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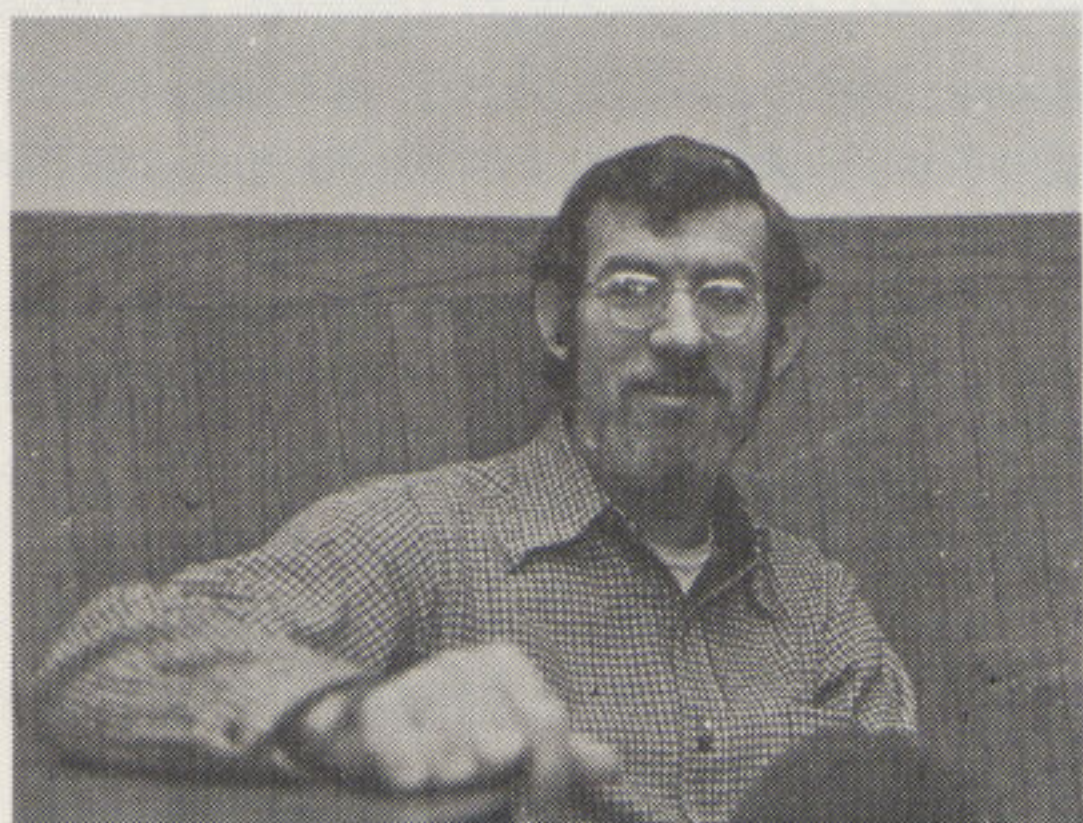
TWENTY CENTS

Irons Unearths New Evidence On Hiss Investigation

By Randy Phillips

A political scientist turned law student has uncovered new evidence of government misconduct in the still-controversial Alger Hiss case.

The evidence appears in forty-seven pages of Federal Bureau of Investigation documents obtained under the Freedom of Information



2L Irons presses Hiss evidence.

Act by former University of Massachusetts professor Dr. Peter H. Irons, 2L. The documents show that a private detective employed by Hiss's defense attorneys was simultaneously feeding information to the FBI.

Moreover, the documents establish that the U. S. Attorney handling the Hiss prosecution was aware the FBI had an informant within the Hiss defense. Yet that fact was never

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Sacks, Reiman Cross Swords Over Class of '76 Gift-Giving

By Paul Coady

Branding the proposal "a most inappropriate step to take," Dean Albert M. Sacks has recently reacted to an alumni fund-raising boycott urged last spring by the 1976 Class Committee. In an October 28 letter issued to every member of the Class of 1976, Sacks condemned the proposed alumni action as "counterproductive" and predicted that the withholding of alumni financial support would ultimately redound to the detriment of HLS students.

The plan to hold gift-giving hostage to Law School reform was conceived last May by several members of the 1976 Class Committee and was advanced in a letter sent at that time to all members of the graduating class. It sets out 14 items which are taken as a representative, but not exhaustive, list of examples which its authors deem "substantial and demanding of attention."

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Recruitment Of Clinical Instructors Hits Snags

By Andrea Brown

Despite a strong commitment to increasing opportunities for clinical education, Harvard Law School has been having difficulty recruiting qualified faculty members interested in teaching clinical courses.

Gary G. Bellow, who teaches *The Lawyering Process*, explained that "clinical education" is a methodology that can be used to teach anything from substantive law to ethics. Actual field work may be done by students, or simulated situations may be used in the course. The goal is to examine what lawyers do and how they learn. The method is based upon the educational theory that with-

out experience, students tend to discount learning and find it difficult to make the transition to practice.

The Law School has been involved in clinical methods of education almost since the genesis of the method in 1968 or 1969. In 1971, Bellow began teaching *The Lawyering Process*, and shortly thereafter, Jeanne C. Kettleson was appointed as Administrative Director of Clinical Programs. Currently, there are several clinical courses at the Law School, including Frank E. A. Sander's Tax Workshop, David L. Shapiro and David Rosenberg's *Federal Litigation* course, *Intro-*

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New Legal Methods Format May Be Retained, Expanded

By Charles Jordan

Despite a hectic start, the "experimental" Legal Methods format of Section IV (class of 1979) appears to be a success. At least, this is the perception of the principals in the program.

The Law School embarked on a rare voyage of experimental reform in inaugurating the new Legal Methods format. Steps implementing the decision to try the new format were not taken until last May, yet from all reports, both students' and teachers' alike, the program has succeeded seemingly in spite of itself.

The 135 students in Section IV are undergoing a significantly different Legal Methods experience than their counterparts in Sections I, II and III. Facets of the new Legal Methods format include instruction by upper-class (primarily 3L) teaching assistants, smaller classes (10 to 14 students per section) and assignments explicitly related to materials being covered in only one of the basic first-year courses, Contracts.

The new format does not split teaching and advising roles between teaching fellows and BSA advisors. Upperclass teaching assistants manage both roles, and BSA members do not participate in the experimental sessions.

The new format was developed primarily by Vickie Raymer, 2L, under the direction of Professor Charles Fried, the faculty supervisor of the program. Fried hired Raymer during the summer of 1976 on very short notice. He was himself contacted regarding the program only in May, 1976.

In an interview with the REC-

ORD, Fried explained the history of the program: "I was approached by the Dean [Albert M. Sacks] who said that the Committee on Legal Education had been considering a new program, and would I like to supervise it? I have experience [working] with teaching fellows [in the College]."

Professor Robert E. Keeton, former head of the Committee on Legal Education, confirmed the fact that Fried had had to design the program in a hurry. As Keeton put it, "It was done on fairly short-term consideration as these things go."

Fried feels that the lack of substantial advance preparation did not affect the new program adversely. "The short notice was, in any event, not harmful," he concluded. "We just stewed a bit less. We would have done all the work over the summer anyway. We had plenty of applicants [for teaching assistant positions]." Fried acknowledged in a later interview, however, that a "longer lead time for preparing" would remedy what he considers to be a defect in this year's program, that "the teachers are more than occasionally uncertain about the material."

The reason for the "late plunge" of the Committee on Legal Education was rumored to be the departure of last year's Legal Methods coordinator, Nathan M. Crystal, and other teaching fellows in the spring semester, 1976. Keeton, however, denied that the shortage of teaching fellows entered into the final decision.

Teaching assistant Stephen
(Continued on Page 14)

Alums Reminisce About HLS In 'Bad Old Days'

By Terry Keeney

"It's time to enjoy yourself at Harvard Law School," the invitation read. Eighty members of the Class of 1961 accepted the invitation to return for their Fifteenth Class reunion and experience that rare combination of fun and Harvard that eluded them as students.

For some it was a trip repeated many times before. For others, the fifteenth reunion marked the first return to the halls of Langdell and Austin where, under the eyes of the Kaplans and Sacks and Freunds, they were introduced to their profession.

Few came back to reminisce about the good times at Harvard, for few harbored fond memories of life here over 15 years ago. But the class members found their way to Cambridge for several reasons.

"Fifteen years seemed like a good time to come back," said Asher Rubin of San Francisco who was returning to Harvard for the first time. "It's long enough for people to change and not so long to be depressing."

William D. Zabel, now a specialist in estate planning in New York City, remembers the mental challenge of the Law School. "I came back because I respect and enjoy a lot of the people here," he said.

When the class first arrived in 1958, most came fresh from college or military service. This time they came to Harvard as attorneys near the top of their profession. A profile of the class conducted by the Alumni Association reveals few surprises. Of the 572 graduates, 267 answered the Alumni survey. More than 80 percent of those responding are still engaged in the full-time practice of law. Of these attorneys the vast majority are in private practice, mostly in large cities.

The median class income topped
(Continued on Page 17)

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Harry Reems Bares Obscenity Details

By Madison L. King

Pornographic film star Harry Reems popped up in Professor Alan Dershowitz's first-year criminal law class recently and bared some of the details of the harassment and hard times he has faced since his prosecution for his role in the porn film classic "Deep Throat."

Currently awaiting sentence along with 11 other individual defendants and 4 corporate defendants, Reems—whose real name is Herbert Streicher—was convicted April 30 "of a national conspiracy to transport interstate an obscene film." Recently he has been popping up in Philadelphia, New York, Boston, Cambridge, Chicago, Los Angeles and a spate of other West Coast hangouts of the influential and the concerned in a relentless grind of fund-raisers, benefits, celebrity bashes and gala classroom lectures leaving a tell-tale trail of informed ink in a wide variety of newspapers, magazines, trade journals and campus rags.

Indeed, slicing through the "legal jargon and technicalities," Boston's Free Paper accurately surmised, "Harry Reems is finding the screwing he got isn't worth the screwing he is getting."

Streicher was convicted for al-

legedly engaging in a national conspiracy to transport interstate an obscene film even though he acted in the film only one day, was paid a flat fee of \$100 and signed a release relinquishing all rights to edit, market, distribute or display the '71 sizzler that "Variety" is now calling "an oral sex comedy."

The only overt acts the prosecution is charging Streicher with committing are travelling to Florida to participate in the 1971 filming and allegedly knowing the film would be shown outside of that state. Therefore, the prosecution maintains he is liable for its distribution.

On the other side of the coin, the federal government has exhausted more than \$1,000,000 and hundreds of thousands of man-hours to prosecute Streicher and the other co-defendants for having the temerity to allow their smut to ooze across state lines and into the Memphis Bible Belt which is rapidly gaining a well-deserved reputation as the "anti-smut capital of the nation."

