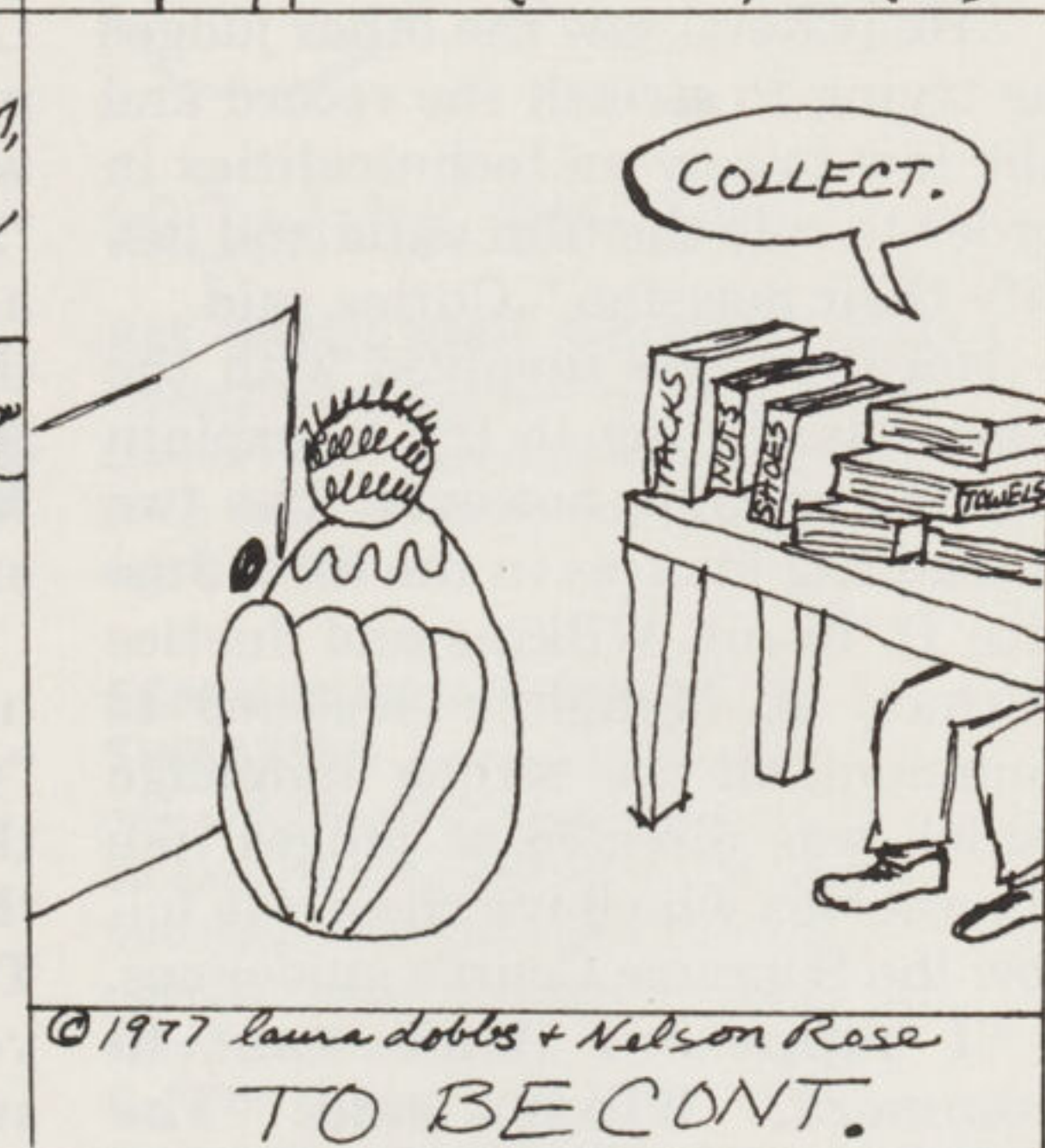
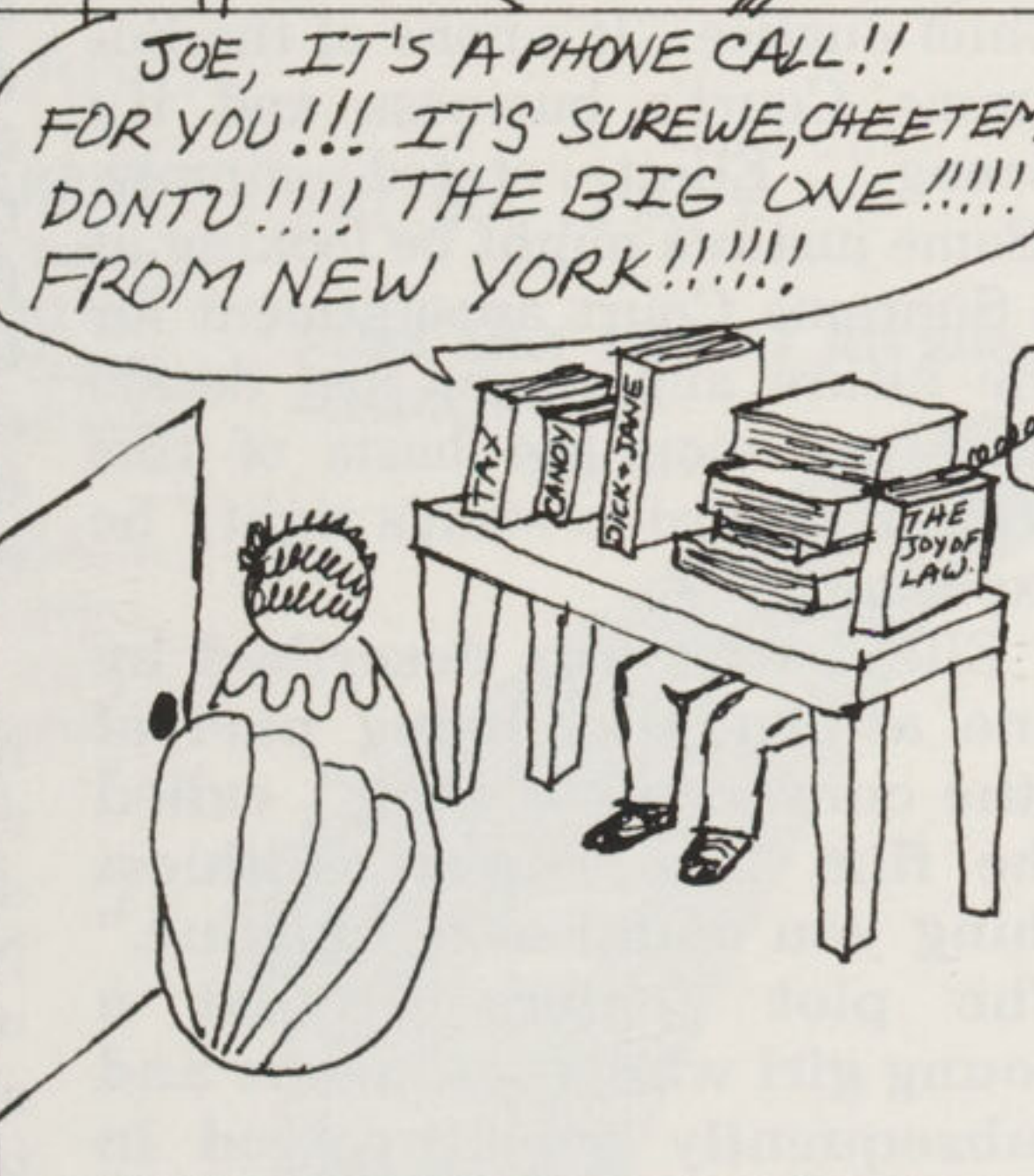
