

HARVARD LAW RECORD

America's Oldest Law School Newspaper

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VOL. 67, NO. 4

OCTOBER 13, 1978

TWENTY CENTS

Added Year Leads to Extra Career

By Jorie Roberts

Two are better than one, or so some students at Harvard Law School believe. Each year approximately 100 law students are enrolled in joint degree programs with other Harvard graduate and professional schools, MIT, and the Fletcher School of Law and Diplomacy at Tufts University.

The most extensive of the joint degree programs is the four year J.D.-M.B.A. arrangement with the Harvard Business School. This year 44 students are pursuing both degrees, 32 at HLS and 12 at the

"The programs have filled a need in meeting the particular professional interests of a small but steady number of students . . ."

Business School. Next in popularity is the Law School's program with the John F. Kennedy School of Government, leading to either a Masters in Public Policy or a Masters in Public Administration, as well as a J.D.; 34 students are enrolled in this four year venture. Finally, 26 students are involved in individually-tailored programs combining legal education with

study towards Masters or Doctorate degrees in the Harvard Divinity, Architecture and City Planning, Education, or Arts and Sciences Schools; the Fletcher School of Law and Diplomacy at Tufts; the Sloan School of Management at MIT; or the School of Urban Planning at MIT.

According to Stephen Bernardi, assistant dean for academic administration at the Law School, "Until the late 1960s there were students who would get two degrees in five years. When cross-registration privileges between the Law School and other graduate departments at Harvard were introduced in the late 1960s, students began to see that certain requirements for both programs could be satisfied with the same courses. At the same time, faculties began to see a potential for interfaculty interrelations through joint offerings." Bernardi explains, "Eventually two types of joint degree programs developed: the J.D.-M.B.A. faculty-structured program and the individually-prepared program."

Admission

The J.D.-M.B.A. program, begun 10 years ago, is the only program created by faculty legislation and officially adopted by the governing boards of both cooperating institu-

Higginbotham on Legal Past: Color Matters

By Mark Nadel

"America would rather distort its history than admit the brutalities that existed," observed Judge A. Leon Higginbotham in the Law School Forum's 1978 opening presentation last Friday night at Ames courtroom.

The Third Circuit judge noted that when he went through "the other law school" (Yale) his constitutional law book (and most other texts of the time) had no reference to the *Dred Scott* decision or the Harlan dissent in *Plessy v. Ferguson*. Roger Taney is considered one of the top ten Supreme Court justices, yet he was the one who wrote, in *Dred Scott v. Sanford*, that, "a black man had no rights."

To try to help America become conscious of its racist past Higginbotham decided to spend fifteen years of Saturdays and Sundays, late nights and early mornings, to write *In the Matter of Color*, a study of race and the American legal process. Volume I, on the colonial period, was published this year.

His history of blacks in America comes on the heels of Alex Haley's tremendously successful *Roots*, but it is written for a different audience. While Higginbotham's book, now in its third printing, has made a few best seller lists, it will never approach the sales of *Roots*. The book is written for people with at least some college education, and its

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Drama Society Recruits for Law Revue

By Gina Markey
and
Michael Smith

"So many attorneys have theatrical urges, it's a shame not to capitalize on them," says Lisa Poyer, the co-producer of the HLS Society Fall Show. This year the Drama Society will take advantage of the available talent and stage a fall show in addition to its annual spring musical.

The Fall Show, entitled "From Rags to Rhythm: A Law Revue", will consist of several acts, ranging from comedy skits to solo, group and production numbers. These acts have not been arranged around a unifying theme, but are capable of standing on their own. According to Poyer the aim has been "to select acts that will provide an evening of light entertainment for all."

The fall production grew out of a conversation last spring between Lisa Poyer and Dave Fleischer, who both believed the Drama Society should offer some type of program in the fall. The Drama Society Board of Directors liked the idea and gave Poyer and Fleischer the go-ahead. The two innovators, both second-year students, are the producers of the show. Although the show was originally envisioned as a simple evening of entertainment, it is now like "a full-fledged professional show," notes Fleischer. The directors of this novel production will be Peter Jones, 2L, and Terry Leahy, 3L.

The producers not only hope that the fall show will become an annual event at the Law School, but also believe that it will create a higher level of interest in the Drama Society. A fall production may help to stimulate interest in



A sample of life in the spotlights: Last year's spring show.

*"Rags to Rhythm" show
to provide evening of
light entertainment.*

auditions for the spring show and benefit the Drama Society as a whole. The producers have noted that first-year students have been joining the Drama Society earlier this year than in the past.

In addition to attracting more first-year students, Poyer believes that more alumni and administrators can be involved in the Drama Society in the future. This year, the Harvard Law School *Bulletin*, a publication for alumni, solicited ideas for the show from graduates.

Both Fleischer and Poyer are delighted about the wide range of tal-

ent they have seen among the students at HLS. This is especially true of the first-year students. The producers are also enthusiastic about the help they have received from the Board of Directors of the Drama Society.

"It would have been hard to get going without a lot of work from the Board. Dean Stephen Young has also been very supportive and helpful in the production area," Poyer said.

The producers hope to create a cabaret-coffeehouse setting for the show and the audience will be seated at tables in the Ropes-Gray Room of the Pound Building. Refreshments and drinks will be available. The 90-minute show will begin at 7 and 10:30 p.m. on November 10 and 11.

The producers are looking for people to help with advertising, costumes, set, lights and sound. "We have a wide need for technical people in addition to those on the stage. We also need musicians, especially a drummer," Fleischer said. If you feel the theatrical urge that Poyer attributes to those in the legal profession, you have an opportunity to use your skills in the Drama Society.



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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Legal Methods: Power to the Students

By Becky Wesley

Second and third year law students are gradually taking over the teaching duties in the Law School's Legal Methods program. Until two years ago the program, which is designed to give first year students training in practical legal skills such as research, writing, and negotiation, was staffed entirely by graduate teaching fellows. Two years ago a few Legal Methods sections were taught by second and third year students on an experimental basis. The experiment has proven so successful that this year three-quarters of the 1Ls are under the tutelage of upper-class students.

The success of the program is "due to a special combination of energies."

According to Assistant Dean Robert Keeton, the administrator in charge of Legal Methods, the program's objectives include offering 1Ls a small class of less than twenty students, in contrast to their basic courses with nearly 150 students, and giving students a chance to apply in practice the doctrines they are learning in their other classes.

Three years ago extensive evaluation and discussion of the program by the faculty resulted in two important decisions: that one faculty member chosen from among those teaching first year fall courses was needed as Legal Methods faculty advisor for each of the four first year sections; and that the Legal Methods courses should be related to the course taught by the faculty advisor for each section. If the faculty member taught contracts, for example, the Legal Methods sections under his supervision would emphasize contracts.

Another change was made two years ago, when it was decided that the Legal Methods groups under

Prof. Charles Fried's leadership would be headed by ten second and third year students. Legal Methods groups in the other three sections would continue to be taught by graduate teaching fellows, who had a career interest in teaching, and most of whom had had some experience in legal practice.

The student teaching experiment worked so well that last year student teachers were used in two sections — the section supervised by Prof. David Shapiro, as well as Fried's. And this year student teachers have moved into yet another section, that of Prof. C. Clyde Ferguson. Only Prof. Lloyd Weinreb's section continues to be taught by graduate teaching fellows.

