

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 67, NO. 1

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SEPTEMBER 22, 1978

TWENTY CENTS

Administrative Structure of HLS Revamped

By Michael Smith

A major revision of the Law School administrative staff occurred during the summer. The net results of the changes were five departures, four new staff members and numerous rearrangements and new titles. The reasons for such a large number of changes were "partly the result of decisions by some people to go on to other jobs, and partly my sense that we might improve our organizational structure," according to Dean Albert Sacks.

Sacks said that his intent with many of these positions was to "provide someone with an assignment and let them develop the job." Sacks also indicated that the personnel involved were a mix of both persons familiar with the system and outsiders who will bring in new perspectives. Consultants will be utilized in several areas to provide an outside perspective without having to keep someone in a permanent relationship.

Sacks identified three results of the new administrative structure. First, he says that the administration will now have a greater capacity to carry out changes if and when they are desirable and necessary. He indicated that a smoother transition into a 4-1-4 system was one of the changes which benefited from the new structure. A second result will be a clearer structure to the administration with responsi-

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BALSA: Boycott Lobbyists

By Charles Johnson

The Harvard Black Law Student Association (BALSA) plans to stage a demonstration Monday to protest the interviewing appearance at the Law School of a Washington law firm which has three partners who serve as lobbyists and counsel for the Republic of South Africa.

Last year the firm, Collier, Shannon, Rill, Edwards & Scott, cancelled its scheduled interviews after BALSA engineered a boycott and threatened a protest which reduced the number of students signed up to interview with the firm from 30 to three.

Profs Pit Law Against Media — And Both Win

By Tammy Jacobs

Imagine this: you're an investigative newspaper reporter. You receive information that Heinrich Schweinhund, a prominent corporate lawyer in your town who has just been nominated for the city school board, is a former Nazi. He served at one of the concentration camps in Eastern Europe during the Second World War and returned to Germany in 1956 for what may have been a meeting with other former Nazis.

Schweinhund is active in civic organizations, has been extremely

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But this year approximately 40 students have signed up for interviews with Collier, Shannon, and the firm plans to come to Cambridge despite the threatened protests.

"In the event that Collier, Shannon ultimately comes to the Law School on the 25th, we will have a protest demonstration in order to allow students the opportunity to know exactly who Collier, Shannon is," said Michael W. Tyler, BALSA's vice president. The demonstration will consist of a peaceful picket line and the distribution of leaflets, he added.

Tyler said BALSA would halt the protest only if Collier, Shannon were prohibited from using Placement Office facilities to recruit HLS students.

Fight for Freedom

In a resolution adopted last week, BALSA stated: "We . . . reaffirm our commitment to the ongoing struggle of the people of South Africa for full equality, freedom and human dignity. We condemn the present South African government for being racially oppressive and violative of the most basic human rights of the overwhelming majority of the people of South Africa."

BALSA went on to indict what it called HLS's indirect support to the South African government by allowing Collier, Shannon to use its placement services.

A statement released Monday by Stephen M. Bernardi, assistant

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Sacks: High Hopes for New Schedule

By Joshua Dratel

"At some point you become more interested in defending what you have done than in changing anything," noted Dean Albert M. Sacks in discussing his seven years as the Law School's chief administrator. "I'm still very sensitive about that issue, but I don't think I've reached that stage."

A revamped schedule for 2Ls and 3Ls, increased numbers of women students and visiting professors, and various administrative shifts are evidence of the changes for this year.

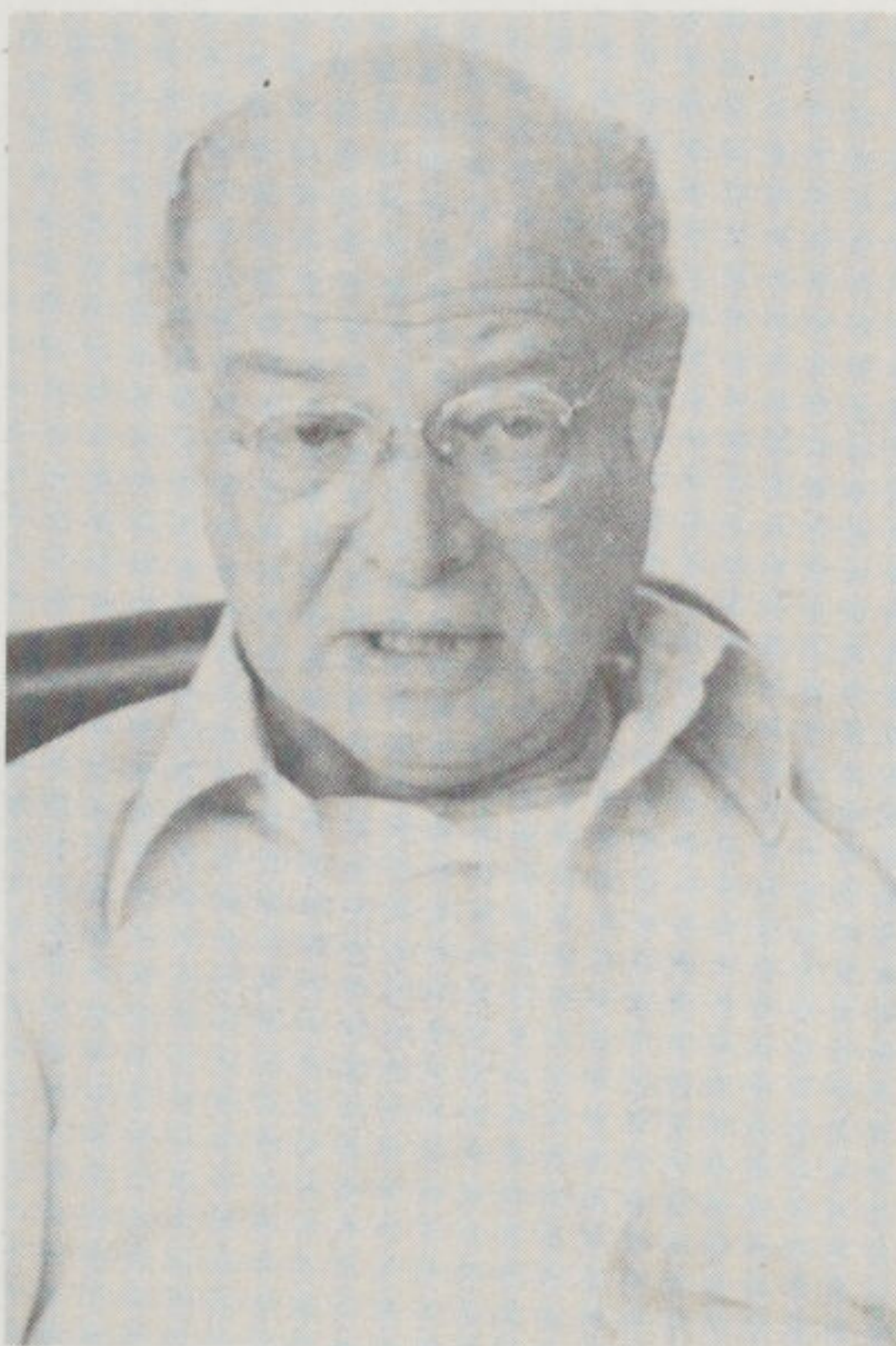
"When I took the job of dean, I said I saw the function as one in which you are attempting to improve the education in the school," Sacks continued. Perhaps the most obvious effort in this direction concerns the winter session that will follow 2L and 3L fall exams.

"It is experimental," Sacks conceded. "Everyone who supported the 4-1-4 [as the new schedule is referred to] agreed that at some point we would have to step back and see how it has functioned."

While a thorough review, according to Sacks, "couldn't possibly occur until we've had a minimum of two years experience with the program," an ongoing examination will address the day-to-day and more urgent problems presented by the 4-1-4 structure.

