



Harvard Law Record

America's Oldest Law School Newspaper

VOL. 81, NO. 10

JANUARY 16, 1986

25 CENTS



File Photo

Prof. Laurence Tribe

Tribe Proposes Faculty Journal

By Brian D. Rance

On Dec. 20, 1985, HLS announced that it would begin publication of a faculty-edited journal of legal analysis. The first edition of this new journal is scheduled for publication in 1987.

The new journal, which was approved unanimously by the faculty, grew out of a proposal drawn up by Professor Laurence Tribe, the Ralph S. Tyler, Jr. Professor of Constitutional Law. Tribe has been named the first editor of the new journal. The journal is slated to be published two to three times per year over the next two years on an experimental basis. Thereafter, if the journal is judged to be a success, publication will continue.

Tribe, in a recent interview, explained that the journal will publish articles on "the cutting edge of the law [to] be read by legal academics, contemplative practitioners and judges." Unlike the *Harvard Business Review*, which produces a sizeable profit for the Graduate School of Business, the new journal will not be published with the objective of generating income for HLS.

Tribe noted two arguments weighing in favor of the publication of the new journal. First, law schools, largely because of their historical origins in the system of apprenticeship between lawyers and students, remain alone among graduate schools in relying upon student editing of academic journals.

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2L Petition Rebuffed by Administration

By Vincent Chang

On Dec. 5, the Dean's office distributed a "memorandum to all Harvard Law School students" which reaffirmed HLS's change to a system in which second-year students, rather than third-year ones, are given "preference in allocating seats in basic courses."

This change, designed to encourage students to take basic courses in their second year, rather than waiting for third-year preference, was criticized by current second-year students, 395 of whom signed a petition attacking the new priority scheme. Most members of the class oppose the system because of the transition process: this year's 2Ls received lower priority in class

selection last year under the old system of 3L preference, and next year will, as 3Ls, receive lower priority than their 2L counterparts.

According to Vice Dean Stephen M. Bernardi, the system of preference for third year students had been in place "for a long time . . . it might go as far back as the late sixties, the point at which second and third year schedules became totally optional." But Bernardi contends that "over the years" second-year students had themselves objected to a seemingly "crazy" system which seemed to lead third-years to delay basic courses until third year in hopes of getting the more popular instructors. The December 5 memorandum, signed by Bernardi, Professor Lance Liebman, Vice-

Dean David N. Smith, and Registrar Sue Robinson, called the old priority scheme "educationally wrong" since "students then had limited opportunity to do advanced work in various fields."

Both the memorandum and Bernardi contended that the changes impose no particular hardship upon the current 2L class: the memorandum notes that "seeing that the transition process risked unfairness to the class of 1987, the School made special efforts to create additional sections this year in courses it thought would be heavily sought."

For example, Professor Laurence Tribe taught two sections in Constitutional Law and a first-year Corporations course was added.

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Student Editing Often Lacking, Prof. Says

(Continued from Page 1)

Tribe stated that the law, like other social science disciplines, is understood today as an academic area in which a substantial basis of fundamental knowledge is necessary to evaluate the importance of new developments. Thus, while student-edited journals are suited to articles that comprehensively review an existing area of the law, "students are less able to know a great advance when they see it," according to Tribe. Tribe went on to observe that "the hundreds of footnotes" accompanying student-edited pieces "are often a facade."

Secondly, the faculty of several other law schools such as Chicago, Duke, and Minnesota already successfully publish their own journals. Tribe stated that the new journal would give Harvard faculty a similar opportunity to add to legal scholarship.

As for the nuts and bolts of the operation, an advisory committee of Harvard faculty will be selected to set broad policies. The new journal will employ a full-time professional manager as well as several students to assist in subediting and other production-oriented tasks. Tribe plans to hire these students as he would any other research assistants. Outside referees are likely to be called upon to evaluate the worthiness of submissions for publication.

For students, perhaps the most important consequence of the new journal is that Tribe will teach only one seminar next year, in the spring semester. He had already planned to be on leave during the fall semester. Tribe plans to return to teaching his popular constitutional law class during the 1987-88 academic year. His writing plans should be unaffected by his new task as editor.

Dean James Vorenberg is currently soliciting funds from significant past donors to HLS to finance the new journal. He estimated that at least \$50,000 would be necessary to cover the first two years of expenses in producing the new journal.

Vorenberg first suggested the creation of a faculty-edited journal in 1981. After Professor Richard Stewart, the Byrne Professor of Administrative Law and Associate Dean, prepared a report listing several possibilities for publishing legal scholarship edited by HLS faculty, Vorenberg then asked Tribe to formulate a specific proposal. Tribe's proposal was later submitted to the faculty for approval at the end of the fall 1985 semester.

When asked for her opinion of the new law journal and for the *Law Review* reaction to the faculty announcement, *Law Review* President Carol Steiker, 3L, declined to comment.

Celtics Hypothetical Comes Alive at HLS

By Hillary Richard

Suppose Bill Walton was sitting in front of you and you lightly kicked him, inadvertently crippling him. Should you be held liable for his injuries, to the tune of his million dollar contract? Such was a hypothetical posed by Professor David Rosenberg to his Torts class as he taught the doctrine of intentional torts and taking the plaintiff as you find him (or her). Rosenberg, a known Celtics fanatic, used Walton in his hypos periodically.

Inspired by this practice, a group of students plotted to convince Walton to come to class and surprise Rosenberg. Rob Ricigliano, 1L, IV, wrote to Walton, explaining the situation and asking Walton if he could possibly visit class. Much to Rob's surprise, Walton called him at home a short while later. He agreed to drop by.

The plot thickened. Most of the students, as well as some of the other professors in section 4, were in on the prank. According to plan,



Seth Lesser/Hillary Richard

Celtics' Center, Bill Walton, opens a gift from the 1L \$4 class as Prof. David Rosenberg watches.

at the beginning of class on Friday, Dec. 13, a student, Julie Ross, asked a question using Bill Walton to illustrate her point. Rosenberg was completely taken in and proceeded to answer her, continuing to use Walton in his response. Just as Rosenberg began a sentence about Bill Walton and joint causation, Walton

strolled in. Rosenberg was obviously delighted, as well as thoroughly shocked. The class went wild. After making a few legal puns, Walton was given a gift from the class. Upon opening it and finding inside a HLS t-shirt, he joked, "Good. I need a new dish rag!"

Vorenberg Letter Discusses HLS Schisms

By James Hoffman

Late last semester, Dean James Vorenberg wrote a letter to all HLS alumni which discussed the recent allegations of faculty division at the school that have been the subject of many media reports in publications such as *Time*, *The New York Times*, and *The Wall Street Journal*.

Vorenberg said in the letter that the debate over CLS has not made the school an unbearable place to teach but rather has made it more exciting and intellectually challenging, offering students a "rich array of approaches to the study of law and legal institutions."

He did admit in the letter that the faculty has had difficulty deciding on appointments but insisted that many "excellent young scholars" have been appointed. He also noted that HLS had had trouble making lateral appointments, and to remedy this he has established a new procedure where the Dean can now recommend visiting appointments directly to the Governing Board of the University, without a full faculty meeting review. He also stated that he intends to pre-

vent any possible future faculty deadlock on appointments.

Furthermore, Vorenberg expressed concern in his letter about the atmosphere at HLS and a desire to prevent any further faculty departures similar to that of Professor Paul Bator, who left HLS to go to the University of Chicago.

In an interview in his office, Vorenberg talked about the letter and questions regarding the present situation at the law school.