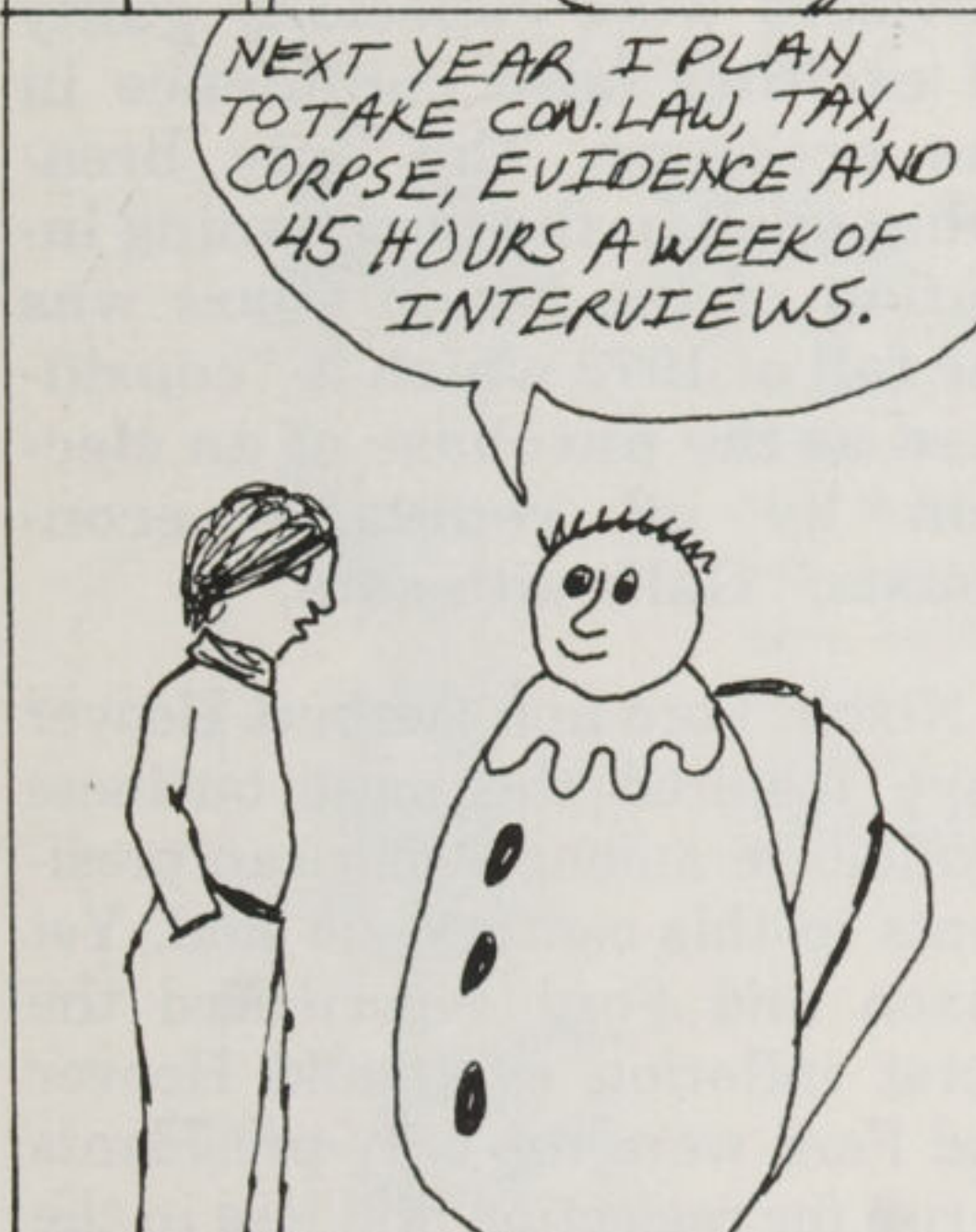
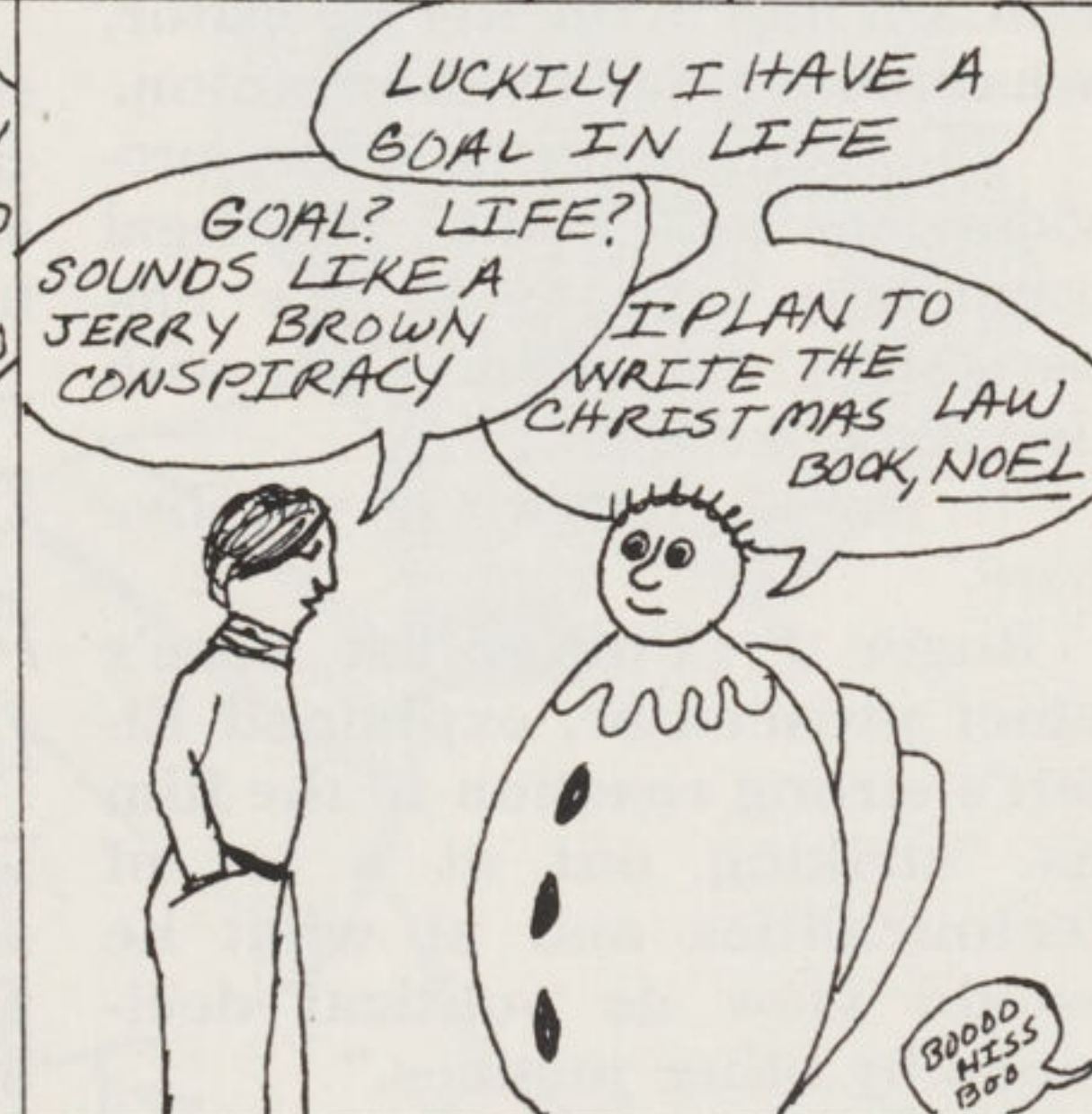