Winter Term

"We do want to see to what extent students use the winter term to effectively write a major paper," Sacks explained. "Also, as individual faculty members find particular things that work well, those things will be communicated to the others along an informal network. We're also looking for student reaction."



Dean Albert Sacks

The students' major adjustments will involve the immediacy of exams and an anxiety-free Christmas vacation.

"I have always thought having exams before winter recess to be educationally desirable," Sacks maintained. "I believe the students will function better after the break."

Yet the dean is unsure of the program's prospects. "I'm hopeful, but I'm not clear enough," he offered. "I don't think anyone is. We will see whether we come up with innovative ideas or wind up doing fairly traditional teaching. The first year will not necessarily be the proof, though."

More certain are the figures that reveal the rising enrollment of women and an unusually high number of visiting professors. Women comprise 29 percent of the class of '81, and the 23 visiting professors represent a more than 100

percent increase over the usual number.

"The higher percentage of women in the first year class resulted not from any preferential treatment by sex," Sacks pointed out. "Rather it is because of the increase in the proportion of qualified women wanting to go to this and other law schools."

Sacks is not sure how the presence of more women will alter the once male-dominated campus. "Inevitably it must have some effect on the atmosphere of the school," he predicted. "I'm not sure I can break down the components, but my own feeling is that it's for the better."

Sacks does not view the desire for women faculty in terms of the pressure caused by the increasing enrollment of women, but he does regard the addition of women faculty as "an important goal."

"I'm not satisfied with our accomplishments in that area to date," he admitted. "But people have to recognize that the pool of talent is years behind the present student population. That identifies the difficulty, and we're not going to apply different standards."

Visiting Professors

A set of complementary circumstances enabled HLS to host an extraordinarily large number of visiting professors this year. "We have a large number of regular faculty members on leave, and there were a number of opportunities [to secure professors] that seemed too good to pass up," Sacks commented. "The newcomers offered something special and distinctive that we don't have here."

Although the visiting professors give HLS cultural and geographic diversity, Sacks cautioned that "law teachers in the United States are not different because they teach at different schools."

That is true despite the popular notion, supported by current literary and television representations, that HLS is an unrelenting

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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 1978 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.

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Female Enrollment Nears 30 Percent

By Becky Wesley

Over the last four years, the percentage of women in the first year class at Harvard Law School has increased, from 23 percent in 1975, to 25 percent in '76, 27 percent in '77, and now 29 percent in this year's entering class. However exact this progression appears, there are no quotas in the Law School's "sex-blind admissions," according to the statement of policy found in admissions materials available to prospective applicants.

The result of sex-blind admissions should be that, given equally qualified applicant pools, the percentage of applicants admitted is the same for men and women. This year about 10.3 percent of the women who applied were accepted — 236 out of 2,303 female applicants — as compared to a 10.8 percent acceptance rate for men — 544 out of 5,017 male applicants. (Last year's figures were 11.2 percent for women and 12.7 percent for men.)

The steadily increasing number of women coming into the Law School — corresponds to the increasing number of applications by women. This year there are 159 enrolled (including 12 who took deferrals in '77) in the first year class of 557, as compared to 154 out of last year's class of 561. 2,303 women applied this year, a 16.5 percent increase in female applications over last year. 5,017 men applied this year, an increase of only 6.8 percent.

Another positive factor is that more women admitted are choosing to attend. June Thompson, Assistant Dean of Admissions, commends the efforts in recent years of the Women's Law Association both to recruit female applicants and to personally encourage admitted women to come to Harvard.

WLA uses funds budgeted by the Law School to make recruiting trips to colleges and universities around the nation, and to send letters describing HLS as a good choice to women who have been accepted. Each woman accepted also receives a phone call from a WLA member, and there is allowance for

a second call should the applicant find she has any questions. In many cases the WLA member may supply the name of a woman already attending HLS who could share some special experience similar to the applicant's — for instance, she may be married or have minority status — and suggest that the second call be used to contact her.

Conversation with first year women reveals they are not overly conscious of being outnumbered two to one, at least not in the classroom setting, where they are as vocal as the men.

"I guess I've thought about the minority status of women in law most when I've noticed one of my professors consciously using 'she' sometimes instead of always 'he' in reference to the judge or attorney in a hypothetical case. I really appreciate that," says one. Many are bothered by obvious lack of women on the HLS faculty. Those who are housed in campus dormitories appreciate the daily access to interaction with other women, including some in their second and third years and first year women in sections other than their own.

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HLS Administrators Play Musical Positions

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bility better focused than it had been in the past. The final result will be that more administrative time will have been released to give specific attention to matters of concern to students and to provide more staff assistance to faculty.

New Administrators

One of the additions to the Law School administration this year is Stephen B. Young. He has been appointed as Assistant Dean and Associate Director of Financial Aid. Lee I. Leavitt has been appointed to the Law School staff as financial officer. The library also has received a new administrator, Robert C. Berring, Jr. He has been appointed associate librarian and will be responsible for the day-to-day operations of the Library. The final new member of the administration will begin work on November 1, 1978 when Molly T. Geraghty will assume the position of assistant dean and director of admissions.

Departures

William L. Bruce, formerly vice dean, has left the Law School to become professor of Law and associate dean at the New York Law School. Director of Admissions and Assistant Dean Patricia A. Lydon, who had assisted in the administration of the Legal Methods program, left the Law School to practice law in New York City. The third dean to resign was Alfred C. W. Daniels, who had served as an assistant dean and director of the Office of Placement and Counseling. Daniels will be devoting his time to a business with which he had previously been associated on a part-time basis. Dorothy Chin resigned as assistant dean and associate director of the graduate program in order to assume a teaching position at the University of Singapore. The final departure was that of Mary Conlan, who had served for many years as the administrative assistant to the dean.

Russell A. Simpson

Because of these departures, Sacks believes that this is an opportunity to "reassign some of the major administrative responsibilities at the Law School along functional lines." One of the major beneficiaries of this philosophy was Russell A. Simpson. Simpson had previously been assistant dean and director of financial aid. In addition, he was special assistant to the dean on budgetary and fiscal matters. As a result of the changes, Simpson has been named assistant dean for financial and general administration. His position is defined as covering budgetary matters, accounting, non-academic personnel and physical plant. Simpson will also retain his position as director of financial aid.

Simpson's position in Financial Aid, although unchanged in title, will result in a significantly lesser time commitment on his part. Basically he views his position there as being one of "overall supervision." He plans on sharing policy decisions with Assistant Dean Stephen Young. Simpson plans to cut back on the number of students he sees in regard to financial matters in order to provide time for his new responsibilities.

A major element of Simpson's new position will be his contact with the Law School budget. He contends that the \$12 million budgeting process has not in the past operated as efficiently as possible. Simpson said the monitoring and predicting of expenses needs special attention. He also feels that more is needed in the area of medium- and long-range planning aspects of the Law School's budgeting process.

When asked what changes he was planning in the budgeting process, Simpson replied that he was still learning the job and did not make any specific predictions. He is planning to review the whole budgetary operation and "make decisions on what works." No changes will occur until the budgeting process begins in the spring. In addition,

Simpson could foresee no changes in the current procedure used to bill students.

According to Simpson, student input into the budgeting process would be "helpful", but a problem exists in getting that input in a "reasonable way." Simpson would be particularly interested in how students perceive the value of a wide variety of courses as compared to the cost of offering that variety. Simpson would like to develop an accounting system which would tell how an educational change would affect the cost of the education.

Another major responsibility for Simpson will be buildings and grounds. One of the most important aspects of this area will be the development of short, medium and long-range planning for the purpose of maintenance and also to upgrade facilities, including dormitories.

He and Young have toured the dorms and "were not particularly pleased" at what they saw. It is Simpson's belief that the Law School needs to make an investment in the dorms over a period of time. He would like to "plan a program to upgrade the dorms generally" so that they could "offer a reasonable service and charge a reasonable price for it."