For his part, federal prosecutor Larry Parrish spent an estimated \$10,000 daily in a case which involved 101 unindicted co-conspirators (including the film's

star, Linda Lovelace, and director Gerry Damiano) and 148 witnesses subpoenaed by the government.

According to Streicher, the prosecution was fraught with arbitrariness and error. The former off-Broadway actor cum porn star currently faces 5 years in prison and a \$10,000 fine and appears to be the first actor ever to be tried under a national obscenity standard for mere participation in a film. Because he is a convicted felon, his passport has been revoked. He cannot work because he cannot enter a contract knowing that he might be whisked off to jail whenever the federal judge in the obscenity-conspiracy case decides to enter sentence.

The issues are compounded by the government's insistence that the *Miller* standard of obscenity (if, taken as a whole, the film appealed to the prurient interest in sex and did not have serious literary, artistic, political or scientific merit) is applicable rather than the *Roth* standard (whether the film had any redeeming social value) which was the prevailing doctrine at the time Streicher acted in the film.

According to Dershowitz, Streicher had no control over "whether the final product would or would not possess that elusive quality called 'redeeming social value' and normally a defendant who engages in an act is tried under the law that was applicable at the time he committed the act."

Sitting in the Faculty Office Building a few short hours after Jimmy Carter squeezed Jerry Ford out of the White House, Streicher mused over the fact that in less than three years he had managed to work in almost 70 movies and squirrel away almost \$40,000 only to see it sucked up in nine and one-half weeks of federal litigation. But the stakes in this case are bigger than that. "My personal feeling is that this is a Nixon legacy," Streicher said.

"We're dealing with an in-

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Support Harry Reems

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In Person
At a Benefit for
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from 5:30 PM to 7:30 PM
Minimum Ten Dollar Tax Deductible Donation

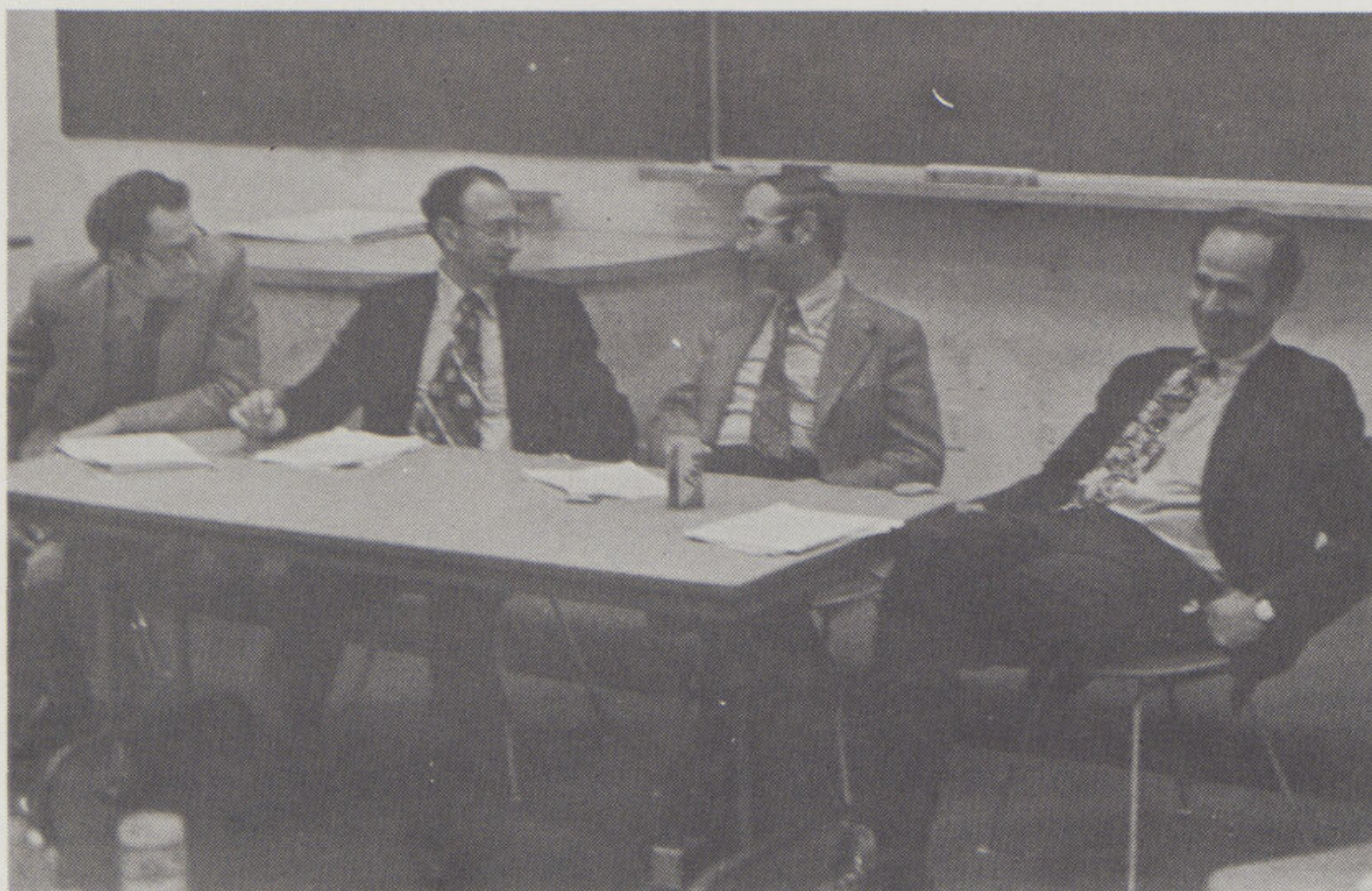
Speakers Committee
Alan Dershowitz, Richard Dreyfuss
Barney Frank, George Mansour

**Harry Reems
Legal Defense Fund**

TAX DEDUCTIBLE contributions should be made payable to:
"The Bill of Rights Foundation, Inc." and mailed to
Harry Reems Legal Defense Fund
P.O. Box 57
Dorchester Center Station
Boston, Mass.
02124



Reems raises funds at HLS with posters like these.



Section IV ethics panel lets it all hang out.

Section IV Teachers Spar On Legal Ethics Questions

By Rob Reznick

Fundamentally different views on legal ethics were presented strongly and often emotionally before an overflow crowd of about 150 on November 5 in a panel discussion featuring the four instructors who teach Section IV of the first year class. The participants, Professors Charles Fried, Jack H. Friedenthal, Morton J. Horwitz, and James Vorenberg, were brought together by I. Nelson Rose, 1L, following discussion in Section IV Legal Methods of Fried's article, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relationship*, found in 85 Yale L.J. 1060 (1976).

Fried's article served as a framework for discussion of ethical considerations and viewpoints. The article argues that, with regard to the legal system, the lawyer is a friend to his client, with "friend" used in a limited sense to reflect an unusually personal relationship. It is a relationship in which the lawyer is morally bound to place his client's interests above the collective interest, and in which he retains the discretionary power associated with friendships to select those clients whom he wishes to accept.

Fried began the discussion, stating that he seemed to have been cast as the Bob Dole of the group. Elaborating on his argument, he said that with the rule of law as the only official limit to one's liberty, "an individual is entitled to all the help he can get in discerning what the law is and in accomplishing his purposes — whatever they may be — within the law."

Horwitz also took a broad philosophical and moral approach, but with a different emphasis and quite different results. "A good lawyer can be a good person in a basically just society," he said. "To the extent that he operates in a basically unjust society, a good person cannot be a good lawyer, and vice versa."

Friedenthal, positing himself as John Dean to Fried's Dole, cast the problem in individual terms, seeing legal ethics questions as the product of internal conflicts among three forces: personal morality, described as that which one would do or not do had he never gone to law school; institutional morality, or the informal norms within one's individual conception of the legal system; and legal morality, that

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Gilmore Lives On, Contracts Do Not

By Larry Zelenak

Professor Grant Gilmore of Yale Law School offered his interpretation of the development of Anglo-American law over the past 200 years to a Harvard Law School Forum audience on November 11.

Gilmore, author of the controversial *Death of Contract* (1974), began by admitting he might be considered a heretic at Harvard for some of the things he has written about Dean Charles Langdell and Justice Oliver Wendell Holmes. "As far as Langdell is concerned, I plead guilty as charged," he remarked. "But it seems to me that my Holmes is a greater man and a profounder thinker than the Holmes of Harvard myth."

Gilmore identified two distinct phases in the response of the law to the industrial revolution. The first, which he termed "innovative pluralism," began in England around 1750. Lord Mansfield led the way with his wholesale restructuring of commercial law and his attempt to do away with consideration. In America, Justice Joseph Story and others played a similar role about half a century later.

The second stage was the retreat to legal formalism, which began in England around 1800 and in the United States after the Civil War.

"Although we talk about legal formalism all the time," Gilmore noted, "we rarely try to explain what we mean by it. To me, it involves the belief that law is a science, that legal truth is a species of scientific truth, that there is such a thing as the one true rule of law. In general, it's all those ideas peculiarly associated with the name of Langdell."

An essential feature of formalism, Gilmore went on, was an attempt by legal scholars to reduce broad fields of law to abstract formulations, most notably the general theories of contract and tort. Holmes was

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Clinical Program Needs Teachers

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duction to Advocacy, and Harry T. Edwards' course in negotiation.

Student interest, however, appears to have outpaced available clinical offerings. According to Frank I. Michelman, Chairman of the Appointments Committee, there is general agreement at the Law School that more clinical courses are needed. The faculty and the Committee are actively interested in finding qualified instructors to teach such courses. The criteria, he said, for selecting these people have never been refined beyond requiring "substantial promise of distinguished contributions to scholarship and learning, and excellent teaching."

Michelman said, however, that no definitive decision has been made to add a permanent professor rather than continuing to use visiting and part-time teachers drawn from practice. The Law School is currently seeking full-time professors, but will wait until a particular candidate has been found before deciding whether to invest in another permanent faculty member or to proceed with current use of visiting practitioners, or both.

The current system of "Visitors from Practice" is built around practitioners who take a sabbatical from their firms to teach at the Law School for a semester or a year. Bellow sees this as one possible route to enlarge the clinical segment at the Law School. He would like to see the development of a regular group of such lawyers who teach clinical courses in their own fields. When they return to practice, they would develop teaching materials for future visits.

To build up a group like this, Bellow said, requires contacts with public interest firms and legal aid groups. Through informal contacts with these groups the Law School tries to find people who would be willing to take a sabbatical, and to publicize the fact that Harvard is looking for practitioners.