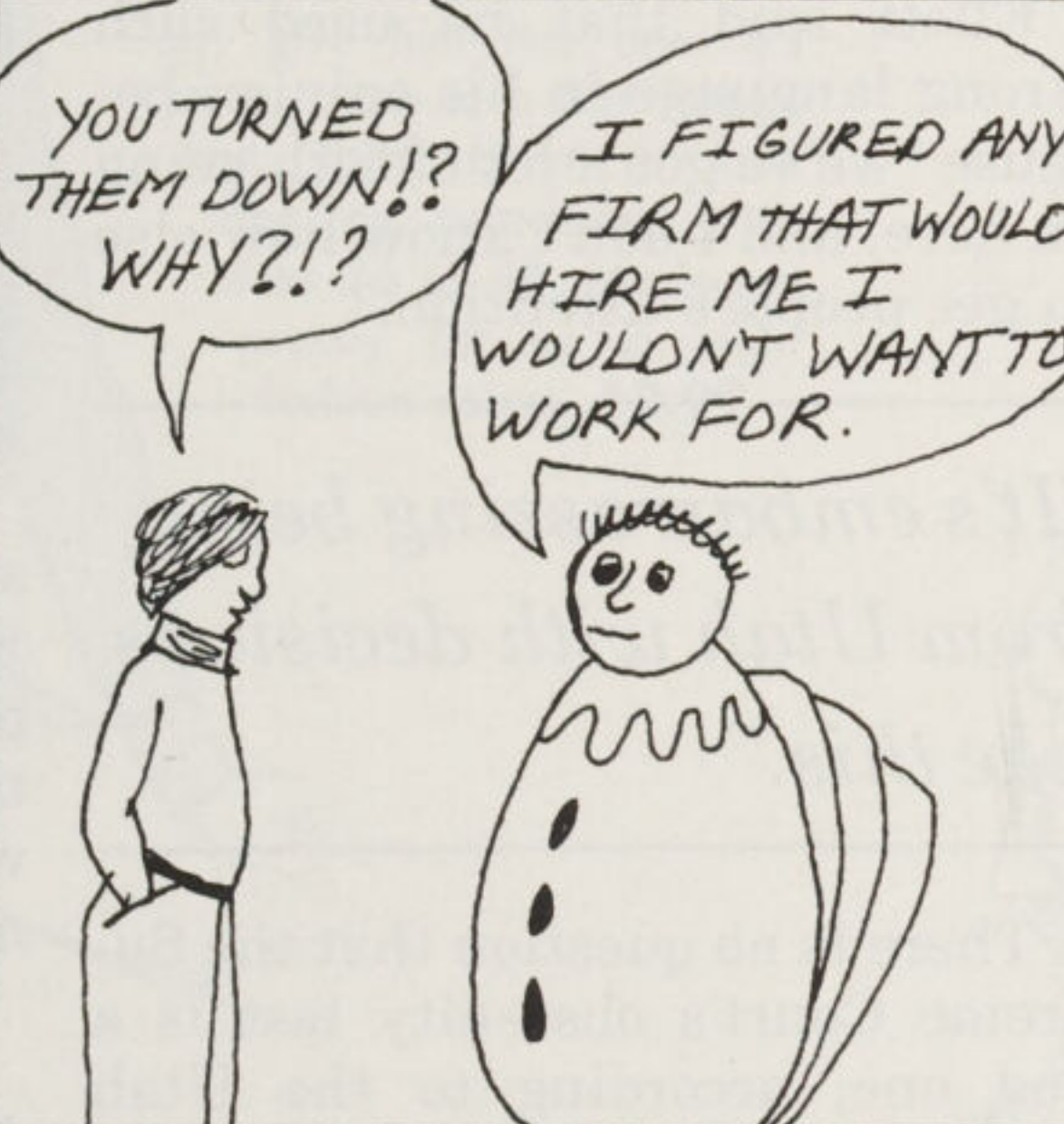
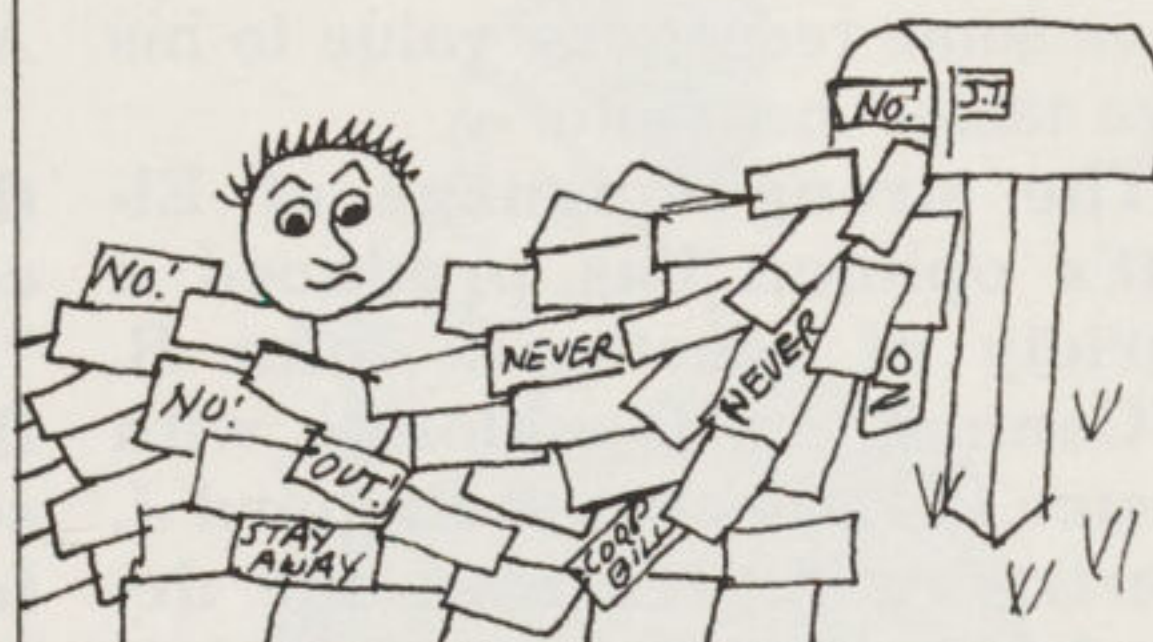
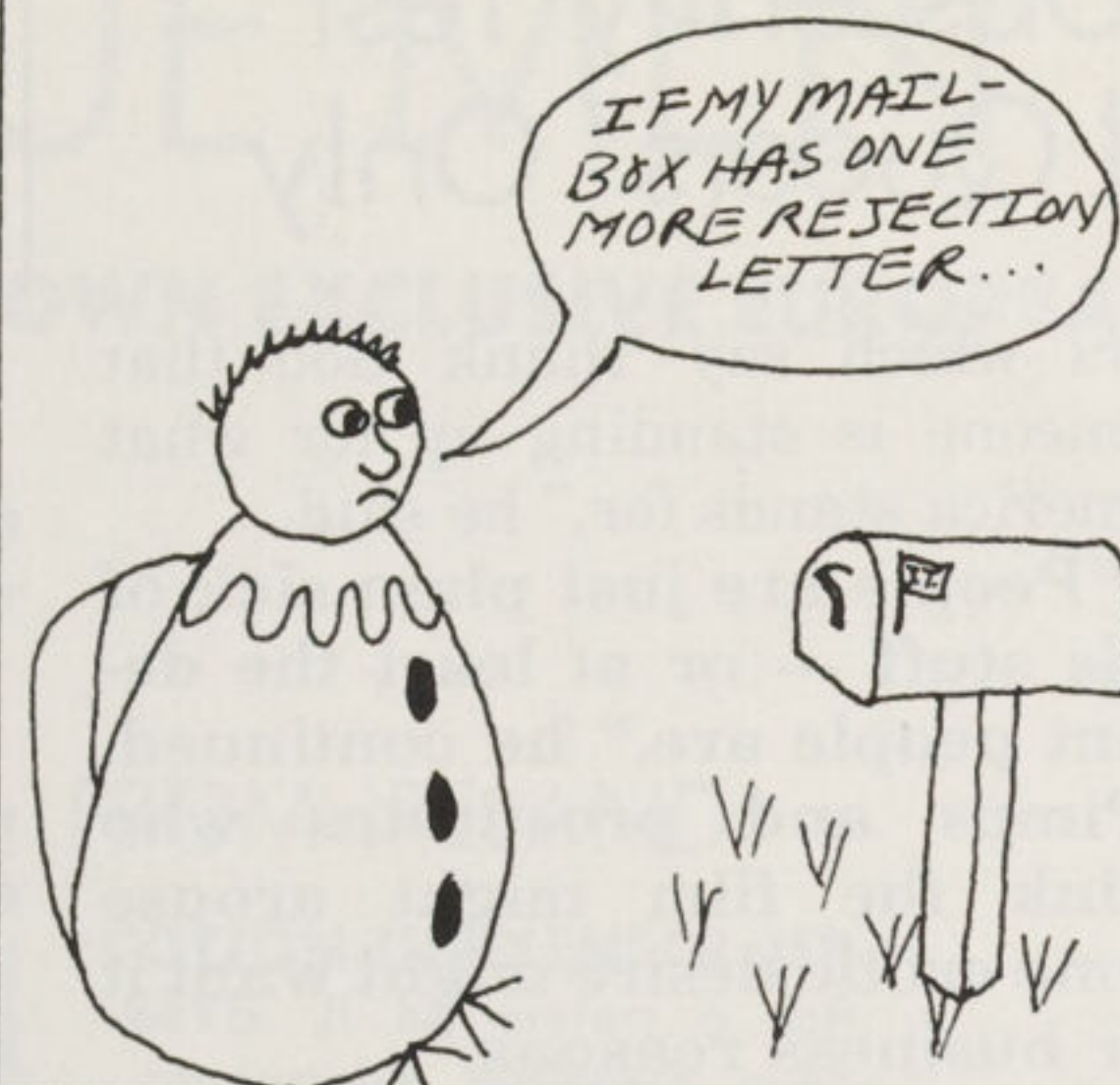