Overall, Simpson sees his position as being the senior assistant dean for general administration matters. He feels that it will take him a year to learn the ins and outs of the position and that his function will be more coordinating than controlling.

Stephen M. Bernardi

Another person benefiting from the change in the Law School's administrative structure is Stephen M. Bernardi. Formerly an assistant dean and secretary of the Law School, Bernardi becomes assistant dean for academic affairs and retains the position of secretary of the Law School. Bernardi adds new responsibilities for overseeing the

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Deans Come and Go in Administrative Shake-Up

(Continued from Page 4)

admissions and placement functions while continuing to oversee the Registrar's Office and serving as a member of the Administrative Board.

Bernardi will be seeing more of the day-to-day operations of the Placement office in his new position and will also be involved in some policy decisions. He would like to see the opportunities available through the Placement Office reflect more of a choice for students rather than being so heavily weighted in favor of private firms. He also feels that many students are "missing a bet" when they restrict their interviewing only to private firms in major cities. Bernardi is not happy with what he sees the 2Ls going through, especially the problem of "overinterviewing."

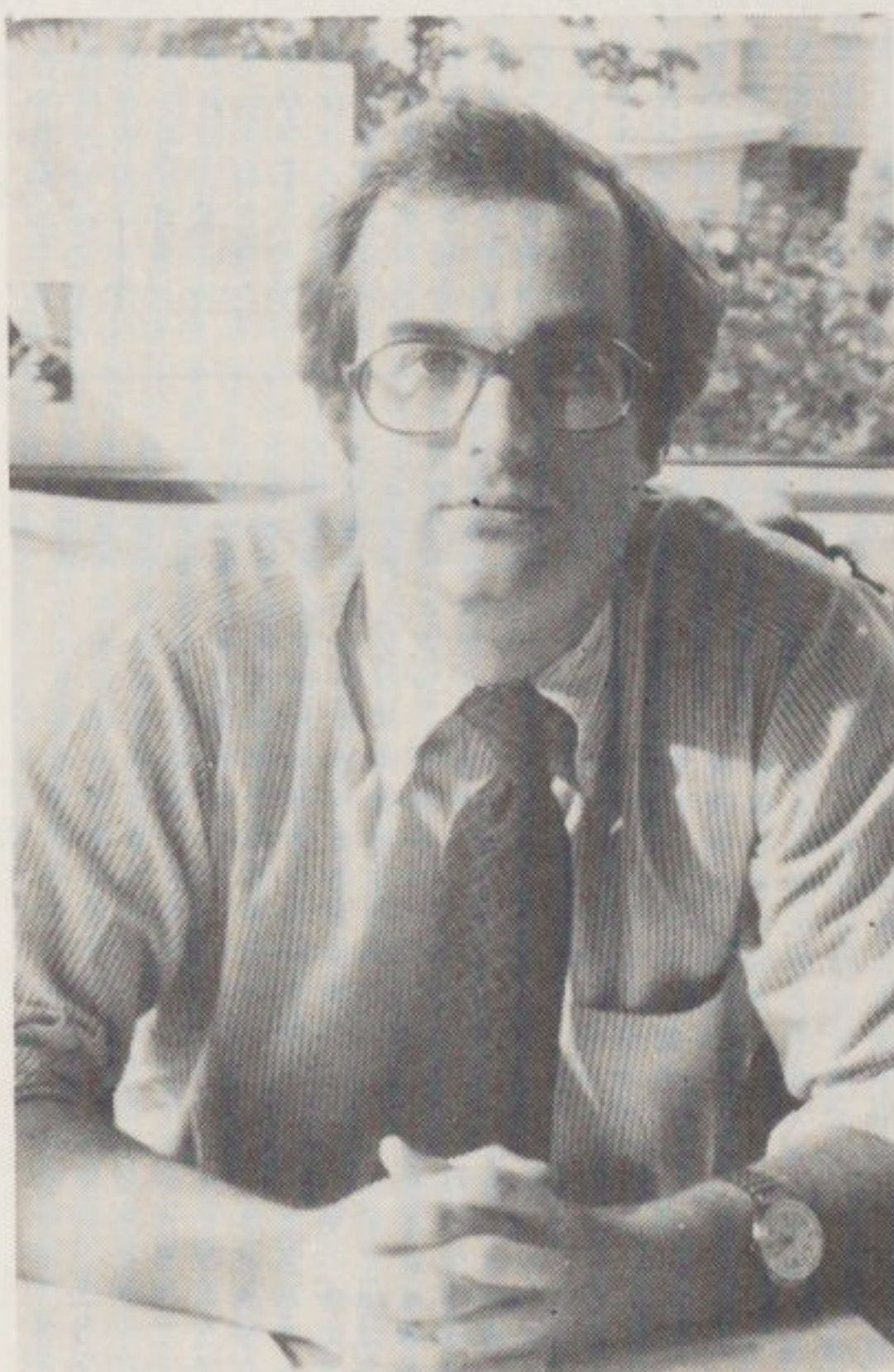
One of the major changes Bernardi sees resulting from his new appointment will be a decrease in the amount of student contact he will have as compared to his position last year. Most of his one-to-one contacts now will be directed to Assistant Dean Mary Upton. Although Bernardi says he feels this may be the best thing for the immediate future while he is learning his new position, he "doesn't want it to diminish to the vanishing point."

Mary D. Upton

Registrar Mary D. Upton has been named as an assistant dean and registrar. This change was warranted, according to Sacks, not by any changes in the office, but rather because "her work as registrar has a sufficient importance and close relationship to the academic mission of the Law School." Upton was also appointed to the Administrative Board and the Committee on Legal Education. In addition, Upton will now be in charge of handling withdrawals and requests for readmission and her office will handle cross-registration.

According to Upton, one of the most positive aspects of her job was

being able to assist the Board of Student Advisors with the 1L orientation program this fall. She said she is looking forward to more opportunities to do something positive, rather than dealing always with people who are "angry, cranky or mad."



Asst. Dean Stephen B. Young

Stephen B. Young

One of the new faces among the administration is Stephen B. Young. Young's appointment is as an assistant dean and associate director of financial aid. He will only be available on a half-time basis because he currently holds a Rockefeller grant to study the concept of human rights in Sino-Vietnamese tradition. The major areas for which Young will be responsible are the day-to-day operations of Financial Aid, student organizations, and the dormitories.

Young, who will be under the general supervision of Simpson in the operation of the Financial Aid Office, sees his function as that of "responding to student problems" and "focusing on how they affect students' lives." Overall, Young has been impressed with the basis of the Financial Aid program at the Law School. One specific need he sees is for a better job to be done of explaining to students the basic assumptions involved in the process.

Another change that Young would like to see in the Financial Aid process is some sort of special loan program which would provide a private funding source so that the parental contribution would not be so important to the aid package. The reason that the parental contribution is currently included is the lack of sufficient alternative funding. In connection with this possible change, Young would also want to institute some coordination and expansion of the part-time legally oriented work available to second and third year students. However, Young "doesn't look on Financial Aid as having primary responsibility for financing a student's education."

The dormitories will also come under Young's supervision. He says there is a need to begin planning some decorating changes and developing a capital improvements plan. The Dorm Council has been asked to assist in the process of developing priorities for dormitory improvements. Another development he feels necessary for the dorms is improved buildings and grounds support. Young would like to see a preventative maintenance program with appropriate follow-up developed. A revision of the responsibilities of the resident assistants is also on Young's agenda so they will have a clearer definition of their responsibilities.

The last major area for which Young is responsible is student organizations. He identifies these groups in three categories. The first contains those organizations which are involved in the experience of legal education and have separate budgets from the Law School. In the second category are those groups which have been recognized with the Harvard Law School name and which may receive some budgetary support. The final group is made up of those organizations that are ad hoc or political in nature. Young sees his responsibilities as being with the second group of organizations.

