

HARVARD LAW RECORD

America's Oldest Law School Newspaper

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TWENTY CENTS

Boycott, Weather Cause 30% Dip in Classes

By Jorie Roberts

Ad Board May Tighten Policy on Hardship Cases

The procedure permitting certain students to switch schools for their third year and still receive a Harvard Law degree is being re-evaluated by the Administrative Board, the RECORD has learned.

The board, which includes students, faculty members, and administrators, currently considers individual requests from students who want to transfer. Those allowed such transfers are known as "hardship cases," and include students with spouses or "significant others" elsewhere, or with ill family members. There are a limited number of schools approved for transfer under the program.

One solution the Ad Board has considered is a return to a policy abandoned several years ago, which allowed only those couples who are married to successfully claim "hardship" status. Currently, those "significantly involved" can seek the special transfer.

The review has been prompted by the rapid rise in the number of applications for hardship transfers. No change is being contemplated for hardship claims based on ill family members.

No final decision has been made yet, nor will a vote be taken until early next month. Any new policies are not expected to be announced until next Fall.

Approximately 30 percent of the Law School population participated in Monday's boycott in support of divestiture of Harvard's investments in South Africa and preservation of the undergraduate Afro-American Studies Department, estimated former BLSA president Sylvester Turner.

At HLS, the boycott was sponsored by the newly-formed Third World Coalition, composed of the Native American Law Students Association, the Puerto Rican Law Students Association, the Puerto Rican Law Students Association, the Chicano Law Students Association, and the Asian Law Students Association.

The campus-wide participation in the boycott was much higher than that at HLS — above 70 percent effective, according to Coalition estimates. Turner explained: "The notion of boycotting classes came late — at the end of last week. Moreover, with exams coming, students are less willing to miss classes for any reason." However, about three-fourths of BLSA's members participated in the boycott.

Harvard's 'Racism'

1L Nicky Sheats, BLSA internal vice-president, characterized the boycott as "motivated by the general theme of Harvard's racism, as manifested by the University's actions abroad and its internal policies." He stated that BLSA

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Minority in Marshalls Protests New Constitution

By Jorie Roberts

Representatives of the southern Marshall Islands have declared their intention to secede from the northern Marshalls because they think the new constitution, largely written by HLS Prof. Laurence Tribe, fails to adequately acknowledge their rights.

According to a recent report in the *Marianas Variety* newspaper,

the leadership of the south Marshall Islands-based "Voice of the Marshalls" has asserted that the new Marshall Islands constitution solidifies the power of the majority while "denying minority rights and desires to end our historic subordination to the north Marshalls and gain greater control over our own destiny."

The group has requested U.S.

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Judge Keeton Takes Seat on Bench

