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TWENTY CENTS

Grades Released Piecemeal

It's that time of year again, and will continue to be for the next month, due to the 4-1-4 schedule.

Some grades for 2Ls and 3Ls should be out by today, or early next week. Others will come out in two spurts in March. For 1Ls, the magic date will be sometime next week.

Mary D. Upton, assistant dean and registrar, explained that her office gets grades to students about a week after they are due from the professors. That week is taken up with entering the grades on computer forms and records and proofreading them at least two times.

Deadlines for professors vary this year, due to the 4-1-4 system. For first-year professors, the date was Feb. 6. For those professors teaching 2L and 3L fall term courses, with nothing to do in January but read bluebooks, the date was Feb. 1. For those professors who had 2L and 3L courses both fall and winter terms, grades are not due into Upton's office, until Feb. 27; winter term grades are due March 6.

A few of those professors with classes both terms made the early deadline, so some "extra" grades will be in the first batch. On the other hand, three or four professors of upper-level classes did not make the deadline, so, if something's missing, grit your teeth and wait.

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Pre-Christmas Exams Worth Time Pressure

By Terry Keeney

"Don't put off until January what you can do in December" seems to be the motto of some Harvard law students and faculty after the first year of pre-Christmas fall semester exams.

Students and faculty interviewed in an informal RECORD survey expressed satisfaction with the experimental calendar which gave them a Christmas vacation free from exam worries. However, students and faculty noted that the new calendar did cause some problems.

Prof. Louis Loss detected "a little bit of time pressure" caused by the fact that the semester was shortened by two weeks to accommodate December exams. Prof. William Andrews, chairman of the Committee on Legal Education, which will conduct an evaluation of the calendar, also noted that the semester was "compressed." "But I find that very hard to evaluate because there is more material I want to get into my basic tax course that I find I don't have time for every year," said Andrews.

For students too, pre-Christmas exams created time pressure, because the Christmas vacation could no longer be counted on for exam preparation time.

Less Procrastination

"I felt a crunch," said Tim O'Neill, 2L. "You weren't able to put things off for as long."

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Exams: Golden Oldies?

By Tammy Jacobs

The plot seemed all too familiar.

At least, that's how it first appeared to students in Prof. Duncan Kennedy's first year Torts class, who had studied the Emanuel's commercial outline in preparation for their exam.

A sample question and answer in Emanuel's was taken from an exam given by Prof. Robert Keeton in January 1975. Kennedy's question was drawn from the same place, but he had altered it somewhat and had consulted with Keeton. He feels the Emanuel's sample answer did not affect his grade curve.

Kennedy was not the only pro-

fessor who ran into trouble involving old exams during the past finals periods; and the situations have raised issues concerning the advisability of reusing old fact patterns or short answer questions, as well as questions about the study-days mentality of Harvard Law students.

Visiting Prof. Irving Younger gave an Evidence exam in which several short answer questions were similar or identical to ones given on a Cornell Law School examination of several years ago. Visiting Prof. Michael Graetz rewrote his tax exam at the last minute when he learned that Harvard students had gained access to an

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3L Authors Look Back on 'Surviving'

By Gina Markey

Can three law students agree about anything? When the topic is the first year of law school it seems the answer is no.

Ralph Canada, Charles Cheatham and Tony Licata, all 3L's, have recently written a guidebook entitled *Surviving the First Year of Law School* and they admit they fought about almost every piece of advice that went into the book. "We had dogfights!" Cheatham said. "At some points we weren't even speaking to each other."

The recently published book had its beginnings in January of 1978. Rebecca Lord of Lord Publishing called the office of the RECORD looking for someone to write a book about the case analysis used in law school. Lord had published a guidebook to business school cases and felt there was an unmet need for such a manual for law school.

Telephone Call

Cheatham, who was then the editor-in-chief of the RECORD, happened to answer the telephone when Lord called the RECORD office, and Cheatham was offered the job.

"She said to me, 'You go to Harvard Law School and you're the editor of the paper—why don't you write the book?'" Cheatham explained. "I didn't want to do it. I told her I didn't have the time. She said 'Get some help and write it!'" Lord eventually persuaded Cheatham to write the book with others and soon Cheatham, Canada, and Licata met with the publisher to begin the project.

Lord said that the three writers had so many ideas that what had begun as a guide to case methodology soon expanded into a more encompassing handbook to the first year of law school.

Canada explained the way the trio went about writing the guide: "One would write a section and the others would read it and disagree. We'd argue, rewrite, argue some more." As a result of the varying opinions held by its authors, *Surviving* often presents alternative views on the approach to take to problems encountered in law school.

Different Views

Lord confirmed that the book is a product of much "discussion" among the authors and between

the authors and the publisher. "The three of them are very different from each other. Each brought something different to the book." She related that Canada was "full of ideas on moot court," she said Licata had a lot of good ideas about law school exams, and described Cheatham as "an experienced and precise editor." We *all* had different views. What ended up in the book was the best of all those ideas," Lord added.

Licata believes that the book may reduce the pressure felt by first-year students. The practical advice and tips given may seem obvious to second and third year students, Lord maintains, but can be very helpful to those in their first year. Canada and Cheatham pointed out that the book may be especially valuable in schools which have no program like the Legal Methods program at Harvard.

The three writers don't anticipate wealth and an early retirement to result from the sales of their book. Instead each plans to return to his home state and practice with a firm there.

In compensation for their efforts the trio will split royalties earned on the sale of each book. "We would have probably made more money if we'd spent the time working part-time for a law firm," Licata commented. Under the agreement made with the publisher the three authors will equally divide royalties on a graduated scale: 10 percent on the first 2,000 books sold, 12 percent on the next 2,000 and 15 percent on all sales over 6,000.

Never Again

3,000 books have been printed and Cheatham estimated that 1,300 have been sold to bookstores and distributors. "Royalties are not earned until the bookstores actually sell the books to customers," Cheatham pointed out.

"The response so far has been positive," Lord related, but added that it's still too early to tell how the book will sell. "College and law

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Wasting the First Year of Law School

By Robert Reznick

Ralph Canada, Charles Cheatham, and Tony Licata, 3L's, have added another book to the ever-increasing library chronicling the life and times of a law school education: *Surviving The First Year of Law School* (Lord Publishing, \$6.95).

Without question, this is a very difficult type of book to write. It is an attempt to describe what is essentially an experience — individual adjustment to the demands of the first year of law school — in how-to form: how to take notes; how to study; how to prepare for exams; how not to be nervous.

The pitfall, of course, is to elevate to the level of "tips" what are in fact just petty, idiosyncratic details of the authors' particular routine. And it is not a pitfall that these authors have been able to completely avoid.

The feeling is almost inescapable that Messrs. Canada, Cheatham, and Licata have written down what *they* did, manufactured justifications therefor, thrown in the caveat that it might not be right in all respects for everyone, and captioned it, as they have, "tricks of the trade."

