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TWENTY CENTS

Media Blitz Hits Law School: Will Success Spoil the Image?

By Terry Keeney

Does art really imitate life? At Harvard Law School the jury is still out on that question.

Harvard Law School has been the subject of much attention in the popular media lately. In the past year three works dealing with the Law School have appeared before the public: the *Paper Chase* television series; *One L*, Scott Turow's slightly fictionalized account of life in the first-year; and *The High Citadel*, a non-fiction study of HLS and legal education by Joel Seligman.

How has HLS been affected by this sudden attention by the popu-

lar media? Opinions of students, faculty and administrators vary. Many believe that the art of fictional works like *One L* and *Paper Chase* does not imitate reality. But, the reality may come to imitate the art if, as Prof. Arthur R. Miller warns, the works become a "self-fulfilling prophecy."

Turow's *One L* appeared to be a popular choice among the first-year class this year. "Everyone I've met has read it," commented one second-year student. But based on the experience of only several weeks of classes, opinions vary as

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Ed. Committee Kills Pass-Fail Petitions Hope

By Madison L. King

The status of a student-initiated petition to have the faculty consider alternative systems of first year grading remained in doubt this week, as the faculty was presented with a report by the Committee on Legal Education (CLE) which recommended that the proposal not be given plenary consideration this year.

The petition, signed by 356 of 550 first year students last year, recommended that the faculty as a whole consider one of several alternatives to the current first year grading system.

According to several members of the CLE, which had been charged by the faculty with the task of considering the proposals and recommending the next course of action, the majority report of the committee will advise that the proposal not be considered this year.

Several questions were raised last week when it was learned that the CLE would promulgate its report to the faculty without student input. Ordinarily, the CLE is comprised of five faculty members, two administrators and three students. However, because the report was prepared during the first few weeks of the semester, two new student members had not been appointed when the decision was made.

No Circumvention

"My impression is that the CLE members did not feel that there

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(PHOTO COURTESY OF CBS)

John Houseman and James Stephens play a law professor and student at not-so-fictionalized Law School, in the new CBS television show, "Paper Chase."

Ken Hur: Advertisin'est Lawyer in the Country

By Gina Markey

"A free ten-speed bicycle if you lose your license in a drunken driving case." That's the promise made by attorney Ken Hur to television audiences in Madison, Wisconsin.

The self-proclaimed "advertisin'est lawyer in the country" has been vigorously promoting his Legal Clinic since the Supreme Court struck down the ban on attorney advertising in *Legal Clinic of Bates & O'Steen v. State Bar of Arizona*. Newspapers, billboards, tee-shirts, radio, television and even the sky have carried advertisements for the Legal Clinic. In his first flamboyant promotional stunt Hur chartered an airplane to pull a "Call Ken Hur" banner over 77,000 fans at last year's Purdue-Wisconsin football game.

"I was the first lawyer in the country to do my own television commercial," boasts the 1951 graduate of the University of Wisconsin Law School. In a recently aired television ad he parodied a local jewelry store commercial in which an unclad woman gracefully emerged from a pool of water adorned with rings, bracelets and necklaces. In Hur's spoof, the 54-year-old, 300-pound attorney struggled, huffing and puffing, out of the water and informed the audience that they could "talk to a lawyer for ten bucks."

Hur's ads are designed to reach the "middle American." In a newspaper advertisement Hur advised readers:

"If the contract's very small
"And your salesman gives you a stall

"Don't make a fuss
"Just call us."

Hur believes that his advertisements have done more than build up a business for his Legal Clinic. "The image of lawyers has improved 50% in this area since I started my commercials," he said. Many of the people who go to the Legal Clinic for consultation would have never gone to a lawyer if not for his offbeat approach, Hur claims.

Loud and Obnoxious

"I'm loud and sometimes obnoxious. I'm a scuba diver and a motorcyclist. I wear tee-shirts with advertising to the office. I'm not a stuffed-shirt country club lawyer and that's why people come to the Legal Clinic. I tell rich people not to come, we don't want rich clients."

The innovative attorney, who drives a car bearing the message "Sideswiped? Call Ken Hur," says his advertising has been well received and has received hundreds of compliments from the public. "It makes people laugh. Ninety percent of the lawyers in the area approve of it; only the stuffed shirt Harvard-types don't."

Ken Hur has not had to give away any bicycles yet, because he hasn't lost any drunken driving cases. "I keep them on the road. I do everything I can, I twist and turn and I win. I'm not just flamboyant, I'm good."



Media Focus on HLS: Art or Reality?

(Continued from Page 1)

to the accuracy of the picture of HLS portrayed by Turow.

Daniel Johnson, 1L, noted that the book contained a lot of accurate descriptions. But the book is inaccurate because "it really highlights the amount of time you spend with the books."

"The book created the feeling that law school is something to be endured, not to be enjoyed. It created a sterile, intensely competitive atmosphere," said Stephen Friedland.

Prof. Clark Byse, believed by some to be a model for Prof. Kingsfield of *Paper Chase* fame, considers none of the portrayals of faculty members in *Paper Chase* or *One L* accurate. In *Paper Chase*, Kingsfield is not even a good professor because he, not his students, recites the facts of cases, Byse said. "I don't like to see what purports to be my intellectual exercise scandalized," said Byse.

A Personal Reaction

Miller's reaction to *One L* is a personal one. Miller was Scott Turow's civil procedure professor and, by his own admission, provided the unwitting model for Prof. Perini. "I don't think a day goes by that I am not asked about *One L*," said Miller.

Miller claims that the book and other portrayals of the Law School have had no effect on his teaching style, which is "Be tough. Be demanding. Set a role model." But Miller admits that the style of teaching has changed dramatically over the past several years. "Many of the demands that I imposed at Michigan and even in my first year at Harvard, I wouldn't think of imposing today. I think part of it is the increased civility today."

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Collier Boycott "Absolute Success"

By Pat Hanifin

This week's boycott of Collier, Shannon, Rill, Edwards & Scott, a Washington law firm which has three partners who serve as lobbyists for South Africa, was an "absolute success," according to Michael W. Tyler, vice president of the Harvard Black Law Student Association (BALSA), which sponsored the boycott.

"As far as we could determine, no student interviewed with Collier, Shannon," Tyler said. "We talked to Collier's representative, who said that in any other situation he would have gone back to Washington, but because of the boycott he stayed to prove Collier's point." The law firm maintains that it is improper to criticize a lawyer because of who his client is.

According to RECORD sources, at least one person did interview with Collier, Shannon.