These requirements may be the biggest problems in recruitment of visiting and part-time practicing attorneys. According to William Butler of the Environmental Defense Fund, all public interest lawyers are so busy that they cannot teach conscientiously unless they take leaves of absence. He added that they cannot responsibly do that because replacements are unavailable or impossible to properly train for the one-year term.

However, Gustave Speth, of the Natural Resources Defense Fund, said that while he is definitely not interested in teaching right now, he believes that "a good percentage of people like me" in Washington, D.C. public interest groups expect to go into teaching at some time.

Different issues are involved in the search for permanent faculty members. Bellow named two separate pools of possible candidates for such positions. The first is permanent faculty, currently at other schools, who are interested in clinical methodology. These people are hard to find, he said, because no one's law school experience to date has included much exposure to the method. Most professors are not interested in clinical education because they are not familiar enough with the theory of clinical teaching. Until the field has been sufficiently developed to attract faculty, professors at other schools will not yield many candidates, Bellow said.

The other group is people with public interest backgrounds who are willing to experiment with clinical education. Both Bellow and Michelman emphasized that the search for public interest lawyers to add to the faculty is not tied to the clinical expansion, but is in response to strong student interest in the public sector. Michelman said that while the Law School is not deficient in appropriate courses, he recognizes that it would be helpful to students to have a professor with substantial experience in public interest law. He or she would be able to provide curriculum gui-

dance and support, and "keep students oriented in the direction of public interest practice," as other faculty members cannot.

While lack of interest in clinical methods would not preclude an otherwise qualified public interest lawyer from consideration, clinical orientation would make "a potent combination," Michelman added. And Bellow said he would certainly try to interest the new professor in clinical education.

Kettleson pointed out that it is difficult to find lawyers who are good practitioners and yet are reflective and speculative — and harder to get them to leave practice permanently. She mentioned as likely candidates the heads of the large public interest firms across the country. It can be rough for a potential candidate to be seriously considered, however.

"The Law School is locked into people others know," she explained. "The key is how to get considered, and how to contact people."

She described the usual process as a very informal one. A member of the faculty who knows someone qualified may approach him or her and "each person dances about the other" to gauge the degree of interest. In the meantime, other people at the Law School get to know the potential candidate, still informally.

Paul Gewirtz, who was with the Center for Law and Social Policy, now teaches at Yale Law School. His description of his seduction from practice to teaching parallels Kettleson's. He spoke informally with personal friends of his on the Harvard Law School faculty, but decided he was not interested in Harvard. Acquaintances at Yale knew he was contemplating teaching at some time, and they approached him on the subject.

"Then the process of who knows whom, and can say 'X is at the threshold [of leaving practice] and is interested, started. . . . I as-

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Evidence Links Hiss Agent to FBI

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disclosed by the government at Hiss's perjury trials in 1949 and 1950 — in possible violation of Hiss's Sixth Amendment rights.

Hiss, '29, was accused of lying to a December, 1948 federal grand jury when he denied ever giving confessed Communist spy Whittaker Chambers secret State Department papers.

Some observers consider the Hiss case one of the most important trials of the Twentieth Century. A bright young attorney, and protégé of Supreme Court Justice Felix Frankfurter, Hiss had held a number of government posts in the New Deal. After one hung jury, a second trial ended in 1950 with Hiss a convicted perjurer and by inference a Communist spy.

Hiss served 44 months in prison.

One of the chief beneficiaries of Hiss's fall was former President Richard M. Nixon, who as a young congressman helped build the case against him. As Nixon once put it, "The Hiss case for the first time forcibly demonstrated to the American people that domestic Communism was a real and present danger to the security of the nation."

Hiss, however, insists he was framed. Now a 71-year-old stationery salesman, Hiss has consistently denied giving Chambers secret documents and being a spy or a Communist.

Irons, 36, has played a prominent role in the current revival of interest in the Hiss case, which gained added steam with Nixon's own disgrace and recent revelations of FBI and CIA misconduct.

Last April, Irons presented the case for Hiss in a panel discussion reported in the New York Times as the "highlight" of the annual meeting of the Organization of American Historians.

Irons clashed sharply with Smith College professor Allen Weinstein, an avowed former Hiss sympathizer who now declares that Hiss "has been lying about his re-

lationship with Whittaker Chambers for nearly 30 years."

The private detective who was at the same time aiding Hiss's attorneys and the FBI was Horace W. Schmahl, a German native now reportedly living in Florida.

Schmahl was hired to investigate Chambers' background after Hiss decided to sue his accuser for slander. One FBI memo describes Schmahl, then in the Hiss defense's employ, as boasting to agents about his contacts with the House Un-American Activities Committee (HUAC) but declaring that he preferred to work with the FBI.

On the strength of the FBI memos already released and other information unearthed about Schmahl's past, Irons has filed a Freedom of Information Act suit in Boston U. S. District Court to force the FBI to release any further documents it may have on Schmahl. Hiss has filed a similar suit against the Central Intelligence Agency.

Documents found by Irons in the National Archives reveal that Schmahl was once suspected in the 1930's by the New York Police Department and in 1941 by U.S. Army Intelligence of being a Nazi sympathizer. Schmahl, in a letter also on file in the archives, vigorously denied the charges, claiming instead that he was actually expelled from Germany by the Gestapo in 1935.

The response to an inquiry by Irons to the CIA confirmed that Schmahl subsequently worked during World War II for the Office of Strategic Services, the predecessor of the CIA.

More interesting is that Schmahl's name cropped up during the 1950's in the sensational and as yet officially unsolved disappearance of a critic of the late Rafael Trujillo, then dictator of the Dominican Republic.

The suspected kidnapping in 1956 of Dr. Jesus de Galindez while working on his doctorate at Columbia University re-

ceived massive news and editorial coverage in the New York press at the time. Government investigators suspected but were never able to prove that Galindez was eliminated by Trujillo's agents.

Schmahl's name appeared on the flight log of the American pilot suspected by the Justice Department of having flown the kidnap plane. The pilot, Gerald L. Murphy, died mysteriously in the Dominican Republic before being questioned by authorities. J. J. Frank, a partner in Schmahl's detective agency, was convicted of failing to register as a Dominican agent as a direct result of the grand jury investigation into Galindez's disappearance.

Schmahl himself attempted to quash a subpoena to appear before the Galindez grand jury on grounds that his Fifth Amendment rights were threatened, according to a December, 1957 New York Times article.

Irons' interest in Hiss began five years ago while he was working on a doctoral dissertation on the domestic origins of the Cold War.

One focus of Irons' interest is Hiss's charge that he was the victim of "forgery by typewriter." The charge refers to the Woodstock typewriter produced by Hiss's own attorneys to refute government claims that the secret documents produced by Chambers were typed by Hiss's machine.

When the typefaces matched, it helped assure Hiss's conviction. Hiss later claimed the typewriter must have been "planted" so that his attorneys would think they had found the Hiss family's old typewriter.

"There never has been a real explanation of whether the typewriter was real or phony," argues Irons. One fact not known then but known now, he points out, is that during the war the OSS had developed the ability to fabricate typewriters with typefaces identical to those in use by Axis officials.

Students Predicted as Losers In Alumni Gift-Giving Boycott

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Among others, they include injecting student input into appointment, tenure, and admissions decisions; providing some form of pass-fail grading during the first year; reforming and publicizing Administrative Board policies; providing exams before Christmas, and instituting a "meaningful" legal writing program.

According to Jeffrey F. Reiman, '76, one of the drafters of the letter, a majority of the 1976 Class Committee endorsed the idea of a contributions boycott. Moreover, the Committee unanimously endorsed the form of the letter which Reiman and three others eventually prepared.

In his letter of October 28, Sacks challenged the reasoning on which the economic boycott is grounded. He emphasized that HLS students have long benefited from the tradition of gift-giving. Not only has this history of contributions substantially subsidized students' educational costs, Sacks maintained, but it also has enabled the Law School to construct programs similar to those advocated by the Class Committee. "Alumni/ae support is a worthy and valuable tradition," Sacks observed. "If it becomes embroiled in a politicized debate, that few will be able fully to follow and appraise, current and future generations of students will be the losers."

In further refuting the claims contained in the 1976 Class Committee letter, Sacks took issue with its "implicit" view of governance at the Law School. He expressed his own belief that students should have the chance to convey their views on "significant policy matters." He encouraged recent graduates to write letters to faculty members, to the Dean himself, to the *RECORD*, or to the *Harvard Law School Bulletin*.

The Dean emphasized, however, that while students' views will be

taken into account, the final decisions on HLS policies can only be made by the faculty. "I think that most students and most alumni/ae will conclude on reflection that the Faculty should set the important and continuing policies of the School," Sacks wrote.

Finally, Sacks closed his argument that the "concerted threat" to withhold funds is a "dangerous and wrong step" by quoting from a letter reportedly written to him by a member of the graduating class. In this letter, the recent graduate asserted that if older classes had used financial pressure to influence Law School policies, it would have caused outrage among the then-present third-year class.

"If, for example, the classes of '38 to '48 had combined to withhold contributions until Harvard Law School restored the compulsory courses in Equity and Trusts, or re-instituted Saturday classes, or abandoned clinical courses," the letter-writer speculated, "it is impossible to believe that their efforts would have been tolerated. The undertaking proposed by the Class Committee is, in principle, no different."

Contacted at the Denver law firm for which he now works, Reiman defended the aim of the Class Committee letter. Noting that he was conscious that his class as well as others had been the beneficiary of substantial alumni contributions, he criticized the results which these financial gifts have produced at HLS.

Reiman described in graphic terms the choice which he and his fellow class members face when called on to support the Law School. "You can choose to either give or not give. You either like the place and want to continue the way it works, or you don't like it and want to change it. If someone belts you in the mouth for three years and then puts out his hand asking for money, you're not going to be

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Conscience and Professional Ethics Separate?

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prescribed by rules of law and canons of ethics.

Placing himself clearly on the opposite side of the philosophical fence from Fried and Horwitz, Friedenthal excluded many of the large-scale considerations which had been suggested before, saying, "There is no system which is basically just or unjust with respect to individuals."

Vorenberg, calling himself the Charlie Brown of the panel, expressed his confidence that most of the students in the audience could become the kind of lawyers they want to be "in every sense," and said, "I think it is possible to have a morally valuable and satisfying life as a lawyer; I also think it is possible to have the opposite."

Vorenberg combined the social and the individual considerations by pointing out that "the greatest evil which lawyers as lawyers have a moral obligation to try to rectify is the unfair distribution of legal services in our society." He proposed a provisional admittance to the bar for the first five years, conditioned on two of those years being spent in a public interest capacity. The two years could be accumulated either full or part time, and funding would have to be from the federal government.