Hundreds Applied

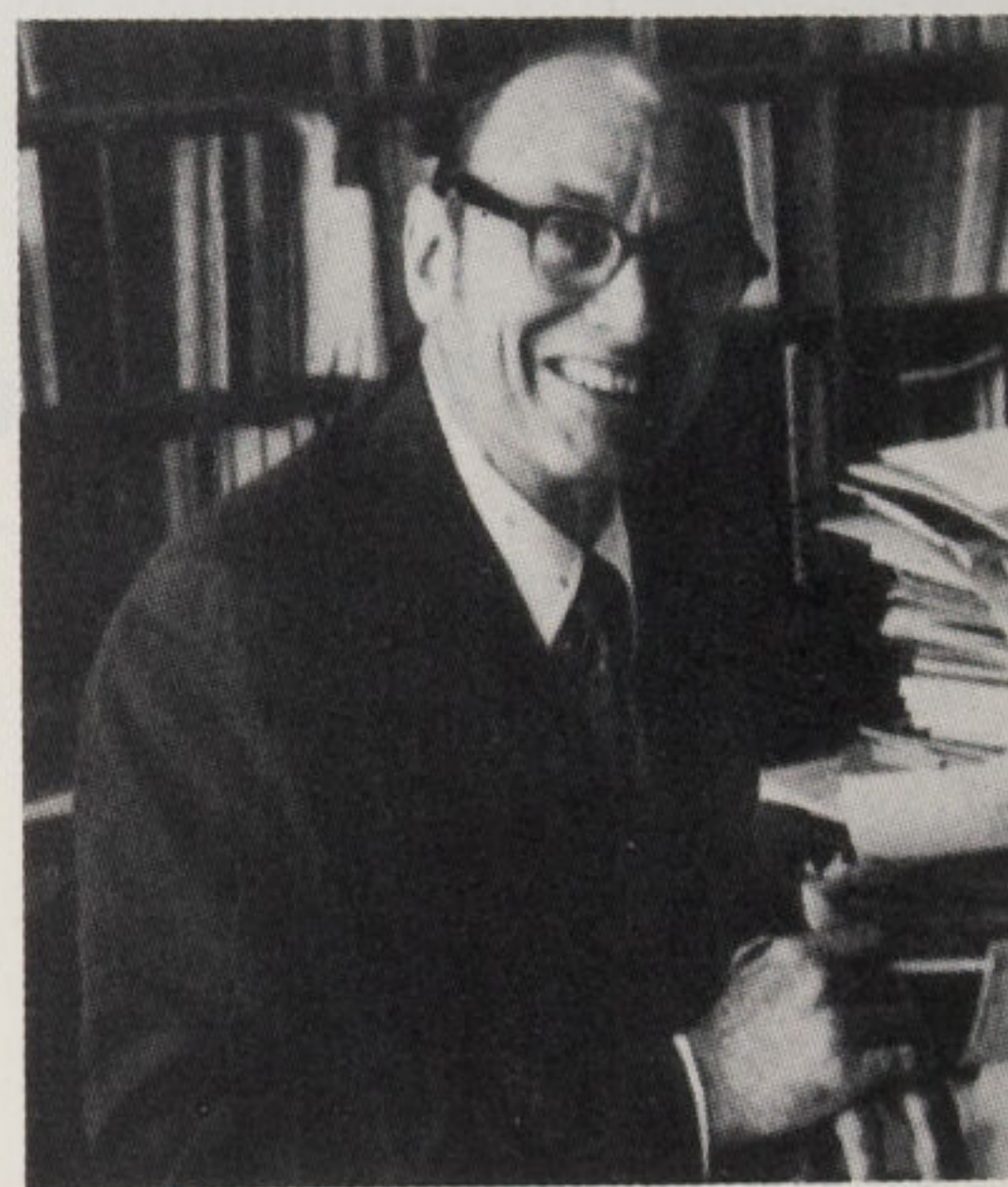
The supervising professors had hundreds of applicants to choose from for the student teaching positions. Shapiro, for example, received 90 applications for ten available positions, at least 70 of which he felt were qualified for the job. Shapiro explained the reasons behind his choices: four were students he had taught whose course performances had impressed him favorably, three were students who had successfully taught Legal Methods groups the year before, and three were students unknown to him whom he selected on the basis of their application letters and references.

Preparation for the student teachers includes introductory meetings with their faculty super-

visor in late August, as well as weekly group meetings with the supervisors during the fall semester to review the previous week's sessions, plan for the next week, handle administrative matters, and discuss particular problems and suggestions.

Educational Experience

Shapiro believes the student teachers learn as much from the program as the 1Ls they teach. "My view is," he explains, "that you don't really understand something until you've taught it." He feels teaching Legal Methods is an



Robert Keeton

excellent way to learn both substantive law and teaching skills. Nevertheless, the student teachers do not receive any academic credit; instead they are paid a salary.

Shapiro thinks the success of the Legal Methods program is due to "a special combination of energies" — first year students are eager for exposure to the workings of the adversary process, and the student teachers are anxious to learn teaching techniques. From the 1Ls' point of view, Legal Methods is a refreshing contrast to huge classes taught by sometimes intimidatingly eminent scholars, and it also offers concrete assignments with regular feedback which helps to relieve the uneasy sense of having only examinations to measure their progress in learning the law.

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Higginbotham Discusses History

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100 pages of footnotes attest to that fact. It is a history of legal decisions affecting blacks in the colonial period and traces the ups and downs of discrimination.

Higginbotham pointed out the way blacks were referred to in *The Century Digest*, volume 43, page 556, under "sales: goods." There is a discussion of the warranty for unsoundness of Tennessee slaves included with other "related items" such as the sale of castrated mules, unsalted pork, and a headstone with a white streak in the marble. The casualness with which blacks were treated then, and are treated in some history books even today, reeks of immorality.

*... the black experience exists for all blacks,
no matter what their status,
no matter what their income.*

"I used to watch cowboy and Indian movies when I was young," explained Higginbotham, and he recalled that, "we all felt angry at the cruelty of the Indians as they scalped the cowboys." Yet in the colonial period, white laws rewarded and thus encouraged Indians to tomahawk the scalps and ears of runaway slaves; the reward increased as one collected more items.

Higginbotham's long and impressive list of credentials includes,

in addition to his Yale Law degree, positions on more than 30 professional and community service organizations, more than 50 local, regional and national awards, and 16 honorary degrees. But he explained that the black experience exists for all blacks, no matter what their status, education, or income. He gave an example:

When he was first appointed to the Federal Appellate bench, last October, he drove to the courthouse and parked his car in the designated area. As he was walking to the courthouse in his three-piece pinstripe suit he heard a state trooper scream, "Hey Boy! What are you doing parking there?" Higginbotham didn't even turn around to acknowledge the insult until the trooper cried again, "HEY BOY! Didn't you hear me?" At this point the judge turned around to answer the shout because the trooper had a gun. "Aren't these spots for federal judges?" the Antioch College graduate queried. "Oh, you must be Judge Higginbotham," realized the embarrassed trooper. "Welcome."

A Great Tradition

"Many great men have gone through this school," Higginbotham observed to his Harvard audience. "Brandeis, Holmes, Cardozo. Still, many of you here today may do as much as they did." He asked students to make themselves educated individuals, educated to the entire American experience, good and bad. "In addition to the legal craftsmanship you learn here also maintain a consciousness for the legal process."

On the Bakke case he quoted with approval Justice Blackmun's warning that, "To eradicate our racism we must be conscious of our racism. We cannot be color blind."

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Tenure Decisions Postponed

By Tammy Jacobs

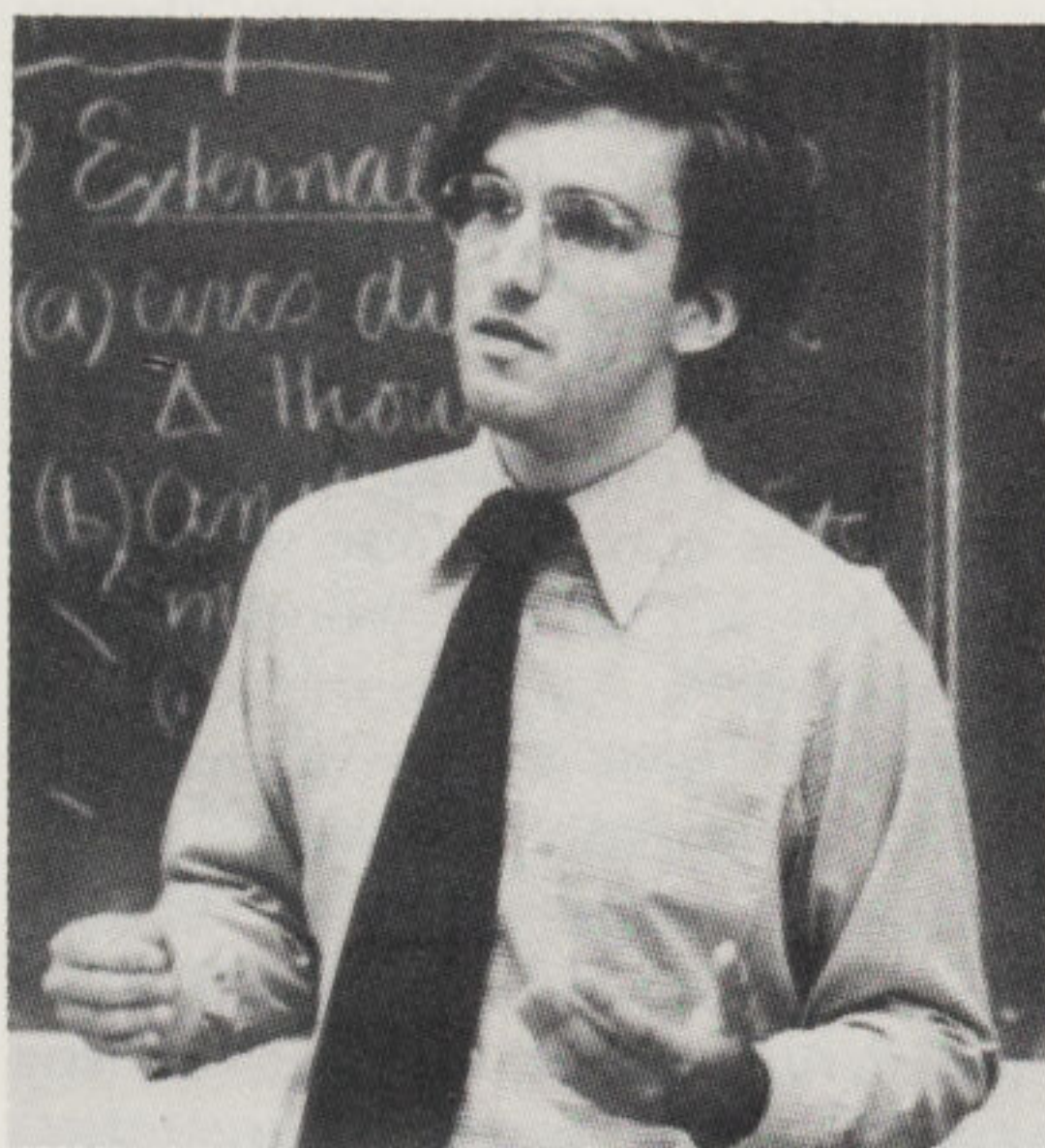
Announcements regarding last year's tenure decision have been postponed for an indefinite time, leaving the law school status of Asst. Profs. Richard D. Parker and Lewis D. Sargentich in limbo, or at least unpublicized.