Collier, Shannon no longer officially represents South Africa. Three of its partners have formed a new partnership, de Kieffer & Associates, to represent the lobby for South Africa. However, the three de Kieffer partners continue as partners of Collier, Shannon, and still do the majority of their work for that firm on matters unrelated to South Africa.

According to June Thompson, assistant director of admissions and placement, 31 students initially signed up to interview with Collier, Shannon. Of these, 14 had formally cancelled as of last Friday. Others cancelled on Monday, called Collier representative Lauren Olsen directly to cancel, or simply failed to show, according to Tyler and students who had signed up.

Boycott Activities

The boycott involved picketing in front of the Harvard Motor House where Collier, Shannon intended to interview on Monday and Tuesday. At the main rally at 2:00 p.m. on Monday, between 50 and 100 students, most of them white, marched in a circle in front of the Motor House driveway, carrying signs

and chanting slogans critical of South Africa, Collier, Shannon, and the Harvard Law School (for allowing the firm to interview). Lesser numbers of students demonstrated from 9:00 a.m. to 5:00 p.m. on Monday and Tuesday.

The Harvard Law Guild and the South Africa Solidarity Committee of Harvard College also supported

"I decided that this was not a firm I wanted to work for."

the boycott and provided some of the demonstrators. The Law Guild issued a statement criticizing Collier, Shannon for "clothing racism in the rhetoric of assuring legal representation to every client who needs it."

According to Thompson, some students who had signed up for interviews complained to the Placement Office that they had received calls from BALSA people criticizing their action. One person complained that she received a call although she had not signed up. Since it is against Placement Office policy to disclose the names of students signing up for interviews, the RECORD was unable to speak to those who complained.

Tyler strongly denied that BALSA harassed anyone. "I have heard nothing of it. I defy anyone to come forward and say they were harassed by this organization," Tyler said. BALSA members did phone students they knew had signed up for interviews, but only to "remind them of Collier's activities and to ask them to consider the arguments against interviewing and to make their own conscientious decisions," Tyler said. BALSA obtained the names of prospective interviewees by checking open card files in the Placement Office.

Bernardi Memo

One student who signed up and later cancelled said that he had not

heard about the South Africa connection until he got Assistant Dean Stephen M. Bernardi's memo (distributed to all students) which explained the Collier-de Kieffer-South Africa relationships. "I didn't cancel immediately," the student said, "but after I talked to some fellow students I decided that this was not a firm I wanted to work for. So Monday I called the Collier representative and cancelled."

Another student, also unaware of Collier, Shannon's connection to South Africa when she signed up, said that she cancelled after learning of that connection. Neither student received calls from BALSA members.

Tyler wished to "express gratitude and appreciation for the overwhelming positive response of Harvard Law School and the individuals who came forward to support this boycott." ❧

Law Notes

The M.I.T. China Study Group will be hosting "Free China Day — Celebration of the 67th National Day of the Republic of China" on October 8th from 10 a.m. to 10 p.m. at the M.I.T. Student Center. There is no admission charge for the day and only a \$2.00 charge for the evening variety show at the Kresge Auditorium.

* * *

The following people are notary publics at the Law School and will be able to certify absentee ballots: Betty Allebach at Legal Aid in Gannett House, Donna Chiozzi in FOB 200, Libbi Lepow in FOB 100, John Muller, Jr. at the Law School Fund Office in Hastings Hall, Suzanne O'Connell at Law Review in Gannett House, Mary Upton in FOB 100, Lisa Winsor at Harvard Defenders in Austin Hall.

* * *

The East Asian Law Speakers Program will present Jamie Horsley, '78, of Brobeck, Phleger & Harrison, speaking on "Sex-Based Discrimination in Traditional Chinese Law." He will be speaking at 12:45 p.m. in Pound 415.

* * *

"The Role of the U.S. Lawyer in Asian-Related Practice: Counselling, Negotiating and Litigating" is the topic of the October 4th session of the East Asian Law Speakers Program. David Hayden and George Brumder of Graham and James will speak at 12:45 in Pound 419.

Supreme Court Raps Gavel;

By Mark Nadel

Does Harvard Law School give preference to minority students? According to a July cover of *Newsweek*, which announced: "After Bakke-No Quotas-But Race Can Count," it would seem that it could. However, both Harvard College and Law School claim that they do not give preference to minority students.

According to Russell Simpson, director of admissions at the Law School, and Fred Jewett, dean of admissions at the College, minority students are treated no differently from anyone else, except that extra efforts are made to bring minorities into the applicant pool and to give adequate weight to their special background experiences in the selection process.

All students have their grades and test scores examined, taking into account any obstacles they had to overcome. If they meet Harvard's academic standards, they are then reviewed for interesting life experiences, including efforts on the athletic fields, in the concert halls, a year abroad or a novel adventure. Both admissions staffs try to put together a class of students with diverse backgrounds.

Under *Bakke*, the experience of living in a ghetto or of being treated as a foreigner in one's own country can also be considered. Students are admitted because of a unique cultural background or an extraordinary family lifestyle, but not because of membership in a minority group.

Yet Edward Wall, Dean of Admissions at Amherst College, refused to believe this. "They don't do it that way and they never have," he said. "Harvard, Yale, Princeton . . . all use racial preference."

Special Efforts

Commenting on Dean Wall's statement, Jewett stated that the difference between their positions was probably more semantic than real. Harvard does make special efforts to identify and attract qual-

BAKKE

ified minority students because of their special range of backgrounds and experiences which are often inextricably tied up with membership in a racial or ethnic group. While this means that a great many individual minority applicants will receive special attention, it does not signify a blanket preference for minorities.

The Harvard plan was praised by Justice Powell in his controlling opinion in *Bakke* because, "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids . . . The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive . . ."

Jewett observed that racial preference allows one to be rejected because he is not a member of a minority group, while Harvard's system only rejects students because they are unqualified or do not have the unusual and interesting experiences that someone else has. The first is racial or ethnic discrimination that creates a stigma, the second is not.

Harvard's policy entails ethnic sensitivity coupled with aggressive affirmative action searching and recruiting in order to bring all qualified persons into the applicant pool. This policy is intended to dissolve stereotypes because students can observe that their classmates are all qualified. The ethnic preference of the disallowed *Bakke* quotas, on the contrary, allowed less qualified students to be admitted and thus reinforced any stereotypes of their inferiority.

Faculty Content

The Law School faculty was generally content with the *Bakke* decision.

Assistant Dean Simpson was relieved that the Harvard plan was

acceptable. Yet he was concerned that Harvard's system was chosen as a model for other schools that do not have Harvard's resources. Harvard is able to attract a large national applicant pool and has substantial scholarship money to disperse while many other institutions do not.