When asked why he wrote the letter, Dean Vorenberg responded that "I thought the alumni had been hearing about the school and what was going on here from the media . . . and it seemed to me it was both fair and the time had come for them to hear directly from me and that was all I intended to accomplish." He added that the feedback he received from the alumni was mostly favorable and that "some of it has been . . . heartening in showing the alumni's devotion and concern to the school."

Vorenberg was more evasive when it came to answering questions about why almost all of the younger faculty members at HLS have been

to the left on the political spectrum, as is generally considered to be the case, and why there are so few conservative tenured professors. He said that "I don't think I should try to characterize faculty members as conservative or liberal. . . . It is a great mistake to give a simplified labels to people's outlooks. I think it is that kind of oversimplification that has led to some of the present misunderstanding." Vorenberg did not agree that the appointments process in the last few years has produced almost all left leaning scholars.

Faculty Not Deadlocked

With regard to lateral appointments, Vorenberg said that "the faculty is not deadlocked . . . and has voted some lateral appointments." The Dean said that he foresees new lateral appointments in the future, even though it has been several years since the last one was made.

"We will continue, as we have in the past, to make good lateral appointments," Vorenberg said. "I think the simplification of the procedure on the appointments of visitors has been helpful in that it has saved faculty meeting time in the making of visiting appointments. It seemed to me that some of the time spent on deciding on the invitation of particular visitors was not time well spent in faculty meetings. So I think it has made it possible for the faculty to complete its business more efficiently. I don't think it has had a big substantive effect," he concluded.

Crimson Story Denied

When asked about a Dec. 4 *Harvard Crimson* story which reported that up to six professors were considering leaving the law school because of the current situation, Vorenberg commented, "I don't think there is any basis for the predictions or comments by the author of the *Crimson* story. . . . The kind of de-

Student Mugged on Campus

By David Snouffer

A male law student was knocked down and robbed near HLS in mid-November after he left an automatic teller machine (ATM) in Harvard Square, Harvard University Police reported last month.

Two "young males" followed the man from the Harvard Bay Bank down Massachusetts Avenue almost to the corner of Hastings Hall. There they knocked him to the pavement and one of them took his wallet, said Harvard Deputy Police Chief Jack Morse, who would not disclose the student's name. The two thieves then ran across Massachusetts Avenue to the Cambridge Common.

The student called the police from the International Legal Studies building, and police obtained descriptions of the two muggers from him and several other witnesses

who saw the student being pushed down.

Police "located" a suspect in Harvard Square "who fit the general description" of one of the two thieves, Morse said. However, the student and other witnesses were unable to identify the suspect as one of the robbers.

Morse advised students not to go to banks alone at night. "If you're going to mug somebody, a great place is to stand around ATM machines," Morse said. "It's a crime of opportunity."

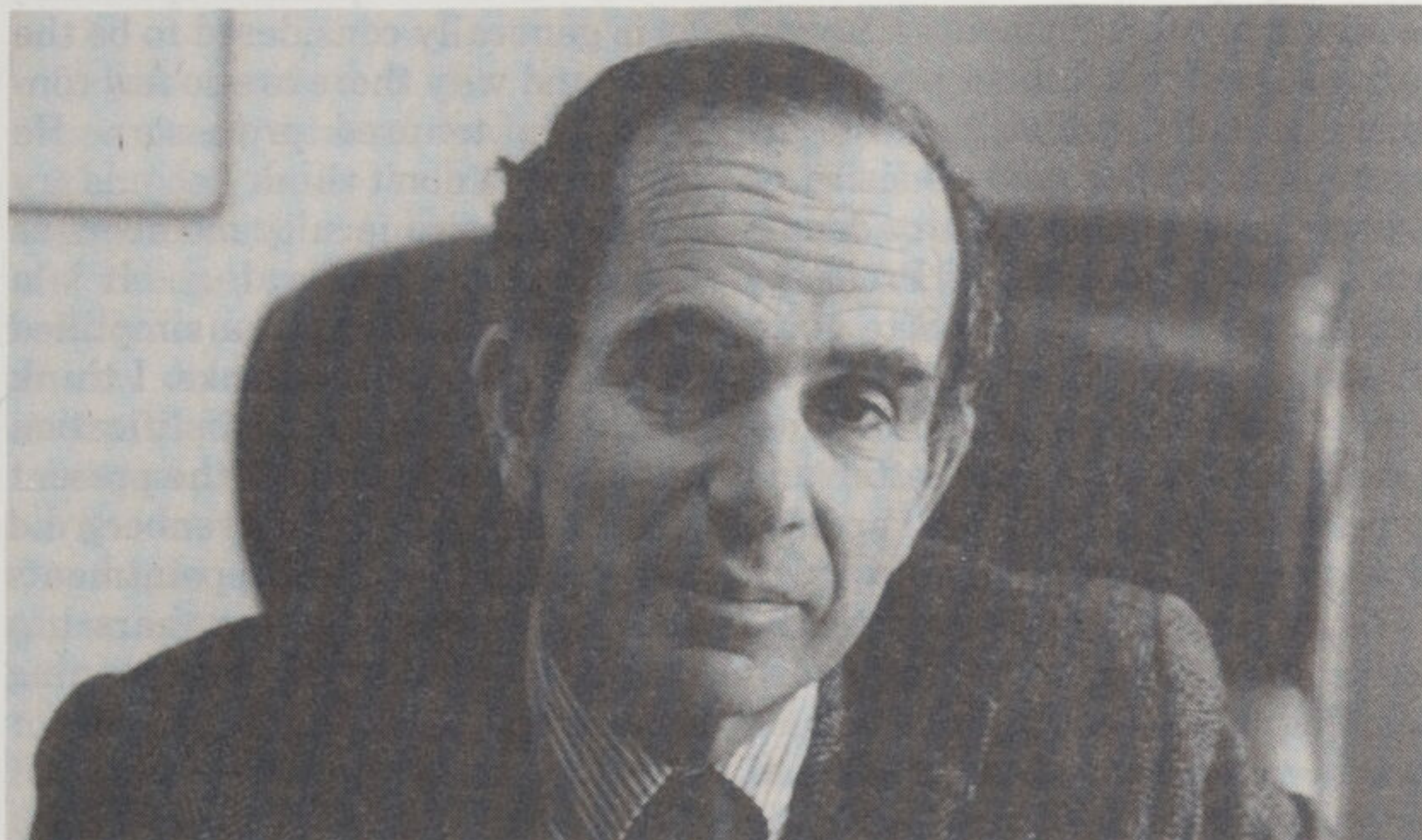
Morse also said a student who believes he is being followed should telephone police immediately. "Mugging only takes a second," he said.

Hold-ups in Harvard Square are "rare," Morse said, because many people usually are walking around there.



(Continued on Page 4)

Vorenberg: HLS Strife Exaggerated



HLS Yearbook

Dean James Vorenberg

(Continued from Page 3)

partures they talked about seem to me to be very unlikely."

Finally, the Dean discussed a concern of some people that alumni contributions will be adversely affected by the media reports of Law School strife and the radical teachings of the Critical Legal Studies movement. He said that "there have been a few instances in which alumni have written in that they are withholding their gifts . . . and there have been also a number of instances in the last few months, particularly since my letter, in which alumni have written that they are increasing their gifts as a sign of support for the school, so I have no way of making a net overall judgment."

In concluding the interview, Vorenberg said that the letter was "intended to speak for itself" and that the situation has not changed enough since he wrote the letter for him to add any other comments to it.

When asked about the Alumni's reaction to Vorenberg's letter, the Alumni Office indicated that Elisabeth Wahler, Assistant to the Dean, had seen many of the Alumni's responses and she said that "the reaction from the alumni was supportive of the school and the Dean's leadership," and that the majority of the responses were favorable to the letter.