By Larry Zelenak

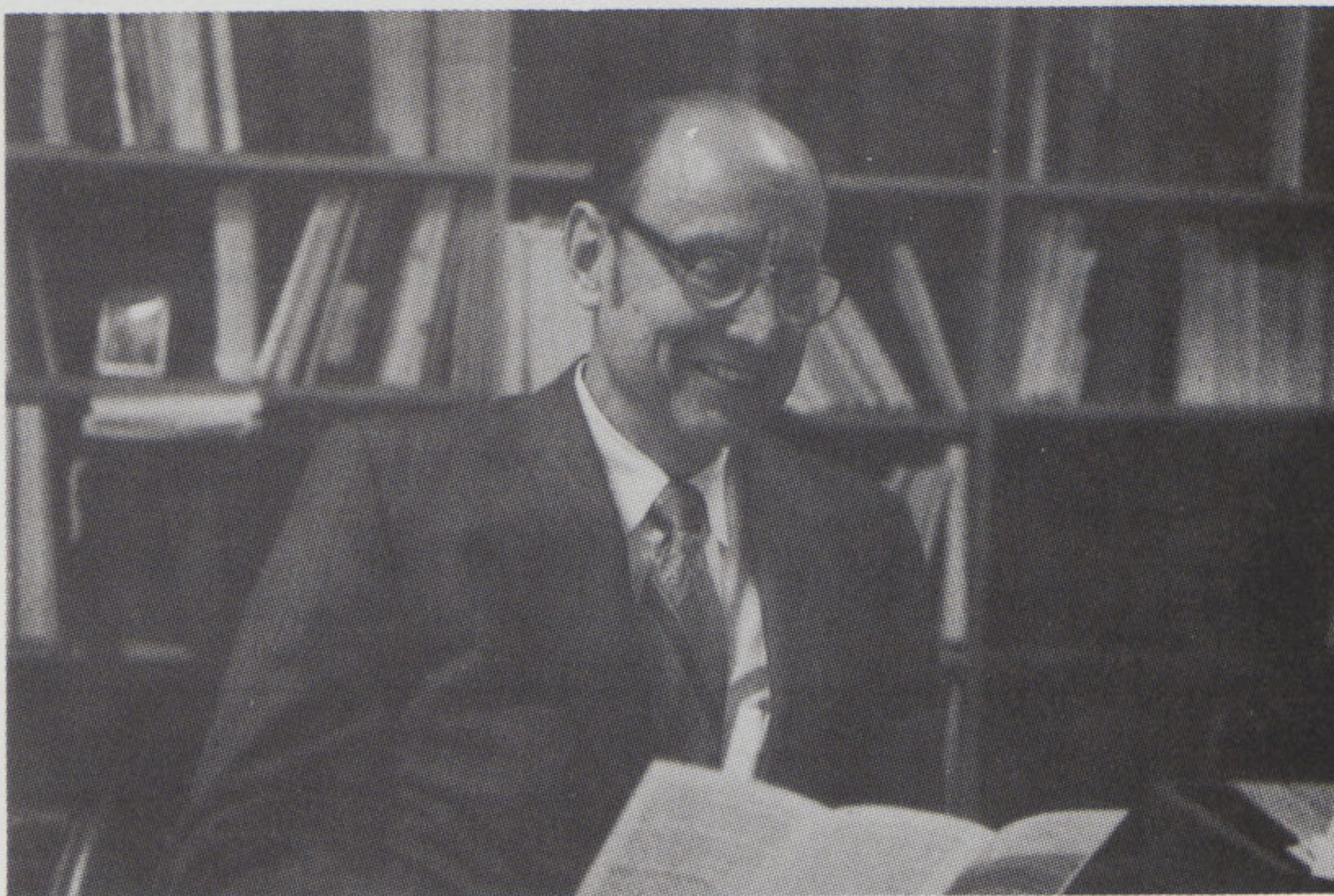
After more than 25 years on the Harvard Law School faculty, Prof. and Assistant Dean Robert E. Keeton became Federal District Judge Keeton on March 30, as he donned the judicial robes which students in his trial advocacy workshop had presented to him a few weeks earlier.

As Keeton had expected, his first few weeks on the bench have been extremely busy. Some 588 civil cases have been transferred from other judges to him, and he has a sizeable criminal docket as well. He has already begun trying the criminal cases, and he is working on pre-trial conferences in the hopes of bringing some semblance of manageability to his civil caseload. He anticipates that it will take about two years to dispose of the civil backlog.

At the same time, he has been receiving both formal and informal training. The formal training was at a conference on sentencing held in North Carolina last week. "For me it was very welcome," Keeton noted, "since it came before I've had the responsibility for any sentencing." The informal training has been in the form of advice from the six experienced district judges in the area, whom Keeton praised as a "cordial and generous group."

On-the-Job Training

More training is scheduled for June — a one-week seminar designed especially for newly-appointed district judges. Keeton noted that the fact that he will have been on the bench for more than two months before the formal training session is "fairly consistent with my theories about the



Federal District Court Judge Robert Keeton

trial advocacy workshop — throw people into the process first to give them a base of experience to work from."

Although Keeton has found time to meet twice a week this semester with the students in his insurance law course, he has no plans to teach next year: "I don't want to teach while I'm breaking myself into my new job, but I hope I can teach one course a year eventually."

From what he has seen so far, Keeton is enthusiastic about his new job: "I think I'm going to like it. It should be a very different and interesting life. Dean [Albert M.] Sacks referred to it as an opportunity to become an actor instead of an observer, and I do welcome the opportunity to get into law in an active way. My chief regret will be losing the chance to teach full time."

Keeton taught torts for nearly every one of his 26 years at Harvard, and he has taught courses emphasizing courtroom skills for more than a decade. Since 1975 he

has taught the trial advocacy workshop — an intensive three week program in trial skills he originally helped develop for the National Institute for Trial Advocacy.