Professor Archibald Cox, who argued the University of California at Davis Medical School's case before the Supreme Court, felt that the result was quite satisfactory. "It leaves the door open to let minorities in." Though he advanced the Davis position favoring quotas in his Supreme Court brief and oral argument, he would vote against quotas at Harvard.

"I myself don't have problems with quotas," admitted Derrick Bell, one of only two black professors at the Law School and author of law review articles favoring racial preference. But since the Harvard plan was achieving satisfactory results, he was not upset with the *Bakke* result. If ethnic sensitivity can work he favors it.

Professor Alan M. Dershowitz was very upset about the praise Harvard's plan received because he didn't feel that the College followed its own plan. In an article in *The New Republic* he claimed: "Harvard's program has the effect of preferring the wealthy and advantaged black applicant, for example, over the poor and disadvantaged black or white applicant." Dershowitz charged, "they do not have an affirmative action program."

Jewett disagreed strongly with Dershowitz. "He doesn't have the facts," explained Jewett. The admissions staff does extensive traveling directed toward minorities, he said. Letters are sent to minority students located by the College Board search system. There are contacts made by present students, and alumni and follow-up interviews are conducted with those who show interest. The Harvard College applicant pool includes about 14-15% minority stu-

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Legal Scholars Weigh Impact

By Terry Greene

The Supreme Court's decision in *Zurcher v. Stanford Daily*, allowing law enforcement officials to conduct warrantless searches of newspaper offices in order to obtain evidence of a crime, has been widely criticized in the press in recent months and is largely viewed with disfavor among the law school faculty. Professor Alan M. Dershowitz, for example, denounced the decision for "reflecting a perverse refusal of the Burger Court to recognize the unique status of the press," noting that the press was specifically included in the language of the First Amendment. W.

Dershowitz denounced the decision for "reflecting a perverse refusal of the Burger Court to recognize the unique status of the press."

Eric Collins, who argued the case for Santa Clara County before the Supreme Court, noted, however, that "the original concept of freedom of the press was addressed to pamphleteers — it was not intended to apply to the *Washington Post*."

Professor Paul A. Freund said that it is "unfortunate that the Court got involved in debate over whether the press has any special institutional immunity." He feels that the discussion should have centered on the people's Fourth Amendment right to be secure in their papers and effects. He noted that "there is no mystique about a newspaper office any more than about a lawyer's office . . . or a person's home library." Professor Mil-

STANFORD DAILY

ton Katz feels that the case should be considered in terms of its effect on all persons not directly involved in a criminal investigation. Characterizing the decision as "reprehensible in practical consequences," he argues that it leaves "all third parties — lawyers, doctors, accountants, as well as newspapers — open to fishing expeditions in the course of a perfectly proper investigation."

Dershowitz also criticized the decision for "reflecting a suspicious view of law enforcement." He believes that a search warrant was not called for in this case. He argues that a subpoena duces tecum, being a "more civilized way" to obtain documentary evidence, should always be used unless there is proof that the custodian is likely to destroy the materials. He maintains that although a magistrate's discretion "may be a hollow protection," at least a party has an opportunity, with counsel, to challenge a subpoena. Katz and Freund agree that the search warrant should not have been granted. Both base their conclusion on a belief that *Warden v. Hayden's* 'mere evidence' rule was improperly applied.

Impressive Briefing

The Supreme Court was acutely aware of the underlying facts of the case due to an impressive amount of briefing which one of the attorneys in the case attributed to the intense interest generated by the media. One of the earliest events leading up to the search was a call from the director of Stanford University Hospital on April 9, 1971, for police assistance in removing a group of demonstrators that had seized the hospital's administrative offices and barricaded both ends of an adjacent corridor. As police were attempting to enter the west end of the hall, a band of demonstrators

assaulted nine police officers stationed at the east end. Because most bystanders and reporters, including all the police photographers, had taken up positions at the west end, the police were able to identify only two of their attackers. On April 11, the *Stanford Daily*, a student newspaper, published a special edition covering the demonstration. Photographs in the issue led police to believe that a staff photographer had been at the east end during the confrontation. The following day, a search warrant for films of the incident was executed on the *Daily's* premises.

The *Daily* and various staff members sought declaratory relief against the police officers who conducted the search, the chief of police, the district attorney and one of his deputies, and the judge who issued the warrant. Although the action against the judge was dropped, the District Court ruled that unless a magistrate has probable cause to believe that a subpoena will be impractical, a search of a party not suspected of the crime is unreasonable. The Court of Appeals affirmed, adopting the opinion of the lower court.

Majority Opinion

The Supreme Court decided the case on May 31, 1978, ruling that the search was constitutional. Justice White, delivering the majority opinion, said that a search is reasonable if there is probable cause to believe that the "fruits, instrumentalities, or evidence of crime" to be seized are located on the premises to be searched, emphasizing that warrants are directed not at persons, but at places and things. Justice Powell filed a concurring opinion to assert that there is "no justification for the establishment of a separate Fourth Amendment procedure for the press," challenging what he saw as the fundamental error in Justice Stewart's dissent. Stewart's opinion, in which Marshall joined, argued that the search

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Bakke and Racial Preference

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dents (using the government definition which includes Asians, Blacks, Native Americans and Spanish). They comprise 17-18% of those admitted to Harvard.

Preppie Minorities

Still Dershowitz notes that most of Harvard's minority students come from prep schools. Yet this is not strange to the admissions staff since the prep schools help Harvard with its search by locating and admitting minority students themselves.

Leo Hitzrot of the Exeter admissions office noted that "somewhere around 10%" of their applicants are minority members. Each of his three full-time staff members spends five weeks a year on the road, looking exclusively for scholarship students who would not otherwise know about Exeter or be able to afford it." At Phillips Andover Academy, representatives are sent to inner-city schools from the South Bronx to Watts to recruit candidates. All applicants are then evaluated by a system similar to Harvard's, according to Headmaster Ted Sizer.

Professor Elizabeth Bartholet was not satisfied with the court's decision, and she voiced a fear felt by many that, without quotas, a class might include only a small number of minority students. The admissions office, however, felt that this fear was unfounded because ethnicity is not a measure of one's talents, skills, or intelligence. With aggressive recruiting and an unbiased and ethnically sensitive evaluation process, a representative number of minority members will deserve to be admitted. Some minority students admitted may be less prepared than their classmates because of deficient academic backgrounds, but the college's present policy of encouraging extra preparation over a summer or an extra year for these students is designed to remedy this shortcoming, Jewett said.