I do not agree, for example, as the authors would have the reader believe, that briefing cases is the best idea to come down the pike since beer in glass bottles. Nor can I understand their inexplicable dependence on felt-tips ("While reading a case, the student should mark (usually with a felt-tip pen) the essentials listed above." [p. 18]. "After the class notes have been analyzed and highlighted with a felt-tip marker . . ." [p. 89]).

Philosophical Differences

Still, my main quarrel is not with the substance of most of the tips. Rather, it is the view expressed in

the book of law school, the law school experience, and the legal profession with which I take great exception.

At the outset, there is a virtual canonization of the contemporary process of legal education: "He [the student] *will* come to realize, however, that law school education produces an organized, effective product — the 'total lawyer.' Although a first-year student may be dissatisfied with the methods of legal training, he probably will be much happier when he begins to see the result that 'the system' has produced in him." [p. xiv].

I remember reading where some people used to believe in the coherence and perfection of law school education, but that was years ago.

Some of us are still waiting. And consider this heartwarming passage:

"By subjecting students to tough, sometimes embarrassing questioning, professors are training future lawyers to keep their wits in pressure-packed situations. Although the professor may appear to be conducting an ill-natured 'grilling' of students, he is in fact performing a service." [p. 28].

Jesus. I remember reading where some people used to believe in the coherence and perfection of law school education, but that was years ago. Uncritical acceptance of the law school process has been demolished from one side by a generation of critics looking at society, and from another side by several generations of practitioners looking at the reality and the demands of the profession.

[The Elitist Cult]

At least the necessary "correctness" of legal education is a concept in wide disrepute. The book, how-

ever, also reinforces a related and unhealthy elitist view that has managed to survive as an artifact. This, of course, is the view that in law there is a secret wisdom, kept from the public at large and revealed to those fortunate enough to enter law school. The mystification of "thinking like a lawyer," practiced throughout the book, is a classic example. Implicit in the following time saving suggestion is another:

"Rereading the case after the [case] brief is written only highlights those aspects that he [the student] does not yet have sufficient

training to understand." [p. 24].

And who knows *what* happens if you mistakenly include in your brief to begin with an aspect you can't understand?

Without belaboring the point, mystification of law is the same self-serving line that the legal profession has been offering for literally hundreds of years in an attempt to keep it an insulated elite within society. Even if the concept is used on a less sinister level simply to help justify the book's existence, its apparently uncritical internalization by the authors is frightening.

On the plus side, the book is quickly read and easily forgotten. I can't see that it will do too much damage.

But this is little consolation for prospective law students who stand utterly unprotected from such an appeal to their fears and insecurities. They will come to law school reinforced in a belief which most law students must manage somehow to overcome. ☛

'Deja Vu' Exams Plague Students

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exam he had given at the University of Southern California.

There may have been others, but the examples of Kennedy, Younger and Graetz illustrate some of the problems of old exam usage.

KENNEDY: Never Again

When Kennedy decided to use the old Keeton question, he talked to Keeton, changed the fact pattern slightly and made sure the issues were somewhat restructured.

"As both he and I see it, he was not using my old exam," says Keeton. "He was using some of my old pattern — the issues were changed. There's a sense in which any exam problem in a course has analogies — there are a certain number of issues you want on a Torts exam." In any good exam, those issues will arise.

When Kennedy discovered the Emanuel's situation, he sent a note to each of his students, apologizing and saying he would never again use an old exam question. Then he read his students' answers to that question, and came to the conclusion that the Emanuel's sample answer probably harmed more than it helped.

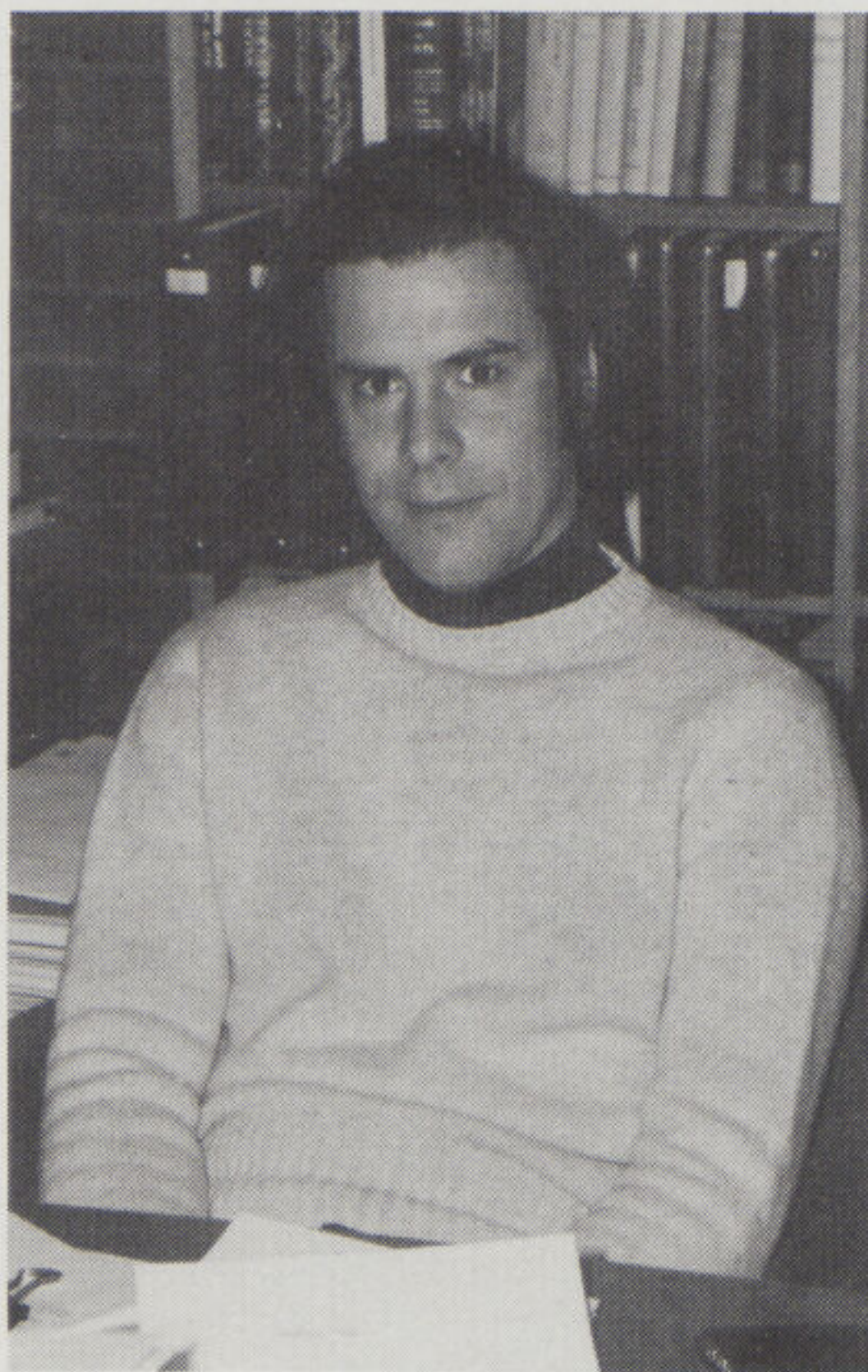
No Effect

"My impression is that it had no effect on the curve, and I'm fairly confident of that impression," he said. He explained that his curve is not rigid — there is a range of A's he expects to give, a range of B's, and so forth. Thus, a person could have been helped to a higher grade by Emanuel's without harming any other person's grade.