Tireless Teacher

He says the decision to give up full time teaching was not an easy one. "I've loved every minute of it," he remarked. "Torts is such a lively and changing subject, I've never gotten tired of it."

Keeton has not lost all traces of the accent he brought with him from Texas a quarter of a century ago, but he says unequivocally that Massachusetts is now his home.

"The natives here still recognize that I come from somewhere else, because I don't quite talk right," he admits, "but I've never felt any hostility because of it." He explains that he's lost much of his accent over the years: "When I go back to Texas people say I talk like a Yankee — or more likely they'll tell me I've been corrupted by the Yankees."

His acceptance of a judgeship in Massachusetts may be evidence that Keeton has not merely been corrupted, but is even in danger of becoming a Yankee himself.

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Profs Pass Clinical, Writing Proposals

By Tammy Jacobs

Proposals of both the Writing Committee and the Clinical Committee were adopted by the faculty Wednesday, leaving Dean Albert M. Sacks with discretion to implement the recommendations or not.

The most controversial suggestion of the Writing Committee, to require that a writing portfolio be kept for each student, was modified by the committee and further modified by a faculty amendment before the vote. The recommendation is now for an optional portfolio to be kept by the student, with contents to be chosen by the student.

The faculty decisions on both proposals came after faculty discussions running through several weeks of meetings. The proposals were the result of full years of work by both the Writing Committee, chaired by Prof. Charles Nesson, and the Clinical Committee, chaired by Prof. Richard Stewart.

Up to the Dean

For the most part, the faculty votes are not binding on the dean, but are, instead, statements of support for the committee proposals, leaving the dean free to implement the suggestions as he sees fit.

The one exception to the discretionary aspects of the votes seems to be on one Clinical Committee resolution, which provides for appointment of instructional and supervisory personnel in clinical courses to be made by a committee designated by the dean and re-

porting to the faculty annually. Currently, such personnel are not formally appointed.

Both issues were decided by less than half the faculty, with under 30 people approving the Writing Committee report, and only 16 casting votes (13 yes, 3 no) on the Clinical Committee report.

Writing Role Debated

The faculty debated the Writing Committee suggestions for nearly two hours. Prof. Lloyd Weinreb led the opposition to the committee's report, with amendments on both issues.

The committee, which had already tempered its portfolio proposal after criticisms offered at an earlier faculty discussion, had recommended that the school "will encourage students to maintain a portfolio of their writings, and will encourage employers to consult it in the course of making employment decisions."

On Weinreb's motion, and after some discussion, the phrase involving employers was deleted. "We ought to have the educational program in place before applying the screws," Weinreb had said.

Another Weinreb amendment, to omit a recommendation for eight sections of first-year Federal Litigation, instead of the current three, failed. Weinreb noted that the expansion would change the shape of the first-year electives program, ultimately involving half the class. He also said that a major change in appointments procedure could re-

sult from the Writing Committee's suggestion that some new sections be taught by "adjunct fellows" who would first spend a year as assistants to faculty course teachers. The unsuccessful Weinreb amendment seemed aimed at promoting further study on both issues before a faculty vote.

The defeat of the amendment came after the faculty was reminded that eight sections is a goal, not a mandate; and that the proposal, even with the faculty backing, still lies in the dean's discretion. When asked, Sacks indicated that he favored additional sections of Federal Litigation to meet student demand.

Other Writing Committee suggestions include a screening program to identify and to aid students with writing problems, more courses and seminars emphasizing written work instead of exams, book prizes for top student work, and a renewed emphasis on third-year paper quality. (See RECORD, April 13.)

The Clinical recommendations, originally incorporated in a 113-page report (RECORD, April 13, 20), urge encouragement of fieldwork and simulation courses, an emphasis on appointments of Faculty and staff oriented towards clinical teaching methods, and a strengthening of supervision of student organizations doing legal work.

The lukewarm 13-3 acceptance of the clinical committee's recommendations came after the dean promised that the issues would be reopened if there was faculty sentiment in that direction. 

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Jaffe Recalls Long Career in Law

By Jorie Roberts

"Both teaching and writing have been very satisfying professions for me — I have never regretted not spending more time in private practice." Thus spoke Louis Leventhal Jaffe, Byrne Professor Emeritus of Administrative Law, when reflecting upon four decades as a law professor, first at the University of Buffalo and, since 1950, at HLS.