One major step Young plans is the development of standards for

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New Faces Among HLS Top Brass

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the kind of support, such as money or office space, that the Law School gives these student organizations. Previous to his arrival, resources were dispensed on a discretionary basis. Although he does not condemn the discretionary aspect, Young says he feels that standards and guidelines would lead to more autonomy for student groups.

Overall, Young feels that student organizations and activities have a great deal of exciting potential for legal education and for a sense of community at the Law School.

Other Changes

In addition to these changes, several others occurred during the summer. Frederick Snyder was appointed as assistant dean and director of the graduate program. He will handle the same activities as Dorothy Chin did previously. Annie Bombard, assistant to the registrar, will now handle all cross-registration matters. Matters relating to judicial clerkships will

now be handled by Eleanor Appel, who will remain as director of placement. June Thompson, assistant director of admissions, will become assistant director of admissions and of placement. The purpose of this move is "improved office coordination" according to Sacks.

There were also several title changes which are not intended to result in changed responsibilities. Douglas Phelps now becomes admin-

istrator for public service placement and career development. Mark Byers becomes the career counselor in the Law School.

When questioned about the magnitude and multitude of changes which occurred, Dean Sacks stated that they stemmed from a number of developments which occurred independently. The knowledge of these developments led to planning which took into account more than just the individual specific openings.

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The matchless humor of a few nameless 2Ls caught fire this week when copies of the above matchbooks were delivered to the dean and several professors, as well as placed in faculty lunchroom ashtrays. Commented one originator: The matches were "funded by a group of public-spirited students in order to add a little levity to the beginning of the new year."

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Blacks Urge Boycott of D.C. Firm

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dean for academic affairs, however, said the Law School would not block the firm from using Placement Office facilities. Stating that "the Law School does not ordinarily undertake to determine what clients a firm represents," Bernardi said his memorandum reiterates the official HLS position with respect to law firms seeking to interview students.

Bernardi said the statement, posted on the Placement Office bulletin board, would allow students to make informed choices about associating with the firm.

He disagrees with BALSA's stand and doesn't think the Law School should require interviewing firms to disclose their controversial clients. "I feel strongly on my side if what we're talking about is barring the use of placement services to Collier, Shannon or any other firm," he said.

In his memorandum, however, he pointed out that Collier, Shannon's past representation of South Africa was "a matter of unusual and intense interest" which prompted him to issue the statement similar to one released last year by Alfred Daniels, former Assistant Dean and Director of the Office of Placement and Counseling.

Although the statement partially responded to one of the requests made by BALSA in its resolution, Tyler said that it failed to satisfy BALSA's request that the school deny the firm its placement services.

Pressure intended

"As long as Collier, Shannon shows up, we plan on having some form of protest, not only to inform the students but to put direct pressure on Collier, Shannon and make them uncomfortable in coming here to recruit Harvard students," he said.

Collier, Shannon has defended its representation of and lobbying for John Vorster's South African government, although it has now

dissociated its South African business from the rest of the firm.

David A. Hartquist, one of three partners involved in work for South Africa, confirmed Monday that the firm has formed a special partnership to represent and lobby for South Africa. The partnership, named de Kieffer & Associates, also includes partners Donald E. de Kieffer and Thomas Shannon.

All three, however, remain as partners in Collier, Shannon and still do the majority of their work for the 26-person firm on matters not involving South Africa, said Hartquist.

De Kieffer & Associates registered with the Department of Justice early this year in compliance with the Foreign Agents Registration Act, which requires all persons or firms engaging in political activities, such as lobbying, on behalf of a foreign principal to register and disclose their clients.

According to the Department of Justice, Collier, Shannon no longer lobbies for South Africa. The firm is a registered agent for the Republic of China.

But the three partners of de Kieffer & Associates still occupy space in the old firm's offices.

"We felt that this was a rather special client and that those who work on such matters for South Africa should represent them directly," said Hartquist, explaining the decision to form a separate partnership.

Moreover, the provisions of the Foreign Agents Registration Act require the keeping of separate bookkeeping records and files. "We determined after consulting with the Justice Department that it would be desirable to sever the financial relationship as well as all the files from Collier, Shannon," he said.

Hartquist said he disagreed with protesting students and thought that the firm had a right to interview at Harvard, whether or not it officially represented South Africa.

In an interview last spring, de Kieffer said, "I think it was a sad commentary on Harvard that this

happened the way it did. To criticize a lawyer for who his client is goes back to the Scopes Monkey Trial."

Reevaluation sought

BALSA officials, however, hope their efforts to influence students to boycott the firm will force it to reevaluate its clientele.

"We do feel that an informed student body will do as they did last year in boycotting Collier, Shannon," Tyler said. "I think the overwhelming majority of Harvard law students are conscientious enough."

But Tyler said that Bernardi's statement, posted only at the Placement Office, did not go far enough in informing students. He said that BALSA would like to notify by telephone each student who had scheduled an interview with Collier, Shannon, but that the list of such students would not be available until Wednesday.

Although last year's boycott successfully employed similar tactics, it apparently had scant effect on Collier, Shannon's recruiting process.

More than 1,700 people, including several Harvard law students, applied for a handful of positions with the firm. "We did talk with some Harvard students this year, but we did not hire any," Hartquist said.

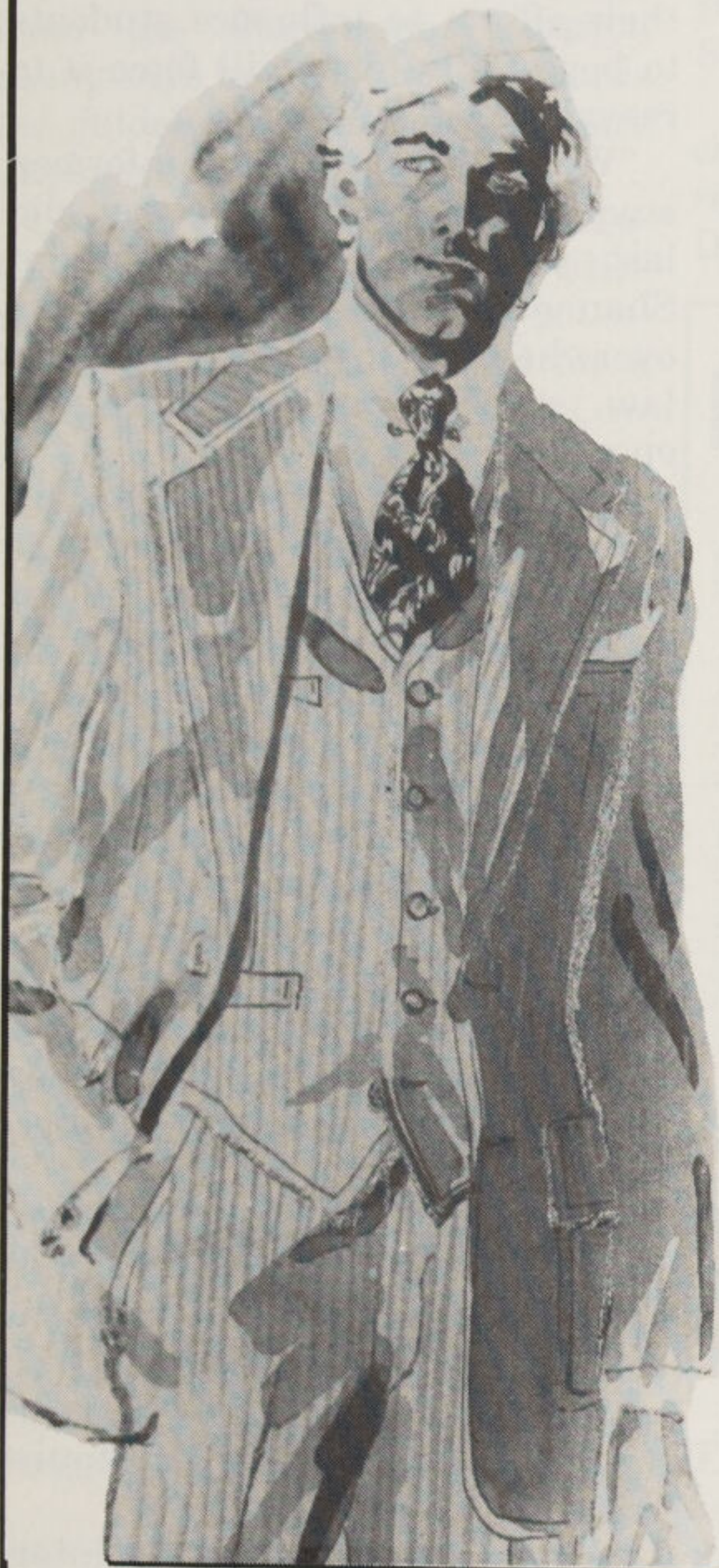
This fall the firm plans to interview at Harvard "as it would anywhere else," he said. "We'll have to see what happens [with respect to the protest]."