Theoretically, if a large amount of students did better because of Emanuel's, enough to fill up the curve's high range, the curve could be affected. But, said Kennedy, that did not happen.

"There were a number of clues to students having read Emanuel's, and the number who seemed to do better as a result was small," he said.

"Clearly, people mistook my fact situation for being much closer to the Emanuel's than it was," he



Professor Duncan M. Kennedy

said. "So they missed a whole series of issues, which no one else missed; and they included elaborate discussions of issues that were in the Emanuel's answer that weren't in my question. Those people lost substantially — first, they lost all that time, and second, I'm not going to be particularly impressed with a person who does that."

Further, said Kennedy, "Emanuel's contained a number of flat misstatements and a number of people who used Emanuel's simply reproduced those mistakes of doctrine."

One student, who asked to remain nameless, agreed that the Emanuel's answer was "not that good in itself." Still, he said, "it certainly would have helped. . . . It might have been the base for a good answer. . . ."

Other students echoed the sentiment that the Emanuel's answer would have helped, although Kennedy also heard from some who said they felt it had given them "tunnel vision."

Despite his conviction that there was no ill-effect in terms of grades, Kennedy said he will stick to his promise never again to use an old fact pattern in that manner.

"If one is going to have a great deal turn on first year grades, stu-

dents have a right to a system in which they experience the test as a fair test," he said.

"If I had been a student, I would have felt absolutely outraged, and the fact that it didn't alter the curve doesn't alter the effect of that unpleasantness and outrage. That seems enough reason never to do it again."

YOUNGER: Student Panic

Visiting Prof. Irving Younger normally does not put his old exams on reserve. When he makes up new ones, he draws from a file of short answer and essay questions that he is constantly revising. He knew, when he made up his Evidence exam, that he had used some of the questions on other exams, but he did not have copies of his old tests.

Harvard students, on the other hand, did have copies. Through what Younger calls "an administrative foulup" at Cornell, one of his old exams had been released. When he learned that Harvard students had a copy, "my initial inclination was to ignore it because I just don't worry about such things. But the students didn't seem to ignore it."

So he arranged for a copy to be put on reserve, and urged his students to study the subject, not the old exam. "I never looked at the old exam," he said. "I should have perhaps been more careful."

Younger's exam included 50 three-part hearsay questions, 75 true-false questions and two essays. The true-false questions were drawn from 190 or so questions on the old Cornell exam, he said, "but it seems to me that most of those questions were different in important details. If people read them carelessly because they thought they had studied from the Cornell exam, they're going to get them wrong."

Younger, in looking over the short answer results, said the curve seemed normal — "nobody got a perfect score, but then again, nobody really bombed."

He added that "it would be dis-

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Views Vary on Pre-Christmas Exams

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"The calendar puts a lot of pressure on students to cram a lot of material in the last several weeks," noted Prof. Richard Stewart.

Robert Reznick, 3L and member of the Committee on Legal Education, attributes his own pressure-free semester to a relatively light schedule. "I did not sense a squish at the end of the fall term. It was just like free money getting exams done before Christmas," he said.

Several students noted that the new schedule made no impact on the amount of academic pressure students felt, but that students felt under pressure for a significantly shorter period of time. Penny Preovolos, 3L, stated, "Under the old calendar you started worrying about exams on Dec. 1. Under the new calendar you started worrying about exams on Dec. 1. This time it was over in three weeks."

Miserable Time

"I think the two or three weeks before exams are going to be a miserable time no matter when exams are," said Jeff Kichaven, 2L member of the Law School Council. "I would rather those exams not interfere with what's ostensibly my vacation."

Did pre-Christmas exams have any effect on the quality of student exam performance? Although professors have not completed their grading of exams, none of the professors interviewed could notice a decline in quality. Stewart said, "I expected a noticeable fall-off in student exams. But I didn't find it." Professors noted no decline in the level of student preparedness and class participation. But both faculty and students noted that the experimental calendar had an adverse impact on student interviews.

"I think the main problem is trying to combine interviews with the semester," said Mary Lu Bilek, 2L member of the Law School Council. "The crux of the problem is that the end of interviewing comes so close to the end of the semester and the

date for decisions coincides with exams."

Trips Postponed

A particular problem arises when a student interviews with a law firm near the end of the interview season in late November. If that student is asked to visit the firm, pre-Christmas exams may force students to postpone the interview trip until the Christmas vacation.

"I hope the law firms will make accommodations for students to visit during Christmas vacation," said Kichaven.

Bilek argued that the problem of the December 15 deadline coinciding with the middle of exams can be avoided by shifting the deadline into January.

Andrews pointed out that student absences caused by interviewing is a separate problem from the calendar issue. "I personally think that the problem of absence and diversion because of interviews is a very serious problem," he said. Any proposals to deal with the interview problem should be left to the faculty committee on placement, not his Committee on Legal Education, Andrews said.

Interviewing Impact

Michael O'Brien, a 2L member of the Committee on Legal Education, agreed. "I don't think you can say interviewing has an effect on the calendar. I wouldn't want to mix the two issues. Interviewing will have an impact no matter what calendar we have," he said.

The Committee on Legal Education is scheduled to review the entire experimental calendar this spring. Andrews said that it is too late in the year to make any substantial changes in the 4-1-4 calendar for next year, so the Committee will make recommendations for changes in the 1980-81 school year.

"Now we'll accept and welcome information from any source," Andrews said. The Committee will

seek student opinion through a survey to be sent to a limited random sample of the student body. O'Brien said this limited survey will be enough to give us "a flavor of the opinion on campus."

When asked whether the Committee has discussed extending pre-Christmas exams to 1L's, Andrews noted, "There's a fair amount of feeling that it's not a good idea." Under the current calendar there are four and a half months from the first day of 1L classes to the first exam. With pre-Christmas exams that period would be shortened to three and a half months. Andrews said, "Four-and-a-half months is a good deal less compacted a time than three and a half months."

Too Early To Tell?

Several persons mentioned that it is difficult to evaluate pre-Christmas exams without considering the entire 4-1-4 calendar, especially the three-week winter term. "A more serious question for me is the winter term," said Loss. "I talked to my students in my corporations class and they seemed to like the winter term."

Should pre-Christmas exams be kept?

"It's toughest on 2L's because of interviewing, but the advantage of having a nice Christmas outweighs that," said O'Neill.