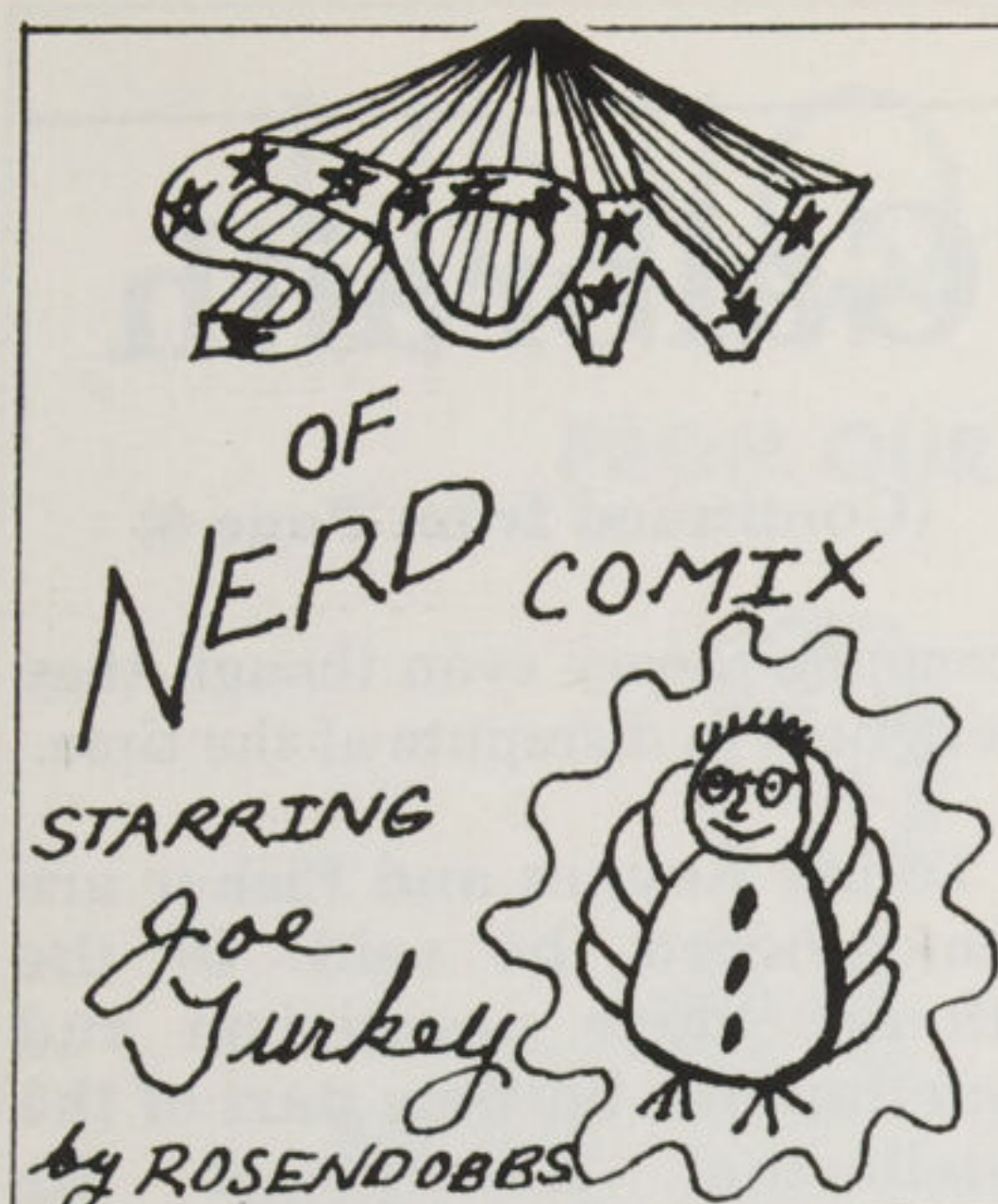
While he didn't refer to any present economists, except for Milton Friedman, by name, Galbraith implied that the profession is beset by the same contented conservatism which hindered economic development in the 1930s.