John Holton, '85, a lawyer in Boston, said that the letter shows the Dean is extraordinarily concerned about the problem, but that "it will be a step forward only if he uses the authority to introduce some much needed balance into the faculty; i.e., he appoints a number of unabashed conservatives."

Student Response Mixed

Some students at HLS agreed that the Dean should take more action, although disagreeing as to what this action should be. John Fortier, 3L, said that the letter "didn't tell us what he is going to do and didn't

propose a program for the future. It was merely a bone thrown to the alumni. He should have laid out specific steps, a positive program. The feeling of disruption and disrespect has festered too long. A leader has the responsibility of focussing these groups on shared values. I don't believe the faculty is at heart self-destructive, and the Dean's role is to build a program on a common foundation. Ignoring the divisions won't heal them," Fortier concluded.

Anthony Farley, 2L, thought that "the letter was a good idea and should help to abate some of the anti-CLS feeling I found among some alumni when I interviewed. One of the reasons I came to Harvard was that I thought CLS would make life here more interesting." He also said that he was for the new method of making visiting appointments "only if it helps to create a diverse faculty, so that students are presented with differing viewpoints."



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Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617) 495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass.

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Human Rights Group Moves to HLS

By Maurice S. Kane

Formerly headquartered in Washington, D.C., the Human Rights Internet is now based at HLS. Here it will continue to operate autonomously as a worldwide communications network and clearinghouse on human rights.

Director Laurie S. Weisberg describes her organization as one that has a "mandate" to disseminate human rights information to all groups and individuals on "all sides of the political spectrum." Their interests may range from broad, universal concerns to more specific issues such as "prisoners in the USSR, repression in Chile, and the rights of indigenous groups." Weisberg said that Internet works to "stimulate cooperation between existing human rights organizations" and to help "make groups more efficient."

Various nongovernmental human rights groups contribute information which Internet publishes in the *Human Rights Internet Reporter* five times a year. These groups also can more easily contact each other by using Human Rights Directories that Internet has published. There are directories for North America, Western Europe, and the Third World — Latin America, Africa and Asia. "We get information from Eastern Europe indirectly," said Weisberg.

A neutral, non-advocatory organization, Internet has consultative



Adele-Marie Hendrix

Administrative Director of the HLS Human Rights Program, Jack Tobin.

status with the United Nations and UNICEF (United Nations Children's Fund). "We've done research with UNESCO [United Nations Educational, Scientific and Cultural Organization]," said Weisberg.

One of Internet's objectives is to assist contacts and understanding among academics, activists, and policymakers. Weisberg spoke about Internet's work with UNITAR (United Nations Institute for Training and Research). "UNITAR has put on a series of workshops, bringing people from various countries together," said Weisberg. A recent workshop involved the English-speaking Caribbean nations. These meetings, the participants of which are government officials and human rights representatives, teach officials how to report on human rights.

Internet receives voluminous amounts of reports from nongovernmental organizations and international agencies, including data generated by commissions, subcommissions and working groups of the UN General Assembly and the United Nations Economic and Social Council. This vast amount of data, which Weisberg said will ultimately be encoded into a "computerized data base" makes for a "unique library."

Jack Tobin, Administrative Director of the Human Rights Program at HLS, said that the Internet library will be "open to the public" as well as to students and instructors. "Anyone can use the collection," Tobin noted. He mentioned that a human rights area receiving considerable attention currently is "political asylum" and Internet has "current documentation on Afghanistan and Central America."

Weisberg said that the available resources cannot be checked out, since "it's not a lending library," but "there will be complete access" and table space for library users to examine documents.

Students interested in human rights will soon have an opportunity to work with Internet. "We're looking for student interns almost immediately," said Weisberg. Tobin also observed that, "In the future, there is hope for student intern regional specialists."

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Editor Charges Text Monopoly

A former editor at West Publishing has told the RECORD that West sells more than 90 percent of all law school casebooks in the U.S. and that its profit margin on casebooks exceeds 80 percent. Calling the company "a virtual monopoly," he stated that West also owns Foundation Press, another casebook publisher.

The former editor, who asked not to be identified, suggested in a letter to the RECORD that HLS students should "organize and lead a national strike or whatever to get massive discounts on law students' books." He argued that "West officers do know that the good thing they've got going for themselves won't last forever. They're scared ... of when you law students wake up to how they've been screwing you on prices."

He also claimed that West had threatened another editor with assassination to deter any disclosure of financial data.

West, a privately held firm, would not confirm or deny the allegations about its market share and profits.

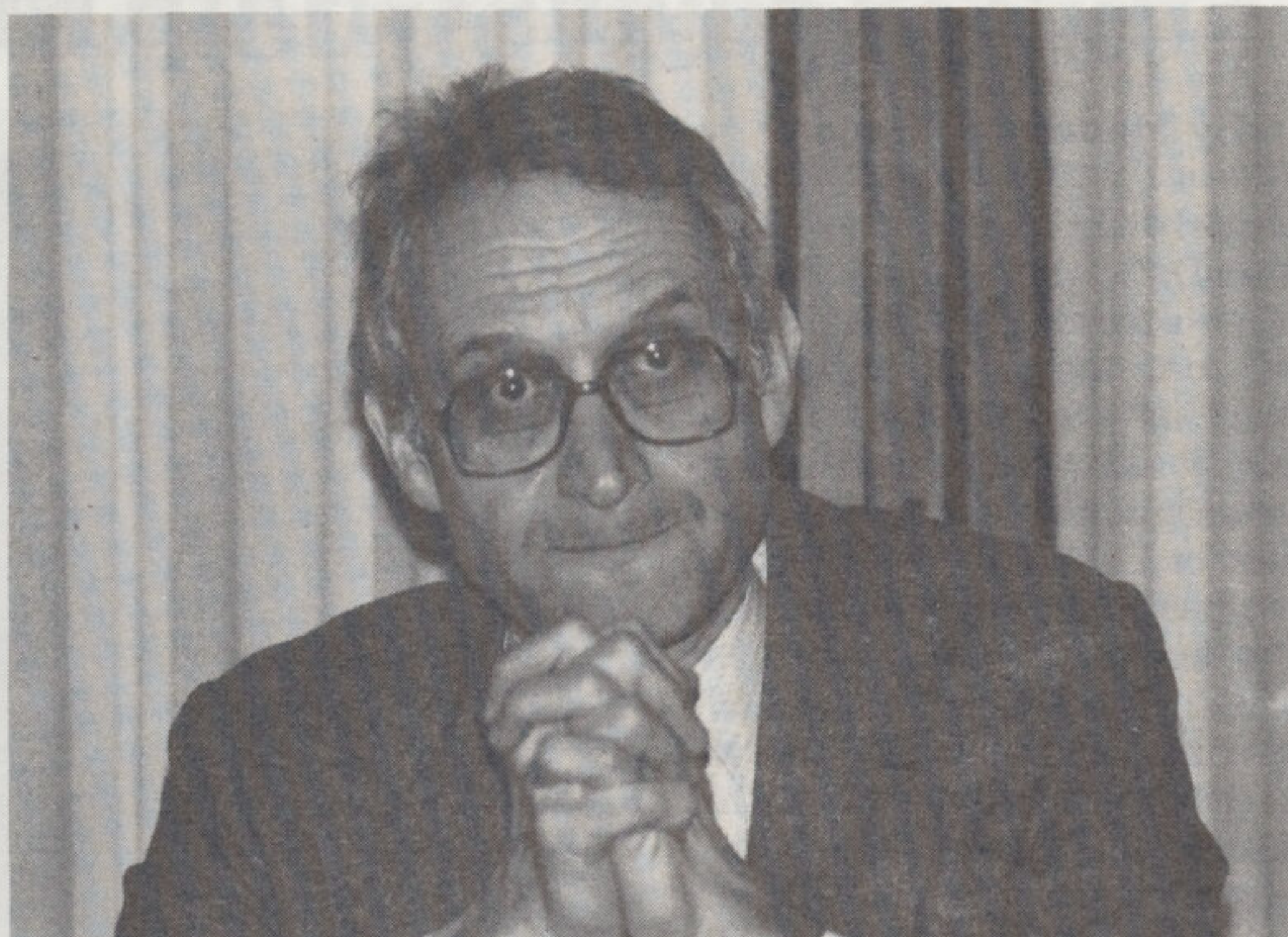
The president of Foundation Press, Harold R. Eriv, confirmed that West owns a majority interest in the company. However, he stated that Foundation Press was independently managed. "We compete head to head with West," Eriv said. "If you're using a West book, we're in tears."