Howard Gutman, 2L, filed a dissenting opinion. "Given the balance I would rather have had the extra weeks of class and maybe used the vacation to study," he said.

"I think having exams before Christmas is a great idea," said Preovolos. "It makes for a slightly more intensive and more efficient effort with much less pain."

Loss believes that pre-Christmas exams are here to stay. "I think it's as hard to imagine going back to exams after Christmas as it is going back to Saturday classes."



Students Favor 4-1-4 in Absentia

By Kenneth G. Gormley

In the olden days, one dean of the Harvard Law School would greet entering students with words of consolation something like this: "Between now and exams," he would say, "you should find time to do something other than law. You should find the time to go see a movie." By the deadpan expression on his face, according to those who lived to tell the story, you could tell he was serious. He meant *a* movie.

Over the years, a revolutionary philosophy began to evolve: perhaps the study of law need not be a *totally* de-humanizing process. This daring new philosophy was implemented only cautiously at HLS. Saturday classes at the Law School were phased out, to make time for the matinee at Harvard Square Theatre. TGIF's were invented, to reintroduce students to basic skills in conversation.

But the boldest step towards abolishing the whip-and-chair approach to legal education came just last year, when the Harvard Law faculty voted to adopt the controversial 4-1-4 calendar. For the first time ever, 2Ls and 3Ls were free to return home for Christmas break to have visions of sugarplums rather than of derivative actions.

The RECORD conducted an informal survey of fifty 2 and 3Ls randomly selected from all walks of campus life — the library, classrooms, and the bathroom in Pound. All were asked the same brilliantly pointed questions (Okay, it only took us three minutes to come up with the questions. But just stop and think how many brilliant law school exams have been composed in a similarly brief span of time). The results of the survey were forcefully unambiguous.

Forty-two of the respondents preferred the 4-1-4 system to the former exams-after-Christmas scheme, and recommended continuing it. Only five hoped to return to the old system. Two respon-

dents were impartial. One student — who insisted on strict anonymity — felt he hadn't gotten a good enough feel for the new calendar since he spent most of January in New Mexico. But he was willing to give it another try next year.

The overwhelming approval of the calendar reform did not appear to be based on a cavalier view of the one-month semester as a "gut." Only 16 felt they had done less work for the number of credits than usual.

Nor did there seem to be any support for the rumors — which reached exciting proportions by late January when the registrar ordered a spot-check of attendance — that half of HLS was doing research on the beaches of Jamaica. "I can't even think of anybody who wasn't around for winter term," was the typical response. "Hey, off the record, do you remember seeing Peter Goodman around at all?" Virtually none of those surveyed admitted to being truant for any substantial chunk of the semester (although many reported receiving postcards from Goodman in New Mexico).

Almost universally, the reason students appreciated the new calendar was that it gave them a "real" Christmas break. For many, this was the only chance all year to return home to see friends and family. As well, a number of more subtle advantages to the 4-1-4 system were pointed out:

- "I usually find myself concentrating on one subject at a time even during the regular terms," said one student. "For one month of the year, HLS was harmonized to my patterns of work. To tell you the truth, I would recommend a 1-1-1-1-1-1-1-1-1 system."

- Another anonymous student, a 3-L, pointed to a more practical advantage of having a concentrated winter term. "It's short enough that, with a good 'story,' the textbook can be returned to the

bookstore for a full refund."

This is not to say that students were completely satisfied with the reform. A substantial number thought the 4-1-4 should serve only as a stepping stone towards creating the ideal scheme — two semesters (with the first starting in late August or having longer class hours) and exams before the holidays.

The most common complaints about the new calendar were these:

- There was a paucity of "alternative" courses and seminars. The compact one month of study was seen as an ideal time to undertake clinical projects and those nuts-and-bolts courses like Legal History and Professional Responsibility. Students complain of an overdose of traditional business-type courses.

- For nearly two months, 1Ls and Upper-Ls were living in two different worlds. This proved especially disconcerting to students with inter-class romances, and to organizations like the Somerville Bar Review, which suffered attendance problems.

- Interviewing season teetered dangerously close to final exams at the end of the fall term. Said Jorge Del Calvo, 2L, "I woke up on the beach in L.A. one day and realized I had ten days to read a thousand pages of Tax, write a 20-page paper, and buy my books for Accounting."

The results of this survey were not easily compiled. Students squirmed, grunted, and wrestled with their pride before revealing their enthusiasm for the 4-1-4 system. Admit that the faculty and administration did something right? Not an easy task. But it appears few students will deny that taking this bold step towards humanizing legal education was, well, a fortunate mistake which the faculty and dean happened to make.

Commented Peter Goodman, "It was okay." ❧

Professors Evaluate Winter Courses

By Jorie Roberts

This January, 30 HLS professors taught 26 Winter-term courses ranging from one to three hours a day — for many the first intensive teaching experience outside of professional seminars and lectures. With comments ranging from "They snooked me into this" to "I'm pleasantly surprised" to "It's been a very rewarding experience," all eight professors who were consulted as to their impressions of the term had both positive reactions and criticisms at the end of the three and one-half week marathon.

Professorial reaction was especially varied as to whether students learning in an intensive term absorbed as much material as in a four month semester. Prof. Hal Scott, who taught International Business Transactions, was optimistic about Winter term. "Students were not distracted by other subjects, so they could devote their interests solely to International Business Transactions. Also, start-up problems and time losses through gaps were eliminated." Yet Scott worried that "with the exams coming right after the courses, students have less time to put together the whole course in their minds, which could be a negative consequence of the term."

Prof. Louis Loss, who taught the first half of Corporations during Winter term, also felt that daily in-

struction was an efficient way to teach. "When teaching every day, I don't lose speed, or spend time catching up from the former week, so that at the end of the term I was four hours ahead of my projections. Moreover, the attendance was good, and a much larger proportion of the students were answering when called on than usual."

Moreover, Loss stated, "I had the fortuity of teaching a small section of Corporations, which I am not used to. I felt the size was a distinct advantage to the success of the course, but feel a little guilty, since by consequence other sections of Corporations will be larger than usual."

Prof. Lloyd Ohlin, who taught the Effectiveness of Criminal Justice Policies during the term, also found the intensive session "worked exceedingly well" for his course, which was conducted along a workshop format. "The everyday meeting was fairly conducive for a workshop with a small number of students. It met the dual needs of permitting the students to absorb a great deal of cumulative information while allowing me to get to know them and give them a great deal of personal attention."

Prof. Doug Ginsburg, who taught Theory of the Firm with Prof. Victor Brudney, also noted, "The course went well, very well. We had a very good group of students; that made a big difference." Ginsburg required students to submit questions related to each day's reading in lieu

of an exam or paper, which he felt "was a more appropriate way of review for an intensive discussion course such as this one." Moreover, Ginsberg posited, "The quality of the questions submitted was good, and the class discussion was on a sophisticated level, perhaps in part because of the necessity of writing out questions and observations on the reading beforehand."