That the controversial firm will recruit on the first two days of the interviewing season is due to the luck of the draw.

"It's no conspiracy," said Eleanor Appel, placement director. "The only conspiracy was the calendar."

According to the placement office's system of rotation, a firm which visits Cambridge during the eighth and final week of interviews, as Collier, Shannon did last year, automatically is scheduled to interview during the first week of the next year. ❦

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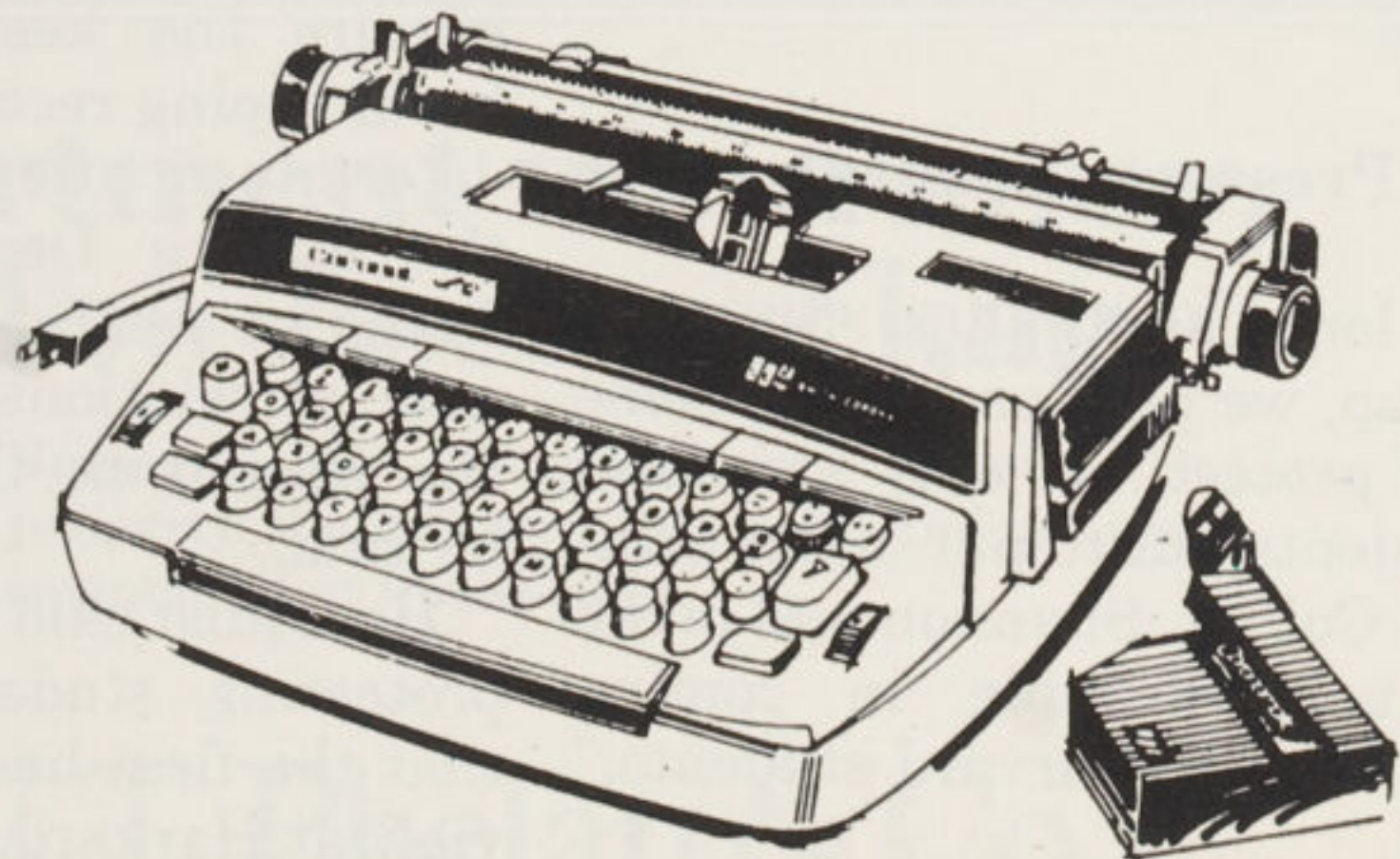
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Tribe Tries Advocacy Scholarship

by Robert Reznick

Prof. Laurence Tribe's *Treatise on constitutional law* is an important work because it represents a drastic departure from the traditional enterprise of treatise writing. That reformulated enterprise is the subject of this review. An analysis of the *content* of the book — its seven models, two tracks, one triangle, and God knows what else — is left to the law reviews which dot our land, and whose obsession with details, such as content, gives them a sense of purpose.

Treatise writers have typically characterized themselves as reporters and collectors. William Prosser called himself a "packrat" in the Preface to his Fourth Edition of *The Law of Torts*, and stated that his work could "at most report the arguments which have been going on, and the perhaps fleeting state of the law." Similarly, Charles Alan Wright stated flatly that his treatise on *The Law of Federal Courts* "endeavors to state accurately and completely what the law is."

By way of contrast, Tribe's goal is to "provide a coherent foundation for an active, continuing, and openly avowed effort to construct a more just constitutional order." With this comes a shift in the role of the treatise writer: "For me, the morality of responsible scholarship points not at all to the classic formula of supposedly value-free detachment and allegedly unbiased description."

Advocacy Scholarship

What remains unsaid is the necessary inference I have drawn from having read most of the *Treatise*, and from having taken Tribe's Con Law course: more than a summary or a hornbook, the *Treatise* is intended to be a manual for effectuating the positions it espouses. It is a work of advocacy scholarship, and must be analyzed accordingly.

It is possible at this point to in-

troduce the opinions of others who have reviewed the work. The *Treatise* at one time was sold with a dust jacket, although the dust jacket is not now available at the Coop or the Harvard Bookstore. Perhaps it seemed un-treatiselike. Or maybe they just like dusty books. In any event, the back of the jacket reproduces statements by several people you don't often find hyping books: Arthur M. Schlesinger, Jr., California Supreme Court Justice Mathew G. Tobriner, Professor Philip B. Kurland, and U.S. Circuit Court Judges Shirley M. Hufstедler and Harold Leventhal.

Start with Kurland: "A sterling accomplishment. It will be of great use to students, teachers and practitioners. It is not only informative, but provoking." Misses the essence of the *Treatise* entirely. A review I could have written without reading the book.

Hufstедler: "No architect of constitutional law, on or off the bench, should deprive himself or herself of the benefits from meticulous inspection of Professor Tribe's intellectual craftsmanship." Much warmer, with emphasis on the "architect."