Parker and Sargentich, both of whom were up for tenure last year, declined to comment on the postponement. So did Dean Albert M. Sacks and Prof. Laurence H. Tribe, who heads the seven-member Appointments Committee.

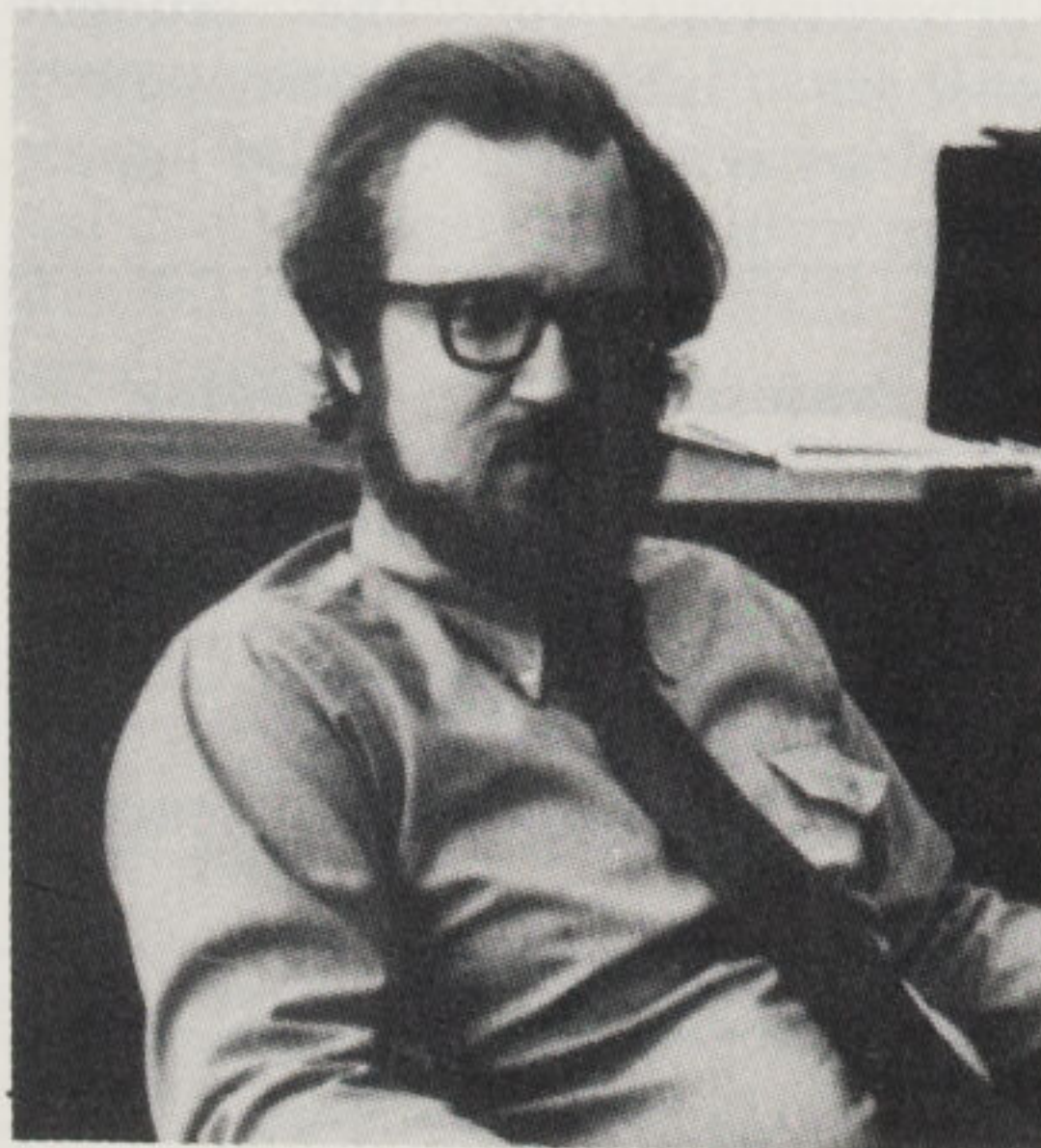
While it is assumed that decisions on the fates of both men have been postponed for further study, it could be that partial decisions have been made. Sacks notes that "we don't comment on appointments decisions until they are completed," and that completion includes action by the governing board of the University.

Tribe, who was unwilling to discuss anything involving the internal workings of the committee or the specifics of the two decisions the group faced last year, did comment generally on how tenure decisions are made.

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Richard Parker



Lewis Sargentich

Live, From Langdell... It's Irving Younger!

By Dan Hershman

"My first day at the U.S. Attorney's Office I sat with my supervisor as he prepared a timid witness for the next day's trial of a post office theft case. I was excited to be in on the action.

"When the trial opened, I sat beside my supervisor, an experienced litigator. I had never tried a case in my life. He called our first witness, and then suddenly jabbed me. 'You interrogate the witness.' 'Me?!' I responded with shock and astonishment. 'Here,' he said, 'the questions are all prepared for you.'

"As I stumbled up to the attorney's lectern, something about the witness didn't seem right to me; he looked a strange color. I was shaking and felt very small, but when I started to ask him his name, my very first question as a trial attorney, I realized my witness had fainted."

Thus began the trial career of Irving Younger, prosecutor, defender, judge, and now law professor. Younger, the Samuel S. Leibowitz Professor of Trial Techniques at Cornell Law School, is a visiting professor at HLS this year, presently teaching Evidence to a packed Langdell North Middle classroom.

During Younger's 20-year legal career, he has worked in a large New York firm; served as Assistant U.S. Attorney for the Southern District of New York; practiced law with his wife Judith (now deputy dean and professor at Cornell Law); taught at NYU Law School, his alma mater, and at Columbia Law; served as a judge in the Civil Court of the City of New York; and taught an extremely popular bar review course. He has been at Cornell since 1974.

After Younger left the U.S. Attorney's Office, he entered private practice with his wife. Nobody thought they could do business in the land of giant law firms, but they prospered. They paid a price for it in anxiety, wear and tear. The Youngers saw too many lone



Irving Younger makes his point — neither incompetent, irrelevant or immaterial

wolves like them trying to do too much and dropping dead, so they gave up the practice and Irving Younger made his first venture into teaching law, at NYU.

Judge Younger

Three years later, Younger fooled the Democrats who nominated him and the overconfident Republicans who thought they controlled the gerrymandered Upper East Side of Manhattan by winning election to a seat on the Civil Court of the City of New York. In a short campaign "for which my wife deserves the credit," Younger stumped five crucial corners in the silk stocking district the weekend before the election, and with the *New York Times*' endorsement — a favor to the former *Mirror* reporter — he became the youngest judge in the state.

Being a judge was for a while very enthralling for Younger, and the source of many after-dinner stories, which he now tells his Evidence class at 9 a.m. Previously experienced in federal law, Younger

faced technical challenges to his legal skill in the complex areas of automobile negligence and landlord-tenant law, "an area more complicated than the tax code" but very intriguing.

Teaching and Judging

During his judicial days Younger taught at NYU early in the morning and at Columbia late in the afternoon. Eventually, though, the court administrators managed to do such a good job clearing court calendars that Judge Younger didn't have enough work to keep himself occupied. If a case were settled just before trial, he wouldn't receive a new assignment but instead would have to sit in his chambers listening to classical music. During this period Younger also taught courses to judges, "many of whom are idiots," but who would listen to him because he was one of them, not just a lawyer or professor.