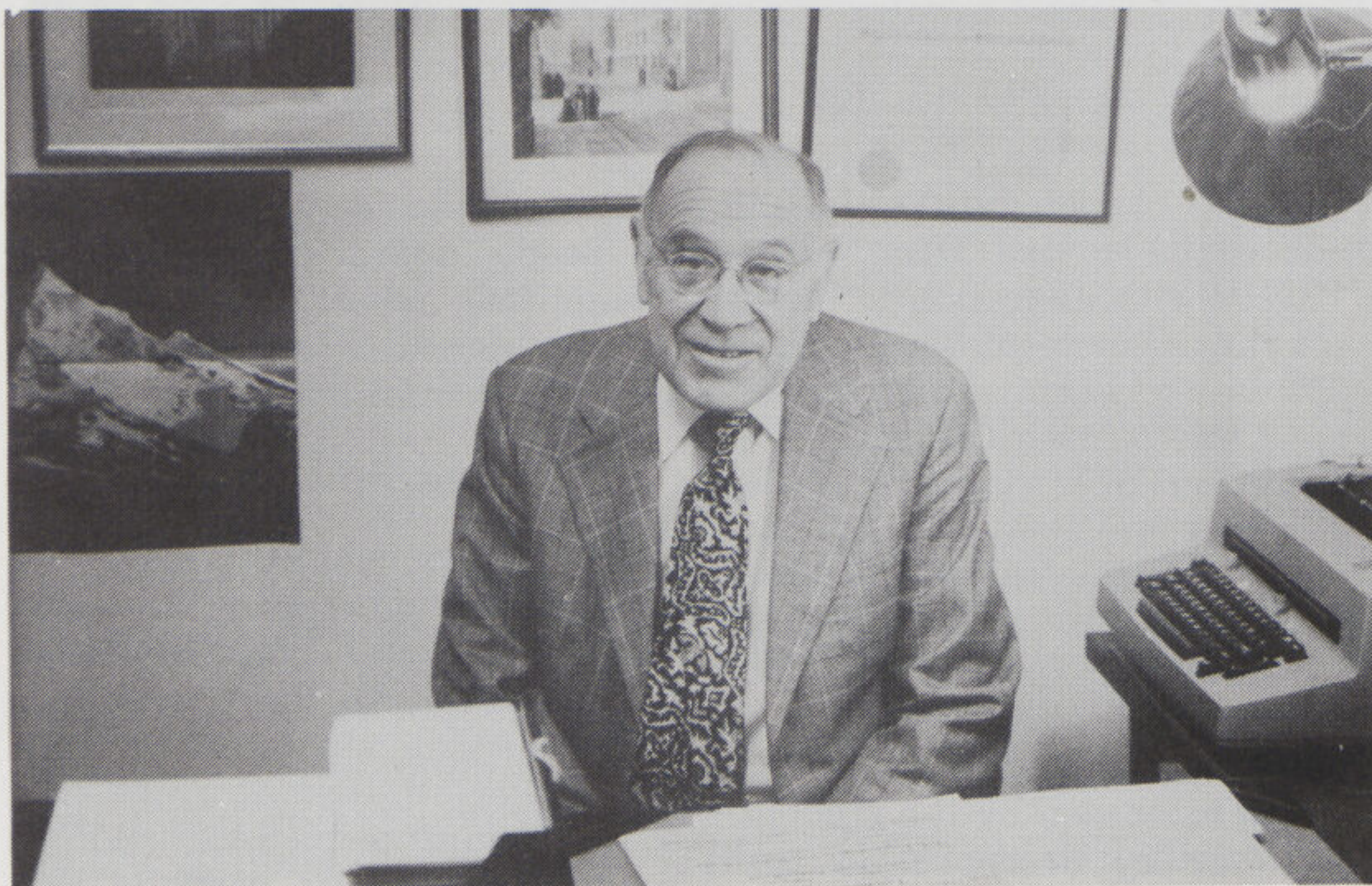
As a professor, Jaffe "liked the large classes and seminars as well." Jaffe continued, "I used the question and answer method extensively in both kinds of courses." Moreover, Jaffe, once Dean of Buffalo Law School, stated, "I much prefer teaching to being a dean — although I did come to HLS only two years after I was appointed Dean there." Yet, while Jaffe had "always wanted to teach," he had planned to "teach history as a child." It took the influence of one of Jaffe's HLS professors, Felix Frankfurter, to steer him towards law teaching.