Prof. Steven Breyer, who taught Antitrust, described a "highly professional relationship" in Winter term instruction. "I felt as if I were interacting with a group of lawyers who were very interested in the subject matter." Breyer said, "The course structure seemed especially advantageous from the point of view of student learning. The attendance was high, the students were prepared and involved in class. I suppose that they realized three hours was too long to be bored because of a lack of preparation, and they were scared not to come!"

Prof. Arthur Miller also noted high levels of attendance and attention in his lecture course, Advanced Civil Procedure, but voiced two concerns about the format. "I worry about the lack of the faculty and student experience in adjusting to the course compression and whether students lose the reflection and maturation provided by the 15-week period. I also wonder how much time any student will devote to the same subject, whether

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Student Input on Hark Sought

As the deficit at Harkness Commons heads skyward, members of the Harkness Dining Committee are calling for the views of the law school community. An open hearing on the "serious problems" at the Hark is slated for 7 p.m., Tuesday, Feb. 13, in Pound 101.

The committee, appointed by Dean Albert M. Sacks last year to make recommendations on the rising Hark deficit and falling Hark usage, includes faculty, students and administration members.

In a memorandum to the law school community, the committee notes that the deficit for 1978-79 is projected to be \$157,000, a 50% increase over last year's deficit. Since the Hark deficit is financed from "unrestricted" funds, the money comes largely from student tuition and fees.

At the present, the cost of an average meal at the Hark is approximately 90 cents more than the price charged, according to the memo. With funds coming from student tuition, the subsidy represents a considerable contribution from those students who don't use the Hark to those who do.

The Committee feels that it is unlikely that the deficit can be reduced either by increasing the use of the Hark significantly or by making substantial renovations.

The Committee, according to the memo, "has only a very limited number of major alternatives to consider." Among these are:

- Continue operations as they are at present. This would cause a deficit greater than this year's and, according to the committee, require a tuition increase of around \$75-\$100 per student for the 1979-80 school year.

- Cut expenses. This could be done by limiting services to soup, sandwiches, salads, and perhaps a simplified grill. Either University Food Services, an outside contractor or a largely-student-staffed operation would handle this kind of dining facility.

- Close the Hark. The Committee contemplates the Hark being used for other activities, with perhaps vending machines available. The memo also notes that this would have an adverse influence on the Pound cafeteria and other catering operations at the law school, as well as eliminating the "convenient place for Law School students to meet, talk and dine together."

- Require student use. The committee has estimated that to reduce the deficit to \$80,000 for the 1979-80 academic year, law school dormitory residents would be required to buy \$400 worth of Hark coupons and non-resident students \$200. However, notes the committee, "this plan would require an element of coercion that is likely to be viewed unfavorably by some students."

- Contract with an outside commercial food company. Outside catering firms operated the Hark for several years in the late 1960s and early 70s, and the results were considered unsatisfactory.

Comments on these alternatives are invited by the committee.

Cryptic Law

This week's selection is dedicated to the 1L's, who are currently participating in Ames competition.

Wbr ktrqrswhwpls lm wbpq ohqr . . . yhq
olsmcqre, epqilpswre, csmlocqre, psolbrtrsw
hse, hw wpxrq, psolxktrbrsqpznr. Slt yrtr
wbr . . . ztprm q lm hsj hqqpqwhsor
ybhwrfrt ps xhtqbhnnpsu wbr rfpersor hse
trnhwpsu pw wl wbr nruhn olsrswpls q lm
wbr khtwprq . . . Brtr, yr bhfr zrzs kew
wl wbr hnxlqw rsenrqq hse ortwhpsnj
rgbhqcwpsu whqa lm wtjpsu wl ztpsu lttert
lcw lm obhlq.

(Solution on Page 15)

Professors Tied to HLS during January Term

(Continued from Page 7)

it's taught singularly or as one of four or five courses."

Professors were not so enthusiastic about the time constraints and added pressures they incurred when teaching in the term. As Ginsburg remarked on the peculiar time constraints created by the term, "It was impossible to do anything other than prepare to teach, teach, and reflect on what was taught, for three weeks. But the cost was well worth it."

Similarly, Miller, who teaches first year Civil Procedure and a fall-term copyright course as well as Advanced Civil Procedure, stressed; "I am tired; I have not had any break." Miller went on to explain; "I was in the classroom with Civil Procedure until Dec. 22, then returned on Jan. 3 to two hours of lecture a day as well as 140 blue books from my fall term copyright course. Now I face 140 more blue books, and had to double up instruction with my first year course during the last week."

Loss also stated, "The professors were tied down and couldn't do much else during the session." However, he recognizes his advantageous position of teaching Corporations in two semesters, and not having to give an exam after Winter term. "My colleagues, on the other hand, faced the situation of having to write an exam before the course was half over."

(Continued on Page 12)

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Exam Negligence

Picture it: One four-hour experience, which serves as total feedback for a term or a year, which creates or forecloses options for the future, which helps mold a person's self-image.

A bit overblown, perhaps, but that's the way many HLS students view exams and the grades that inevitably follow. It may not be the right attitude, and there may be alternatives to the one-exam, one-grade method of evaluation, but for the moment, we're stuck with it.

Thus, it is particularly distressing when professors seem to fail to take seriously their duties with regard to preparation of examinations. Faculty members should have enough responsibility to their reaching functions to realize that the examination should bear, at the least, a rational relationship to the material covered, offer each student an opportunity to demonstrate competence in the subject matter, and also be a learning device.

We are not suggesting that old exam questions can never be used or that access to old examinations be restricted. We are suggesting that the faculty make an effort to investigate what access students have to old examinations. If there is access, it should be made available to all students equally, as it is through the redbooks. In the case where access is doubtful, as with visiting professors, steps should be taken to prevent anyone from getting access.

Study guides are also a problem. When a professor fails to monitor commercial study guides which his students will use, it is, as one student said, "negligence, though not an intentional wrong." If old exams are available as study aides, the professor should prevent any unnecessary duplication between those exams and the current one.

For now, the issues are not whether it is good to study from old exams, or if Harvard students are imbued with a panic peculiar to HLS, or even whether it is "fair" to use an old exam question or pattern. The issue is that some faculty members have, for whatever reasons, failed to realize they have a duty of care to students when it comes to preparing examinations. All we ask is that the faculty commit itself to realizing that duty of care by writing examinations which are fair to all students.

HARVARD LAW RECORD

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Fenno

The 1L spotted Fenno walking into the Hark game room.

"Welcome back," the 1L said. "I understand that you were away for winter term."

"Yes," said Fenno seriously. "My third year paper is on the social habits of South American Lawyers, and so I just got back from a month of extensive research in Rio."

"Sounds rough," the 1L said.

"Darn right," Fenno responded. "Those Brazilian lawyers do a lot of socializing."

"I'll bet that puts you in the running for the 'Most Original Way to Spend Winter Term' Award," offered the 1L.