According to Eriv, West retains no control over the editorial or managerial decisions of the Foundation Press.

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Hillary Richard/Adele Hendrix

Prof. Charles Fried

Professor Charles Fried spoke Dec. 16 about "Lawyering in the Department of Justice and Office of Solicitor General in the Reagan Administration." The RECORD was unable to report on the talk, however, because Fried insisted

that journalists not write about the contents of the discussion. He hoped that keeping his statements off the record would enable him to be more candid in his discussion of his role as Solicitor General.

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PRC Prof. Speaks on Trends in Chinese Law

By Vincent Chang

Guo Shoukang, Professor of Law at the People's University in the People's Republic of China and a leading expert on various Chinese economic laws, spoke at Harvard Law on January 10 as part of the law school's East Asian Legal Studies Speaker Program.

Guo, who is currently inbetween lecturing stints at Columbia and Georgetown, spoke at Harvard on the issue of "Current Trends in Chinese Business Law." Guo has been described as one of the P.R.C.'s foremost specialists on intellectual property and intimately involved in the drafting of patent laws and other economic laws.

Because of his unique perspective, Guo was able to deliver some insights into the future of Chinese economic law and how that law is likely to affect foreigners who are contemplating business transactions in China. First, Guo placed China's



Adele-Marie Hendrix

Prof. Guo Shoukang

legal situation in context, noting that the P.R.C. has experienced "rapid development in the field of economic law. Since 1979, China has issued 409 laws and regulations of which 327 are related to economic activities." Guo predicted that be-

tween 1986 and 1990, China would promulgate some 160 new laws and regulations of which 30 would involve foreign businesses — and out of that 30, 20 are likely to be issued or deliberated in 1986.

Guo did not elaborate on the specifics of these proposals, but indicated that "we will have many special civil laws — inheritance, marriage, we will have a law of general principles — what is a legal person?, what is the capacity of a natural person?, what is the conception of a juristic act?" In addition, "there will be a contractual joint venture law, company law, bankruptcy, customs, foreign trade, overseas investment, maritime, and copyright laws."

The predicted growth of new Chinese law comes on the heels of several significant legal developments in 1985. Most prominent was the passage of a long-awaited Foreign Economic Contracts Law which has facilitated foreign transactions in China. However, American practitioners in China have encountered several difficulties in application of the law. The first issue concerns choice of law. Guo recognized that foreign parties have often requested that foreign law, rather than Chinese law, govern foreign contracts. To address this issue, the Foreign Economic Contracts law provides that the parties may gen-

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2nd YEAR

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BAR REVIEW

Sometimes A Great Notion . . .

I was delighted to see that HLS has reinstituted the tradition of flooding the field behind Harkness Common to create an ice skating area. Besides just enjoying traditions, I also was glad to see the rink because it is just one more way for HLS to let students know that recreation is acceptable.

Another addition I appreciated was the wide class selection offered in winter term. Now, instead of all the classes being worth two credits, students have a choice between subject matter and work load. And after all, variety is the spice (and perhaps the only one) to winter term.

The new computer laboratory is another welcome and useful expansion to HLS. In order for HLS to remain on the cutting edge of the law, it must remain current with developments in all legal fields. In order for its students to remain competitive, they must also keep current with developments, including technological ones. Law is not a profession of only books anymore.

. . . But Not Always

I am not so enthusiastic about all of the changes taking place, though. Of concern is the new faculty-edited law review. I just do not understand the purpose of this publication. Were HLS profs having trouble getting their work published? I think not. Does not a forum for the type of article proposed to be in the new review already exist? Why create further competition?

I just hope that this move is not just another way for the professors here to assert their superiority over the students. Are they out for the thrill of watching their own publication surpass the circulation of the student-edited review? Have professors simply become averse to working with students? If not, why not try to have more professorial input for the existing law review?

One reason given for the creation of the new publication is the shortcomings of student editors. Why not try to help the students along? I am sure that the law review staff would gain much from professors' participation.

On the whole, I am uncomfortable with the idea. It is yet another split between the students and the faculty which will foster competition and misunderstanding. I believe that HLS should be working toward joint projects between faculty and students instead of trying to segregate them.

—G.K.K.

HARVARD LAW RECORD

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Fenno

Fenno awoke on New Year's Day alone, as usual. It's difficult to get and retain a date for New Year's when one insists on rolling a beer keg out on the dance floor for each song just to have it ready for when the urge strikes. This is especially a problem for Fenno, who can never remember if he is supposed to keep his right hand on his date's waist, or on the tap of the keg.

Fenno grimaced as he tried to locate the sound of the horrible pounding that had so rudely awakened him. As he peered out of the window of the broom closet, he realized it was the snowflakes slamming into the ground outside that were making all the racket. Fenno looked around for something to drink, since his mouth felt as if a herd of various sized rodents had recently expired in it. All he could find was a flat, half-full bottle of Meister Brau.

"Better than nothing," he thought to himself as he chugged the lukewarm fluid. The prospect of spending the day vegetating in front of Bowl Games also cheered him.

Suddenly, Fenno was struck by a thought. WINTER TERM. He had 174 pages (single spaced) to read for tomorrow. Fenno moaned. He wondered if Winter Term was in fact originally created by Moammar Khadafy, as had been rumored.

"No way," Fenno said out loud. "Khadafy may be a terrorist, but he's not that big of a sadist."

Who, then, is responsible for ruining his first day of 1986? Fenno thought. Who could be so cruel, thoughtless, and nasty? Joseph Mengele is reportedly dead. Charles Manson is still trying to get parole. Mary Lou Retton is busy having her teeth enlarged. Who, then?

Fenno resolved to find the answer to this perplexing riddle. When he got back on campus tomorrow, he would ask the kind, caring, and considerate souls in THE HLS ADMINISTRATION for help. Given their long history of striving to make student life more bearable at HLS, Fenno hoped to confront the source of the problem perhaps even sooner than he expected.

Fenno managed to crawl out of the closet into his bedroom. He gazed about with bleary eyes for the 7,423 pages of multilithed materials for which he would be charged 150 dollars. Hoisting himself up on his chair, Fenno began to read page one of his assignment.

"The plethora of legal rights based on pre-chancery notions of natural law were often . . ." Fenno's head hit the desk with a thud as the sun slowly set on the horizon.

"The In-Law"

by Jinku Lee



Letters to the Editor of the Record

CLS a Hit with Brits

To the Editor:

So much twaddle has been written about Harvard Law School in recent months, and so much manipulation of the press has taken place, that a single countervailing letter may have virtually no impact. Nonetheless, I feel I should write briefly to let Harvardians know how they stand in the eyes of scholars at one of the leading overseas institutions. Since I arrived at Cambridge University in September, I have talked about HLS with a number of people (mostly jurisprudes). Without exception, they see Harvard as an Olympian home to the greatest gods of American legal education. Their reactions are based partly — though certainly not exclusively — on the presence of a large number of critical legal scholars at HLS. Not only are Duncan Kennedy, Morty Horwitz, and Roberto Unger discussed in terms usually reserved for liturgies, but the critical legal

movement as a whole is seen as the most fascinating development on the present-day American scene. (Of course, this is not to say that CLS has been uncritically embraced. All I am claiming is that the intellectual merits of critical legal scholarship are recognized — over here — even by those decidedly unsympathetic to the politics of the CLS movement.)