By 1974, when Cornell set up its
(Continued on Page 16)

How to Become a Harvard Lawyer—

By Mark L. Byers

Once, while walking through an English graveyard, I came upon a tombstone with the epitaph: "Here lies one who was born a man and died a grocer." Later, when I became a vocational counselor specializing in work with graduate students, I sometimes worried if my occupation helped to make grocers out of men. I realize now that my function is to prevent people from becoming merely grocers by helping them become more aware of the relationship between their inner lives and their professional aspirations. To be blind to personal needs, and not to plan for them, leads to an ineffable sense of diminishment in one's occupation. Yet, to rely heavily upon an occupation to meet personal needs, as if being a grocer could satisfy the whole person, is equally dangerous. Having seen many of you steer between these two extremes, I would like to share with you my perception of how some lives are enriched by the law school experience and others are consumed.

Law school, like all professional teaching institutions, arbitrarily reduces a set of human problems to a simplified point of view subject to endless elaboration. Because of inexperience and the strong desire to survive and succeed, students may succumb to this overemphasis on a single frame of reference. For instance, the pressure to think and feel alike is reinforced by the apparent need to make the same career choices, as when it becomes evident that the bulk of HLS graduates go to private law firms.

Undergraduate life is culturally sanctioned as a period of intense personal growth when academic activity is expected to have some personal significance. However, the need for the development of feelings and relationships, as well as abilities, does not vanish with admission to law school. Some individuals are just beginning to hit their stride in personal development, and hope that graduate school will make up for oppor-

tunities missed in college. All have the continued need to affirm their newly found identities, only to discover they have entered a closed system with reduced opportunities for self-expression. They may come to feel that law school requires the abandonment of every thing subjective and personally meaningful.

The abandonment of the personal may be reflected in many ways, some of them minor, but all of them dysfunctional. One danger sign is the abandonment of standard English. Without any

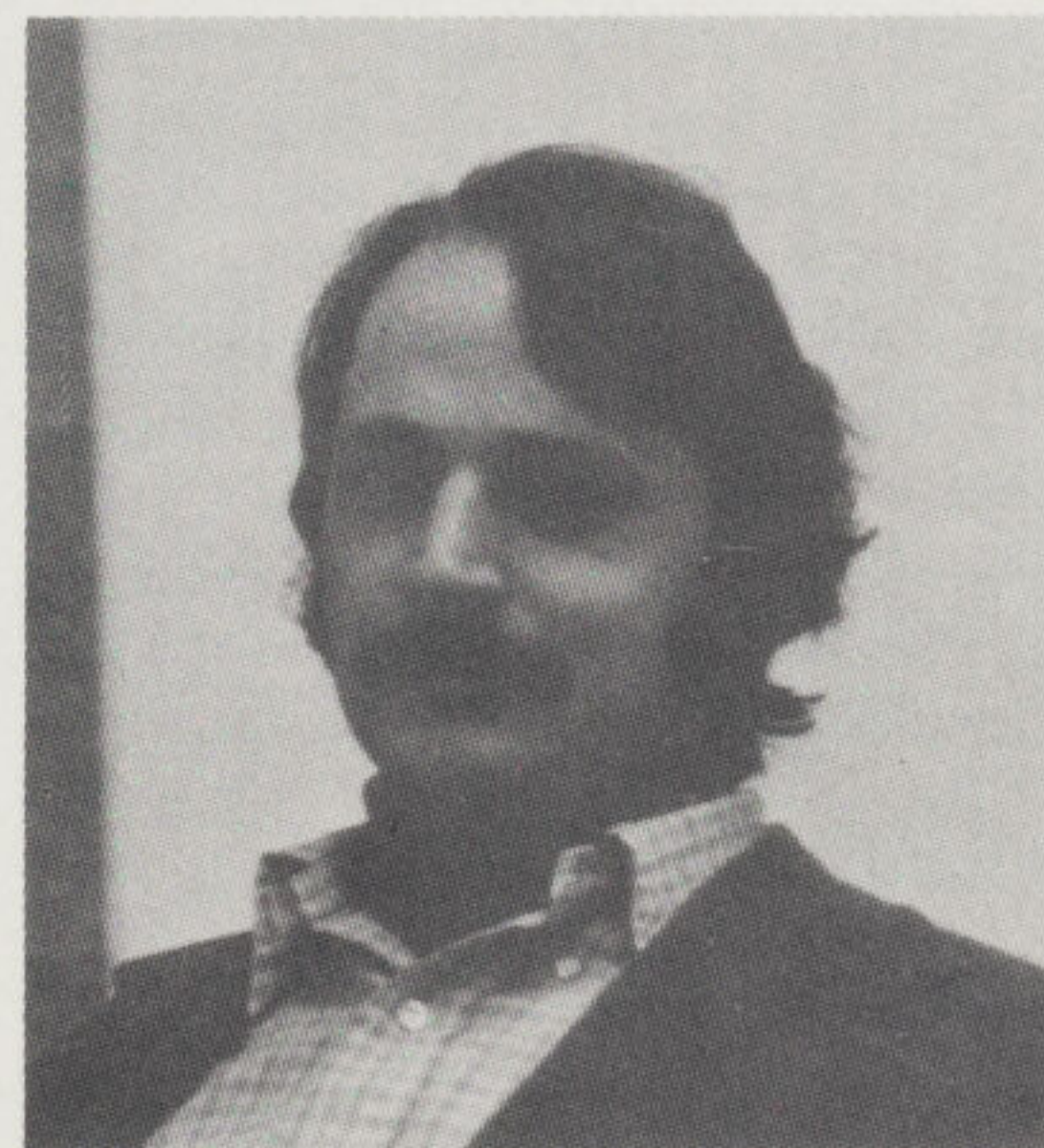
Law School arbitrarily reduces a set of human problems to a simplified point of view subject to endless elaboration.

clear idea of what a good lawyer is, people will try to write like one. Another more certain symptom is the abandonment of common sense. Students here are not idiots, but they may quickly come to feel as if they are. They become so intimidated by the new methodology that they fail to recognize its similarity to forms of problem solving with which they are familiar. Even worse, they may not permit themselves a personal investment in the material because it leads to the "wrong" conclusion. Afraid of thinking and frightened of stupidity, their minds grind to a halt.

A legal education can be hazardous on at least two grounds. One is that students feel constrained to give up personally meaningful pursuits. To this situation I will return shortly. More dangerous is the interaction between legal education and personal needs of which students may be only dimly aware. If they are to resist the inroads of professionalization, they must understand more clearly some of the subjective reasons for entering an occupation. I would include:

The Habit of Achievement: I call this the fighting cock syn-

drome. Put the cock in the ring and he fights until exhaustion or victory, whichever comes first. Such people are often forced to redefine their goals at Harvard, either because their success reaches a point of diminishing returns or because they encounter frustration for the first time in their lives.



Mark Byers

Keeping One's Options Open: I am frequently assured in vocational counseling that law school is a great way to keep one's options open. From that point of view, every major life decision avoids entangling commitments. The clock runs out at graduation, when at last a limiting choice must be made. The consequences of that choice are then exaggerated because they seem so unfamiliar and frightening. People in this situation constantly seek more input, more evidence, before they make a decision. The study of law encourages their obsession, but only to a point, beyond which lies madness. Law is, after all, like life: there is never complete evidence for anything.

Association with Power: The need to be powerful or influential can be very strong in law students, although sometimes it seems to suffice if they can be associated with power. This expectation often lurks even in those with the most egalitarian ideals. Above all, they wish to be where people are influential and policy is made. Harvard Law School does little to help

(Continued on Next Page)

Without Losing Your Identity As a Person

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people with this problem, except indirectly by relegating a large group to the middle of the class for the first time in their lives. They may then discover, with William James, that "there is the strangest lightness about the heart when one's nothingness in a particular line is accepted in good faith."

... always look within to make sure that one is not in a prison of one's own making.

The Desire to Get Things Done: Some people come to law school professing interest in law who are primarily interested in an effective way to get things done. Their goals can range from social justice to real estate development, but in all cases law is valued as a pragmatic tool. Their hopes are legitimate, but problems also lie in wait, chief of which is the realization that law is not always as efficient or pragmatic as they suppose. Conversely, they can become so immersed in the manipulative skills of being a lawyer that they neglect the clarification of long term goals. They may even find law intrinsically boring, for all its vaunted efficiency.

The Love of Argument: The true lover of argument does not need to achieve anything by it except a telling conclusion. A vast amount of energy and aggression is sunk into the adversary process. Insufficient awareness of the underlying teeth and claws in this process can lead to serious miscalculation of the effect of one's arguments on others. On the other hand, the love of argument is the one motivation which best matches personal needs with the essence of legal practice. Research on the interests and values of lawyers indicates that they are most characterized by a love of verbal persuasion. However, if being solely moti-

vated by love of argument makes a happy lawyer, it hardly enriches the profession. Some creative tension is needed between love of legal process and uneasiness with the value of its results. This leads us to the last motivation on my list:

The Love of Justice: This seems to be the hardest motive to keep alive and well, perhaps because it involves one in wrenching contradictions and the pursuit of an indefinable ideal. It requires constant awareness not only of what is logical, but of what is reasonable and humane — difficult to see through the myopia of individual cases. Much happens to disillusion first year students, because they expect so much. When people feel strong compassion for the helpless, they may be loathe to learn the ways of power, even to protect the helpless.