President Nixon's economic advisers were especially guilty of exciting false confidence in the economy. The only breathing spell in the burgeoning inflation of the Nixon years was the fall of 1972 which is "considered as the purchase of an election by all reputable economists," Galbraith said.

Nixon, Ford and Herbert Hoover have inspired the most business confidence among American presidents in this century, he said. Yet Nixon and Ford experienced the worst inflation ever, and Hoover and Ford were the only presidents to run for reelection and lose in the past 50 years.

Galbraith closed his presentation with a word of sympathy for law students and a few good-natured jibes at Harvard law professors.

"I have nothing but sympathy for the terrible situation that you find yourselves in presently," he said. "But I hope that by my comments tonight you will find that there are some of us in a much worse situation than you."



©1977 Laura Dobbs + Nelson Rose
TO BE CONT.

HAIR

WE'LL CUT IT
THE WAY YOU WANT IT

**Gino & Mike
Barber Shop**

ONE BLOCK FROM THE LAW SCHOOL
OPPOSITE HOLIDAY INN
354-6878
We do razor styling.

Sports Answers

1. The mighty quintet were: Babe Ruth, Lou Gehrig, Jimmy Foxx, Al Simmons and Joe Cronin.
 2. Black, Blue, Red, Green and Yellow.
 3. William Howard Taft threw out the first ball in the 1910 World Series.
 4. There are eleven players on a cricket team.
 5. Walker Smith.
 6. The finals of the Harvard Law School Trivia Contest are Thursday, December 15, 1977 at 8:00 in the Ames Court Room.
- Be there! Aloha!

Professional Dry Cleaning
and Shirt Laundry
at

**Rite-Way
CLEANERS**

KI 7-8008
4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

An Idea Whose Time Has Come—

Darby Will Bare Grading System Data

Ed. note: When we were informed of RECORD staffer Jay Darby's planned study of the Law School's grading system, we were, frankly, skeptical. Not only had we never known Darby to accomplish anything meaningful (as a RECORD staffer or otherwise); we weren't even sure that the Law School had a system.

However, after speaking with Darby, we are convinced that he seriously intends to make a legitimate, data-based examination of grading at the Law School. The gist of Darby's plan is to compare the grades several Law School professors give to answers to a single practice exam question. A single professor in the College will also grade the answers, which will be submitted by 15 1L's and 15 3L's.

Darby will presumably reveal the results of his comparative study when it is complete. In order to prepare the Law School community for this long overdue awakening, Darby has consented to an interview with the RECORD.

Record: You're doing a study of the grading system used by the Law School.

Darby: I know.

R: Well, would you like to explain it a little more fully?

D: Sure. I want to find out what the typical grade represents; what it actually measures. Theoretically, grades are supposed to measure the quality of the legal analysis and legal reasoning contained in a written answer to a particular question. A lot of people are skeptical that these qualities can be measured objectively and consistently. It's uncanny how often students complain that the exam they thought was easy ends up with a worse grade than the exam they thought was hard. There is a lot of feeling the grades are almost capricious, that the same paper might be an A with one profes-

sor and a B with another.

R: So you want to see if grades are a good measure of legal ability.

D: No, not at all. That is a different question. Some people are very capable but do not take tests well. My study wants to find out whether, given a specific exam answer, there is any consistency in the evaluation of the answer. Then, if I find consistency, I want to examine what factors correlate to higher grades.

R: How do you intend to do all this?

D: I am giving a basic 50-minute torts question to 15 1L's and 15 3L's. These 30 papers will then be graded by several faculty members here at the Law School, and at least one English professor at the College. I will then use statistical techniques to evaluate the data in terms of three factors. First I want to compare the results of the 1L's and the 3L's to see which group does better. The purpose

R: Did the 3L's study for the exam?

D: Are you kidding? I can barely get them to take the exam at all. I've even been offering a six-pack as bounty.

R: Do they get the six-pack before or after?

D: I make them wait.

R: Sorry to interrupt. You said the first factor was to compare 1L's to 3L's?

D: Yeah. The 1L's know torts because they are taking it now. The 3L's have forgotten a lot, but they are pretty skillful at legal analysis, at least more so than 1L's. I want to see which trait achieves better results.

Second, I want to examine the consistency of the grading, whether a particular paper gets similar grades or whether it is literally an A in one case and a B in another. Third, I want to see if the grade by the English professor, which will be based entirely on essay content, correlates with the grades of the other professors.

R: How are you choosing the 1L's

and 3L's to take the torts question?

D: Well, the 1L's were easy. I simply went to a practice exam for a first-year section and asked for their consent. I am using their practice exam as my question. I prominently marked every fifth exam booklet, and the booklets were then distributed randomly. I asked the people who got the marked booklets to raise their hand if they did not want to participate, so that I could get a count on the objections as a measure of self-selection. Only one person raised a hand, but I later found out that several people traded books without raising their hands. You know what a bunch of paranoid geeks 1L's are.

R: They're pitiful, I know. Now what about the 3L's?

D: The 3L's are a real problem. I've been straining my friendships to the limit, trying to get people to help me out. Almost all the 3L's are personal friends.

R: How will this affect the results?

D: Well, the 1L's are a pretty representative group. The 3L's are mostly misfits and losers. If there is any difference caused by the selection process, it should inure to the advantage of the 1L's.