Law-and-economics, so dear to the hearts of the main opponents of CLS at Harvard, has, on the other hand, enjoyed no influence whatsoever at Cambridge. What do the champions of "consumer sovereignty" and "rational utility-maximizing" have to say about this choice of intellectual wares by Cantabrigians?

Matthew H. Kramer, '85
Cambridge, England

Shut Up and Preach

To the Editor:

From some point of view, (specifically a radical one on either end of the spectrum), all professors politic in the classroom; it is impossible to present all or no political views. This, of course, is what Critters like Mort Horwitz have been saying all along, but they are the worst offenders because while prefacing occasional, blatant political assertions with "this is a political assertion," they imply that their teaching is otherwise neutral.

In his letter to the Alumnas (a declaration of martial law in the faculty war), Vorenberg wrote, "We are also entitled to expect that the classroom will be a setting that does not put pressure on students to accept a particular political view." This is so much bull. Pressure comes from all sides, especially from classmates. Even an attempt to eliminate the pressure from professors must be based on the offensive assumption that students

are putty in the hands of their teachers. Those who are not, don't need Vorenberg's protection. Those who are, may as well be molded.

The classroom is a forum for conflict, so shut up and preach.

Michael S. Christian, 2L

Money-Hungry Crits?

To the Editor:

It's amusing to watch the CLS-types deny the very things they boasted about a few years ago. To hear them tell it now, everything they once openly proclaimed about organizing to dominate the faculty, about vetoing tenure for non-CLS supporters, or about the mission of the law school teacher being to convert students to their cause was a misunderstanding.

Reminds me of an old friend who became a politically active clergyman. To my surprise, one of his publications omitted the usual denunciation of the United States and toned down his standard attack on capitalism. I cornered him on the subject. After considerable denial, explanation, re-interpretation, etc., he said that the church would never abandon its social mission but "nothing should interfere with stewardship" (i.e. fund-raising).

Could those noble and principled supporters of CLS be worried that their successful assault on the decent traditions of Harvard Law School might (horror of horrors!) scare away capitalist donors? The CLS types have accepted money flowing from the "exploiters" of our society without apparent pain. Are they now waffling in public to keep the moolah coming?

William O. Sumner,
San Mateo, California

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which have been covered in the RECORD. Short letters are more likely to be printed.

Letters must be received by 2:00 P.M. on the Tuesday before the issue. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD. Organizations should identify the specific individual(s) responsible for approving the letter. All letters submitted become the property of the HARVARD LAW RECORD Corporation.

ATLA Strives to Educate Citizens in Law

By Joe Brandolino

Imagine the majority of the American public being law school graduates. Scary, isn't it? The Association of Trial Lawyers of America (ATLA) doesn't think so.

ATLA has launched a national effort to conduct free law schools for the general public. These law schools — known as "People's Law Schools" — have met with success in Michigan and Kentucky.

ATLA President Peter Perlman has set up a committee to promote the establishment of such law schools nationwide. Working with the National Community Education Association, state trial lawyers associations, and local community education associations, the committee hopes to have a People's Law School established in every state by next summer.

According to Perlman, "The purpose of the People's Law School is to provide basic information about fundamental legal principles to members of the community. There is an unfortunate misconception on the part of too many people that there is some kind of mystery surrounding the legal system. The law affects everybody, and if we expect to live under our system of law, then it is imperative that they understand the system."

ATLA Committee Chairperson Hugh Moore, a Kentucky trial lawyer, noted that the program will foster a better understanding by the general public of both the merits and problems of our legal system. "This country is unique, because it was founded on the rights and liberties of individual citizens. Yet, most people are unaware of this precious system. The future of our legal system ultimately depends on the people's appreciation of its merits. We can have a profound effect by letting people know what the legal system means to them."

The model for ATLA's program is a People's Law School established by the Michigan Trial Lawyers Association. Since its initiation eight years ago, thousands of Michigan's citizens have graduated from the

school. A student's matriculation typically lasts for eight weeks, with classes meeting two hours per evening. Each week constitutes one course.

Courses offered are mainly of a practical nature, and include: The Rights of the Accused; Consumer Bankruptcy; Wills, Estates, Probate, and Taxation; Real Estate and Landlord-Tenant Law; The Juvenile Justice System; Product Liability; and Workers' Compensation, Social Security Claims, and Employment Discrimination. At the conclusion of the program, certificates are awarded and a class picture is taken.

In Owensboro, Kentucky, the next such program offered will include a course in Comparative Law as well as a field trip to the state capital including visits to the state legislature, Attorney General's Office, Governor's Office, and the Kentucky Supreme Court.

Schools on Low Budget

The law schools operate at a minimal cost, which is borne by the state trial lawyers association. Lawyers, judges and others who teach the courses donate their services. The cost, if any, to the participant is nominal. (In Michigan, the fee is \$1.) Anyone interested in the concept can contact Hugh Moore of ATLA, or their state trial lawyers association, for specific information.

If public reaction to the programs is similar in other states to the reaction in Michigan, the success of the People's Law Schools

seems guaranteed. ATLA Committee Chairperson Hugh Moore noted that ATLA is presently organizing People's Law Schools in 25 or 30 states.

Response from the bar, educators, and the general public has been "excellent." The ultimate long-term goal of the program would be the establishment of a People's Law School in every community. Moore is optimistic concerning future public reaction and the ultimate purposes of the program. "It was one of this nation's founders who said, 'The people must be ever vigilant of liberty.' Knowledge, of course, is a predicate of vigilance. Our People's Law School will help to give the people the understanding they want and need of the law and how the legal system operates."



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Letters to the Editor of the Record

Lawyers Not So Elite

To the Editor:

I was delighted that Gerald Gillerman put me in the company of Derek Bok, Robert Gordon and Archibald Cox in his essay on "The Changing American Attorney," but I wish he had bothered to read some of what I've written before he attacked my writing. Throughout the pages of *The American Lawyer*, I have repeatedly stressed the continuing need — indeed, the heightened need — for today's lawyers to fulfill the high obligations of the profession. Mr. Gillerman quotes only one sentence in discussing my "vision," and it's a quote from *The Wall Street Journal*, not from me or *The American Lawyer*.

Indeed, if the law, for me or for my magazine, is "merely a vehicle for achieving marketshare," how come *The American Lawyer* is the only magazine I know of that routinely carries stories about people stuck on death row following questionable trials, about law firms doing *pro bono* work, about lawyers' performances in front of juries and judges in the country's most significant cases, and about lawyers in government? That's why in just seven years we have been nominated for nine National Magazine Awards

and won two of the coveted Awards — one for general excellence and one for my essays on the *Washington Post* libel trial and the IBM antitrust case.

What may be bothering Mr. Gillerman is that I have, indeed, acknowledged, even endorsed and given broad coverage to, the idea that lawyers are in a business, as well as a profession. And that means that rather than simply congratulate themselves on being the "elite statesmen" Mr. Gillerman envisions, lawyers now also have to care that their customers are getting good value, because if they don't provide that value their customers will go to the competition. I don't think that that vision of the law is particularly subversive. In fact, the idea that the free market, free enterprise system has finally reached the world of corporate lawyers seems rather American to me. I bet even some of Mr. Gillerman's clients (not to mention his partners at Widett, Slater) sometimes worry about customer service and its reward, marketshare. That lawyers should worry about providing good value in a competitive market is hardly cause to think that our civilization is crumbling.