Professor Laurence Tribe called the *Bakke* decision, "an act of statecraft," in a *Boston Globe* article. Though the court disapproved of the Davis quotas, Tribe observed that they left the door open to quotas elsewhere, "if no less extreme remedy would adequately offset past discrimination." However, in education Tribe noted that

individual evaluation was a less extreme measure that must be preferred: "The difference is one of process, not outcome. But justice is often a matter of process. To be kicked is not the same as being tripped over, even if the result looks equally black and blue . . ."



Professors Respond to Stanford Daily Decision

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violated the First and Fourteenth Amendments' guarantee of a free press.

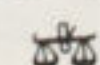
Justice Stevens, in his dissent, contended that the Court had gone too far by extending the permissible objects of a search warrant to include documentary evidence. In particular, he argued from a historical perspective that private papers should occupy a preferred position. He concluded by stating that the only conceivable justification for an unannounced search of an innocent party is the fear that he would conceal or destroy the object of the search.

Unfortunate Extension

Katz, praising Stevens for a "very good opinion," indicated that he is "disposed to agree with Stevens that the Court went off the rails by extending search warrants to 'other relevant evidence' in *Warden v. Hayden*." Prior to that case, he notes, the legitimate objects of a search were "contraband and fruits or instrumentalities of crime." In *Warden*, the Court, approving a search for garments worn by the suspect during the commission of the crime, expanded this definition to include "other relevant evidence." Katz feels that "this extension is unfortunate," and would "confine *Warden* to the precise facts." In applying the pre-*Warden* definition, he would allow "the only exception of fear that the evidence will be removed or destroyed."

Freund also finds Stevens' opinion to be very persuasive. He agrees that "the warrant should not have issued because its object was neither instrumentalities, nor fruits, nor contraband, nor paraphernalia of the crime," noting in particular that "*Warden v. Hayden*'s 'mere evidence' rule was too broadly applied to authorize searches for documentary evidence which is not part of the crime." He also ventured that "this is the sort of decision that will probably require sequels to delineate its scope and meaning."

Jerome B. Falk, Jr., the attorney who represented the *Daily*, stated frankly that he "didn't like the decision" but refused to comment further. W. Eric Collins, the attorney who argued the case before the Supreme Court for the district attorney and his deputy, stressed that this case "did not make substantial new law; it declined to make new law." He pointed out that a 1957 California statute authorized the state "to obtain evidence of crime in the hands of any third person." He also noted that remedial legislation in the wake of this decision, so far as the press is concerned, has been introduced in Congress and the California legislature. Since Collins spoke with the *RECORD* last week, Governor Jerry Brown of California has signed into law a bill granting the press special immunity from searches of this sort. A similar bill is reported to have substantial support in Congress.



HLS Okays Winter Term Written Work

By Joan Shear

Under an experimental winter term writing program approved at a faculty meeting last May, a limited number of second and third year students will be able to devote their winter term primarily or exclusively to written work.

The original approval of the 4-1-4 calendar last December included a directive to the Committee on Legal Education to consider allowing students to use the winter term to complete their written work requirement.

The decision to allow students to earn written work credits during the winter term is an attempt to alleviate some of the problems the written work requirement has faced over the years. "The idea of a concentrated month where there were no other academic obligations, and where the student had done some advance planning and preparation, seemed to us a very attractive possibility," commented Prof. David Shapiro.

The program itself is not limited to students fulfilling the written work requirement, and can be used for other types of written work credit.

Selection Procedure

Selection of students for the program will be made by a committee



Prof. David L. Shapiro

chaired by Shapiro. Also on the committee will be Deans Stephen Bernardi and Mary Upton and one student member. The job of the committee is merely to screen applications, not to make policy decisions.

Students interested in participating in the winter term writing program should pick up an application form in the registrar's office. Applications must be submitted by October 16, 1978, which is also the deadline for third year students' written work forms.

Proposals should contain assurances of adequate supervision as well as sufficient advance planning to insure that the paper can be substantially completed during the winter term, with only minor revisions necessary during the spring term.

"We hope people aren't discouraged by the criteria, and we hope students consider it seriously," added Shapiro. Proposals should also contain assurances that the residency requirement will be satisfied unless special permission is requested to conduct research away from the Law School.

Is a Month too Short?

Some of the controversy over the program goes to the educational ideals behind the 4-1-4 system. According to Prof. Robert Keeton, the greatest advantage of the 4-1-4 system from the educational perspective is that some kinds of instruction are more effective in an intensive form than when spread out over the year. An example of this is the Trial Advocacy Workshop. But

"The idea of a concentrated month where there were no other academic obligations . . . seemed to us a very attractive possibility."

skill instruction in the Trial Advocacy mode is different from most of legal education. 4-1-4 will provide an opportunity to observe whether this form of learning is transferable to other legal subject matters. In most legal subjects the opportunity to reflect on one's courses over a long period of time has been felt to be of great advantage to students.

The question left to be answered by the experimental writing program itself is too short a time to expect the completion of a major piece of legal writing.

Frustrated Journalists

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Holy Day Classes to be Recorded

By Bill Ross

The administration has arranged to tape all classes held next month on Jewish holidays, according to a memo sent last week by Dean Albert M. Sacks to the faculty.

The tapings, which will be made only with the consent of individual professors, are an experiment which establishes "no definite and certainly no permanent school policy," the Sacks memo states.

Leaders of the Harvard Jewish Law Students Association (HJLSA), which urged Sacks to accommodate the needs of Jewish students, praised Sacks' decision but expressed concern that the experiment extends only to Rosh Hashanah and Yom Kippur and not to other days on which Jewish students would not want to attend class.

"We are very happy about the Dean's decision, but the problem is not completely resolved," said Dan Victor, chairman of the HJLSA committee that discussed the matter with Sacks. Victor and Barry Saltzman, HJLSA president, noted that several other holidays, notably Succoth and Passover, are as important to the Jewish faith as Rosh Hashanah and Yom Kippur. They expressed hope that the Law School would establish a permanent policy of making tapes on 11 Jewish holidays, when Jewish law requires abstention from work.

More Accommodating

Sacks acknowledged in his memo that "my proposal for taping does not draw distinctions along lines that are advocated by some Jewish students. . . . I have proposed that the School be more accommodating with respect to those holidays that are in fact more widely observed."

Sacks emphasized that "if we conclude that a fair accommodation to religious conviction requires special arrangements covering very

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Forum: Great Schedule and Price

By Michael Smith

In this era of constantly rising prices, an item whose price goes down without sacrificing its quality or quantity is a rarity. One of these rare items exists at the Law School in the guise of Harvard Law School Forum season tickets. The Forum, while maintaining its usual mix of diverse and frequent speakers, has lowered the price of its season tickets to \$10.00 from last year's price of \$14.00.