Most of the motives just described fall under the heading of self-assertion; inevitably they involve people in aggressive, competitive situations. Those who are easily intimidated when they arrive are prone to overcompensate and become themselves intimidating when they depart. In psychological parlance, they identify with the aggressor, or as one law school secretary put it, "the only thing worse than a craven first year student is an arrogant third year student."

Drives toward power, aggression and self-assertion are inevitable in the practice of law. Without them, it is difficult to function professionally; if they predominate, it is difficult to function personally. Although these tendencies may be reinforced by law school, they originate within the individual, and ultimately it is the individual's responsibility to see that they do not get out of hand.

The first recourse is always to look within to make sure that one is not in a prison of one's own making. Take, for example, law school's incursions on personal pursuits. People who have some insight into this process have walked into my office in the first month of school demanding "is this all there is?"

"Am I never to have time to do the things that have always mattered to me?" Sometimes they temporize, saying that once they get the hang of the first year, or once they graduate, they will resume these activities. I tell them what a professor at the Harvard Business School used to tell his first year class: "the way you organize your priorities in

... every career must be tailor-made to the individual, and what other people do may be irrelevant.

graduate school is probably how you will organize them for the rest of your life." It is deluding yourself to think that you will postpone reading a novel or spending time with your family now, and will return to these activities later in life. Somehow, there will always be reasons not to. People usually can do what they consider to be truly important.

I am not suggesting complete denial of reality; law school will exact its price. However, most meaningful pursuits can be maintained in curtailed form sufficient to keep the soul alive. Occasionally, all time will permit is a symbolic gesture — attendance at a lecture, subscription to a magazine that will not always be read — but it will be enough to remind one of another world. These pursuits must be incorporated in one's present existence, or their importance will slowly erode away.

Once at law school, it is necessary to fight off reticence and paranoia and begin at once to communicate with one's peers and with upperclassmen. People should feel free to talk about their fears and uncertainties. The more first year students know of the lives of upperclassmen the more they will learn of survival skills.

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Joint Degrees Lead to High Hopes

(Continued from Page 1)

tions. Moreover, it is the only program which requires students to apply to the program in addition to both degree-granting schools. Consequently, not all students accepted by both schools are accepted into the joint program.

In contrast, admission into the joint programs between HLS and the other Harvard, Tufts, and MIT graduate schools requires only acceptance to both schools and use of the 10 cross-registration credits permitted by the Law School at the second institution. According to Bernardi, "A student in one of these programs normally spends the first year at one institution, the second at the other, and the third and fourth at the Law School, taking courses on a cross-registration basis at the second school. During the year away from the Law School, the student may still use the Law School's libraries and placement service, and can live in Law School housing."

Bernardi goes on to state, "In a way it can be said that most, if not all programs, don't require Law School approval," suggesting that a joint degree program is administratively similar to other year-away activities of law students. However, Bernardi also emphasizes, "The Law School has a strong interest in the plans of its students, and thus appreciates knowing about their dual degree plans."

Plusses and Minuses

According to Prof. Detlev Vagts, who has been instrumental in shaping the J.D.-M.B.A. program since its inception, "The programs have filled a need in meeting the particular professional interests of a small but steady number of students and in engendering some cross-fertilization of ideas between HLS and the cooperating institutions." Similarly, Bernardi says that "generally, the participating students seem content with the programs and stress the greater

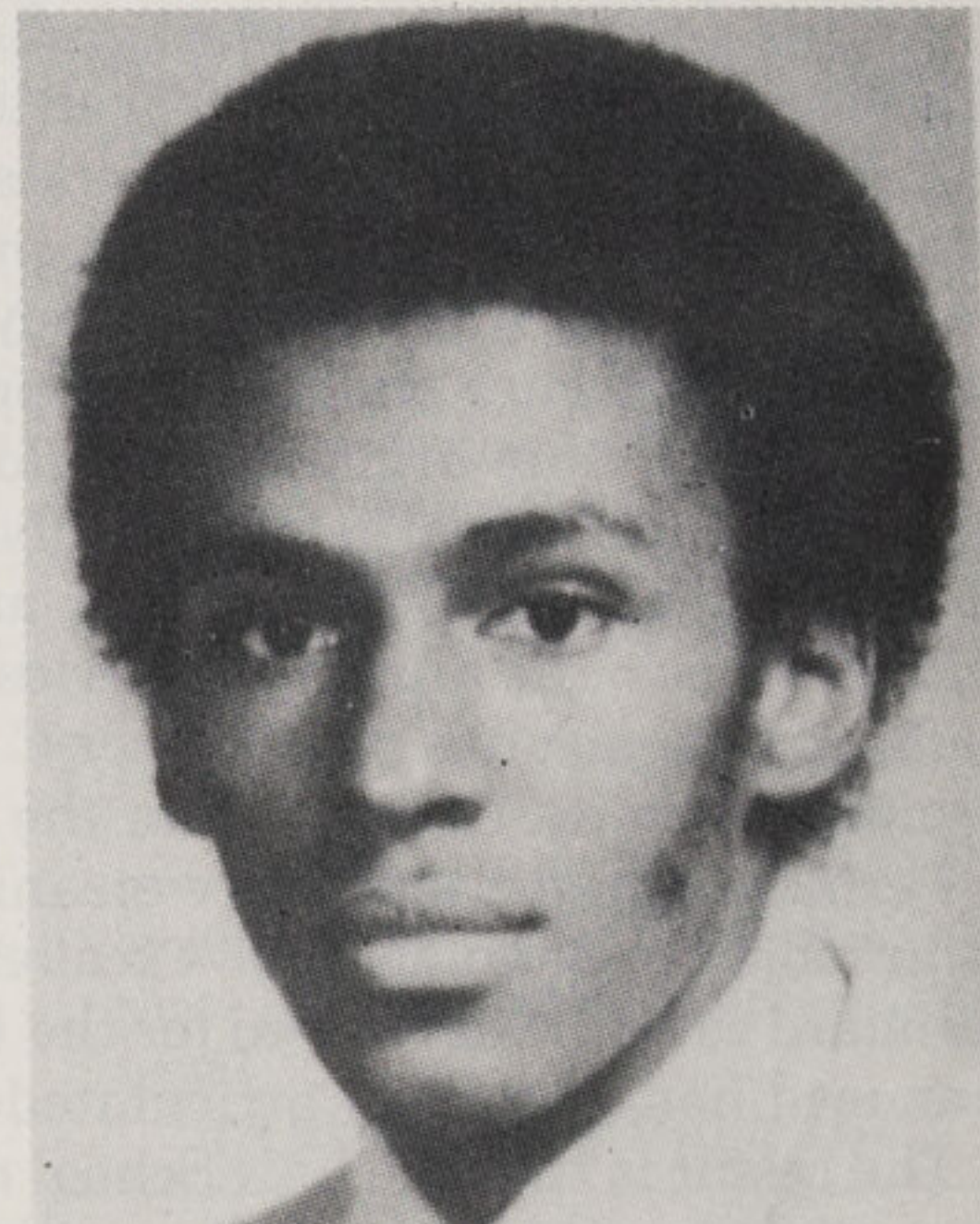


Forrest Berkley

career flexibility the two degrees permit." However, Bernardi sums up the primary problem with the joint degree programs: "The full potential for faculty interaction has not been realized."

Vagts, specifically discussing the J.D.-M.B.A. program, points out that some of the barriers of professional cooperation between the two schools stem from the sheer distance between the schools, as well as from the different calendars and schedules. However, Vagts also stresses, "The J.D.-M.B.A. program has required very little investment by the Law School."

Commenting on the career plans of joint degree candidates, Vagts notes that, "Many graduates of the joint program pursue jobs in management consulting and investment banking, which combine the analytical skills of a legal education with the business background of a business education. In the last few years, there has been an in-



Ira Smart

crease in the number of students starting out in business careers, rather than in traditional law jobs." Vagts usually teaches a seminar interrelating the research work of fourth-year students which is the only course specifically combining the educational experiences of the two institutions.

J.D.-M.B.A. Program

Forrest Berkley, a current participant in the J.D.-M.B.A. program, feels that the two degrees will give him more independence from the judgment of other professionals in his planned career as a lawyer than he would have with just legal training. Unlike most of the students in the program, Berkley applied to the business school only after spending time at HLS. He mentioned boredom with his first

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Meaningless Grades

As one proposal for pass-fail grading after another has been rejected by the faculty of the Law School over the past few years, the justification for the retention of grades has been stated time and time again. Grades are necessary, so the argument goes, in order to give students and potential employers an idea of how well they have mastered the skills of being a lawyer. Grades are claimed to supply essential feedback.

Ordinarily, this argument would carry considerable weight. But because the Law School refuses to divulge any information on such things as class rankings, average grades, and the shape of the grade distribution within a class, the argument carries no weight whatsoever. Grades mean nothing in a vacuum. An A, B, or C is meaningless in and of itself; it has significance only in relation to the grades of other students.