If Mr. Gillerman wants to avoid this "vision" of law practice in America he has two choices: 1) he can go back to the old days

when a relatively few select lawyers (he uses the term "elite") at a few select firms could charge anything they wanted and never tell clients why, and then do the statesmanlike work Mr. Gillerman talks about with an extra one or two percent of their time; or 2) he and his partners can decide that they don't care how much money they make or even if they make any, and, thereby, ignore all this horrible stuff about competition and market share.

What our magazine seeks to convey is that law is a profession (where *pro bono* work is a real sacrifice because it is done amidst competitive business pressures) and a business. As a writer, I can appreciate Mr. Gillerman's need to draw contrasts and suggest controversy in his essay, but I don't think that's an excuse for misrepresenting what I and a large staff of dedicated people have attempted to say in the seven years since we began *The American Lawyer*.

Steven Brill,
New York, New York

4Is of Appointment

To the Editor:

The RECORD article "On Prejudicing Justice" by Senator John Kerry [Oct. 18] said, "As Judge Abner Mikva, who served in Congress [Dem.-Ill.] for many years, has wisely said, the test of a good appointment and confirmation process isn't ensuring the conformity of all judges to a narrow ideology, it is the concept of restraint." Senator Kerry and 42 other senators [39 Democrats, 3 Republicans] rejected that test in voting against the nomination of Hon. Alex Kozinski as a judge on the Ninth Circuit Court of Appeals.

Judge Kozinski served with distinction for three years as the chief judge of the Court of Claims. Born in Rumania of parents who survived the Holocaust, he emigrated here at the age of twelve. He graduated first in his class at the UCLA Law School and clerked for Chief Justice Warren E. Burger. The Senate Judiciary Committee unanimously approved his nomination on September 12. Despite his outstanding qualifications, his margin of confirmation was only 11 votes divided predominantly along party lines.

Senator Kerry concludes, "One of the most profound safeguards on Congress is the integrity of our federal judges." Integrity, intelligence, industriousness and independence may be regarded as the four "I"s forming the core of a good federal judge. I believe that Judge Kozinski has already demonstrated these qualities as a judge and lawyer. It is disappointing that a person of his caliber

(Continued on Page 14)

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3Ls to Lose Priority in Registration

(Continued from Page 1)

The organizers of the 2L petition drive were not mollified. Bern Johnson, 2L and one of the prime organizers along with 2L Dennis Kelleher, contends that the aggregate figures on basic course enrollment mask the underlying unfairness of the transition process.

Johnson noted that "many members of our class put Tribe first this year and didn't get him. 140 have him, but 140 attempted to take him and failed. The extreme number who tried and failed is a reflection that we knew that in third year we wouldn't be able to get him." Johnson also contended that "we're not asking for a particular professor, but a fair shot at choosing the courses of our legal education."

Further scrutiny of the figures shows that Johnson's criticisms may have some validity. Not only were many 2Ls excluded from Tribe's sections, but Professor Nesson's Evidence Class and Professor Wolf-

man's Tax class, among others, were also oversubscribed. On the other hand, possibly because of the extra 1L Corporations section, Professor Clark's popular Corporations course was not oversubscribed. In addition, Bernardi and the Dean's office have pledged to monitor registration figures and to add extra sections of basic courses if necessary.

Alternatives Ignored

Bern Johnson argued that even if the priority system has not imposed excessive harms on 2L's, a less restrictive alternative is available. Johnson and the petition organizers advocate a solution in which the 2L's and 3L's have equal priority in 1987 basic class selection. Johnson said that this proposal was "pretty much ignored" in the Dean's Office Dec. 5 memorandum.

Bernardi disputed Johnson's suggestion, noting that "we spent an awful lot of time and effort, drafting

and redrafting the memorandum and the proposal." Bernardi claims that the equal priority proposal would merely "continue the problem for awhile with impact on another class which may come at us with another proposal next year that we should do something special for another year . . . there would be no end to it. We are doing the best we possibly can to get it over in one year."

Besides disagreeing with the substance of the Dean's Office proposal, Johnson also attacked the administration for its lack of responsiveness to student concerns. Johnson claims that "we never got a direct response to the letter or petition that we submitted. This is disappointing in light of the fact that lack of communication is a major problem . . . it seems there has been a conscious decision to ignore our interests . . . what does that say about the role of students in deciding their educational fate?"

Guo: PRC Legal Development to Continue

(Continued from Page 7)

erally contractually establish a choice of law. However, Guo acknowledged that in practice the contractual choice of law must have a connection with the contract in order to survive approval authority scrutiny. Therefore, Guo noted that the Chinese disfavor foreign contracts which attempt to impose Swedish law, for example, as the governing law of the contract. Declared Guo: "Nobody in China knows Swedish or Swedish law . . . there must be a connection between the law and the contract or nobody can predict the legal result of the contract." In the meantime foreigners doing business in China must deal with not only a difficult choice of law issue, but also with the issue of choice of forum. Many contracts currently call for Stockholm as a place of third party arbitration. However, Guo expressed some concerns about such a choice: "Stockholm is a product

of history for transactions between the United States and the Soviet Union because it is in the middle. But it is not an ideal place for China. If we have a contract with Japan, why should we both go to Sweden? I'm personally in favor of arbitration in Malaysia or Singapore."

Retroactivity of New Laws

Besides the choice of law issue, foreign practitioners have encountered difficulties with the issue of retroactivity of newly enacted Chinese law. The new Chinese position on retroactivity, according to Professor Guo, is that if Chinese law changes in the future, the foreign party may apply the old law at its discretion if the old law appears to be more advantageous.

In addition to describing changes in Chinese substantive law, Guo spoke at some length about Chinese efforts to develop a judiciary system. Guo noted that China has begun to publish its supreme court decisions

and promised that "more and more decisions will be published in the future, including both civil and criminal laws." Furthermore, Guo observed that most Chinese judges will soon have formal legal education. "Many of my students are now lawyers and judges in the court," Guo proudly stated. Guo predicted that within three to five years, all judges "will have a diploma, in addition to hearing lectures and preparing a paper and an exam."

Harvard's Role

Professor Guo noted that Harvard Law has been instrumental in this process of developing the Chinese legal system. Guo particularly thanked Harvard affiliates Tim Gelatt and Jerome Cohen who have spoken in Beijing many times. Guo observed that I received many invitations, but I must come here because Harvard has helped so much in China."

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BAR REVIEW

Letters to the Editor of the Record

(Continued from Page 11)

was apparently made the target of a partisan thrust at the philosophy of President Reagan.

Whatever views one may have on the philosophy of President Reagan, I believe that it is fair to say that virtually all of his appointments to the federal judiciary have outstanding qualifications. Witness his two most recent appointments to the federal bench here in Massachusetts of two outstanding alumni of this law school.

History has demonstrated that no president can control future decisions of Article III judges. For example, Chief Justice Warren, Mr. Justice Brennan and Mr. Justice White have all served with distinction; however, opinions they have written often express a philosophy perceived by many as different from that of appointing Presidents Eisenhower and Kennedy. Article III works in preserving the independence of the judiciary and public confidence in it so long as the President and Senate cooperate in selecting and approving judges with the four "T"s.

I hope that the partisan vote on the nomination of Judge Kozinski is an aberration that will not be repeated in the future by senators of either party when voting on a judicial nomination proposed by a president of the other party of a person having qualifications as outstanding as those of Judge Kozinski.