In addition to Fried's article, Section IV students read *A Plague of Lawyers* by Jerold S. Auerbach, Professor of History at Wellesley, published in the October, 1976 issue of *Harper's*. Auerbach's article views the legal system in this country as consistently benefiting the "status quo of maldistributed opportunity, benefits, wealth, and power." The extent to which the legal system has proliferated and continues to thrive reflects America's unique "consuming individualism, unrelenting contentiousness, and discordant heterogeneity," according to Auerbach.

Each panelist discussed the arti-

cle in his opening statement and made subsequent comments regarding the quality of the underlying social system and its importance to the question of legal ethics. Fried disagreed more with the article's assumptions than with its means of analysis, saying, "If the rules are bad — and there are obviously many things bad in them — nevertheless the institutions and constitutional situation are such that there is no need to subvert the rule of law in order to provide the kinds of changes which Mort [Horwitz], Jim [Vorenberg], and I would say have to go forward."

Friedenthal compared the way the articles of Fried and Auerbach deal with the moral conflicts underlying ethical problems. Auerbach, he said, seems to regard the problems as irreconcilable: "He would almost define a moral person as one who has not gone to law school, or at least one who has not gone to law school more than a semester." (Auerbach was a classmate of Fried's at Columbia Law School, leaving, however, after one semester.) Friedenthal further commented that Fried apparently had no problems with the reconciliation, believing "we're all moral no matter what we do."

Horwitz said that accepting the basic goodness of the society and ignoring its existing inequities "keeps you from conceiving of yourselves as moral persons who are responsible for the nature of your society and the nature of the justice that you yourselves produce." He called this the major question to be faced by those "who experience agonies of conscience in becoming lawyers."

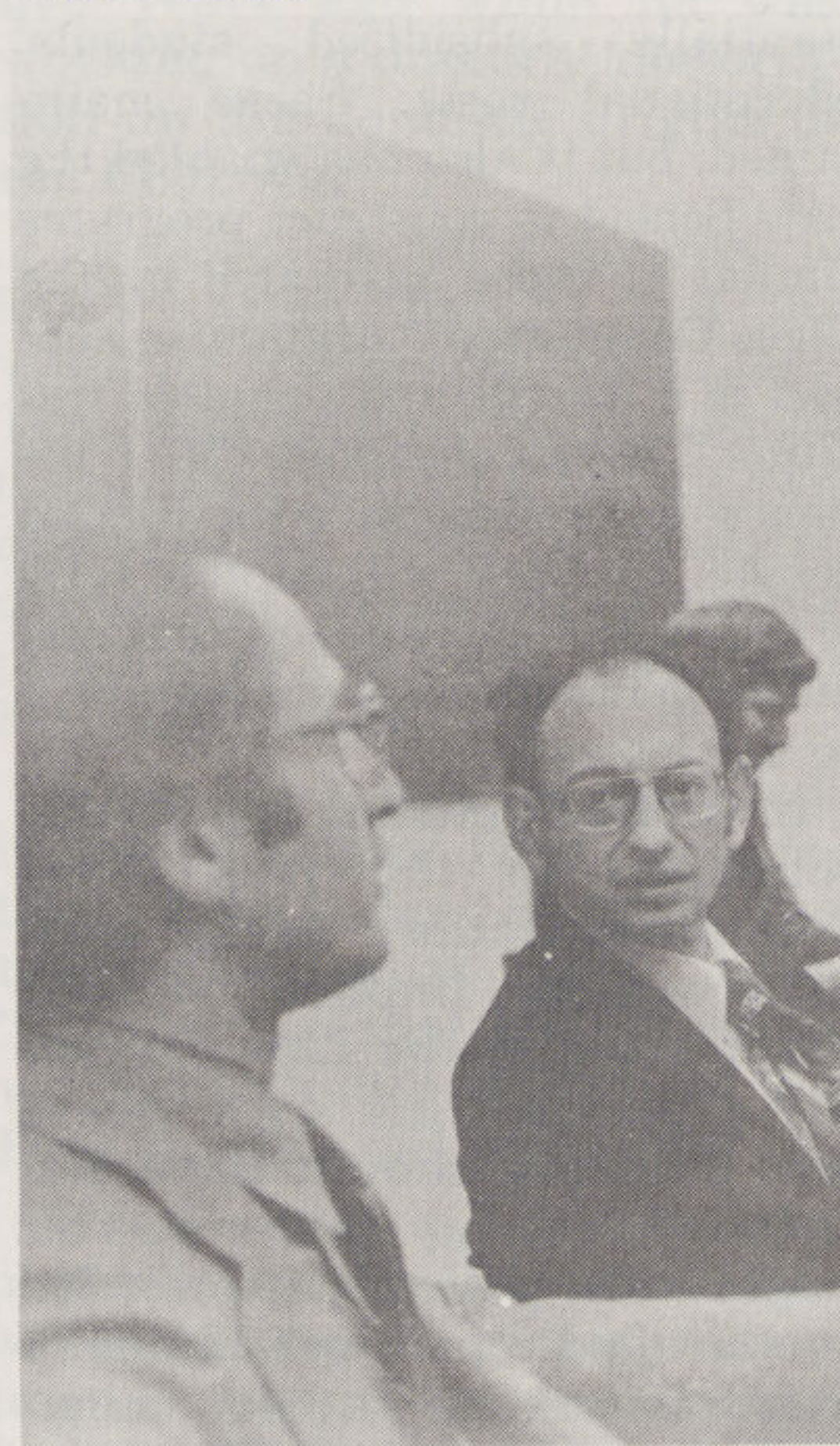
Given the present social system, how must a lawyer deal with it? According to Friedenthal, one can to a large extent separate his professional from his political considerations. "When you're in the courthouse and you're helping a client you can take the most conservative tack and walk out and be a revolutionary on the streets the very next

day. I don't see any incompatibility with that."

Horwitz disagreed. "I think a lawyer is supposed to think about those things [moral and philosophical questions] from 8:00 to 5:00 every bit as much as he's supposed to think about them from 5:00 to 8:00, and Charles [Fried] agrees."

Separating professional considerations from social and political considerations is as difficult as resolving the questions of soldiers' obligations in Vietnam and scientists' obligations regarding atomic secrets, Horwitz stated, concluding, "It's just incredible that six or seven years after everybody in this room would have been considering that issue, we can now move into the 1970's as if it had never been heard of before."

Vorenberg responded, disagreeing not with Horwitz's analysis but with his assumptions: "(Not) every decision a practicing lawyer makes involves some atomic bomb-type moral issue."



Self-styled Bob Dole, John Dean exchange views on ethics, conscience and morals while downing Budweisers.

'Nixon Legacy' Blamed For Reems Prosecution

(Continued from Page 3)
dictment handed down in 1973, obviously approved by Attorney General John Mitchell. The indictment was handed down shortly after Nixon's campaign on morality ("Do Not Trifle With The American Morality"), the judge in this case — Harry Wellford — is a Nixon appointee, the Assistant U.S. Attorney is a Nixon appointee and, ironically, the Supreme Court I will eventually face will contain a majority of justices appointed by Nixon."

At a well-carried 29 years of age, Streicher is quick to point out that he is trying to protect all creative artists from over-zealous prosecutors who ignore the proscriptions of the First Amendment rights and freedoms and seek to force upon society their own provincial and antiquated tastes, mores and moralism.

"The greatest implication of the case is obviously the stifling of creative expression — the lowest common denominator will be the ruling factor," he said. "If something is made in California and 49

states have consenting adult bills and one state doesn't, the government can drag it into that one state and that one state can rule on what's acceptable to the rest of the country."

Streicher said the judge in this case instructed the jury that they were to disregard their own predilections and
(Continued on Page 16)



Nancy Gertner, defense counsel in the Susan Saxe trial, addresses the Women's Law Association. In a recent interview with the RECORD, Gertner expressed her disappointment with the Saxe mistrial: "I am now getting congratulations, but we wanted an acquittal."

Author Declaims On Formalism, Law as Purifier

(Continued from Page 4)
the leading figure in this attempt to fit the whole of law into one continuous, consistent theory.

"There was a generally shared belief among the formalists, both here and in England," Gilmore suggested, "that we had achieved an almost perfect society, from which further change was not only unnecessary, but undesirable as well. This, looking back, seems to me the most amazing feature of the period."

But formalism broke down after World War I, when it became clear that it promised much more than it could deliver. By the time of the Great Depression, the idea that the nearly perfect society had been achieved was clearly untenable.

And so the realists came to the fore. Gilmore recounted how the realists attacked the "simplistic conceptualism" of the formalists, of which the Restatements of the 1920's were the dying gasps. The extreme realists claimed that rules were meaningless, and that the motivation of judicial decisions was almost entirely irrational. They moved back towards pluralism, rejecting broad, comprehensive theories as unrealistic.

"This new concept of realism was reflected in politics by the orgy of statute-making during the New Deal," explained Gilmore. "The realists mistrusted the common law and the judicial process. It was an article of faith that a legislative decision was always better than a judicial one."

From the vantage points of the 1970's, Gilmore admitted, it is clear that the reports of the death of the common law were greatly exaggerated. Judicial activism has come back strongly, with many courts undermining long-accepted theories, such as contributory negligence, liability based on negligence, and the theories of bargain
(Continued on Page 12)

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Money Talks

They claim that they are neither nihilists nor radicals. In an unflagging effort to discourage their class members from contributing to the Law School Fund, the authors of the much-celebrated 1976 Class Committee letter reveal the depth of their own commitment. Though free of Harvard Law School, they still feel called upon to make a symbolic act in the hope of rectifying what they perceive as deep-seated problems at HLS. We think, however, that their fellow graduates should step back a bit before blindly heeding their advice.

The grievances they list and the arguments they marshal have much merit; they are neither petty nor unreasoned. But while their aim is constructive, we believe that there is a path of less resistance: they might just as dramatically and effectively display their desire for progressive changes by urging their classmates to make "strings attached gifts" rather than no gifts at all.

As Dean Sacks points out in his recent letter to the Class, the graduates could strike a compromise by strictly specifying how the gifts could be used. The donors could, for example, earmark a given contribution for the expansion of clinical programs or the adoption of a full-fledged writing program. The use of a gift could be limited to salary payments of the additional teachers which the act of creating 1L subsections and duplicating continually oversubscribed courses would require. All of these suggestions are made in the Class Committee letter. By electing this alternative, alumni can ably serve their own purposes in providing an economic spur to action, and at the same time give future students "a fair break."

Refraining from "giving first, then asking questions later" will not automatically solve the profusion of problems the Class Committee addressed. Some of the items — like making the third year paper optional, revising the examination calendar, and increasing student input into appointment, tenure, and admissions decisions — lack a substantial economic component which could be reached by selective gift-giving.