Perhaps a grade could have meaning standing alone if it were based on some objective standard of excellence. But it is doubtful if any such standard could be developed for the Law School, and in any event no such standard has ever been articulated by the administration.

The result is that the Law School refuses to reveal the only information that could possibly defend the continued existence of grades. The administration may be reluctant to publish class rankings because towards the middle of the grade distribution, where grades are bunched most closely, an insignificant difference in grade point average might mean a large difference in class ranking. This danger could be averted, however, simply by disclosing not only class ranking, but the shape of the distributional curve as well.

The refusal to give students the information they need to understand what their grades mean violates the spirit, and possibly the letter, of the Buckley Amendment, which requires schools to reveal to students all the information in their files. It would be interesting to see what would happen if an imaginative law student filed suit against the Law School on that theory.

There are strong arguments for and against the retention of the current grading system. But all the arguments in favor of grades are based on the premise that grades mean something. As things currently stand that premise is incorrect. And until the information that would make grades meaningful is released, the Law School has no valid argument against the abolition of grades.

HARVARD LAW RECORD

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Fenno

Fenno straightened his tie and walked into the hotel room. A well-dressed, attractive woman sat on a chair beside the bed. She moistened her lips and parted them slightly. Fenno walked slowly toward her.

"You know what I'm here for," Fenno said quietly.

"Yes," she replied. "Shall we begin?"

"Only if you're sure you want to," Fenno answered.

The woman looked up at Fenno. "Well I have your resume here," she said, "so we might as well get started."

Fenno took a deep breath. This was his first interview in over a year.

"I see your name is Fenno," the lawyer began. "Don't you have a first name, Mr. Fenno?"

"Fenno is my first name. And my last. Just Fenno."

"And aren't you dressed a little strangely for an interview, Mr. Fenno?" she asked.

Fenno smiled and snapped the elastic waistband of his gym trunks. "I didn't want to overdress," he said. "And I thought that the Olivia Newton-John T-shirt and Harvard tie would be a nice touch."

The attorney scribbled some comments on Fenno's resume. "Just why do you want to work in Philadelphia this summer?" she asked.

"The location is ideal when you think about it," Fenno said. "Summers always seem to pass so quickly. Spending a summer in Philadelphia will make the time pass much more slowly. Why, I spent a month in Philadelphia one weekend."

"Seems to make sense," the attorney said thoughtfully. "Now I see from your resume, Mr. Fenno, that you've been at this law school a number of years, but you're still classified as a 1L because you've never taken a class. Can you explain that?"

Fenno sat in silent thought for a moment. "It's my own small way of expressing criticism of the administration's organization of the curriculum," he said. "Also, I don't like going to classes."

"I see," she said. "Now do you have any questions for me?"

"Yes," Fenno said. "Is the view from your library conducive to interesting daydreaming? And is the office large enough so that there are places where one can hide and sleep undisturbed?"

"I — I don't really know," the lawyer stammered.

"You should have done your homework," Fenno said as he rose from his seat, "but I've enjoyed talking with you anyway. I'll let you know of my decision by phone or mail within the next few months."

Fenno shook the befuddled woman's hand and walked out of the room. He immediately removed his tie and smiled, glad that he would not have to wear it again for at least another year.

Letters to the Editor of the RECORD

Help, Not Hinder, Choice

To the Editor:

A few points are off-base in your advocacy of fewer placement services. Taken in order of occurrence:

1. How can fall semesters filled with interviews be a waste when:

A) Most people come to law school to get jobs (especially Harvard — HLS people do get hired)

B) People make it "out the door" (i.e. graduate) so they're not wasting too much.

2. How many public interest firms could afford to bring students into their offices for interviews (which they would have to do if firms couldn't interview on campus) — or how many students (not yet gainfully employed lawyers) could afford to go to employers? Better that public interest firms can at least send one representative and compete with the "vast resources" of corporate practice firms on a more equal basis.

3. Interviewing during school allows us to get our money's worth from the school — or do you figure we get that from what sometimes passes for teaching?

The point is that we are individuals who can choose our own careers. And I for one am putting down some heavy \$\$\$\$\$\$ to this school to help me with that choice. Harvard's placement services should be expanded from where I sit — so I can get a high paying job commensurate with my high tuition and lofty Harvard degree.

Chaz Fitzhugh, 1L
RECORD Staff Photographer
Cambridge, Massachusetts

Cryptic Law

Students in Professor Herwitz's class will recognize that things are not always what they seem. (Hint: Each letter stands for a different letter of the alphabet.)

Nqke fleh ke nqh zpqlcct lwnhmilnq aw l
famcamlnh ilmmklbh baph eazm, sknq nqh
ymkxh'e wlikrt frlkikpb nqln nqh bmaai
wlkrhx na xkefraeh l pziyhm aw
rklykrknkhe ln nqh nkih aw nqh
phbanklnkape rhlxkpb zc na nqh pzenklre
... (N)qh janhme ap nqh ihmbhm shmh
yhhpb eqasp nqh wmaenkpb ap nqh floh
sknq pa lrrzekap kp nqh enlnhihpne na nqh
wlfn nqln l ezyenlpnklr clmn aw nqh floh
knehrw sle xmkhx azn, kw pan ikrxhshx.

(Solution on Page 16)

A Dissenting Opinion

To the Editor:

Michael Smith's weak polemic ("On Judging a Firm by Its Clients") of recycled arguments is unpersuasive and irrational. The Collier, Shannon case was extraordinary and unique, involving extra-legal representation of a foreign nation whose policies are universally condemned. Smith fails to understand that the Law School's "normal policy" toward recruiters is not absolute; this case was abnormal.

In informing students of Shannon's activities, HLS did not "select" potential employers for students. Indeed, the more drastic step of exclusion of the firm was not taken. Students were not prohibited from interviewing with the firm, but were allowed to make an informed decision whether to interview.

Smith's analogy with the ACLU is incorrect. The ACLU provided legal representation for Skokie Nazis; it was not a Nazi lobby. The primary reason for not inquiring about the clients of lawyers is to protect the entitlement of every person to adequate legal representation. This reason is inapplicable where, as here, the firm engages in extra-legal lobbying activities in promotion of South Africa's reprehensible policies.

Smith's implication that HLS must be morally indifferent is not only unpersuasive, but wrong.

Lenel Hickson, Jr., 1L
Cambridge, Massachusetts

Always a Bridesmaid

To the Editor:

I am writing to correct a false impression which might unintentionally have been created by the last sentence of the *Fenno* column that ran last week. I am not a fan of the New York Yankees, and so long as I call Cambridge home — which I will do so long as the *RECORD* gives me space — I shall not be!

Fenno replies: The impression created by the final sentence of last week's Fenno column was anything but false. While it may be true that in the past Fenno was among the ranks of the most vocal Yankee haters, the simple fact is that this year my heart and soul are both behind the Bronx Bombers. Some may insist upon living in the past, but Fenno changes with the changing times. So help me Joe DiMaggio.

SPORTS QUIZ

1. Who is the only major league pitcher to have pitched a perfect game in the World Series? Name the year and the team.
2. Who is the last major league football kicker to use high top shoes?
3. Who are the only major league players to win the Cy Young Award three times?
4. One man dominated an Olympic event longer than any other champion in any other event? Name the man and the event.
5. Although Carl Yastrzemski did not make it to the World Series, again, he and another Red Sox player have brought what honor to Boston more times than any other American League team?

(Answers on Page 16)

In Rebuttal

To the Editor:

Robert Reznick's review of the Tribe's *American Constitutional Law* (ACL) ("Tribe Tries Advocacy Scholarship," in the 9/22/78 *RECORD*) claims to be a review of the "reformulated enterprise" ACL represents as a legal treatise. It isn't. Actually, it is a review of Tribe's style and method of legal scholarship which takes traditional definitions born of a positivist ideology as its standards. Only by an acceptance, explicit or obscured, of the myth that some "natural law" exists objectively out there someplace, apart from our own making of our historical realities and future truths, can this piece be said to have reached its subject.

The review begins by avowedly disregarding the content of ACL, leaving such "details" to the law reviews. It then sets up the Prosser packrat standard as the accepted definition of the treatise enterprise — collect all the little bits and pieces and dump them all in one place so that the reader can catch a fleeting glimpse of the collection as it is. Tribe's method is contrasted — he openly seeks "to provide a coherent foundation for an active, continuing, and openly avowed effort to construct a more just constitutional order."

Tribe is found to have engaged in "advocacy scholarship", which is to be "analyzed accordingly" a notion which is merely asserted, not explained. It is noted that "the Treatise is intended to be a manual for effectuating the positions it espouses." Since this does not match the traditional approach, Tribe's effort is said to be in jeopardy because other legal professionals might perceive a footloose overconfidence and brashness on the part of the author, as if the substance of the effort must wilt before the overwhelming importance of this obvious and inevitable "danger". In a digression to literary criticism, it is also noted that Tribe has regrettably engaged in "very difficult to express complex and dense thoughts".