Of course, when a president proposes a nominee lacking in the four "T"s, the Senate has an obligation to reject the nomination. While such nominations are fortunately rare, bipartisan efforts in the past have either rejected them in a tallied vote or graciously allowed withdrawal of the unacceptable nomination.

If senators are unhappy with what they perceive to be the philosophy of judicial nominees consistent with that of the appointing president elected by a majority of the electorate, they are urged to work in their party for nomination of a candidate himself characterized by the four "T"s capable of being elected.

Charles Hieken, LL.B '57
Boston, Mass.

Ethical Analysis

To the Editor:

I would like to comment on the panel discussion described in "HLS Panel: Kill All The Corporate Lawyers" [RECORD, Vol. 81, No. 4 (Oct. 18, 1985), p. 4]. Although two opposing points of view were alluded to, a third, very significant point of view was ignored.

The explicit theme of the discussion was the ethical "correctness" of practicing law on behalf of public and underrepresented interests, or at least for rewards other than financial gain. The implicit counterpoint (which apparently had no voice on the panel) was the ethical neutrality of corporate practice. These points of view are eloquently articulated in and out of the law school, and I have nothing to contribute, except to say that it is no doubt important to influence sufficient numbers of gifted students to choose noncorporate career paths.

The point of view I would like to emphasize is this: A majority of lawyers simply will not devote their professional careers to ethically motivated activities, but will still have plenty of ethical choices to make, and they should be trained to choose skillfully. In fact, the ethical choices most of us make in our capacity as lawyers, while important, may in many cases have far less significance for our society than the ethical choices we make as citizens. It is important for us to make *all* our ethical choices skillfully; if our legal training does not enable and encourage us to recognize and analyze the ethical choices that confront us, whether legal or nonlegal, that training is deficient.

The possibility that students will leave the Law School without learning to recognize the ethical content of choices clearly troubles many HLS professors. However, they appear to focus on the few obvious choices that involve personal sacrifice and commitment, and to ignore the myriad unobvious choices that, in the aggregate, move society (even though they may involve little or no personal sacrifice). Thus, in response to their concern, they emphasize career paths and client selection, and appeal to the egos (glory dreams) of the students, rather than doing what they do best — teach methods of analysis. Examples of this response are in the constant laudatory references to roles of lawyers and judges in school desegregation and capital punishment cases. These exhortations inspire some students, alienate some, and leave some feeling helpless in the face of their sincere desires to behave ethically in less ambitious ways. The professors may be disappointed in the students, but they must recognize their own missed teaching opportunities.

Lawyers, like other citizens, must form opinions, vote, and, one would hope, engage in discussions with others in which issues are explored. What perhaps sets lawyers apart from many nonlawyers is that their training and often their professional activities cause them to be more exposed to society's ethical conflicts — they are brought into contact with conflicts of all kinds (directly, through gossip, or otherwise) — and their legal training, if it is good training, should enable them to recognize the ethical

content of such conflicts, their many analytical layers, and the various decisionmaking levels at which they may be resolved. When a citizen/lawyer conscientiously uses his or her analytical skills to develop an ethical perspective on social issues, legal training is put to a worthy use.

The HLS faculty has ample opportunity to equip students to recognize and analyze ethical choices, but it must avoid the temptation to equate ethics with material sacrifice, to overemphasize a lawyer's choice of career and clientele as a condition of ethical behavior — in short, the temptation to forget that good legal training may be powerfully and importantly applied to ethical choices *outside the practice of law*. Is it not ironic that HLS graduates generally believe that the Law School's greatest influence was in teaching them to think rather than in teaching them the law, but that some of the faculty members who are most audibly concerned about ethics do not have the confidence simply to teach their students to think ethically, but insist on shouting out the "answers"?

Neil Kimmelfield, '79
Washington, D.C.

Want A Drink?

To the Editor:

"America's seemingly unceasing thirst for information about what life is *really* like at HLS. . ." (Vol. 81, No. 8, p. 8.) Are you serious, G.K.K.?

Edward T. Ferguson, III, '81
New York, New York

Don't you get much exposure to media anymore? — Ed.

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Effect Of In-House Counsel Examined

By Gregory Klima

On Dec. 10, 1985, the Program on the Legal Profession hosted a panel discussion entitled, "Discussion of the Profession: Corporate Legal Practice." Alumni from the Boston area were invited to the gathering. The main topic of the session was the effect of the growth of in-house counsel on law firms.

Dean James Vorenberg began the discussion with some preliminary remarks. Vorenberg stated that the purpose of the discussion was to gauge alumni reaction to the work that the Program had been doing and to see if that work had been helpful. He also added that the program wanted to "find ways the alumni and the school can interact on a more substantive level." Vorenberg then introduced the moderator for the session, Professor Phil Heyman, who is also the director of the Program on the Legal Profession.

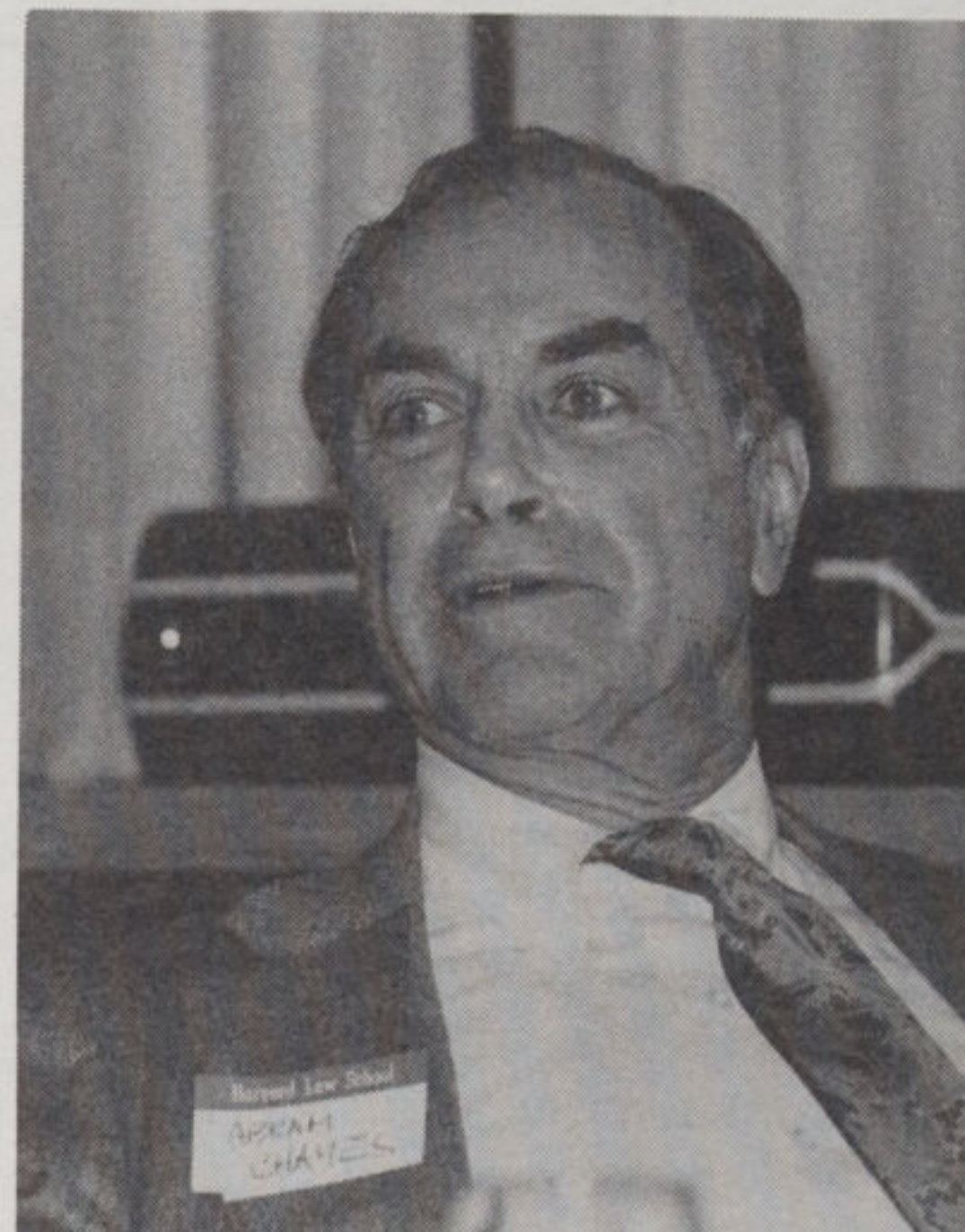
Heyman began the discussion by reading a 1983 article by Professor Charles Fried. Fried stated in the article that "Lawyers are a plague." Fried claimed that there are too many lawyers with too much influence. He also asserted that lawyers, no matter in which field they practice, relate better to each other than they do to their clients.