Alan Solow, Forum president, explained that the reason for the reduction in prices was the very successful year the Forum had last year. The Forum officers decided to return the additional revenues from last year to the students in this form, rather than retaining the revenues within the organization. Solow indicated that the reduced price becomes more attractive when students realize that the individual prices for each speaker will not change, but will remain in the \$1.50 to \$2.50 bracket.

Fifteen Speakers

The Forum schedule will include approximately 15 speakers this year, according to Rob Lewinson, programming vice-president. The first of the speakers will be the Hon. A. Leon Higginbotham, Jr. from the Court of Appeals for the Third Circuit, scheduled to speak at 8 p.m. on October 6 in the Ames Courtroom. Higginbotham has just finished a book, *In the Matter of Color: Race and the American Legal Process*, which he anticipates will become part of a four-book series.

Also scheduled for October are television producer Norman Lear and Republican political leader Elliot Richardson. Richardson is to appear on Oct. 24 and Lear is to be at the Law School at an as-yet undecided date in October. Lewinson is also trying to get TV news per-

sonalities Barbara Walters and Mike Wallace for fall appearances.

Other speakers who have indicated they will be coming include Connecticut Senator Lowell Weicker, Mass. Gov. Michael Dukakis, *Roots* author Alex Haley, former Secretary of State Dean Rusk, Commerce Secretary Juanita Kreps, and author Sheri Hite.

No Honorariums

Both Solow and Lewinson indicated that it was not always easy to get speakers to come to the Law School. One of the major hurdles is that the Forum, by its by-laws, is prohibited from paying an honorarium to speakers who do come. This makes it impossible to obtain some speakers whose standard fees often approach \$5,000. But many speakers do come. Solow finds that "the response is amazing" considering that the speaker is paid only his travel and lodging expenses.

Another problem is that the Forum is forced to deal with prospective speakers "at more than arm's length." Many times it has been more productive to deal with the speakers directly than through their agents. Lewinson also indicated that it is sometimes the case that the speaker wants to come, but will not be able to appear due to schedule conflicts.

Several factors have combined to make the last several seasons successful for the Forum. Several speakers have declined to send bills for their expenses, thus saving the Forum a substantial amount of money which is then used to bring other speakers to the school. Solow also credited the work of Linda Gray Fee, '78, who had been president of Forum for the past two years and had "pulled things together."

Well-Treated

Although the Forum does not receive any direct financial support from the Law School, Solow indicated that "the Law School has treated us well." He was appreciative of the fact that the Law School has allowed the Forum to have complete independence in the selection of its speakers and the administration of its budget. The Law School has also indicated its willingness to back up the Forum, should the organization get into a financial bind. According to Solow, this has allowed them to try new speakers whose popularity is uncertain.

Both Solow and Lewinson are optimistic this will be a good year for Forum. They feel they have "an attractive deal with a strong schedule."

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A Stamp of Disapproval

Although Harvard Law School has placed its alumni in some rather impressive positions, such as the presidency and the Supreme Court, one alumnus recently found himself in a position never before occupied by a graduate of the Law School — on the front of a fifteen-cent United States postage stamp.

That alumnus is, of course, the Great Dissenter himself, Justice Oliver Wendell Holmes. The Law School can take particular pride in this honor, because its connection with Justice Holmes is peculiarly intimate: his birth-place is marked by a stone tablet a mere case comment's throw away from the offices of the *Harvard Law Review*.

While the RECORD joins in the rejoicing over the bestowal of this belated but richly deserved recognition upon the Magnificent Yankee, we feel compelled to ask why the stamp depicts the Justice wearing such a dour countenance. To all appearances, Justice Holmes is casting a stern look of disapproval upon someone or something.

His unflinching downward gaze is in the general direction of his enormous moustache — possibly he is wondering if it could be malignant. Or perhaps the realization that his likenesses will be machine-cancelled by the millions has been enough to spoil his disposition. Or he may be frowning at the horrendously inflated price of postage (although fifteen cents may not be so bad if one thinks of it as the price not of a stamp, but of a beautiful miniature color engraving of Oliver Wendell Holmes).

Whatever the explanation, there can be no doubt that Justice Holmes is very displeased about something. (We suggest as possible objects of his disapproval, besides those already mentioned, the recent performances of the United States Supreme Court and the Boston Red Sox). It should be a high national priority to discover what the Justice has found so upsetting, and to remedy the situation as quickly as possible.

Happy Birthday

Down in Cochran, Georgia, last week, they celebrated Lucian A. Whipple Appreciation Day, honoring the Law School's oldest alumnus. Whipple, a member of the HLS class of '01, practiced law in Middle Georgia until about a year ago.

Dean Albert Sacks sent a letter to Whipple, who celebrated his birthday Sept. 4, and the RECORD would like to join the dean, the rest of the Law School community and the people of Bleckley County, Georgia, in congratulating one of our own.

So, hoping this finds you well, Sir, Happy 100th!

HARVARD LAW RECORD

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Fenno

Fenno spotted the 2L about to enter Law School Health Services, a look of gastrointestinal pain upon her face.

"A Harkburger, I'll bet," Fenno said. "I told you not to eat Harkburgers. I told you they'd be bad for your constitution."

"No," the 2L moaned. "I haven't even seen the 'New Hark' this year, let alone sampled one of their delicacies."

"Then it must be Larry Tribe's class," Fenno reasoned. "I told you not to take Larry Tribe. I told you he'd be bad for your —"

"Don't say it," the 2L interrupted. "You'll only make it worse. Besides, I haven't been to Tribe's class since the first day when he announced that he'd be using his treatise as the text and the Supreme Court opinions as supplements."

Fenno looked puzzled. "Then why the visit to our own little Mayo Clinic?"

"Haven't you heard them, Fenno?" the 2L groaned. "It's those 1Ls. 'Quaere' this, and 'it seems to me' that. It's as if they think there's no life after law school."

Fenno smiled. "But it was just a few months ago that —"

"I know," the 2L said defensively, "but we couldn't have been that bad. This class thinks that the Summit Talks were between Byse and Fried — with Roberto Unger as mediator."

"And there's a pennant race going on out there, but mention Bo-Sox to a 1L, and he'll think you're talking about what Archie Cox wears under his shoes."

"Need I remind you," Fenno scolded, "that your study group outlined both *The Paper Chase* and *One L* during the first month of school last year?"

"Or that you became so engrossed in Prosser last November that you read right through your Thanksgiving break?"

The 2L looked down at her shoes like a three-year-old caught with her hand in the cookie jar. "I guess you're right, Fenno," she admitted. "It's just that I can't remember anything ever being so important to me that it occupied my every thought."

"It happens to the best of us," Fenno said. "Forget about it and join me for lunch."