Finally, Tobriner, for whom Tribe clerked on the California Supreme Court: "We haven't had a book like Tribe's in this century. He's giving the kind of guidance sensitive judges will follow." Right on the nose. He's telling judges to write the *Treatise* into law. That is, of course, if they consider themselves sensitive.

A Digression

A casual reading of the preceding quotations demonstrates that yes, Virginia, judges write the same way off the bench as on. In a similar vein, you should realize that the *Treatise* is not light reading to be skimmed over your morning Sanka. Consider the clarity of this "clear" constitutional message on

pages 32-33:

"Thus, the Supreme Court in *Hass* obscured an otherwise clear constitutional message: despite the growth of federal judicial power, the Constitution remains a fundamentally democratic document, open to competing interpretations limited only by the values which inform the Constitution's provisions themselves, and by the complex political process that the Constitution creates — a process which on various occasions gives the Supreme Court, Congress, the President, or the states, the last word in constitutional debate."

What may be lacking in readability and punctuation is more than made up in length. It is very difficult to express complex and dense thoughts so that they are also a pleasure to read. John Ely can do it, and so can one or two others. Maybe.

The John Brodie Complex

Tribe's effort at advocacy scholarship is not without risks commensurate with the scope of its goals. The main threat to the success of the endeavor comes, I think, from what I will call the John Brodie Complex.

John Brodie was a great quarterback. In fact, he appreciated his greatness so much that he thought he could complete a forward pass through any zone defense. What Brodie did *not* appreciate was that there were also great cornerbacks in the league who were able to transform his overconfidence into interceptions, and who resented being underestimated so much that they played a little harder during the game.

Now, members of the legal elite like to think of themselves as a very smart and sophisticated bunch. And goodness knows they're vain. As a consequence, rough ground rules have evolved which have been designed to ensure that

(Continued on Page 11)

A Failure For Pass-Fail

The once and future issue of pass-fail grading seems to be an idea whose time has not come, at least according to a law school committee that spent over two hours this week deciding that the faculty should not decide.

The Legal Education Committee, normally made up of five faculty members, two administrators and three students, voted this week without its usual student complement — two of the student members have yet to be appointed for the year. Since it's the students who will have to live with the results of the decision (or non-decision), it seems a bit over-conscientious to have pushed through the committee's recommendation before more student input was heard.

The issue was placed before the committee at the end of the spring semester in the form of two student-written pass-fail proposals, both of which deserve a better look. Instead of evaluating the ideas themselves, the group voted (not unanimously) to recommend that neither proposal be considered by the full faculty because they felt that other matters were more deserving of faculty attention.

The dissenters offered two separate minority reports advocating that the issues be raised by the faculty and sent to a special committee. But in light of the majority recommendation, it seems unlikely that the issues will ever be aired.

A student survey of last year's 1L's indicates that students, if not faculty members, feel that pass-fail is at least worth considering. Had the other student members of the committee been appointed, there might have been a tie vote, instead of an overwhelming vote against such discussion.

The recommendation for no discussion will be considered at next Wednesday's faculty meeting. Had the Legal Education Committee waited until its other student members were appointed, held a one-hour open hearing and a one-hour discussion of the proposals themselves, the full group might be three steps farther ahead instead of two steps back.

Other schools have found a pass-fail system worthy of adoption. At the very least, it is worthy of full and open discussion among students, faculty, and administration. As Aaron Seth Bayer, 2L, a proponent of one of the pass-fail plans, observed to the RECORD, "Given that many students are unhappy with the present grading system, it seems incredible that deciding whether to consider the subject is itself a controversial issue."

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Fenno

The room was filled with the silence of 1L's on their first day of class. Fenno stood outside the door, took a deep breath and entered. With seating chart and books under his arm, he walked to the front of the room as confidently as possible.

"I am Professor Fenno," he said, trying to sound professorial. "I will be teaching you Civil Procedure."

Fenno noticed that no one in the room was breathing other than himself, but he continued.

"Perhaps what you've heard about the Harvard Law School is to the contrary, but the ground rules here are as follows for each one of your classes: come to class if you want to and do the reading if you feel like it."

A hand went up. Fenno nodded toward its owner, who had already begun to sprout wings and feathers.

"It seems to me," the small voice began, "that something is wrong here. You're not Professor Ferguson, and we're not petrified."

Fenno smiled. "Fergy's been detained. I'm taking his place."

"I'll just ask the Registrar about that," gobbled the 1L as he flew from his seat. Fenno hurled his Field and Kaplan, and then his new blue rules pamphlet at the youth, but he missed. Rules 12(b)(1) through (6) hit the back wall and fluttered harmlessly to the ground.

A frantic group of 1L's jumped from their seats and descended upon the text and pamphlet which they hoped would be annotated with the professor's comments. The books were torn to shreds in a matter of seconds.

"Reminds me of the Christians and the lions," thought Fenno. "Or one of Miller's better days last year."

In a few minutes the Registrar entered the room with forty members of the Harvard Police. "OK, Fenno, your fun is over," the Registrar announced. "We can get more police here if you won't come peaceably."

"But it wasn't just fun," Fenno protested. "With Horwitz on sabbatical this term, I figured that we'd need someone to give a day-one pep talk. Maybe I got carried away, but—"

A Harvard Police Officer walked to the front of the room and hand-cuffed Fenno. Three others reached under the podium and removed a bound and gagged Professor Ferguson. After standing up and dusting off the Professor, they led Fenno from the room.

"Wait a minute," said the 1L who now had a complete set of feathers. "You forgot to untie the Professor's hands and take the gag out of his mouth."

"Maybe it won't make any difference," offered another 1L.

Fenno smiled knowingly as he walked out of the room.



Letters to the Editor of the RECORD

A Cheerful Giver

To the Editor:

After a steady diet of highly publicized plans by recent graduating classes to restrict or withhold contributions to the Law School and efforts to induce future graduating classes to do the same, acts which are presumably intended to punish the Law School for all of its transgressions, I think it only fair to state that I am one alumnus whose feelings about the Law School and attitude toward giving could not be more diametrically opposed. I do not understand, and I deeply resent, most of the criticisms leveled by highly vocal, disaffected students against almost everything of consequence which constitutes Harvard Law School: its curriculum, hiring policies, educational style, attitude toward students, and teachers. Above all else, I am repelled by the incessant, purportedly humorous, personal disparagement of certain faculty members who, despite all their imperfections, I know from personal experience to be excellent scholars, skilled educators, and decent individuals. To me, a large portion of the criticism so liberally dispensed is petty, vindictive, and, unless life at the Law School has changed dramatically in the past three years, unjustified.

I therefore fully intend to do what I have done since graduation: to make regular, unrestricted gifts to the Law School to help it to continue doing what it has done so well for so long. Considering all that the Law School has given me, that is the very least I can do for it.

Clifton B. Cates, III, '75
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SPORTS QUIZ

1. Who was the only man who was ever thrown out at second base while he was taking a shower?
2. Who penned the epic American ballad "Casey at the Bat"?
3. Who leads all active National League players in career runs batted in? Who's the leading American Leaguer?
4. What was the nickname of the first Seattle major league baseball team? Where is that franchise presently located?
5. Name the authors of the following baseball novels: *The Natural*, *The Great American Novel*, and *You Know Me, Al*.

(Answers on Page 16)

Cryptic Law

We begin the new school year as a former HLS student began a new school year.

Gxl qpczg mhn P elyg gk an bthzzckkaz P
xhm kyl kq gxl akzg pyglyzl qcpdxgz kq an
tpql. P tkkilm hrkjg al. Lulcnrkmn ehz
ghltlc... P ehz h tpggtl qlttke... Gxlel elcl h
tkg kq rpd qlttkez, ghth qlttkez, ckrjzg
glttkez, zltq-bkyqpmlyg belhgjclz hckjym
... P zhpm, "An Dkm, gxpz pz h sthbl qkc
dphyzg, ykg qkc h tpggtl apyyke tpil al."