By substituting this choice, however, "strings attached gifts" will ultimately give HLS graduates a greater voice in Law School policies with a lower price for students than they would otherwise pay with a complete boycott. Embroiling the subject of alumni contributions in a "politicized debate" does not have to be counterproductive. Money talks and people will listen.

HARVARD LAW RECORD

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Fenno

Fenno waved energetically to the passing 3L. "Haven't seen you for ages. Where have you been?"

"Job hunting. We can't all be tenured students."

"There, there," replied Fenno. "It's merely a question of *carpe diem*, or being seised of the right opportunity."

"I've been out in California interviewing."

"California," Fenno said dreamily. "That reminds me of my own student days."

"On the Coast?"

"No," said Fenno. "I didn't start taking it easy until I got to law school. Is Harvard still the golden gate to the Golden Gate?"

"I wasn't talking to big firms." The 3L drew himself up. "I was looking for something in the public interest line."

Fenno was curious. Coming to Harvard to prepare for *pro bono* work was like going to the Combat Zone for high tea. "You're developing upside down. Two years ago you wanted to work on Wall Street."

"I was tempted, but New York offered me nothing but money. No jobs, just money. Besides, I'm trying to crawl out from under the pile I have right now."

"Admirable," said Fenno. "You strike me as a blue chip off the old block, in a manor of speaking."

"That's precisely the problem," his companion replied. "I was born with the proverbial silver spoon, but all it's fed me is an overdose of guilt."

Fenno was sympathetic. "Of course, I like my guilt on the edge of corporate bonds, but it sounds like you have that already. What exactly do you have in mind?"

"Something that leads to quick notoriety and power," answered the 3L eagerly. "Perhaps a whistle-blower like Ralph Nader."

"That's unfortunate," Fenno said gravely. "I've always thought that the brat in the 'Emperor's New Clothes' was dull-normal — certainly not to be trusted. What did he get out of spoiling everybody's fun? If he ever got to law school, I bet he talked in class. My ideal Harvard Law School type is the peeping Tom in Lady Godiva. He didn't run around screaming 'She has nothing on!'"

The 3L became defensive. "I don't see why you're so hard on enlightened self-interest. I want to pander to my conscience for a while before I retire to the Grand Caymans."

"I see," nodded Fenno. "You're looking for a 'taxpayer-funded fellowship' with a generous helping of self-promotion."

"Something like that. Do you have any ideas?"

"As soon as you get out to California, run for the United States Senate. But before you do, change your name to Fenno."

HARVARD LAW RECORD

Letters to the Editor of the RECORD

Nesson Would Give Sacks More Credit

To the Editor:

Parts of your "Discrimination" story and editorial in last week's RECORD (November 5, 1976) were dangerously unfair.

It was not made clear in your article that the student who interviewed the Cincinnati firm preferred to remain anonymous and hence would not make a formal complaint. I think it quite extraordinary that the Dean would nonetheless take it upon himself to travel to Cincinnati to attempt some remedy. Rather than commending the Dean for his willingness to assume responsibility and take action, even in the absence of a formal complaint, your story, and particularly your editorial, castigates the Dean's initiative as "weak-kneed" and "undercover." Such criticism is far more likely to stifle initiative than to advance it.

I also have difficulty believing that Dean Sacks ever cautioned against moving too fast on discrimination because it might hurt white male students. That statement is completely foreign to the man I know. You attribute it to him without quotes. Did he really say it?

Charles R. Nesson, '63
Cambridge, Mass.

Ed. Note: Kennedy and Miller respond: We apologize for attributing to the Dean the statement that the Law School cautioned against moving too fast on discrimination because it might hurt white male students. The Dean did stress that the Law School could not move too fast, but on review of our notes, it is clear that he based his opinion upon the notion that it is inappropriate for a private institution to assume this role. In point of fact, Dean Daniels and Victor Brudney, Chairman of the Placement Committee, did suggest that a tradeoff between a vigorous policy against discrimination and jobs for white males indeed exists.

Cultural Chauvinist Resents Americans

To the Editor:

In Europe they sometimes make fun of Americans who buy a bridge, numerate all the stones, transfer it to America and reconstruct it: "They need history and we are overburdened with it, so let them have some of ours. Their money doesn't stink either." I was amused by Larry Zelenak's article on how Roscoe Pound abused the necessities of the *vieux et moins que riche* English aristocracy, but only because the English have robbed half the world themselves and thus

NOVEMBER 19, 1976

fully deserve this "karma" and Mrs. Gerard's delight along with it. But when I think of the Italian churches being robbed by organized bands on account of some Texas millionaire, so that the baroque angels might ornament the living rooms of people who do not — as their very behavior proves — have any real appreciation of the art, then I experience some of the *ressentiment* typical of the contemporary attitude of the young people all over Europe: A resentment of the idea that money is power, precisely because this proves to be so true.

On the other hand this cultural glut-tony reminds me of the police in its first days: they wanted to have uniforms and be like the army in order to acquire status they had not possessed. Or, have you ever counted the number of lights on the firemen's car? The number is 48. But while police and firemen can assert their social presence by these means, culture cannot be bought for money; the problem is really more American than European.

All this along with the judges emphasizing in their opinions how America ought to defend the Western cultural tradition (and the borders are somehow drawn along the frontiers of the Iron curtain) is pure reaction formation: an overcompensation. Just as Roscoe Pound has not succeeded in making the Law School one year older or more venerable to anyone but a few frightened 1Ls, so the baroque angel in the millionaire's bedroom doesn't make him a Renaissance man (or improve his sex life for that matter).

The least impressed, of course, are Europeans themselves. It is easier for them to realize that the important thing for a hungry man is not to give him fish, but rather to teach him how to catch them himself, to paraphrase an old Japanese saying. By the way, it would be amusing to see Japan become the next station for these revered art objects.

Bostjan M. Zupancic
Cambridge, Mass.

Ed. Note: Any American who wants to be a Renaissance man should buy Renaissance angels, not baroque angels.

Suppression Gives Reader A Big Laugh

To the Editor:

I got a great big laugh over your news item in the October 29th issue entitled "Cohen Decries Suppression of Rights by Allies." Doesn't the professor know that the world today, except for a handful or two of countries, mostly in Europe, consists of dictatorships, either of the right or left? Those of the left, with the exception of China and

Albania, are allies of Russia. They are definitely not our allies or friends. Most are our enemies. To use Khrushchev's words they would like "to bury us." The dictatorships of the right are not our enemies and with most of them we have normal diplomatic relations. Now, experience has shown that when a dictatorship of the right is deposed, we find in its place a dictatorship of the left (Portugal, thus far is somewhat an exception, except that at the start it was definitely to the left). And we know that dictatorships of the right and left care nothing about human rights. Neither tolerates dissent.

So what kind of jackass would we be to alienate allies who do not hate us and who appear to be our friends? Let's be sensible. Let the honorable professor criticize our enemies, not our friends. We can't make every nation in our image. G-d created us in his image and yet most of us are so ungodly.

Stuart H. Aarons, '32
New York, N.Y.

Room For Idealism Among Women, Too?

To the Editor:

Please refer to the article pertaining to Professor Jerome Cohen's concern about suppression of human rights by our allies.

It is good to see that he feels that the communist countries are worse than our allies in this respect.

The question is, where can we find allies who do not suppress human rights in some form or other? Not anywhere in the Middle East; not anywhere in Africa; not anywhere in Asia; not anywhere in South America; not anywhere in Central America. This leaves Canada, New Zealand and most of Western Europe. The total population of the countries which do not suppress human rights in some form or other aggregates about the population of India. (Does Professor Cohen approve of the suppression of human rights there?)

Professor Cohen decries Kissinger's realpolitik, but where we might find allies, we find probably no more than half the population of Red China.

What will Professor Cohen have us do? Arm to the teeth? Permit the less suppressive countries like Israel to be overrun by Libya, or Kenya by Uganda, or South Korea by North Korea?

When I was in law school, I remember Professor Simpson remarking how important it was for a lawyer to discern the difference between shades of gray, and how poorly absolutists performed in law school.

There is room for idealism, especially among Harvard Law men, many of whom — like Professor Cohen — are hypercritical of

(Continued on Page 12)

(Continued from Page 11)

ourselves and our allies, while at the same time shutting their eyes to and glossing over the really horrible suppression of human rights in communist-dominated countries, or near-communist-dominated countries in this hemisphere and all over the world. Personally, I am tired of this double standard.

Adolph Weil, Jr., '38
Montgomery, Alabama

SPORTS QUIZ

1. What was the previous name of the New York Jets?
2. The basketball team representing the United States in the 1960 Olympics contained four men who later became rookies of the year in the NBA. Name the four as well as a fifth who became one of the NBA's all-time greats.
3. Who was the only college football player to be named an All-American at different schools?
4. Between 1949 and 1964, only one man managed an American League baseball team other than the Yankees which won the pennant. Who was he?
5. What was the lowest batting average to ever win for its holder a major league batting crown?

DEALER'S CHOICE:

6. Complete the following Casey Stengel quote: "They said it couldn't be done but. . . ."
7. Name the 12 teams to populate the 3 divisions of the original World Football League.

(Answers on Page 20)

Cryptic Law

The following excerpt from a 1639 King's Bench opinion is in "judicial code." Those who enjoy a tasty brew should easily get a laugh or two from this week's selection. Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

"[Qopdmnsx] eocj, blob cb loj qssk ojivjhsj,
blob flsps uks eoxe ug o nofxsp, blob ls loj oe
avdl nof oe o aukmsx; blob bls fupje fsps kub
odbcukoqns, qsdoves ls lobl oe avdl nof okj
aups oneu. Qvb cg ls loj eocj, blob ls lobl ku
aups nof blok o aukmsx; blues fupje ops
odbcukoqns. Okj eu cb foe ojiuvpksj."