"Sorry," the 2L said as she hurried toward the elevators. "I've got to get back to the Placement Office right away. I've been eating and sleeping there the past two weeks. It gives me the competitive edge in signing up for interviews."

Fenno rolled his eyes upward and went to find the Health Services doctor.

Letters to the Editor of the RECORD

Socratic Slalom

Dear Harvard Law Students:

Interested in clearing the fuzz from your brains for a few hours this winter?

I am a second year student at Vermont Law School and am interested in organizing several Alpine Ski Races this season between Law Schools in the Northeast. Tentatively, the teams would be made up of three men and two women and the race will be a one-day slalom. Races could be held at areas convenient to both teams (or as many as are involved in that meet). I will take the responsibility for setting up meets, getting gate keepers, etc.

If you are interested, please contact me at the following address or phone before snow flies — or sooner if possible.

Susan Fowler
Box 286
South Royalton, Vermont
05068
1-802-763-7607

We look forward to meeting you and celebrating the winter season.

Susan Fowler

Cryptic Law

This week's edition of Cryptic Law is dedicated to stage-struck animal lovers everywhere. (Hint: Each letter stands for a different letter of the alphabet.)

Iwx ecamqr drxllmuvp mrj zahcrlvvp qmj,
al jmodxq, jpdre jartxp, wmox cxqahrjxj
mcahrj iwx xmciw. Iwx vmqi vdrexcdre
emsx leaz iwx qali, zdvj xpxq al iwdq jabdvx
mrdzmv, vptx iwx vmqi nmcidre qhruxmzq
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diq ecamrdreq ux qdvxbxj up iwx cmridreq
mrj xfbacdmidrarg al bmendre bcdidbq.

(Solution on Page 16)

Home of the Gods

To the Editor:

I am writing to tell you about a marvelous discovery I have made while visiting your campus recently. On the face of the right-hand cement slab next to the stairs leading to the outside west entrance to Landell South and South Middle, there are crude drawings which apparently depict a spaceship in orbit.

These primitive etchings conclusively prove that Harvard Law School was founded by extraterrestrial visitors, and may serve to explain why, even to this day, the majority of your students and faculty are known as "space cadets" to the at-large public.

Erich Von Mehren -er, Danicken
Geneva, Switzerland

SPORTS QUIZ

1. What former professional water skier rose to political prominence?
2. What great college football coach required his players to learn ballet?
3. What great professional football coach returned a recovered fumble 98 yards during his playing days to set a record?
4. Who won the Olympic marathon while running barefoot?
5. How many home runs did the Chicago White Sox hit during their world championship 1906 season? (They were nicknamed the Hitless Wonders.)
6. Who pitched and won the longest world series game in history?

(Solution on Page 15)

Law Notes

The East Asian Law Speakers Program presents "U.S. — Japan Nuclear Fuel Cycle Dispute" today at 12:45 p.m. in Pound 419. The speakers will be K. Suetsugu, a research fellow for the East Asian Studies Program, and Albert Carnesale, Associate Director of the Center for Science and International Affairs.

* * *

The Law School Library is hosting an exhibit of drawings by Kathleen Tighe Clark, wife of Visiting Professor Robert Clark, in the South Colonnade of the Langdell Reading Room. The exhibit runs until December 21.

* * *

The Honorable A. Leon Higginbotham will be speaking at the Law School Forum tonight at 8 p.m. in the Ames Courtroom in Austin Hall. Higginbotham is a judge on the Court of Appeals for the Third Circuit and has just written a book entitled *In the Matter of Color: Race and the American Legal Process*. Admission will be either by season ticket or \$1.50 at the door.

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Committee Rejects Pass-Fail Rejection

(Continued from Page 1)

was any circumvention of student input involved," commented Dean Stephen Bernardi, who serves as one of the administrators on the CLE and who voted with the majority in recommending that the issue not be given plenary consideration by the entire faculty.

According to Bernardi, the CLE was charged by the faculty last May with coming up with some recommendation for the first working faculty meeting of the semester (actually the second meeting). Pursuant to this mandate, Bernardi said, "The feeling of the members was that we should proceed, I'm quite clear on that. Further, I don't think the addition of students would have made any change in the outcome."

Aaron Seth Bayer, one of the 2L's who circulated the petition last year, disagreed, saying that the Sept. 27 mandate which had originally been designed to insure fairness and an adequate amount of time for the faculty to consider the proposal was in fact having the opposite effect.

"The issue here is plenary consideration of the pass-fail proposal," Bayer said, "and there is every indication that that objective has been avoided from the beginning."

Hurried Handling

Bayer said one effect of the hurried handling of the proposal was that "a lot of faculty members who are closet supporters of grading reform are not going to put forth the effort to convince their colleagues that the matter is worthy of further consideration."

According to CLE members, there were actually two major grading reform proposals included in last year's petition. When the proposals came before the committee they were considered in conjunction with other proposals for curriculum reform, a restructuring of the Legal Methods Program and several other structural changes in the first year program.

The Bayer proposal, which he described as a "modest, compromise-pass/fail grading in the first semester," would have been based on a system of internal grading whereby letter grades would be given to the students, while the designation on student transcripts would either be pass or fail. "This way there would be feedback with no record," Bayer said.

"A lot of faculty members who are closet supporters of grading reform are not going to put forth the effort to convince their colleagues."

The Thuronyi proposal, authored by 2L Victor Thuronyi, proposed "a rather flexible pass/fail option for any law school course during any one of the three years at the law school."

Option on Menu

"It seems to me that at a place like Harvard Law School, it is only elementary that the option at least be on the menu, and if it turns out that it is only used by a few eccentrics, well and good."

Thuronyi said he felt the processing and procedures surrounding the matter had been extremely rushed and inefficient. "The CLE spent one afternoon in deliberation and there was no new student input into the decision whatsoever."

"I think that the faculty should have either postponed the entire thing until some later date, or they should have voted for plenary consideration as a good will gesture."

According to Thuronyi, the faculty last considered a pass/fail proposal in 1972-73. Following a favorable recommendation in support of such a proposal by the CLE, the matter was subsequently voted down by the entire faculty. Citing what he termed a "history of

circumvention," Thuronyi said that in 1973, even though the fact-finding body came down with a recommendation for reform, "the proposal was voted down by the faculty, but only after the close of the school year."

Conservative Faculty

"Let's face it," Thuronyi added, "the faculty is pretty conservative and therefore, if they are interested in getting good ideas before it and making sure those ideas are passed upon, then they should at least try to liberalize the procedures (vis a vis plenary consideration). I'm sure to some this may seem like an off the wall proposal, but . . ."