R: What will the results be?

D: I don't know. Your guess is as good as mine.

R: Are you satisfied with the way the study is set up?

D: Not really. Apart from the registrar's office, which was great during the practice exam, I am not getting much help from the school. Some of the faculty members are treating me like a known carrier of Legionnaires' Disease. The study could be improved by enlarging the number of students, finding a better way to randomize the 3L's, and either using a real exam or else paying the students to participate. I don't have the resources to make these improvements.

R: Then do you think the study is
(Continued on Page 16)

Is There Method In Grade Madness?

(Continued from Page 15)

lacking in important respects?

D: No, not at all. It will be open to criticism because there are factors which I cannot guarantee are standardized, but there is still a good chance that the results will be valid. The 3L's are not selected in a random manner, but this does not mean that they are not a good representative group. In fact, the conventional wisdom is that almost all the law students are pretty equal in ability. It would be hard to select 15 people who were not pretty representative.

More importantly, the second and third factors do not even depend on who wrote the exam or how seriously the exam writer tried. Rather, the comparisons are between faculty members to determine if there is consistency in grading, and a correlation between the essay grade and the other grades. As long as the professors are earnest — and I am sure they will be — the study will provide important information.

R: How do you get the faculty members to participate?

D: Blackmail. You know, the usual pictures.

R: What are the names of the professors?

D: I'm not telling. There is a good chance a particular professor knows his own name, but no one knows all the names except for me, and I'm stonewalling like Gordon Liddy.

R: What about the names of 1L's?

D: For all I know they don't even have names. I couldn't believe it, but some of the 1L's actually used their Coop number instead of their exam ID number.

R: What was the exam like?

D: Oh, a typical torts question. You know, a series of Joe Bstfplk catastrophies.

R: Who is Joe Bestifplik?

D: He's that little guy in the Lil' Abner comicstrip.

R: You mean the guy with the cloud over his head that walks around causing disasters?

D: Yeah.

R: Did you take the exam yourself?

D: Unfortunately.

R: How did it go?

D: I punted it out of sight.

R: By the way, there was a letter about your articles that we are printing in the Letters to the Editor column. Did you get a chance to see it?

D: Yeah, the guy lived on my floor first year. He's a well-known degenerate.

R: Do you think he has revealing pictures like he claims?

D: He may. I don't know. I wasn't worried at the time because I didn't think he knew how to work the camera.

R: Is there anything else you would like to say about the importance of this study and the effect it will have on the institution of grades at Harvard Law School?

D: No.

SPORTS QUIZ

1. Name, in order, the five men that Carl Hubbell struck out in the 1934 All-Star Game.
2. What are the colors of the rings on the Olympic flag?
3. Jimmy Carter hopes the Atlanta Braves make it to the World Series (is he kidding?) so that he can throw out the first ball of the series in his home state. What President was the first to throw out the "first ball" at the World Series?
4. How many players are there on a cricket team?
5. What was Sugar Ray Robinson's real name?
6. Where can you hear many more exciting trivia questions like those provided above, and the best in annual trivia competition, right here on campus?

(Answers on Page 14)

Solution to Cryptic Law

attractive nuisance doctrine.
 ter explanation of the *Guilford* case is the
 editors of the casebook suggests that a bet-
 intended by the University. One of the
 making use of the premises in a way not
 plaintiff lost the benefits of that status by
 and left it up to them to decide whether
 on the theory that he was a business invitee
 Court allowed the plaintiff to get to the jury
 AND MATERIALS ON TORTS 469 (1977). The
 C. GREGORY, H. KALVEN & R. EPSTEIN, CASES
 Conn. 449, 23 A.2d 917 (1942), *squibbed in*
 hurt," *Guilford v. Yale University*, 128
 small wall, falling down below and being
 walk into the "shrubs" and tripped over [a]
 Harvard man, the plaintiff attempted to
 which would have been extreme even for a
 of the lawn . . . [O]ut of a sense of delicacy
 up from the ground ten feet below the level
 ally was the top of a tree which was growing
 What plaintiff thought was shrubbery actu-
 appeared to be some nearby bushes . . .
 to urinate . . . [H]e sought relief in what
 two o'clock in the morning he had occasion
 New Haven at his fortieth reunion. Around
 "[P]laintiff, a Yale alumnus, was back in

JAMES F. BRINE, INC.
 29 BRATTLE ST.
 HARVARD SQ. 876-4218

SPORTS EQUIPMENT AND
 APPAREL FOR THE
 ENTIRE FAMILY

- Skates • Skis • Squash •
- Darts • Soccer •
- Jogging • Exercise •

WARM WINTER CLOTHES:
 DOWN PARKAS AND VESTS, HATS,
 GLOVES, SOCKS, LONG UNDERWEAR
 AND SWEATERS

SECOND CLASS POSTAGE
 PAID AT BOSTON, MA

RETURN ADDRESS:
 HARVARD LAW RECORD
 HARVARD LAW SCHOOL
 CAMBRIDGE, MA 02138