(Solution on Page 20)

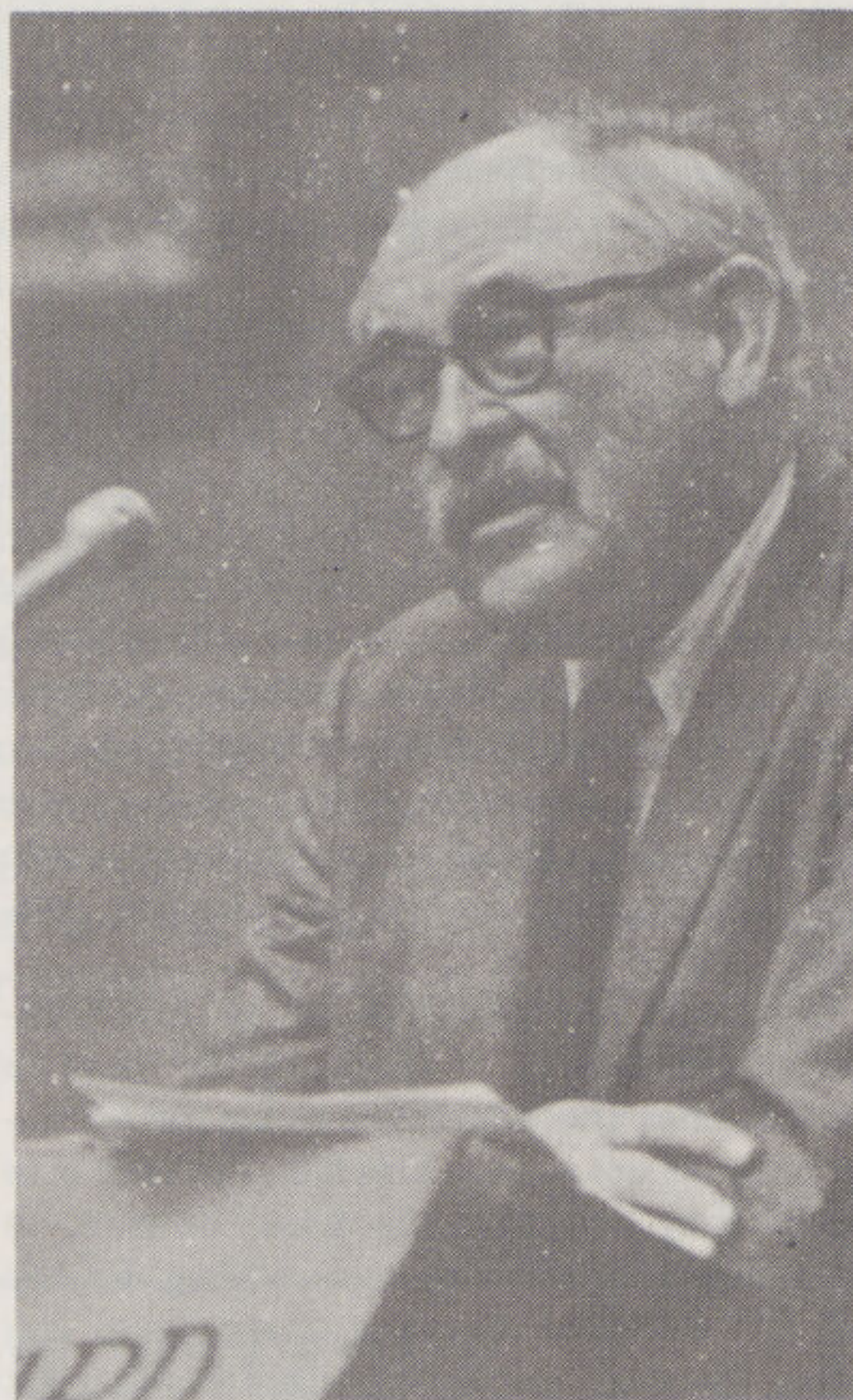
Gilmore Recounts Realist Rules, Formalist Fallacies at Harvard

(Continued from Page 9)

and consideration.

Gilmore remarked that when he concluded the lectures that were to become *Death of Contract* with the thought that perhaps "some new Langdell is already waiting in the wings to summon us back to the paths of righteousness, discipline, order, and well-articulated theory," he did it as a rhetorical flourish that he hoped would induce the audience "to leave quietly and without throwing things at me."

He noted, however, that the



Professor Gilmore, alive and well.

"new conceptualists" have returned to the elaboration of unitary theories, and will be a force to be reckoned with for at least the next generation — thereby making him a better prophet than he ever expected. Nevertheless, he doubted that they would ever achieve as complete a victory as the formalists had a century ago.

Gilmore concluded his lecture with a few thoughts on the proper function of law in society. "The adept of formalism," he said, "once he's got his model, becomes an enemy of all further change. *Stare decisis* inevitably comes to the fore, and the judicial process becomes simply mechanistic. I don't propose that we all become anarchists to ward off the excesses of formalism, but as lawyers we will do well to guard against any suggestion that law can purify or save society.

"The function of law is much more modest than that: it's an orderly way to settle our disputes, to insure that our institutions adapt to change as smoothly and as rationally as possible. But if we become too sure of our premises we will necessarily fail. The beginning of wisdom lies in the realization that at any time and any place the body of law is a living, evolving mass. We must always keep our assumptions open to change."

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Sacks: Reiman's Grievances "Scattershot"

(Continued from Page 7)

happy about giving it," he declared.

Reiman also disagreed with Sacks's view that students can use existing mechanisms to provide input into faculty decisions. "Sacks argues procedure when he can argue substance," Reiman claimed. "As far as I can tell since I graduated, Sacks has not responded to a single issue we raised (in the Class Committee letter). . . . None of the issues have been substantively addressed."

He further attributed the perceived lack of responsiveness of the Administration to its recognition

tunity for a full and fair hearing on these matters. Commenting upon Reiman's "procedure not substance" claim, Sacks stated, "There is a problem with what I will call scattershot grievances. If you take a look at those grievances that accompany the letter, they are sufficiently numerous and diverse that I had the sense that it was not going to be a useful exercise with Jeffrey Reiman to attempt to response one-by-one-by-one. . . . The fact is that whenever a group of students has wanted to raise specific issues for discussion and response, and the main focus was on getting a response, they've had one."

it is impossible to go into details with every one of them," Sacks said.

The Dean's recent attempt to offset the effect of the Class Committee's letter coincides closely with a request made by the Harvard Law School Fund for class contributions. According to Wesley E. Bevins, '48, the Director of the Fund, it is too early to assess the impact which the Class Committee's letter will have on gift-giving. Bevins explained that the level of contributions for the graduating class is traditionally low, however.

"It's very difficult to know how people in the first year out feel," Bevins said. "Today, many graduates have a substantial loan obligation — which is a condition which did not exist 25, 20, or even 15 years ago — even though many have good jobs with starting salaries that would make graduates of 20 years ago drool with envy." Bevins also related that the absolute amount of gift giving and the participation rate often doubles during the second year out of Law School.

Bevins stated that the Law School Fund has experienced little difficulty to date in recruiting representatives of the class in the large metropolitan areas. He commented, moreover, that some of the alumni who have been major Law School contributors have indicated "dismay and distaste" for the Committee's action.

Bevins himself said that he was "mystified" by their act. "I can't believe the letter was really representative of the class's feelings," he said. "I can't believe you can ask the Administration to do things that benefit more students and cost more dollars if you refuse the funds available for this. It's not the kind of logic one would expect from people who managed to graduate from college with first-rate records, and then managed to go through this place," he observed.

"The boycott is not the kind of logic one would expect from people who managed to graduate from college with first-rate records and then managed to go through this place."—Director, HLS Fund

that it is working with a transient group. "Sacks is well aware of the fact that students spend only three years here . . . their political base is too small to make their point. By the letter, we hope to institutionalize the dissent at the school in the hope that students will eventually be benefited."

Roger E. Schechter, '76, a co-author of the Committee letter, described the economic impact of the boycott as a means of convincing the Administration of the seriousness and validity of its proponents' arguments. In paraphrasing a passage of the Dean's October 28 letter, Schechter claimed, "If we are successful, it will be a clear indication that most students and most alumni have concluded on reflection that the students and alumni should help set the important and continuing policies of the school. That's what this is all about."

Sacks, interviewed earlier this week by the RECORD, responded to Reiman's and Schechter's comments by pointing to the complexity of the issues and by explaining that students have had ample oppor-

In supporting his argument that the Class Committee's complaints have been adequately addressed, Sacks singled out four of the fourteen items in the letter that have been taken up at another time or in another forum. These four proposals — the institution of Pass-Fail grading, the hiring of additional clinical professors, the adoption of a "meaningful" legal research and writing program, and making the third year paper an optional exercise — are reportedly the subjects of ongoing study or were recently raised and discussed by the Committee on Legal Education and the faculty. "With a proposal such as Pass-Fail grading," Sacks maintained, "if the faculty has been over the area a number of times, it is inappropriate for immediate re-examination."

Sacks also explained that some of the charges were too complex to deal with briefly. "Some of the proposals are very general, some are narrow and specific. Some involve large questions of educational policy. Others are matters of petty irritation. . . . It is difficult to go into the details of just four of them;

Fried, 3L's Do Legal Methods Hustle

(Continued from Page 2)

Gang, 3L, while denying any specific knowledge of "the facts of the situation," suspects that "it was just bureaucratic slowness" on the part of the Committee on Legal Education.

Whatever the cause of the delay, teaching assistants were not notified of hiring decisions until July. As Gang remarked, "Things didn't really get cooking until I quit my job in late August . . . We [the teaching assistants] have had to work a whole lot harder than we planned."

Fried selected the teaching assistants from a large pool of applicants on the basis of grades, recommendations and prior teaching experience. On the average, the teaching assistants are slightly older than most 3L's, having taught in undergraduate or other institutions before coming to the Law School.

While teaching assistants were being selected, Raymer was busy developing a curriculum for the course based on three different models. Raymer commented, "We could have run it like undergraduate sections to a larger course," keying it to Fried's Contracts course. Several sessions have also taken the form of a "more practical lab used in tandem with the regular course," said Raymer. Finally, liberal portions of the course have been organized with the "traditional" Legal Methods format, a tool-oriented approach, in mind.

Substantively, the course was designed to cover several areas which the old format did not, or which the old format simply touched on. These areas include contract negotiation, legal ethics, and contract drafting.

After this hectic development period, how is the experiment actually working in the class sessions? The teaching assistants contacted by the RECORD unanimously cited the diligence of 1L's in their sections, compared to their own, dimly recollected experiences in Legal Methods. Attendance is reported as by-and-large excellent, the 1L's appear to be genuinely struggling with their written assignments and vocal class participation is the rule rather than the exception. Teaching assistant Ivan Orton, 3L, explained that the smaller size of the sessions, predictably, is critical: "Everyone has voluntarily participated . . . (there is) no reluctance and no shyness . . . (participation) didn't become a do-or-die thing."

Fried has provided another incentive to active participation. He announced at the beginning of his Contracts course that material covered in the Legal Methods sections "may show up" on his exam at the end of the year. Although a few of the teaching assistants discounted this possibility (because of the course's practical approach), Orton acknowledged that "looking at it from a 1L perspective, you try

to do as much as you can" to get the edge in your classes.

Will the new Legal Methods format be continued? No official decision has yet been reached, but participants feel that the program will continue next year, and will perhaps be expanded to two sections. Fried, who has had regular luncheons with Section IV 1L's for the purpose of sounding out their reactions, is favorably impressed. He remarked that "our goals are being achieved." Students find the sections a relaxed way to deal with legal issues."