(Continued on Page 13)

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Letters

(Continued from Page 13)

When, in the search for knowledge and truth, an entirely abstract method is held more important than the actual findings of the search, when the means supplants the substantive end, the result is ideology and the subversion of the attainment of the end. Reznick's review focuses entirely on the means and ignores the end of legal scholarship — or of any substantive intellectual work — as thoroughly as it ignores ACL's own substance. The packrat method is not substantively related to that end. Instead, it is instrumentally related to the end of legitimacy as an ideology. Only by looking at Tribe's method in such a way can the review regard ACL's content as an intended dogma.

Because our truths and realities lie within our history, we who make our history can find truth only in that making, and only by looking at that making. The future is not inevitable; it is inevitably our responsibility, however. The only tools we have are finally the intelligence and will we create in the context of and in relation to our experience. If we will not relate it to our experience, but only to our abstract doctrines and expectations, we will fulfill our responsibility by abandoning it to the self-fulfilling prophecies of a nihilistic illusion of "law" apart from our own making. Tribe sees this, and at least he is trying. The essence of ACL is its substance. Its future will be a function of actual history, not subjective prejudice.

Mark L. Paran, 2L
Somerville, Massachusetts

Law Notes

On October 13, 1978 the East Asian Law Speakers Program will present Catherine Brown, Clerk to Judge Levin Campbell, U.S. Court of Appeals. She will be speaking on "The Japanese Woman's Right to Equal Employment" at 12:45 p.m. in Pound 419.

* * *

The East Asian Law Speakers Program will present Choon-Ho Park on October 19, 1978 at 12:45 in Pound 419. He is from the Culture Learning Institute of the East-West Center in Hawaii. His topic is "East Asia and the Law of the Sea: Recent Trends."

* * *

The Law School is hosting an exhibition of work by Betsy Zeldin, 3L, from October 3rd to January 2nd in the Langdell Mezzanine Gallery. The exhibit is entitled "Legal Collages: Selections from Law and Life" and consists of works in watercolor and collage incorporating legal materials.

* * *

The Law School Forum will present Norman Lear on October 19th. Details will be posted later this week.

OCTOBER 13, 1978

Despite Problems, Drawbacks, Some Find Joint Program Good

(Continued from Page 9)

year courses and a desire to make his own financial decisions in his future career as a lawyer as the reasons for applying.

According to Berkley, "The funniest thing about the joint program is everyone thinks it's a great idea who's not in it." He adds, "Graduates of the program will generally have to choose between a business and a legal career." He cites "a sense of disregard by both institutions to the joint degree candidates" as a second problem with the program. Furthermore, Berkley says, "students in the four-year program have to pay the equivalent of four and one half years tuition." He also complains that job hunting after one year at each institution is difficult, since "employers at the Business School want students who will be available after one more year and law firms generally want students with two years of legal education."

On the positive side, Berkley enjoys the Business School where class participation counts as a substantial part of a student's grade. Additionally, "Students at the Business School have stronger career orientations than have most students at the Law School," Berkley feels.

JFK Program

Students in the program with the

JFK School also value the additional flexibility which the two professional degrees will ultimately allow, though they point to the difficulty of actually combining in one job the training provided by both programs. Bob Zoellick has finished one year at HLS and one year at the JFK school, and is presently working for Prof. Phil Heymann in the Criminal Division of the U.S. Justice Department in Washington.

Zoellick has been very happy with his program, as the JFK school has provided "good experience in making contacts with people in public management." Zoellick plans to work in public management after graduating from the two schools, and feels, "Legal training alone is weak preparation for such a career, but legal training does add substance and prestige to public policy education."

However, according to Zoellick, "Students in the joint program believe that law firms are uncomfortable hiring students with public policy training, since such students might later pursue careers in public service and government." But, he concludes, "For students interested in careers in the public sector, the skills and contacts developed at JFK are well worth the year spent there."

(Continued on Page 14)

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Two Degrees Better? Students Find Out

(Continued from Page 13)

Juli Heller, an HLS student now spending a year at the JFK School, also emphasizes the importance of making friends and contacts in government, which is possible in the JFK program. Moreover, Heller hopes that the year will give her "the analytical skills necessary to work in the creation and interpretation of law," as she pursues a career in and out of government.

Ron Barusch, a 1978 graduate of both HLS and the JFK School, is very pleased with his dual education. While the public policy training is not particularly useful in his present law practice in a Boston firm, Barusch plans to use his training in a later career in government and feels that JFK training will give him the expertise to work in government and make him more attractive to government employers. Barusch emphasizes, however, "the J.D.-M.P.P. training is essentially preparing participants for two career paths, rather than for an integrated law-public policy career."

Dissatisfaction

Mike Fossier, also a 1978 graduate of HLS, felt that the training offered by the JFK School would not help his legal practice, and therefore decided to opt out of the joint degree program. He also believes, "A person can always return to school later, after perceiving a need for additional specialization in a career." Similarly, another student who has decided, after lengthy consideration, to abandon joint degree plans has stated, "The opportunity to get additional education after a few years in the working world was the final

factor in my decision to 'stop at three' for now."

In contrast, one student who wishes not to be named is not pleased with his J.D.-Ph.D. program. He complains of "the absence of reduced course requirements for joint degree students, tight job market for academic degree-holders, and negative reaction from employers." While he hopes that the Ph.D. will ultimately give him freedom for mid-career changes, he would steer students away from graduate school since "there is no future for humanists" and since employers question the depth of his desire to practice law.

City Planner

Ira Smart is working for a J.D. and a Masters in City and Regional Planning at the Harvard School of Design. Like Berkley, Smart applied to the second program after his first semester in Law School. Smart muses, "The years go by pretty quickly," and adds that the training combines his two interests in planning and law. He has been

able to find summer employment which combines his dual training, having worked for the President's Reorganization Project of the Executive Office of Management and the Budget and for the National Telecommunications and Information Administration.

The joint programs have provided opportunities to law students not previously available, allowing them to prepare simultaneously for two careers or for one career combining legal and other training. According to Vagts, the joint programs have expanded the breadth of legal training provided at the Law School. For example, the J.D.-M.P.P. program has resulted in courses such as Law and Public Policy and Statistical Methods being introduced into the law school curriculum. The programs have had an impact on the Harvard Law School educational experience, and as the programs continue and develop, the potential for faculty interaction envisioned by Bernardi and Vagts will perhaps be realized.

Parker and Sargentich in Limbo; Tenure Decisions Postponed

(Continued from Page 4)

Surveys Made

Assistant professors usually become eligible for tenure four or five years after they are hired. Parker joined the faculty in 1974 as an assistant professor; Sargentich joined as a lecturer on law in 1973 and became an assistant professor in 1974. Parker teaches criminal law, constitutional law and advanced constitutional law; Sargentich teaches torts, advanced civil procedure and jurisprudence.

When a faculty member is up for tenure, Tribe says, "an effort is made to find out about the teacher, both by surveying students and by attending classes." There is also a requirement that the faculty member have produced some "writing of distinction" to be granted tenure, so the member's written work is studied by the committee.

Student views are canvassed both through a formal process involving interviews with students on random lists generated from the classes taught by the members being considered for tenure, and through the Appointment Committee members' informal contact with students.

According to last year's Board of Student Advisors' course evaluation summary, Parker "is considered one of the better professors HLS has to offer its students." Sargentich also received higher-than-average marks from the BSA.

Decisions on the tenure applications of the two men are expected to be announced sometime this school year. The committee, which also oversees visiting professors, has no tenure decisions — other than the two pending — to make during the 1978-79 school year.



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Taking Time To Be A Person At HLS

(Continued from Page 7)

As the waters of the law begin to close over one's head, a huge effort must be made to stay in touch with someone or something unrelated to law. Make vows not to talk about cases or courses at dinner; join a volleyball team; cross register somewhere, but do something to get out and away. Do not, however, make the opposite mistake and become isolated from one's peers; it is somehow necessary to be a full participant and at the same time to hold back.

In the academic sphere, be suspicious of the formula $\text{Work} \times \text{Time} = \text{Achievement}$. Not all intellectual obstacles are overcome by this approach, and time may be wasted in Spartan effort. People should be constantly examining not only what they learn but **how** they learn. By doing so, they may become efficient, but more important, they acquire the habit of relating their work to their personal style of accomplishment.

Career and life planning should be based on a thorough-going skepticism. It should be assumed that every career plan must be tailor-made to the individual, and what other people appear to be doing may be irrelevant. Be prepared to consider a career unrelated to the practice of law. Be willing to leave law school, if need be.

To be so independent, one must spend some time in life review, picking out the significant patterns and defining the most important goals and values. The necessity for this introspection seems self-evident, but too many people are unaware of or afraid of the benefits. Although essentially a private process, this self-exploration is best pursued with others — a spouse, family, friends — because it needs to be validated by being shared with someone important. It is this kind of talk that goes on a good deal in college, and it should not cease in law school.