Jaffe explained, "As a student, I took Frankfurter's Administrative Law course, and later worked in two governmental agencies. Administrative law was just coming into its own then; there was not much systematic writing by lawyers in the field."

Prolific Writer

At HLS, Jaffe has taught Administrative Law, especially Regulation of Broadcasting, Banking Law, and Securities, as well as Torts and Environmental law. He is also the author of several major works on Administrative Law, including his fundamental *Cases and Materials on Administrative Law*, as well as "twenty-five or more" journal articles. When asked what he most enjoyed writing, Jaffe thought a moment and replied, "I have most enjoyed writing my treatise on *Judicial Control of Administrative Actions*."

Jaffe was born in Seattle and attended Stanford before transfer-



Prof. Louis Jaffe

ring to the Johns Hopkins University as an undergraduate. For those West Coasters who wonder how Jaffe could have ever left Palo Alto for the Eastern Seaboard, he explains: "My family moved to Baltimore, and I thought I would be homesick for them if I didn't transfer, but as it turned out I was more homesick for Stanford and the West Coast than I ever would have been for my family."

At Johns Hopkins, Jaffe majored in economics. He laughed, "I was an economics major for no good reason. My friends said I liked literature and history too much to go into it — that I should learn something useful. So I majored in economics and didn't learn anything."

Memorable Profs

As a student at HLS in the 1920s, Jaffe found Constitutional Law professor Thomas Reed Powell to be "very sardonic and wicked in talk, but fun to follow" and Corporations Professor Bull Warren "very dogmatic." Jaffe along with his close friend Benjamin Kaplan, worked on the *Harvard Law Review* for two years, which he "enjoyed very much."

After graduating from HLS in 1928, Jaffe reminisced, "I tried to get a job in San Francisco, but didn't succeed. I did do a little prac-

tice on my own there, but I dealt with no matters of great importance." Jaffe continued, "After a year or two, I knew I had to move on. I wrote Felix Frankfurter and applied to return for study towards my graduate degree." Jaffe received his S.J.D. in 1932, after writing a landmark thesis on "The Effect Throughout the World of Non-Recognition of Judicial Activity."

Clerk for Brandeis

In 1933, Jaffe moved to Washington, D.C. to clerk for Justice Louis Brandeis. Jaffe reflected, "Brandeis was tremendously austere and reserved — he was in his 70s then, and he worked very hard all the time. He rented an apartment as his office, and another one for me. We frequently communicated by shoving papers under each other's doors." Jaffe remained in the Capital to work first for the Agricultural Adjustment Administration and then for the National Labor Relations Board for several years.

Next, Jaffe taught Administrative Law at the University of Buffalo Law School. There, he "kicked off" the first issue of the *Buffalo Law Review* with an article entitled "Res Ipsa Loquitur Vindi-

(Continued on Page 16)

Tribe Feels Secession Is No Threat

(Continued from Page 1)

Secretary of the Interior Cecil Andrus to withhold approval of the draft constitution, due to become effective on May 1, until a conference can be held between the Department of the Interior and the dissatisfied Marshallese.

More specifically, the south Marshall representatives claimed that the South has not received a guarantee of its fair share of revenue expenditures and adequate benefit from development projects.

No Clear Threat

Tribe, who devoted special attention to developing the Bill of Rights for the new constitution, doubts that the efforts of the "Voice of the Marshalls" pose a real threat to Marshall unity. "There has long been a clear line of separation between two groups in the Marshalls, based on historical family affiliations rather than on any ethnic differences."

Moreover, the Marshall Islands constitution was already approved in a March 1 referendum vote in which 5,670 (64 percent) voted for the constitution and 3,210 (35.2 percent) voted against it, a breakdown which reflects the two population groups in the Islands, according to Tribe. The minority group has historically preferred Marshall unification with the Federated States of Micronesia (Yap, Ponape, Kosrae, and Truk) to Marshall Islands independence.