"Dealing with 3L's was an advantage. They [the 1L's] felt relaxed. There was some sense that they were not getting 'authoritative instruction.' But with some exceptions, they are willing to trade this off with easier relationships."

The ultimate decision whether to continue the experiment will rest with the Committee on Legal Education, Dean Sacks, and the faculty. Keeton indicated that that decision will be influenced by many factors, including student feedback.

Although a student-faculty committee independent of the program is presently conducting a large-scale evaluation of the Legal Methods program, both old and new formats, its report will not be prepared in time to play a part in the upcoming decision regarding the experimental sections. Keeton commented, however, that "one clear aim of the decision (will be) to preserve flexibility to move either way," referring to both old and new formats.

It appears likely that Professor Fried will continue to supervise the program, should it continue. Fried would not acknowledge either a confirmed decision to continue or expand the format, but agreed with many of the teaching assistants that there is "no reason to have anything but positive reactions" to the program.

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Informal Contacts Help Recruit Clinical Instructors

(Continued from Page 5)

sume Harvard does the same — contact its graduates, Supreme Court clerk people," he said.

Another public interest lawyer said, "Harvard wouldn't be Harvard if they actively pursued anyone." He believes that Harvard Law School is not generally known to be looking for practitioners. This lawyer, who is currently arranging a possible one-year visiting pro-

Butler said, "The public interest field is relatively new. The question is what we will do when we grow up. Some will bail out into academe — and many came from academe. They want to do rather than to comment." Butler is one of those who came from academe. He taught at the Kennedy School of Government at Harvard, and at the law school at Yale.

Although he does not want to

Schools about the possibility of teaching. While Cotton isn't sure he wants to teach, he is definitely interested. He said that if he were to teach, it would be in a clinical situation.

It is precisely this lengthy soul-searching practitioners go through which is causing the delay in adding clinical and public interest faculty, according to Michelman. "It takes a long time for contacts to ripen because, even when they are interested, these people have practices. This is a big move," he explained.

None of the people actually involved in the recruitment of clinical faculty — Michelman, Bellow, Kettleson, and those lawyers who have spoken to Law School faculty — have any doubt that Harvard is deeply committed to enlarging that portion of the curriculum. Whether it is being done as effectively as it might be is disputed by students and others. But no one seems to dispute the importance of developing the field.

Bellow's evaluation of the field he is doing so much to promote was, "Clinical education at its worst can be the most extreme form of technocratic vocationalization — a movement in education back to the method of no systematic inquiry into the nature and values of the legal system. There is too little of this already, and it would be a shame if clinical education results in a decrease.

"But at its best, it can be a fantastic opportunity to expand the theory of study of how lawyers practice," he continued. "If it does that, it has a long future in legal education, because it is badly needed."

Another public interest lawyer said, "Harvard wouldn't be Harvard if they actively pursued anyone"

fessorship at the Law School, became aware of Harvard's interest through close friends on the faculty. His decision to teach for a year has been "a continuous, ongoing thing," with Harvard being "fairly aggressive" in recruiting him once his interest became known.

While Harvard does have the reputation of hiring only Law Review-Supreme Court clerk types, this lawyer said the school is looking for more than paper credentials. The Law School will be contacting people who have direct personal knowledge of his work: lawyers who worked with him and against him, clients, and judges. According to Michelman, the Appointments Committee is looking for people with capabilities on a par with those of the faculty in other fields at the Law School.

While the decision to seek a permanent teaching job does not entail the problems of rearranging work-loads, as part-time or visiting professorships do, the decision is harder to make. Gewirtz, for example, spent six years deciding whether to commit himself to teaching. Kettleson pointed out that it is very hard to induce someone to give up practice to teach for three years and then possibly be denied tenure.

teach at present, Butler said he does not know anyone on the faculty well enough for them to know that. "My lack of desire to teach right now doesn't excuse them for not contacting me." He turned down a proposal from Yale to teach a rotating course, where several lawyers would each teach for two weeks, because he thought the plan would be unsatisfying for students and teachers alike.

Richard Cotton of the Natural Resources Defense Fund in Palo Alto is another public interest lawyer who did not even know that Harvard is looking for practitioners. He knows many faculty members at the Law School, but said he never discussed teaching with them. Cotton has taught at Boalt Hall, and spoken informally with people at NYU and Stanford Law



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'Artists' Free Expression' Defended by Reems

(Continued from Page 9)

view the film as it would be viewed by "the average American."

"But the prosecution had brought in demographers and statisticians and they proved that the average American is 29 years old, has one and one half kids, some religious affiliation and has never seen a porno flick and they would find it offensive," he said.

Streicher said the judge's instructions to the jury, which took five and one-half hours to deliver, were so narrowly framed in favor of the prosecutor that the jury really had no choice in the matter.

In applying the conspiracy statutes to obscenity laws, Streicher said the government is now saying to all artists that they will be held responsible for anything they offer for sale whenever it appears in some jurisdiction where it is found to be offensive. In addition to the obvious "chilling effect" of that possibility, the Government has also eliminated any defense based on First Amendment guarantees, Streicher explained.

Speaking for the liberal intellectual elite, Nicholas Von Hoffman said the effect of the conviction, if allowed to stand by the Supreme Court, will be to "give the government the power to reach back into time and jail any actor, writer, media executive or office boy connected with the movie, book, magazine or any other endeavor it decides, years later, is obscene. The prosecutors have started with Harry Reems, but they're really aiming for Brando, Nicholson and Beatty."

Ironically, Streicher had arranged for actor/directors Mike Nichols and Warren Beatty to appear as defense witnesses; however, the judge ruled that they were not "experts" and thus could provide no relevant testimony in the expedition of the case.

Assistant U.S. Attorney Larry Parrish, who has maneuvered 10 other obscenity prosecutions

onto the Memphis federal docket (including another one against Streicher for his participation in "The Devil in Miss Jones"), has come under fire recently as a "smut raker who is using shotgun conspiracy laws to operate across state lines," but he maintains that all the litigation is on the up and up. "There is no master plan to wipe out smut," he explained, "but hopefully, this case will have some deterrent effect."

Interestingly enough, "Deep Throat" is estimated to have earned more than \$52 million and the porno industry as a whole takes in a cool \$2 billion annually; however, when it comes to exercising political clout, the pornographers just can't seem to get it up to push Streicher's case through the complex maze of federal litigation. According to Von Hoffman, the Ivy League proponents of civil liberties are finding Streicher's case somewhat less than appetizing because "who wants to go on the mat defending trash?"

One man's trash, however, has often been found to be another's treasure and to many observers, it appears that Streicher has wound up in the forefront of one of the most serious constitutional challenges of this generation.

It was in recognition of this fact, Streicher said, that he settled on Dershowitz to handle the appeal. "I started doing some homework on who had the most extensive experience with the Supreme Court on a appellate level in both the obscenity and conspiracy areas and it came down between Dershowitz and Tony Amsterdam out at Stanford," he said.

Streicher said Dershowitz's experience with the "Hair" and "I Am Curious Yellow" prosecutions and his involvement with the Chicago Seven conspiracy trial convinced him to retain Dershowitz.

Although the tough-chic "Village Voice" noted wryly that Dershowitz has been so moderate at times his more radical friends in

the law have accused him of being soft on the First Amendment, the energetic Harvard professor has picked up the cudgel on this one and come out swinging.

"The implications of this conviction are indeed frightening to contemplate. It threatens not only actors, directors and film technicians, but also writers, publishers and literary editors," he said.

"Any person who participates in any way in the creation, production, editing or distribution of a sexually explicit film, newspaper, book, painting or magazine can be hauled into a federal court anywhere in the United States and charged with participating in a national conspiracy. Moreover, he can be convicted — under the government's theory in the Reems case — even if the act he engaged in was entirely legal at the time and place it was done. An artist, therefore, acts at his own peril — and a society which requires writers, actors and publishers constantly to look over their shoulders and to fear federal government prosecution is a society that is on the road to repression."

To help defray the costs of appeal, research, transcripts and other legal expenses, the Bill of Rights Foundation is accepting tax deductible contributions to: The Harry Reems Legal Defense Fund, 120 East 56 St. Suite 1030, New York, New York 10022. Streicher is also scheduled to appear Dec. 8 in the Harvard Law School Forum program.

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15-Year Graduates Recall Study, Mental Challenge, Friends at HLS

(Continued from Page 2)

\$60,000, according to the class profile. The average class member works well over 40 hours per week. And, if they had to do it all over again, about 90 percent said they would still become lawyers.

The legal profession has not only proven lucrative, but many members of the class find the law both exciting and fulfilling. Marvin J. Garbis described himself as being "rapturous" about his legal career. Garbis, a specialist in criminal tax law in Baltimore, said, "If you don't love what you're doing, you should get another hobby."

Harris J. Amhowitz of New York City noted, "The worst part of the practice of law was law school."

For Robert D. Langenkamp, now a partner in a 20-member Tulsa, Oklahoma, firm, Harvard was the high point of his education. Although he now feels more loyalty to Harvard than to his college, his memories of Harvard are not very fond. "The only good memories were the people. There wasn't a great deal happening to cause a lot of fond memories," he said.

"Harvard Law School was an unpleasant chore," Rubin said. What made Harvard so unpleasant was the pressure deliberately induced by the Law School, he said.

The Harvard Law School that is imbedded in the memories of many members of the class is the law school of the film "Paper Chase." The work was hard, the professors demanding, and the students themselves highly motivated.

Amhowitz, now general counsel for a public accounting firm, recalls the best thing about Harvard was the classes. "And the professors who beat on you really had the best minds," he said. What made law school unpleasant was self-inflicted pressure. "The worst things were internal: the feeling of always being behind. You never had enough time," he said. The work-



Class of '61 pows-wows on Langdell front porch.

ing world has its advantages, Amhowitz believes: "Now you can just go home on a Friday and forget about law."

Although few could say that law school was an enjoyable experience, nearly all agree that Harvard

gave them an excellent legal education and prepared them for their eventual practices.

"Every month I run into something I know because of my law school education," said

(Continued on Page 18)

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Richard S. Weinberg, now a partner in a two-man law firm in Chicago. By attending Harvard, Weinberg feels, he has an intellectual edge over colleagues who attended other schools.

Other members of the class confessed to the same arrogance: that one can actually tell the difference between a Harvard and a non-Harvard lawyer.

Rubin said, "I find it disappointing that other lawyers don't have as good training as we got."

Amhowitz cited the discipline of his law school years, which he believes provided an advantage over other lawyers. "The lawyers on the other side are often not that good," he concluded.