(Solution on Page 6)

DRAMA

The Law School Society is soliciting applications for the positions of **choreographer** and **musical director** of the 1979 Law School Show.

Please contact Lisa Poyer — 876-3853 or David Fleischer — 864-6676, before Sept. 25.

Tribe's Con Law Book: On Thin Ice

(Continued from Page 9)

the style and tone of acceptable legal argument reflect a proper respect for the intelligence and sophistication (to say nothing of the vanity) of the audience. Anything less is unprofessional, and can be ignored.

An Explanation

On a limited scale this explains why so many examples of legal writing are indistinguishably plodding, barely intelligible, and have all those miserable little footnotes. The style has actually been homogenized by years of custom and blind adherence, and by enjoyment of the self-gratifying sense of eliteness which is generated.

In a much different and broader sense, overconfidence is at the edge of what is considered properly respectful behavior within the legal establishment, especially by an avowed reformer. Anything *more* than good faith overconfidence — any hint that an author is playing it fast and loose because he thinks he can get away with it — and the perceived dignity and objectivity of the field is threatened, and the going gets tough.

American Constitutional Law is in a vulnerable position because of its magnitude and purpose. Tribe will probably be held to an exceptionally (perhaps impossibly) high standard of fairness with regard, say, to the interpretation of precedent and the restatement of opposing views. If it is perceived that he has not played it right down the middle, or that he has tried to be too clever, his Treatise will be viewed more as an attempt at manipulation than argumentation and the success of the entire enterprise will be in jeopardy.



Miller and Nesson Branching Out . . .

(Continued from Page 1)

helpful to a number of Jewish charities, and is in line for the presidency of the Rotary Club.

If you can confirm the story about his background, do you print it?

Now you're a judge. Schweinhund has found out about the story and seeks to have publication restrained — how do you rule?

Asking the Experts

The Schweinhund question is part of a four-page hypothetical situation placed before about 35 lawyers, judges, newspaper editors and print and broadcast journalists at a three-day conference in Rochester, New York, in early August.

Profs. Arthur R. Miller and Charles R. Nesson of Harvard Law School, and Prof. Benno Schmidt Jr. of Columbia University Law School put the experts through paces on three such hypotheticals, with each professor running a three-hour Socratic discussion more stringent than the toughest 1L class.

The Rochester conference, sponsored jointly by the Ford Foundation and the Gannett Newspaper Foundation, is one of several dozen such confrontations that have taken place over the past four years. The purpose of such Media and the Law conferences is to bring the two professions together, face-to-face, for a look at the process

each group goes through in making some of their tough decisions.

Miller and Nesson are conference leaders; a third Law School faculty member, Anthony Lewis, has attended many of the conferences, both as a participant and as an observer. Lewis, a *New York Times* columnist, teaches Constitution and the Press.

Schweinhund Unveiled

At the Rochester conference, there was not a single journalist who wouldn't have printed the Schweinhund story.

"He's thrust himself into public life, and it's my responsibility [to expose him]," said one journalist.

"Because he's a candidate for the school board?" asked Miller. "What if he were just a lawyer in a small or moderate-sized town? Just a private Nazi."

"I'd have to look at it; once a Nazi, always a Nazi," replied the reporter.

Another newsperson asserted that he'd go with the story even if Schweinhund were a bellhop in the local hotel — it's news.

"What's the headline? Buffalo Bellhop from Buchenwald?" countered Miller.

"I'd run it, even if only to show he's reformed," said another journalist.

"Oh. From Auschwitz to Albany — the American Way?" Miller said.

But when Miller turned to a U.S. federal judge and asked him how he'd feel reading about a similar situation in his morning newspaper, the journalists seemed surprised to hear that the judge didn't want to know those things the media maintained were in the public interest to print.

Each Conference Different

Although Miller and Nesson have run such Socratic seminars many times in the past few years, the conferences haven't gotten stale.

There have been some, in fact, that have been all too immediate in

their impact. For example, Lewis was at a Media and the Law conference in India last month, where Miller acted as one of the seminar leaders.

The format, Lewis wrote later, was the same as usual, "but the result was dramatically different. For underneath the hypothetical situations there was a reality that pervaded everyone's consciousness: India's recent and narrow escape from dictatorship.

"There were Indian editors in the room who had gone to prison during Mrs. Gandhi's emergency, and there were other editors who were called collaborators," continued Lewis. "There were judges who had bowed to Mrs. Gandhi's decrees, and there were judges who had resisted at the risk of their careers."

At all the conferences, the leaders try to keep the hypotheticals current.

"In each one [hypothetical]," says Nesson, "I tend to put something new in and clear the deadwood out."

"I get into issues more often than [Miller] does," says Nesson. "His is basically one issue — do you print it? I typically run through a series of more complicated issues."

His hypos, he says, involve "thinking through positions;" Miller's involve "articulating instincts" — both valuable goals for the conference participants.

Grand Jury Transcripts

In Rochester, for example, Nesson's hypothetical involved an imaginary governor of a state, his troublesome brother, and a fatal car accident involving a local cocktail waitress and perhaps the brother, perhaps the governor. Issues involved everything from whether a television team would turn its extra footage over to attorneys on the case to what a reporter would do to get a story that perhaps the D.A. was downplaying the matter before the grand jury.

At one point, Nesson asked a reporter whether he'd tell an old friend on the grand jury he'd "got a

(Continued on next Page)



Prof. Charles R. Nesson

Socratic Method Meets the Press

(Continued from Page 12)

tip" and only wanted it verified, when in fact the reporter was just guessing that the D.A. was soft-pedaling the case.

The reporter maintained that he wouldn't lie.

Nesson turned to another journalist. "Are you going to play it absolutely like a Girl Scout?"

"I wouldn't lie," answered the reporter, "but I would probably say, well, I have some information . . ."

"You'd fudge it a little," said Nesson.

"Yes, I'd fudge it."

A while later, Nesson turned back to the reporter who wouldn't lie. This time, he said, the grand juror "is an old high school classmate of yours, an old flame . . . now, how do you get the story?"

"The first step would be to strike up a conversation, renew old times, old acquaintances. Inevitably, we're going to wind up talking about the grand jury, and if the bell goes off in my head, that there's something there . . . we'll talk about it over cocktails, over dinner."

"You won't bald-faced lie, but you'll toy with this source's emotions, right?" asked Nesson. "You'll presume upon a past personal relationship to get the story."

"Probably," admitted the newsman.

Terrorists at the Plant

Schmidt's hypothetical at the conference involved a terrorist takeover of a nuclear power plant. The reporters got some hard questions about how far they'd go to cooperate with law enforcement people; and the judges some harder questions about whether they'd order prior restraint of a news story that law enforcement people felt might tip the terrorists off as to how to cause a nuclear disaster.

The Socratic format, says Nesson, is an ideal way to get the groups together. It's "exciting, and as long as the world is going to be played with conferences, they might as well be exciting.



Prof. Arthur R. Miller

"The typical problems of a conference are if the people are important enough, you can't shut them up; and you can't pin them down on issues," he says. "This format solves those problems. The moderator has permission to ask questions, and in fact is measured by the hard questions he asks."

The format is now being applied to different situations.

Miller did a seminar in Florida early this year that pitted media members against local government members. Both Miller and Nesson have worked with a media-v.-business group and hope the program will expand in that direction.

According to Jude Dratt, project assistant in the Ford Foundation's Office of Communications, the conferences, which started with one co-sponsored by the Ford Foundation, the *Boston Globe* and the Nieman Foundation in June, 1974, have caught on.