Tribe continues: "Having dis-

cussed the problems of the south Marshalls with the heads of the group which is now threatening secession, I feel that they are merely fulfilling a perceived responsibility to their constituents to show that the interests of the south Marshalls must be specifically addressed in the new government."

Evaluating the chances of a separationist movement, Tribe speculated, "I don't think it's likely that a last-minute secession

"I don't think it's likely that a last-minute secession movement could get anywhere."

movement could get anywhere. If it did, it would jeopardize the Marshall Islands' chance for independence." He continued: "If the U.S. military establishment saw that the Marshalls were fragmented and unstable, it would insist that the current trusteeship be preserved rather than risk a threat to its missile bases in the Marshalls."

Quest For Judges

Having completed the constitutional revisions, Tribe is "now the first chairman of the Judicial Service Commission," which is seeking judges for the High Court and the



Prof. Laurence H. Tribe

Supreme Court in the Marshalls. Since there are no trained lawyers in the Marshalls, the Commission is focussing its search on judges who formerly served in the courts of the U.S. Trust Territory islands in the North Pacific, as well as retired state supreme court judges from Hawaii. Tribe added that, "until we find these judges, the constitution provides for judges of the Trust Territory to try cases in the Marshall Islands, although there is some confusion as to how the Trust Territory code and the Marshall Islands constitution will interact in such a case."

Tribe is also negotiating with representatives of the State, Interior, and Defense Departments for acceptance of the "free association" compact of the Marshall Islands, which ends the Marshall Islands' 30-year status as a U.S. strategic trust and gives the Marshalls independence from the U.S. in all matters except defense and some foreign affairs. According to President Carter, the "free association" compact should go into effect before the end of 1980.

After the judges are selected and the compact becomes effective, Tribe hopes to continue advising the Marshalls. In his present capacities, Tribe envisions that he will return to the Marshalls "at least two more times," and hopes to travel to the outer islands at some point.

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Ferguson Leads Discussion on Divestiture

(Continued from Page 1)

plans "to respond to President Bok's recent letter on divestiture in two or three weeks."

The Law School Council also financed one-third of the costs of printing and distributing the Third World Coalition's statement. However, the Council did not sign the statement because "the Council didn't have time to determine whether it agreed with everything in the statement," according to Council President Baker Kurrus. The Council did distribute its own statement, however, which urged students to participate in efforts to end Harvard's indirect support of South Africa.

Mary Upton, Assistant Dean, said that the Administration was generally unaware of the precise level of student participation in the boycott. "It was hard for us to tell how many students were involved because class attendance is usually down anyway on a pretty spring day."

Upton also mentioned that the HLS administration refused the Third World Coalition's request that Monday's classes be taped. "Dean Albert M. Sacks and I decided that it was not the Law School's role to subsidize a boycott of its own classes."

A Last Resort

Prof. C. Clyde Ferguson, who teaches Civil Procedure, devoted half of his Monday class to "discussing the relative merits of Har-

vard's divestiture of stocks in corporations doing business in South Africa and Harvard's use of its role as a major stockholder to push for corporate disinvestment in South Africa."

Ferguson believes that "divestiture should be a last resort. So far, I haven't seen much evidence of Harvard's taking an effort to affect the investment policies of the corporations in which it owns stock."

Ferguson did point out, however, that Harvard approved one shareholder resolution urging Mobil Oil to form black trade

unions in South Africa and a second resolution requesting that Eastman Kodak refrain from selling film to South Africa which could be used for oppressive purposes, such as the photographs for the identity cards which blacks must carry.

Finally, Ferguson did stress, "If it turns out that Harvard cannot affect corporate policies through its position as a stockholder, then the University should take the moral position of disassociation."



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SPORTS QUIZ

1. Who is the all-time Chicago White Sox leader in career RBI's and extra-base hits?
2. Who had 5 hits and 9 RBI's against the Yankees on Sept. 10, 1977?
3. What was the road hotel of every American League team in Boston last season?
4. Give the first and last names of the 2 authors of Tank McNamara.
5. Who held the single-season record for home runs that Babe Ruth broke in 1927?