At least one member of the class has found that the Law School curriculum did not prepare him for his eventual practice. Herman Wilson, the only Black graduate in the class of 1961, has pursued a career in

civil rights litigation, most recently as staff attorney for the Lawyers' Committee for Civil Rights Under Law. Although Harvard Law School prepared him primarily for corporate work with a large law firm, "my interest has always been people-oriented," Wilson said.

The great surge of interest in civil rights law hit the Law School several years after Wilson graduated, he said. In the late 1960's the Law School became more socially active in civil rights issues. Now, Wilson believes, the Law School is reverting to its heavy business orientation.

"I think the Law School is in a continuous process of trying to re-define its role," Wilson said.

The business orientation of the Law School is reflected in the students. Langenkamp, who interviewed Harvard students for positions with his Tulsa firm, noted that students today are less interested in *pro bono* work than five to ten years ago. He found Harvard

students much more interested in business and financial success.

Although most members noted that their profession was exciting, some confessed that the law may be too demanding a profession.

"The law is a jealous mistress," said Garbis, "and the only one I can't satisfy."

Langenkamp said he spends about 55-60 hours at work each week. "Sometimes you feel you'd like to escape from the pace, which is heavy," he said. "I've never had any regrets about practicing law. If there is a drawback, it's probably that you don't have as much time to spend with your family."

Richard J. Birch, a Boston patent attorney and chairman of the reunion, has resisted the temptation to spend more time in his law practice. But he has decided to spend more time with his family and to serve on the Wellesley Board of Public Works.

"I think any one of us could increase our income by ten or fifteen thousand. But at what cost?" Birch said. "There's more to life than staying in the office."

HGAP's December Fair

The Harvard Government Attorneys Project (HGAP) will sponsor a job fair on government opportunities, to be held on Tuesday, December 7, from 1 PM to 5 PM in the Pound Multi-Purpose Room.

Representatives from federal, state and local government agencies will be on hand to share experiences and to discuss job opportunities. Those invited include many of the more than fifty federal agencies represented in Boston, plus state offices such as the Massachusetts Attorney General, and local offices, including the Middlesex and Norfolk County DA's. The broadest possible range of government opportunities will be represented: civil and criminal work, litigation and general practice.

All students interested in learning more about government practice and employment opportunities (both summer and permanent positions) are invited. Students from all three years are encouraged to attend. As the job fair will be an ongoing activity, those interested should stop by anytime during the afternoon of December 7.

HGAP Special Projects Director Jim Cole announced the job fair this week as part of the group's continuing effort to provide Harvard students with public practice information and job alternatives. HGAP's activities here have included a recent seminar on summer jobs with the government, speakers from the public sector and the compiling of a public jobs catalogue available in the HGAP office.

Please Help!

I, Handsome Dick Manitoba, am writing to ask for your help in banning the heart punch from professional wrestling.

The heart punch *must* be banned from organized wrestling! As a professional wrestler myself (I am just back from a trip to Minneapolis, where Vern Gagne and Dick the Bruiser have felt the thunder of Manitoba), I have seen too many careers shortened because of the use of this dangerous tactic. (Not to mention lives lost.)

Please help me outlaw the heart punch forever. Your support will be greatly appreciated.

Sincerely,
Handsome Dick Manitoba

Avoid Local Enchiladas, Good Buddies

By Gary D. Hailey

Breaker one nine, good buddies. This here is the Roving RECORD Reporter and I hope you've got your ears on, 'cause I'm keying the mike to throw you a message about some of the local chew-and-chokes.

I was pulling a 40-footer full of vegetables up from the Bikini State a few weeks ago when I got caught up in a bodacious rat race out on Route 128. Things were so stuffy that I just took the first exit I

But there ain't nothin' I like better than border-town Mexican food. (I hear that if you get all the way down to Mexico City or Veracruz, you can get some real fancy gourmet stuff that's supposed to be even better — but the border variety is plenty good enough for this ol' boy.)

So there I was, sittin' in that Cambridge restaurant and dreamin' about last summer, when the waitress set my order down in front of me. To tell the truth, I had

mirrors and seein' a smokey on the move with his bubble machines flashin'. Or carryin' a suicide load over a stretch of skating rink. Or findin' out that your pavement princess is a real panty stretcher. In other words, good buddies, it ain't exactly the best thing that's ever happened to you. I've heard it said that ol' Cambridge town is famous for its history, bookstores, and law schools, but its enchiladas won't win any gold medals. Mercy sakes, no!

There aren't too many good things I can tell you about this town's Mexican restaurants. I've had bland guacamole on stale tortilla chips, watery burritos, enchiladas covered in somethin' that looked and tasted like ketchup — and all of it cost a lot more than I'm used to payin' for much better food in Texas, California, or even South Dakota.

La Pinata (Davis Square, Somerville, and 16 Eliot St. in Harvard Square) is about the cheapest local Mexican restaurant hereabouts. It has some good points — the guacamole is pretty fair, and the prices are such that you'll have a hard time spendin' more than five bucks on your dinner, even if you pick up a few Carta Blancas at the liquor store downstairs. The offerings are basic — enchiladas, tacos, burritos, refried beans and rice (plus a couple of kinds of soups and desserts) — and even though none of it tastes nearly as authentic as an El Chico frozen dinner, it's at least inoffensive. They do have one real unusual dish — I forget what they call it, but it's the only thing on the menu with mushrooms in it — and it should be avoided at all costs.

And your tummy won't exactly be thankin' your mouth after a meal at Latin-O (19 Brookline St., near Central Square). The menu's a little fancier here and the prices are higher. But the food's nothin' to
(Continued on Page 20)

Eating Cambridge-style Mexican food is like findin' out that your pavement princess is a real panty-stretcher, good buddies . . .

could get to, put the pedal to the metal, and pretty soon I was in Harvard Square. Mercy sakes, that sure was a mistake — the rat race was even worse there, so I parked my 18-wheeler right there on Mass Ave and commenced to look around for some food.

Well, I ended up in a Mexican restaurant with a good, cold brown bottle in my hand — a Dos Equis, I think — and my mind started wanderin' back. . . .

Back to all those runs I made down to the Valley last summer. I sure killed a lot of time in a most pleasant way in the restaurants and cantinas over across the border — in Matamoros, Reynosa, Nuevo Laredo, Juarez. . . .

I'd walk down the streets until that August sun was just too hot to take. I'd step through any pair of swinging doors that caught my eye, order me a tray full of *cervezas* to wash the dust out of my mouth, listen to a little *mariachi* music, and scarf down a whole bunch of enchiladas or tamales.

And let me tell you this, good buddies. I like it when payday rolls around and I've got a pocket full of green stamps. And I love to pull upside of a four-wheeler and look down at a real fine young pair of seat covers.

just popped a couple of California uppers and I was a little confused about just where I was. I guess I should have knowed I wasn't anywheres near the Rio Grande when this guy in a ski parka and a stocking cap came up and asked me if I had any spare change. And there was somethin' a tad bit funny about that music I was hearin'.

Well, I took one bite out of my enchiladas and it all of a sudden hit me. That music — it was Herb Alpert and the Tijuana Brass! And the food . . . it was in about the same classification of authenticity, if you catch my drift.

Eating Cambridge-style Mexican food is somethin' like lookin' up in your West Coast

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CB'er Has No Praise For Local Mexican Fare

(Continued from Page 19)

write home to mama about, except in a negative way.

Casa Mexico (75 Winthrop St. in Harvard Square) is another place with fancy prices and a fancy menu. I once had a pretty good beef tostado and chicken enchilada *verde* here. That's not to say that they looked like anything I've ever seen in a real Mexican restaurant, but they tasted just fine. This place can also serve you *mole poblano* (chicken breast under a chocolate-jalapeno pepper sauce) and all kinds of appetizers, soups, desserts, and drinks (includin' that most wonderful of all mixed drinks, the margarita).

Boca Loca (1300 Cambridge St., Inman Square) is the newcomer to the local Mexican-food scene, and

may just be the best one you all have got, all things considered. You can get a real nice pinto bean soup to start things off, and the main courses ain't too shabby neither, even if you do have to eat them with plastic forks off paper plates in a somewhat crowded situation. You can get your enchiladas under sauce of either the *rosa* (red) or the *verde* (green) variety, both of which are just dandy. (The *verde* sauce is *verde* primarily because they use green, not red, tomatoes to make it, not because anything's wrong with it.)

The tacos are crispy, not soggy. And if you want to try somethin' a little different, the mole poblano is decent and cheap. Boca Loca has even got a soft ice cream machine — but if you want beer, you're goin' to have to pick it up on the way, because

they don't have no license. (And be sure and ask about their senior citizens' special, too.)

All in all, I'd say that Boca Loca is about equal to your average Taco Bell — if it had Dr. Pepper, it might come out on top overall.

And that's about the best I can say about Cambridge-style Mexican food, good buddies. As soon as I can find me a load of anything goin' southwest, I'm goin' to climb back up in my 18-wheeler, get my ears on, and try and find a convoy so I can get in the rockin' chair, put it in the pay hole, and let someone else shake the trees and rake the leaves for me. I'm goin' to back on out now.

This is the ol' Roving Record Reporter tellin' you to keep the greasy side down and the shiny side up, and don't get any lipstick on your dipstick. Seven threes and eights and all good numbers until I catch you on the flipflop. We gone, bye bye.

Sports Answers

Solution to "Cryptic Law"

1. New York Titans.
2. Oscar Robertson (1961), Walt Bellamy (1962), Terry Dischinger (1963), and Jerry Lucas (1964). Also on the team was Jerry West.
3. Elroy "Crazy Legs" Hirsch, Wisconsin and Michigan.
4. Al Lopez, with the Cleveland Indians in 1954 and the Chicago White Sox in 1959.
5. Carl Yastrzemski won the American League crown for the Red Sox in 1968 with a crisp .301 average.
6. "... sometimes it doesn't always work."
7. Western Division: Honolulu Hawaiians, Southern California Sun, Portland Storm, Houston Texans, Central Division: Chicago Fire, Birmingham Americans, Memphis Southmen, Detroit Wheels, Eastern Division: Philadelphia Bell, Florida Blazers, New York Stars, Jacksonville Sharks.

["Barkley] said, that it had been adjudged, that where one says of a lawyer, that he had as much law as a monkey; that the words were not actionable, because he hath as much law and more also. But if he had said, that he hath no more law than a monkey; those words are actionable. And so it was adjudged." *Dickes v. Fenne*, 82 Eng. Rep. 411 (1639). In an action upon the case for words, plaintiff-brewer alleged that defendant had uttered the following words to some of plaintiff's customers: "That he would give a peck of malt to his mare, and she should piss as good beare as Dickes doth Brew." The court held that the words of themselves were not actionable "without al- ledging special damage," e.g., the loss of his customers. Barkley offered the above quotation as an illustration of the principle that words which are only comparative are "al- together impossible also."

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