"No," said Fenno. "Some 3L has it in the bag. He's doing his paper on pornography in sport, and so he had to watch the photography of the *Sports Illustrated* Bathing Suit Issue in the Seychelles. He even got the law school to foot the bill."

"Makes me almost look forward to next year," the 1L noted.

Fenno smiled. "So what's new in '79?" he asked.

"Well," the 1L said thoughtfully, "I got through my first semester exams without panic. Duncan Kennedy's Torts exam was even pretty easy. I never knew Emanuel's could be so helpful."

"You'd be surprised," Fenno said. "Ferguson's been getting an entire course from outlines for years."

"And the Library Reading Room is now tougher to get into than Studio 54," the 1L said.

"I found that out," said Fenno. "On my way to the Root Room I was accosted by a woman at the Library entrance and was asked to produce two picture ID's and a note from my mother."

"I managed to sneak in later, but on my way out she spotted me and shouted 'Up against the wall, turkey.' Then she frisked me and made me return the bust of Felix Frankfurter that I was borrowing."

"Sounds embarrassing," the 1L said. "I wonder where they found that woman."

"Rumor has it that she used to work as a customs official," Fenno said. "On the border between China and the Soviet Union."

"I guess not much else is new," the 1L said glumly. "I'll bet you wish you were back in Brazil."

"Not on your life," said Fenno. "Cambridge is second to none when it comes to fun in the sun."

"Even in February?" the 1L asked.

Fenno winked and began to dream about South American beaches.



Letters to the Editor of the RECORD

It's Higginbotham

To the Editor:

In your issue of October 13, 1978, on the first page you write about a book written by a Judge Higginbotham. This article goes on to Page 4 where the spelling becomes Higgenbotham. The article on Page 4 continues on Page 16 where the spelling is again Higgenbotham.

What is the proper spelling, please?

Edgar J. Schoen
Chicago, Illinois

Praise for Nelson

To the Editor:

In the December 8 issue of the RECORD, there was a quite worthwhile article reporting the appointment of Associate Dean Robert Keeton to a Federal District Court judgeship. Dean Keeton's importance to this school and the loss we will suffer when he departs all justify at least as much attention as the article gave him.

I am writing to remind you and the other RECORD editors that at the same time that Dean Keeton's appointment was announced, Sen. Edward Kennedy also announced that he would appoint Superior Court Judge David S. Nelson to a Federal judgeship. As you know, Judge Nelson for almost a dozen years has taught a trial practise course at the Law School and, in more recent years, has been active in the clinical program. I think your readers would also find significant the fact that Judge Nelson becomes the first black to be appointed to the Federal bench in New England. His appointment concludes a long effort on his behalf by minority lawyers in the Boston area and appropriately rewards a legal and judicial career that has been exceptional in every way. I hope you will agree that a story on Judge Nelson's appointment to the Federal bench is an appropriate priority for publication in the near future.

Derrick Bell
Professor of Law
Harvard Law School

Consider it Noted

To the Editor:

On various occasions, I have borrowed your magazine from my associates to keep up with goings-on at "The Law School" (even though I am a graduate of another well-known national law school located on Morningside Heights). I was dismayed to find (and am pleased to point out to you) an error in the answer to question 1 of the Sports Quiz from the December 8, 1978

FEBRUARY 9, 1979

issue (Volume 67, No. 10). Affirmed this year exceeded Secretariat's 1973 record for single year earnings, earning in excess of \$900,000.

I trust an appropriate notation will be made in a subsequent issue.

Howard E. Peskoe
New York, New York

P.S. I also suggest that you might want to include an English major on your staff so as to enable you to correct such grammatical errors as the one appearing in question 2 of that same Sports Quiz. I am not certain how a Gran Prix driver can have "the most . . . Championships to his credit than any other."

Questioning the Question

To the Editor:

Michael Smith's article "On Judging a Firm by Its Clients" overlooks a consideration crucial to interviewees. A firm whose chief client is the South African government might not be inclined to extend the same employment opportunities to non-white as to white associates. It is doubtful, for example, whether such a firm would send a black attorney to Pretoria for consultations with its client.

The avowed policy on the Placement Office is to provide its facilities only to those firms which have decided to extend positions on a color blind basis. If an associate would be denied the opportunity to be a full part of a firm because his color, religion or national origin would be offensive to a client, then that policy is violated.

Such situation is distinguishable from listing all clients of a firm whose politics are controversial. An environmentalist would not be denied access to the inner sanctum of a firm representing mining interests on the basis of his views if he would be willing to subordinate those views to the best interests of the client. Nor would a black or woman associate be excluded from a firm representing Title VII defendants if she would be willing to present a vigorous defense of that client.

The proper question is not, as Mr. Smith posits, "Does representation of a client amount to de facto endorsement of that client's political and moral stances?" Rather, it is "Does a firm's representation of a client translate into exclusion or second class status of certain classes of law students hired by that firm."

Alan L. Doochin, '78
New York, New York

RECORD on Point

To the Editor:

I was impressed by the perceptive editorial in the RECORD of November 16th, entitled "Splintering the Movement". You accurately point out the danger of having a lot of different organizations devoted to the defense of individual rights fighting among themselves for the most glamorous causes. In the 1930's I was Washington counsel for the American Civil Liberties Union, which was then dedicated primarily to unearthing injustices to little people which would otherwise go unnoticed. While it is, of course, encouraging to see so many groups now interested in the field, there is a danger that the original purpose of the founder of the ACLU, Roger Baldwin, may get lost in the shuffle. You have performed a service in pointing this out.

Frederick A. Ballard, '31
Washington, D.C.

The Envelope Please

To the Editor:

"Prof. Clark Byse, believed by some to be a model for Prof. Kingsfield of *Paper Chase* fame . . ." appeared in your lead article of the edition of September 29.

Absurd!

Those of us alumni who are sufficiently dry behind the ears, perhaps to the point of even being thought a bit flakey, know that there was no other model than the erstwhile Professor Edward H. (The Bull) Warren.

Giving even a modicum of credit (!) to any other than Professor Warren is nothing less than destructive of memories we have cherished and, possibly, embellished lol these many years.

Edward S. Rubinow, '37
Lenox, Massachusetts

SPORTS QUIZ

1. Who managed the Saint Louis Cardinals to their first pennant in 1926?
2. In 76 professional boxing matches, Gene Tunney lost only once. Who defeated him?
3. Who, in the world of tennis, was known as "Miss Poker Face"?
4. Who was the first player to hit a home run in an All-Star game?
5. Five women have dominated American figure skating since 1951. Who are they and what were the years that they were on top?

(Answers on Page 15)

Courses Use New Formats

(Continued from Page 8)

Finally, Scott regrets "not having more time to get to know the students. They were a great bunch, and I felt a good rapport with the class." Yet Scott felt; "While I killed myself for three weeks, I appreciate having a lighter load in the other semesters."