Registrar Mary Upton, the other administrator on the CLE and a member of the minority on the vote on the pass/fail proposal, said the minority report she endorsed called for a consideration of the pass/fail proposal along with other first year programs like Legal Methods, Written Work Requirements, Clinical Programs, and Orientation.

"As an issue in itself, I'm really neutral on the pass/fail proposal," Upton said, "however, I don't think that it is the crux of the first year problem."

Prof. Duncan Kennedy, who was the second dissenter from the CLE majority, said both minority proposals should have been passed.

"One report," Kennedy noted, "said there should be a consideration of the first year grading system, along with lots of other aspects of the first year program and the other proposal said there should be a consideration of grading reform in any event. I think that the grading problem will only be solved as a part of a general reconstruction of the entire first year program."

Radical Change

"I also believe that it is important to take into account all of the elements of the first year, and changing the grading system could

(Continued on Page 16)

Profs Tape Classes on Holy Days

(Continued from Page 8)

many days, I would very likely propose a return to the informal accommodation among students and faculty that we have pursued until now."

Many professors in past years have cancelled classes on Jewish holidays.

Victor said that Sacks has expressed willingness to have a committee of HJLSA members and faculty meet to discuss ways the Law School can better respond to the problems faced by students who wish to observe Jewish holidays.

Most professors are expected to tape classes, according to Sheldon Krause, a member of the HJLSA committee that met with Sacks. A few professors may be reluctant to have their classes taped, but all tapes recorded will be erased after students have had an opportunity to use them.

Victor and Saltzman noted that the Law School Council has passed a resolution urging professors to make "appropriate accommodations" for Jewish students who wish to observe holidays.

HJLSA officers said they are not sure how many Jewish students will be absent on Rosh Hashanah and Yom Kippur.

Chilling Effect

"In the past, the fact that you had to miss class had a chilling effect on student observance of the holiday," Victor said. "Only the more observant were likely to absent themselves. But we cannot predict how many more students

will not attend classes this year."

Saltzman noted that the problem of missing classes on holidays has been a concern of Jewish students for a long time. "This is a significant step to meet the needs of a large segment of the Law School community," Saltzman said.

Growing Recognition

Victor and Saltzman noted that the taping of classes is part of a growing recognition by the Law School of the needs of Jewish students. They noted that the Placement Office is now requiring law

Saltzman: A Significant Step for Many

Sacks: Actions are Experimental and Tentative

Sacks noted in his memo that during the past several years, a number of Jewish students have spoken to him about the possibility of difficulties posed for them by the holding of classes on Jewish holidays.

"It has seemed to me that the numbers of students who feel bound by religious conviction to absent themselves from the School have been increasing in recent years, although I have conducted no survey," Sacks said in his memo. "I think that we can respond partially to the concerns of these students this year by actions that should be regarded as tentative and experimental."

firms to make themselves available to students who are not able to interview on holidays.

They explained that when students turn in their sign-up cards, they must note if a holiday prevents them from being available at normally scheduled interview times. The firm is then expected to schedule interviews at a time convenient for the student, usually the evening before the regular interview or the day following it.

Victor and Saltzman noted that it is too early to determine how well this system will work.

HLS FUN FUND

Some people at HLS have complained that life here is not as funny as life as portrayed on *The Paper Chase*. To remedy said situation, solicitations are hereby made for donations to a HLS Fun Fund, a new campus organization to bankroll any humorous antics which lighten Langdell life.

Joke contributions should be sent to: HLS Fun Fund, c/o 542 Hastings Hall, Cambridge, Mass.

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An informal discussion will be held at 3:00 P.M. on Wednesday, October 18, 1978 in the John Chipman Gray Room, second floor, Pound, for those interested in learning more about strategic consulting and BCG.

N.Y. Yankee in King Burger's Court

by Robert Reznick

In a move which surprised several High Court observers, President Carter today appointed New York Yankee catcher Thurman Munson to the Supreme Court.

Hailing him as "a compassionate man, a fine Constitutional scholar and one hell of a signal caller," the President placed Munson's name in nomination, stating his hope that the Senate would complete confirmation proceedings before the end of the playoffs, or by the start of the

Munson said that equal protection under the laws remained the greatest goal yet to be achieved in American society. "If a throw beats the runner to second base," he explained, "the ump should call him out no matter who he is or what team he plays for."

It is anticipated that Munson will be platooned with another Associate Justice in order to keep the Court from exceeding its legal limit of nine members.

"Final arrangements haven't been made yet," announced first baseman Lewis F. Powell, Jr. "Munson might be rotated with Harry [Blackmun] at second base, or with Potter [Stewart] at short. Or, he might be a substitute for Billy Rehnquist out there in left field late in the term."