Fried blamed the problems with the legal profession on the current organization of most law firms. He believes that firms create intense stratification for the purpose of organized research, producing lawyers who are specialists and subspecialists. However, such specialization leaves no one, not even the senior partner, as a generalist who can oversee the wisdom of a whole approach.

Fried sees the movement toward in-house counsel as a cure to the these problems. "The move in-house has narrowed the gap between those who know how to do things . . . and those who know about regulating them," stated Fried in his article. "Work is done more quickly and more cheaply because it is done by experts not so much in this or that legal specialty but by men and women expert in the business they work for," claimed Fried. Because of the familiarity of the lawyer with the company, the in-house lawyer can help the company make better decisions.

Fried saw nothing good in the future for large corporate law firms. "Surely the days of large stratified law firms charging huge fees for meticulously executed, high volume routine work are numbered," Fried said.

Richard Csapler of the firm of



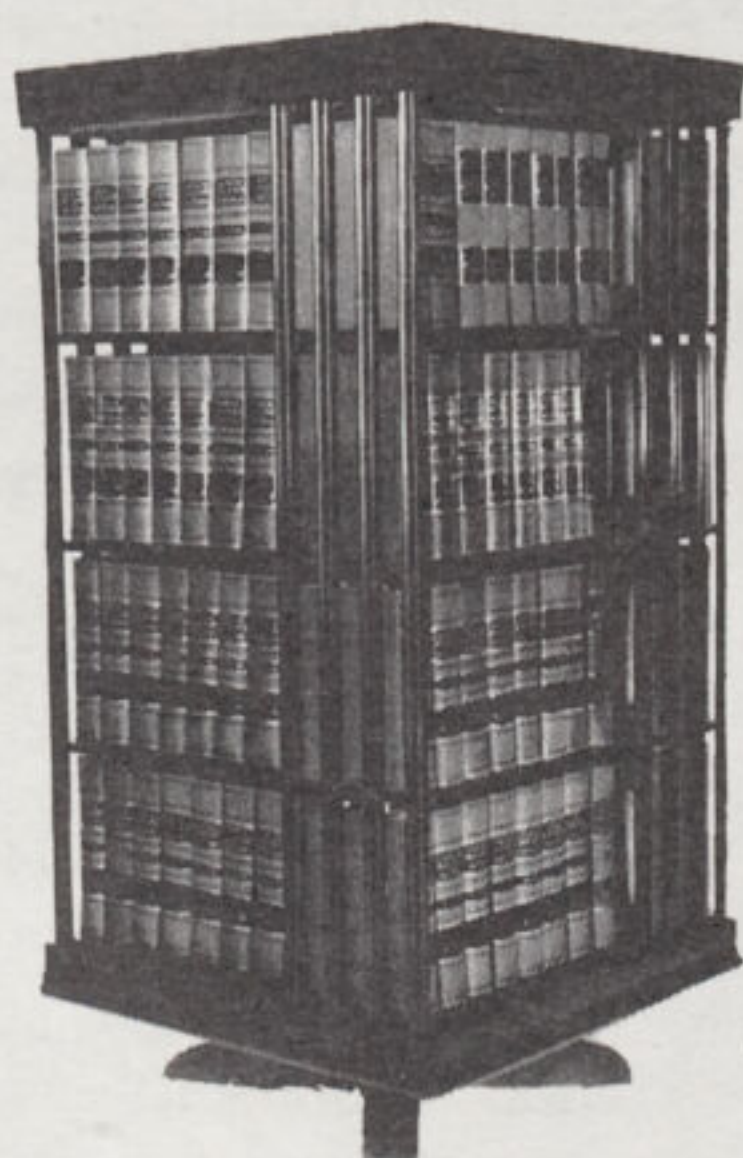
Mark Lennihan

Prof. Abram Chayes

Csapler & Bok was next on the agenda. Csapler responded to Fried's article by stating that it did not fit the reality of modern-day legal practice.

Csapler explained that the American economy is currently in the process of restructuring itself into an information and service society. He continued, "With each restructuring come upheavals. Lawyers have come along with those upheavals in every case. And each of the upheavals has resulted in an increase in the role of lawyers as our economy becomes more complex

(Continued on Page 16)



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Panelists Discuss Fate Of Law Firms

(Continued from Page 15)

and each has resulted in a growth in the size and complexity of law firms."

Csapler also pointed to census information about lawyers gathered by the ABA to refute the dominance of the trend toward in-house counsel. Csapler stated that the census reveals a five percent annual increase in the number of in-house counsel and in the size of the legal profession as a whole. However, large corporate firms (which he defined as firms with at least 75 attorneys) have an annual growth rate of ten percent.

Based on the above data, Csapler believes that Fried's predictions about the fate of large law firms is incorrect. Instead, Csapler believes that a simple shift in law firms' client base has occurred. The client base of large law firms used to consist of Fortune 500 firms. Today, however, their client base consists of service companies and smaller units of production. These smaller companies need the wide range of legal specialization that can be provided by the large law firms. As the number of service companies and smaller companies continues to increase, so will the prosperity of large law firms.

Professor Richard Stewart was the third speaker. Stewart spoke on how law firms react to changes



Mark Lennihan

Prof. Richard Stewart, Prof. Philip Heyman, and Richard Csapler, Jr. (l to r).

in environmental regulations. He noted a recognizable trend which he called a "learning curve." Stewart explained that when a wave of regulative activity occurs, large law firms react by putting "instant learners" on the job to take care of the immediate problems created by the new regulation. Over time, companies in the regulated industry will work with law firms to make compliance with the regulations part of the day-to-day activity of the company. Finally, responsibility for compliance will shift to non-lawyers, such as employees and trade associations. Lawyers are only

brought in when exceptional problems arise.

Professor Abram Chayes was the final speaker of the evening. Chayes described information developed through a seminar that he taught at HLS. The students in the seminar studied in-house counsel in several area companies.

The study was based on Fried's economic motivation theory for the in-house counsel movement. According to that idea, routine and recurring work would be done by in-house counsel and novel, specialized or episodic work, as well as any litigation, would be handled by outside law firms.

The result of the study, according to Chayes, was that the "inside/outside" distinction was "too pat for the real world." Instead Chayes discovered a mix in the work that inside and outside counsel were actually handling. In-house counsel also usually had a supervisory role in the work done by outside law firms.

Chayes stated that, based on the economic motivation theory, he expected to discover tight cost controls on in-house counsel, budgeting, and shopping around for the best deal on outside work. However, none of these practices were found to exist on a wide scale.

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