For the winter term some professors taught new courses while others taught courses which they had previously stretched over a four-month period. Miller, teaching his course for the first time, found, "Advanced Civil Procedure is something I'm very interested in — a personal course. But by teaching something I'd never taught before, I not only faced the problems of compressing and adapting the course, but also of composing it."

Ginsburg and Brudney also taught Theory of the Firm for the first time ever during the term. However, they used a discussion-group format to instruct the 19 students. Ginsburg found, "For this course, the intense format was probably an advantage." While Ginsburg and Brudney designed the course with the short term in mind, Ginsburg stated, "I believe it's adaptable to a longer term, and we hope to teach it next spring."

As to teaching the material for the first time, Ginsburg mused, "Teaching a course for the first time is harder under any circumstances, since one is testing the plan. However, students — through their questions — suggested reorganizations in the material, which Brudney and I have adopted for next year. And I think that the students' ability to evaluate the structure and help us in this regard was enhanced by the intensity of the course. By meeting on a day-to-day basis, the structure of the materials was more apparent than when meeting only once or twice a week."

Scott also used a new format in International Business Transactions: shaping the class through a series of fifteen problems. He states, "I found the problem method was particularly applicable

to Winter term. I can't talk for three hours, and from the students' point of view, I'm sure it's very difficult having a straight lecture course for three hours." Although Scott had taught International Business Transactions before, he had not used the problem method. "However, I had decided to teach I.B.T. this year anyway, before deciding to offer it in Winter term, and I would use the problem method now in any case; I think it's equally useful in either a long or a short term."

Although Loss had always taught Corporations during a four month semester before, he felt that Winter term, in conjunction with the Spring Term, was particularly advantageous for the course. "The first half of the course — proxy, shares is somewhat introductory in nature, and was well suited to concentrated instruction. During spring semester I'll teach the federal law and more policy aspects of corporations, which require reflection and time to assimilate."

Breyer also felt that Winter term was suitable for Antitrust, though he too had previously taught it over a long semester. "Antitrust is as well taught over one month as four, and difficulties of a longer course such as maintaining student interest — were eliminated." Breyer, however, would not recommend teaching a new course in the term. "Since I had taught Antitrust before, I knew what I should emphasize and what I could minimize."

In contrast, Prof. David Westfall, who taught one credit of Estate Planning, felt that the term was not especially suitable for that course. "While some courses lend themselves to intense coverage, estate planning is not one. I felt that meeting five hours a week was less satisfactory than over a long period, when students can more readily absorb the concepts. I would think that a less technical course, such as Family Law, would be better adapted to Winter term."

(Continued on Page 14)

One-L Grades Out Next Week; Some to Wait

(Continued from Page 1)

Grades will be handed out in certain classrooms, to be announced by notice on the Pound and Langdell course information bulletin boards. Those who want to avoid the crowd can get their marks later, from Upton's office.

"One year I mailed them, and the mail was so unreliable that it was just a disaster," said Upton, drawing a picture of roommates getting their grades two days after other roommates, and grades coming to two floors in one dorm, but not to the other floors.

"Then I put them in student mailboxes, and that was equally disastrous. Some got stolen."

So the classroom distribution system is here to stay for a while.

For those who are really sweating about last term, don't worry. "The 'F' letters have already gone out" for the first batch of grades, said Upton. "There will be no surprises."



3L's Publish

(Continued from Page 2)

school bookstores are just getting it now and it will be about two months before it hits neighborhood bookstores." Lord feels confident that there is a strong market for the book and predicts that it will sell well next fall.

Although the three authors of *Surviving* often disagreed about what its content should be, they do seem to agree that they met the goal of writing an informative guide and seem satisfied with the final product. They are also unanimous on another point: "The three of us will *never* attempt to write another book together," Cheatham said emphatically. Canada and Licata quickly nodded their agreement.



Hite to Speak On Sexuality At HLS Forum

The Harvard Law School Forum begins its spring schedule on Tuesday, February 13, when Shere Hite speaks about her new work in the area of male sexuality and her previous book which dealt with female sexuality, *The Hite Report*. Her talk begins at 8 p.m. in Ames Courtroom.

Forum spokesperson Rob Lewinson indicated that other speakers this semester will include Boston Mayor Kevin White on February 27, former Secretary of State Dean Rusk on March 15 and Connecticut Senator Lowell Weicker on April 26. Speakers from outside the world of politics will include Alex Haley, author of *Roots*, on April 17 and William Loeb, publisher of the *Manchester Union Leader*, on May 1.

There are also plans to contact several more speakers to add to the spring schedule. Forum personnel are trying to arrange appearances by Arizona Senator and former presidential candidate Barry Goldwater, Ambassador Elliot Richardson, "Saturday Night Live" star Gilda Radner and movie actor Gene Kelly, although none of them has been definitely scheduled.

The Forum had a good fall semester, according to Lewinson. The audience turnouts were particularly good for several speakers, including Barbara Walters and John Irving, and the overall season attendance was strong.

The Walters speech resulted in bonus publicity for the HLS Forum because Channel Four, a local television station, did a story on her visit to Boston and included parts of her speech at Harvard Law School. Irving's talk was also a departure from the usual because instead of a speech, Irving gave a reading from parts of his work in progress, *Hotel New Hampshire*.



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HARVARD LAW RECORD

Exam-Writing at Issue

(Continued from Page 4)

ingenuous" to say that nobody profited from studying the Cornell Exam — "obviously there's a certain feeling of calm confidence when it looks familiar."

What concerns Younger far more than the exam question problem is the reaction his students had to exam period. "I was appalled at the kind of frenzy that seemed to afflict students here," he said. "I've taught at three other law schools, and while students get nervous, it was nothing like this."

GRAETZ: Changed Exam

Like Younger, Graetz does not put old exams on reserve. "Objective questions take a long time to design and you just won't use them if you have to redesign them each year," he said. He adds that he uses objective questions for a purpose in his exams — among other things, they allow him more flexibility in his essay questions.

But there had been an error at USC, and an old exam had been put on reserve. When Graetz learned that some Harvard students had that exam, from which he had drawn questions, he changed his HLS exam to one with no short answer questions.

At first, he said, he was upset. "I had thought it might be a desire to get a competitive edge, and the students here are simply too good for that," he said. "On reflection, I think it's part of exam gamesmanship."

On the whole, he said, "my experience with Harvard students is that they are simply better and more fun to teach than students anywhere else. I was disappointed about having to revise my tests but it hasn't changed my feelings."

Although, he said, Harvard stu-

dents "seem a little more willing to go to lengths that I wouldn't have expected" to get old exams, "I do not think the exam panic is noticeably different here than anywhere else."

Studying Old Exams

The Law School has no hard-and-fast rule about using old exams, but, says Assistant Dean Mary Upton, professors are told in a yearly memo that "experience suggests there are substantial reasons for concern about reusing an exam question previously used by you or by some other person."