Having determined on a particular life style, the next step is to look around law school and see what re-

sources exist for its implementation. Do not assume that a professor does not have time to talk to you, or that you do not have time to go to a Placement Office symposium; time for these activities should be part of the educational process. Try above all to locate faculty or other students with the same interests. Do this early, and cleave to them, because this is how interests and commitments are kept alive.

Once one has formed some tentative career goals based on all this exploration and information gathering, stop to re-examine them. A common danger is that the goals have become too narrow and idiosyncratic to be realizable. There are more alternative legal careers than is often assumed, but they have certain basics in common. If one cannot be happy doing what most people do in a profession, then the risks are very great of not succeeding. The "window"

Do not assume that a professional does not have time to talk to you . .

one is shooting for becomes so uncertain. An example would be the former engineering major who asserts that he will only be content as

a lawyer if he can be a patent lawyer.

Finally, accept that choices have consequences. Even at Harvard you can't always get what you want, and if you did, you might not like it. Neither are choices as irrevocable as they seem. To be thoughtful and persistent in furthering one's personal goals is vital, but so is not attaching too much importance to any one decision. The trick is to make use of two admonitions, one by Thoreau, the other by Cromwell, which together make a sound basis for career planning:

"Pursue, keep up with, circle round, and round your life, as a dog does his master's chaise. Do what you love. Know your own bone; gnaw on it, bury it, unearth it, and gnaw it still."

And yet,

"No one rises so high as he who knows not whither he is going . . ."

Mark Byers, a Ph.D. in psychology, is vocational counselor at the Law School. This article was condensed from an essay by Byers in the 1978 Harvard Law School Yearbook.

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Younger Comments on HLS Students

(Continued from Page 5)

trial techniques chair and invited Younger to fill it, he was ready for a change. A lifetime New Yorker, he pondered his adaptability to the small town of Ithaca. "It took ten seconds to shake my addiction to New York City," Younger says.

Younger sees a marked contrast between gigantic Harvard Law School, and medium-sized Columbia or NYU, and an extraordinary contrast with tiny Cornell. Younger says the Harvard faculty, though first class, is very large, and this makes it difficult to get to know them quickly. His memories as an undergraduate in Stoughton

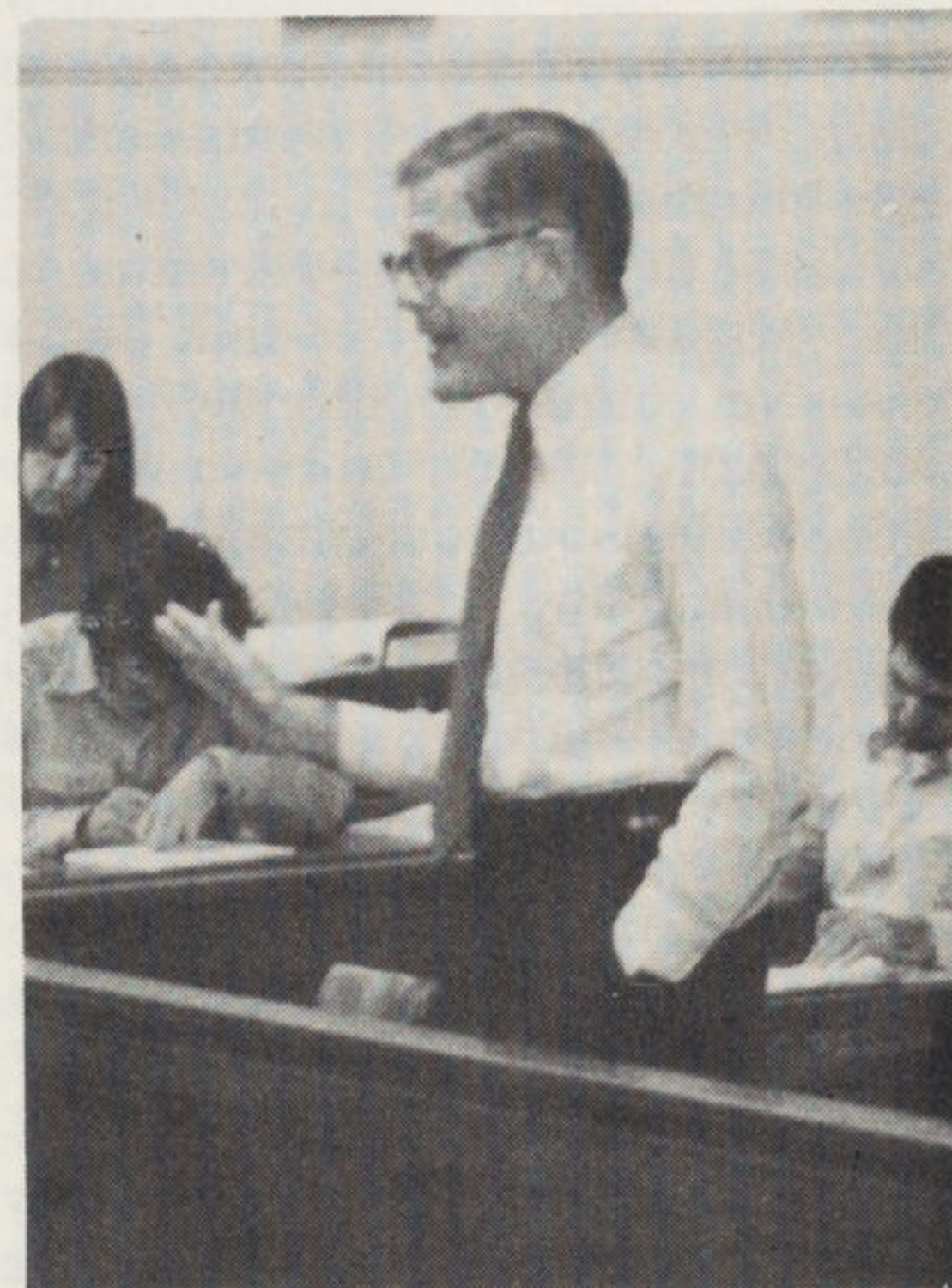
Hall 29 years ago have been rekindled by the "Vanity Fair" atmosphere that Cambridge and Harvard University still exude. "There are always crazy things going on that are fun."

First-Choice School

The big difference Younger sees is in the students themselves. "Harvard students are as smart as human beings can be. The intellectual quality goes right down the class: the lower half would be in the top half anywhere else." He also feels HLS students are happy, relaxed, genial, and prepared to laugh. Younger's lectures and classroom demeanor help produce Harvard students' laughter. He speculates that Cornell, NYU and Columbia are second choices for many of their students, who thus are a little arrogant, resentful and disappointed, possibly "on the verge of being obnoxious." Students at HLS can say, according to Younger, "I got in where I wanted to go."

Irving Younger apparently has gotten where he has wanted to go. He has been a lawyer, a teacher, and an author (*The Art of Cross-Examination*, 1976; *An Irreverent Introduction to Hearsay*, 1977). What comes next? Younger says, "I don't plan, I just have blundering good fortune. Things happen."

They certainly do.



Irving Younger

Higginbotham

(Continued from Page 4)

In answer to a question concerning Harvard's no-preference admissions process, Higginbotham explained that he would accept such a system as long as it recognized the importance of pluralism as incorporated in a diverse student body. He also criticized preference for alumni children and "muscle power."

In closing, the distinguished judge noted that poets are the ones who seem to understand difficult concepts best. He read to his 200 listeners an excerpt from the verse of Langston Hughes, expressing the hope that America can solve the problems of racism, but noting that it is up to all of us, and that we must do more than dream about it.



Sports Answers

1. Don Larson in 1956. The team was the New York Yankees who beat the Brooklyn Dodgers 2-0.
2. Jim Turner of the Denver Broncos
3. Sandy Koufax in 1963, 1965 and 1966 and Tom Seaver in 1969, 1973, and 1975. The crucial difference is that all of Koufax's awards were awarded when the competition was between the National and American Leagues.
4. Alfred A. Oerter — of the United States — who won gold medals in the discus throw in 1956, 1960, 1964 and 1968.
5. The award is the Triple Crown which was won by Vastirzowski in 1967 and Ted Williams in 1942 and 1947. The St. Louis Cardinals have also had the award three times — Roger Hornsby in 1922 and 1925 and Joe Medwick in 1937, but they are, alas, a National League team.

Solution to "Cryptic Law"

This case is the unhappy aftermath of a corporate marriage gone sour, with the bride's family claiming that the groom failed to disclose a number of liabilities at the time of the negotiations leading up to the nuptials. . . . (T)he voters on the merger were being shown the frosting on the cake with no allusion in the statements to the fact that a substantial part of the cake itself was dried out, if not mildewed. Republic Technology Fund, Inc. v. Lionel Corp. 483 F.2d 540 (2nd Cir.) 1973

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