Several newspapers have held in-house conferences, and Miller, Nesson and Schmidt have taken their show all over the country. In fact, there was a Media and the Law conference in England last year, as well as the one in India last month. This month, Miller and

Schmidt went to Virginia for the first conference to involve only broadcast journalists; this weekend, Miller will travel to Montana for another session.

In One Room

While the Rochester conference involved mostly upstate New York participants, some of the gatherings have been stellar. In March, 1975, for example, there was the Washington Conference; and the New York Conference followed in May, 1976.

The participants at the Washington conference included such people as then-Solicitor General Robert H. Bork; CIA director William E. Colby, Benjamin Bradlee, Executive Editor of the *Washington Post*; Fred Graham and Dan Schorr, both nationally-known broadcast journalists; and U.S. Court of Appeals Judge Clement Haynsworth, among others. In the audience were Supreme Court Justice Potter Stewart, now-HEW Secretary Joseph A. Califano and Katharine Graham of the *Washington Post*, among others.

"The cast of characters was as gilt-edged as any you could put together," says Nesson. The New York conference had a similar list of luminaries.

"You're getting them together, to sit down and think through some hypotheticals and articulate their decision-making processes," says Miller. "It's something some of them very rarely do. There's an enormous amount of self-realization and an enormous amount of comprehension and an enormous amount of interaction outside the sessions. I think by and large there's an appreciation of what each side does."

The best discussions, both Miller and Nesson say, take place not around the conference table, but at lunch and dinner, and far into the night.

"We often see the phenomenon of them coming in and sticking with their own groups Friday," says

(Continued on Page 16)

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FALL TERM '78

Law School Bad, But Paper Chase Worse

by Larry Zelenak

To an Early Grave

After two previous lives, one as a novel by John Jay Osborne, Jr., and one as a movie starring Timothy Bottoms, *The Paper Chase* has been reincarnated as a television series. One would have thought two versions of this trash would have been more than enough, but apparently not. For whatever consolation it may offer, the expert prognosticators of *TV Guide* give the show almost no hope of surviving beyond its initial season.

Unlike the book and the movie, which were explicitly set at Harvard Law School, the new show takes place at an anonymous prestigious Northeastern law school. Since this unnamed institution is clearly intended to be Harvard, the reluctance to name names is a trifle puzzling. Perhaps the producers felt that the lack of a definite location would free them from the necessity of being reasonably accurate. If so, they have certainly taken full advantage of that freedom.

Disturbing Inaccuracies

Some of the inaccuracies are trivial (such as the tendency of the students to dress in clothes at least ten years out of date — have they been so busy studying to get into law school for the past ten years that they haven't had any time to buy new clothes?), but others are rather disturbing. What are we to make, for example, of the fact that none of the students seems to have a first name? It may be intended to be symbolic of the depersonalizing effects of law school, but it is also more than a little ridiculous.

Even more absurd is the basic premise of the premiere episode: the protagonist, Hart (who is, incidentally, a pretty poor excuse for a law student, let alone a human being), has nightmares, almost loses his part-time job baking pizzas, and snubs a potential girlfriend, all because his contracts professor re-

fuses to call on him in class. He feels this lost opportunity for a meaningful Socratic dialogue will surely doom his entire legal career to dismal failure. It may be that I have an unusual circle of acquaintances, but most of the law students I know spend more time figuring out how *not* to get called on in class than they do actually studying.

Pompous Overachievers

The law students in the show are, without exception, portrayed as insufferable, pompous, and not particularly bright overachievers. Granted, such a type is not exactly unheard of at Harvard or any other law school, but fortunately there are a number of other, better, types as well. What is really mystifying is that the audience is supposed to sympathize with the travails of these hopeless cases. How anyone could be concerned about the fate of any of these characters is beyond me.

For the most part, the acting does justice to the rest of the show, which is to say it is atrocious. The one exception (in fact, the one bright spot in the entire production) is John Houseman in the role of the dreaded Professor Kingsfield. With his effortless arrogance and air of utter superiority, he plays the role of Harvard law professor far better than do most real Harvard law professors.

Even if *TV Guide's* experts are correct, and *The Paper Chase* dies a well-deserved early death, there remains to be dealt with the question of why there is such high and continuing public interest in the horrors of law school in general and Harvard Law School in particular, as evidenced by Scott Turow's *One L*, Joel Seligman's *The High Citadel*, and the three versions of *The Paper Chase*. Why do people want to believe that law school is such an intolerable place, filled with such intolerable human beings? (As bad as law school can be at times, if it were as bad as it is usually depicted, no one would ever have survived three years of it.) Maybe it is sadism, pure and simple. Maybe it makes people feel good to believe that no matter how miserable they may be, somewhere there are people even more miserable (at law school). Or maybe people don't feel quite so bad about paying exorbitant attorneys' fees if they think their lawyers had to go through three years of unmitigated hell to earn the right to charge those outrageous prices.

Whatever the reason for the popularity of the law school horror film-book-television series, I, for one, have had enough. With luck, *The Paper Chase* may prove bad enough to kill off not only itself, but its entire genre.



Dertads

Restaurant of Continental Elegance

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354-1234

Media and Law Seminar Learning Through Listening

(Continued from Page 13)

Miller. "By Sunday they're all mixed together." "For the whole weekend," says Nesson, "the only thing they talk about is those issues."

Those issues are important to Miller and Nesson, too, but they don't show their personal biases during the conferences.

"To the extent we articulate our own positions," says Nesson, "we lose something. It's the typical Harvard Law School game — you elaborate the issues until everyone in the room understands them; then and only then is there room for judgment."

Forewarned

Calvin Mayne, Director of Communications of the Gannett Newspaper Foundation, believes that the decisions faced by the people at the conference table have real-life parallels. "Our hope is that those decisions will be made less on an ad hoc basis and more by standards," he says.

"Whether (the conferences) actually change the world is a speculative question," says Nesson. "I don't know." But he does know, he says, that the *New York Times* people hit "a whole bunch" of issues that they had encountered at their conference in 1976. "They were ready to go in and grapple with them," says Nesson. "Whether the ultimate decisions were affected — I just don't know."

"We do know that some of these people are more careful thinking through decisions," says Miller. "They write and tell us so."

Whether the decisions are changed or not, the people seem to be. The conferences are one of the few places where judges and lawyers, reporters and editors, can sit down together and have their mental processes stripped bare.

The conference ideas grew out of the post-Watergate distrust of the law and the media for each other, and while some say the trust hasn't grown much, the understanding has.

Says Mayne: "If a lion and a tiger circle each other long enough, they will get a better understanding of each other's moves."



(Editor's note: Jacobs attended the Rochester conference as an observer while working as Prof. Miller's summer research assistant).

TGIF: Friday, Sept. 22 from 4-6 p.m. in the Hark.

"Caine Mutiny"

Friday and Saturday, Sept. 22 and 23 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.

Dean Sacks on the State of the School

(Continued from Page 2)

pressure-cooker for elite future corporate capitalists. In fact, the emphasis within the school has been to reduce the psychological trauma associated with the first year at law school.

"Those who have urged students to approach studies with a more relaxed attitude feel that the anxiety level ought to and can go down without reducing effective learning, and I think it's happening," Sacks remarked.

"Any teacher wants to educate with rigor," he stated. "I don't think any apologies have to be made to students for the need to communicate the necessity of rigorous thought."

"At the same time one wants to do it in a way so as not to cause an inordinate amount of anxiety," he concluded. "There's a nice balance to be achieved there."



Sports Answers

1. Fred. Merkle of the 1908 New York Giants. The play cost the Giants the pennant. See Gregory, Kalven and Epstein, *Cases and Materials on Torts*, Third Edition, page 926.
2. Ernest L. Thayer.
3. Willie McCovey. Carl Yastrzemski.
4. The Pilots. They are now the Milwaukee Brewers.
5. Bernard Malamud, Philip Roth, and Ring Lardner.

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