Keeton agrees that "the ideal is to have completely new questions, but it's almost impossible." And he feels that studying from old exams is useful preparation for an exam, although "it can be overdone."

The Law School mandates that old exams be published, although there is a special exemption for short answer questions, as long as a number equal to one-fourth of the questions used, of "fair and representative" sample short answer questions, are published.

Upton thinks publishing the old exams is "a good policy, but I'm sorry that students are so obsessed with studying that way — I think our students expend an enormous amount of energy tracking these old exams down. I think it adds to the anxiety."

Dean Albert M. Sacks, like Keeton and Upton, believes that studying from old exams has an educational value. "I think students learn a lot from that and we ought to be encouraging it."

Editor's note: Staff writer Richard B. Bernstein contributed to this article.

Benefits Include High Attendance and Preparation

(Continued from Page 12)

Similarly, Prof. Elizabeth Owens, who taught Management of Natural Resources: Public Rights in Natural Resources, felt that the term was not as beneficial as she had anticipated. "I hoped that it would be valuable to students picking third year paper topics but it hasn't worked that way. It's too late for 3Ls to be deciding and too early for 2Ls." Otherwise, Owens didn't feel the semester was much different, "Since I had used the small class lecture format before, and since I usually teach the course as a seminar, I am used to a high level of student participation."

Breyer summed up the general trend of professorial reaction. "I wouldn't like to teach all courses like this, but it has definite benefits. In short, it's tiring but rewarding!" Ginsburg added, "We won't be able properly to evaluate the term until the courses and the methods of instruction have been tried out for at least two years."



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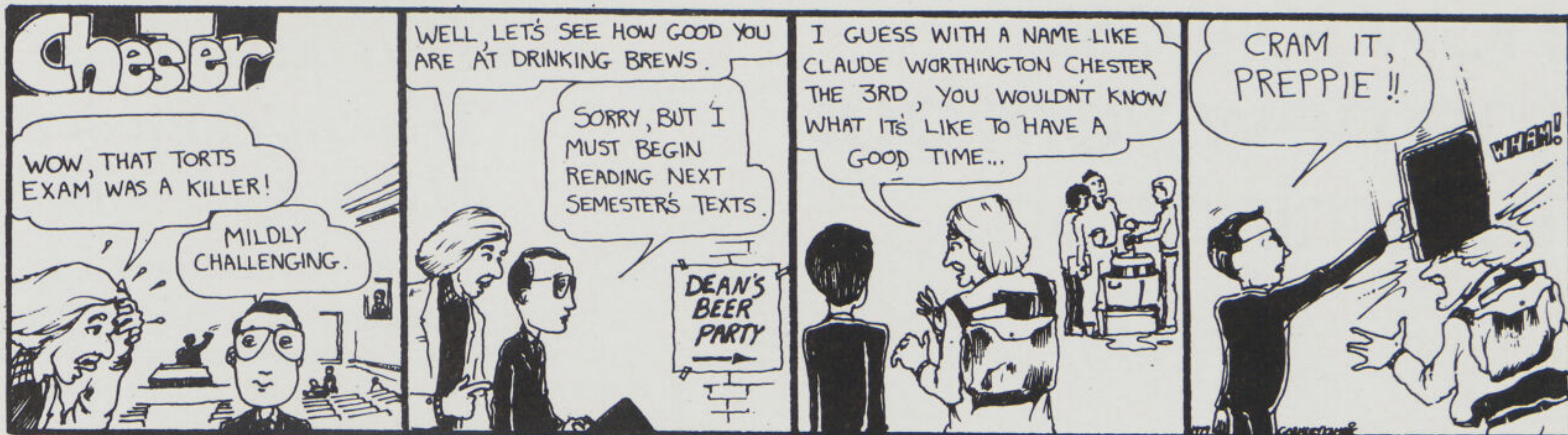
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GOVERNMENT AND PUBLIC AFFAIRS

The Institute of Politics, Kennedy School of Government, announces its spring semester study groups. This term's topics include political fund-raising, the New Right, the tax revolt, arts and the government, poverty, and South Africa. Groups are non-credit and extra-curricular. **Registration Closes Today**, at the Institute, 79 Boylston St. For info, call 495-1360.



Chester Will Return to this Space Next Week

A message to Harvard and Radcliffe students regarding nominations for Coop Board of Directors

If you, as a Coop member and a degree candidate, are interested in serving as a student director of the Harvard Cooperative Society for the next academic year, you should obtain an application from the General Manager's office in the Harvard Square Store. Completed applications must be returned to that office by Friday, February 16, 1979 for consideration by the Nominating Committee of the Stockholders of the Harvard Cooperative Society.

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HARVARD SQUARE

Sports Answers

1. Rogers Hornsby
2. Harry Greb
3. Helen Wills
4. Babe Ruth in 1933.
5. Tenley Albright held the title from 1952 through 1956. She was followed by Carol Heiss who reigned until 1960. After several years of one year champions, Peggy Fleming took the title in 1964 and held it through 1968. Janet Lynn was next, holding the title from 1969 to 1973. The final member of the five was Dorothy Hamill who was the title holder from 1974 through 1976.

Solution to "Cryptic Law"

The presentation of this case . . . was confused, disjointed, unfocused, incoherent and, at times, incomprehensible. Nor were the . . . briefs of any assistance whatever in marshalling the evidence and relating it to the legal contentions of the parties. . . Here, we have been put to the almost endless and certainly exhausting task of trying to bring order out of chaos.

SEC v. Commonwealth Chemical Securities, Inc., 410 F. Supp. 1002, 1006 (1976)

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Harvard Past Discovered by MBTA Project

By Joshua Dratel

It appears as if the Red Line Subway extension project has dug up more than simple dirt and political tension.

Approximately 3000 artifacts were discovered in Harvard Yard while workmen were relocating a water main as part of the Massachusetts Bay Transportation Authority's project. Although the artifacts were unearthed last August, funds for an examination of the materials and a full archaeological investigation were approved by the MBTA's Board of Directors on January 17.

The recovered items included pieces of plates, cups, saucers, and other crockery and glass possibly used by the British Army in 1740 or by Harvard students in the 17th and 18th centuries. The artifacts have been turned over to the Peabody Museum's Institute of Conservation Archaeology (ICA), which will examine and report on the material. The ICA will also monitor and salvage any other artifacts that may be discovered during construction of other new Red Line tunnels and stations.

Despite the initial identification, uncertainty remained as to the value of the recent findings and it will be a little while, too, before a conclusive opinion will be reached.

"Over the next month and a half, we'll clean the pieces, then analyze them and write a report," explained Michael Roberts, the Director of the ICA. "Within the next couple of months we should have a pretty good idea of what it all means."

Alas, though, there is no free lunch, even if it is 250 years old. The current study and the continuing search will cost MBTA \$43,003 for now, with the ICA receiving \$37,499 and Sverdup & Parcel, a design engineering firm working on the Red Line extension, getting the remainder.