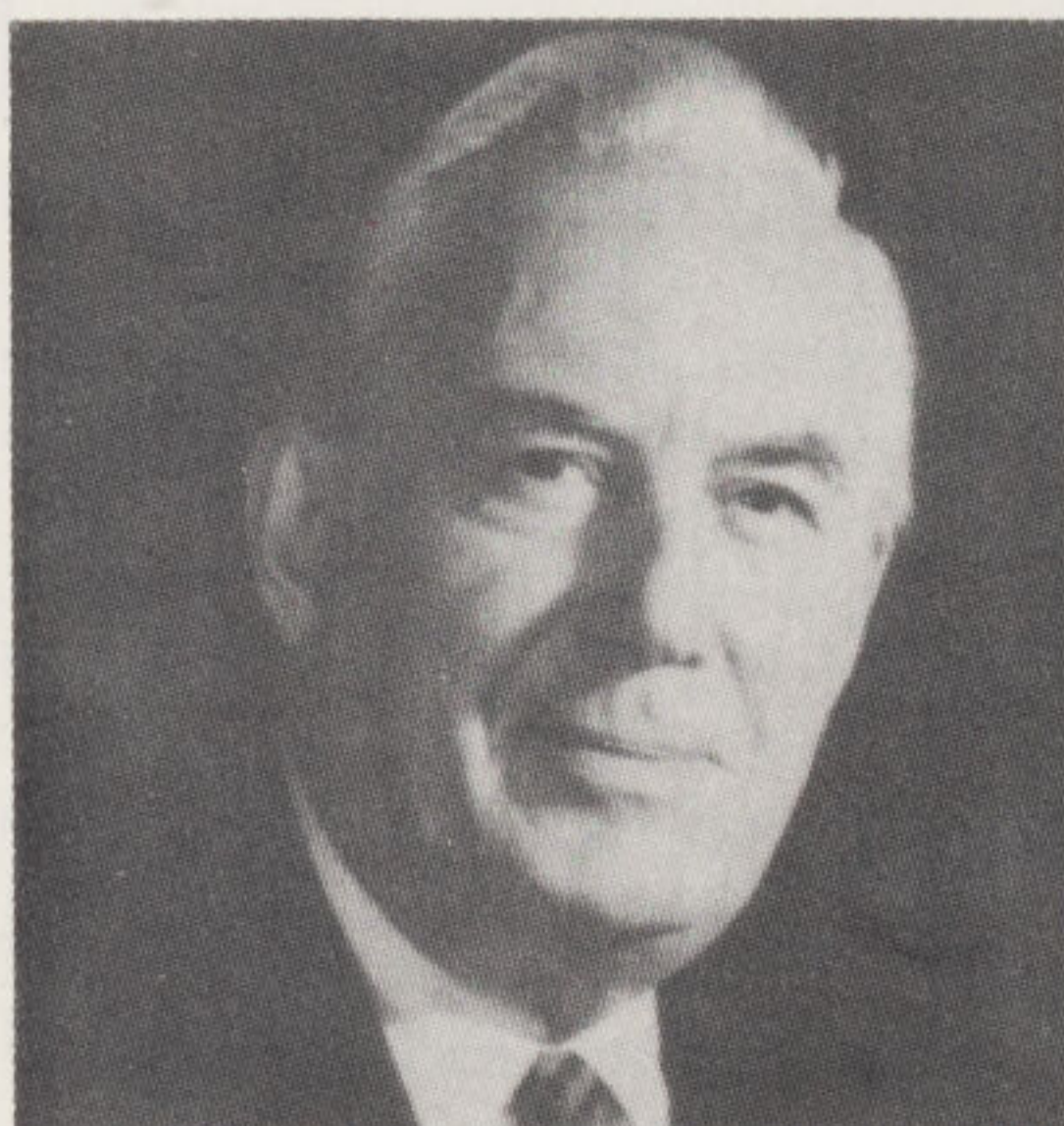
Munson, a graduate of Ohio State University, has never held judicial office. His experience in elective office consists of his having been chosen Yankee Team Captain several years ago.

Munson's appointment during the conclusion of a very tight pennant race between the Yankees and the Boston Red Sox was "poorly timed and questionable at best." President Carter immediately responded by denying that the existence of the pennant race had anything to do with the timing of his selection. "I was thinking of naming Thurman to Court a month ago," said Carter, "but with Pete Rose going after DiMaggio's fifty-six game hitting streak, the nomination wouldn't have gotten the publicity it deserves."

In fact, the RECORD has learned that also under consideration for the High Court spot were Red Sox first baseman George Scott and Triple Crown winner Secretariat, who issued a brief statement through his groom wishing Munson "a fast track."

And of special interest to law students, Munson revealed that he would be selecting Yankee teammate Mickey Rivers to clerk for him during the upcoming term.

Finally, at the conclusion of his news conference, Munson disclosed that he would be initiating a series of reforms aimed at reducing the official trappings of the Supreme Court. Instead of sitting at the bench during oral argument, he will squat, and the traditional black robe will be replaced by shin guards and a mask.



Coach Burger readies for new benchrider.

World Series at the latest.

Chief Justice Warren Burger was equally enthusiastic about Munson's appointment. "Thurman's the right man at the right time," said Burger. "We've been looking for strength up the middle for years now, and I think we've finally found it. Besides, we could always use right handed power off the bench, if you know what I mean."

At a news conference afterward,

"Besides, we could always use right handed power off the bench, if you know what I mean."

Dissenting Voice

The only dissenting voice was raised by Commissioner of Baseball Bowie Kuhn, who stated that

Sports Answers

1. Cornelia Snively Wallace
2. Knute Rockne
3. George Halas
4. Abebe Bikila
5. Three
6. Babe Ruth

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One L, Paper Chase Creating Myths, Self-fulfilling Prophecy

(Continued from Page 1)

Byse believes that *Paper Chase* and *One L* provide even more reason for professors to be sensitive to the needs of students. He objects to the portrayal of Kingsfield because "he projected no concern about the students as students, he projected only a concern about the law," Byse said. "I know very few professors around here who aren't concerned about students."

The problem of being a law school professor, says Byse, is "how to walk that very difficult line between making demands on students and being supportive when it is inevitable that students make mistakes."

Byse believes he must watch *Paper Chase* every week. "Why should I have to spend an hour a week watching the show? It may

become relevant for me to know what my students may be thinking."

Miller believes that 1Ls who have read *One L* enter HLS with some preconceived false notions of the School. "Instead of starting at ground zero, you're starting with some members knowing what's going to happen," Miller said. He hopes that the images of the first year are not "self-fulfilling."

Notions Dispelled

Friedland noted that the book may have created some preconceived notions that were largely dispelled in the first few days of classes. "I think it was the very fact that we were going to classes and surviving that was surprising."

Paul Spellman, 1L, noted, "I

think whatever preconceived notions people may have had at the beginning have been overridden by three weeks of classes. But people may still have preconceived notions of what exams will be like."

Dean Albert M. Sacks sees no adverse effect on the Law School from the arguably adverse image portrayed by *One L* and *Paper Chase*. "They might affect who wants to come here. But the numbers and quality of applicants have gone up," he claimed.

Pass-Fail

(Continued from Page 12)

enormously change the educational experience of the first year."

However, one member of the CLE majority, Bernardi, said, "I don't know about the prevailing attitudes of other administrators, but my own attitude is that we have devoted so much time to this over the years that I would prefer to think about Legal Methods or first year electives or any number of other problems before I considered grading."

"The arguments of the proponents (of grading reform), at least as they are couched in terms of favorable impact on the atmosphere of the school, are those that I have not found overwhelmingly persuasive."

"I just can't imagine, in view of the history of the last 15 years, that any change in the grading system is going to be more than a bit of tinkering here, and a little tinkering there, and I just think there are better ways to spend our time."

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Solution to "Cryptic Law"

The groans, ineffably and mournfully sad, of Davies' dying donkey, have resounded around the earth. The last lingering gaze from the soft, mild eyes of this docile animal, like the last parting sunbeams of the softest day in spring, has appealed to and touched the hearts of men. There has girdled the globe a band of sympathy for Davies' immortal "critter". Its ghost, like Banquo's ghost, will not down at the behest of the people who are charged with inflicting injuries, nor can its groanings be silenced by the rantings and exhortations of carping critics.

Fuller v. Illinois Central R.R., 100 Miss. 705, 56 So. 783 (1911) (Quoted in Gregory, Kalven, and Epstein, *Cases and Materials on Torts*, third edition, Boston, Little, Brown and Company, 1977, p. 400.)

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