(Answers on Page 16)

the
Coop

HARVARD SQUARE

Rather Defends Freedom of the Press

By Dan Hershman

More than 150 people jammed into Pound 201 Tuesday afternoon to hear one of television's premier stars, CBS News correspondent and "60 Minutes" co-editor Dan Rather, speak on the "First Amendment and Reporters' Rights of Confidentiality." Rather fielded questions on journalism and the First Amendment at the hour-long talk sponsored by the Institute of Politics. The focus of his comments was the impact of *Herbert v. Lando*, the recent Supreme Court decision requiring a "60 Minutes" producer to answer questions about his thoughts and opinions while doing a report claimed to be libelous.

Rather has been "a working reporter" for 25 years. He has also studied law, gathering 71 credits at night law school in Houston. Though he noted that he might speak harshly of the Supreme Court and its decisions, he claimed he has tremendous respect for it.

Repealing the First

"I can stomach this decision," he said of *Lando*. "What I can't stomach is the pattern of Supreme Court decisions since 1971: they are in the process of repealing the First Amendment as we know it . . . It is a dangerous thing for our society."

Rather feels that Justice Byron White and Chief Justice Warren Burger are not unbiased in their views. According to Rather, the Chief Justice has referred to reporters as "arrogant" and "twerps."

"Berger's tantrum in Atlanta," when he left a room at the ABA Convention rather than be filmed by a "60 Minutes" crew, "didn't speak well of him or the Supreme Court."

Rather thinks the Court's attacks of reporters' alleged abuses of privilege are misguided. "I don't see the First Amendment as a privilege for my benefit . . . Privileges, like those for an attorney, are privileges for society."

Cases like *Herbert v. Lando* pro-

duce a chilling effect on the media, Rather fears, that is especially felt by smaller stations and newspapers. "If (CBS) lose(s) this libel suit, which I'm willing to bet the ranch we don't, we won't be hurt," he said.

But smaller operations, with their station managers fearing a "hurricane of libel suits," are less likely to pursue the big stories. Recent Supreme Court decisions also make smaller operations less likely to pursue stories that don't work out without the protection of confidential sources, Rather said. Instead of approving a six-month investigation of a congressman thought to be taking illegal campaign contributions, station managers, hired to make a profit and not jeopardize station solvency with a libel suit, will ask reporters to report on the Chamber of Commerce or a "Snake River raft trip," Rather predicted.

Comes the Chill

The effect has also been felt at CBS. One member of Rather's reporting team, an HLS graduate, suggested to him that the staff not discuss their feelings on stories with each other. Rather thinks his colleague exaggerates the matter. "The pattern of cases more concerns me than *Herbert v. Lando* itself," Rather said. The real world for Rather is not what the opinions detail, but what the headlines convey to his potential confidential witnesses. They will be less likely to come forth, he fears, since courts will order reporters to reveal sources.

Rather conceded, "We make mistakes. There are abuses. I expect to be held accountable if I libel someone in the legal sense . . . For the working reporter, accuracy is all important. Treating the material fairly is equally important."

More libel suits are the trend, Rather agreed, but he wasn't sure why. "Five or six years ago, we [at '60 Minutes'] had one or two a year. Today we have about 20. But the broadcast also reaches more

people . . ." ("45 million on a good week," he said later.) "Subliminally, if I know \$75 million in law-suits have been filed against me, it may influence me," he worried.

The cost of winning libel cases isn't cheap for the defendant either, Rather said. "The average suit costs \$100,000 to defend and the cases take up to three weeks of a reporter's time to help the defense attorneys prepare."

Rather was asked why government prosecutors don't keep tabs on the characters that turn up in "60 Minutes" stories. He recalled his report on the meat industry in San Diego that revealed serious illegal activity in the grading of cuts of beef. Rather told a district attorney there not to be disappointed that the understaffed prosecutor had yet to investigate because "there's a hell of a lot going down in San Diego besides the meat business." Like outnumbered government agencies, Rather said "60 Minutes" is also selective in its probes.

Checks and Balances

But what keeps a zealous reporter from running wild, trying to become an instant wonder with a tantalizing story? "What journalists do is in an open forum," Rather said. Public pressures guard against abuse and will cost an inaccurate and abusive reporter his job, he feels. Peer pressure also keeps reporters in line, since it is "as strong as it is in the law. It's an imperfect system," Rather said, but there are "checks and balances."

When Rather was asked what he felt when his interrogations unhinged his subjects' lives, he said his "number one concern is accuracy." Then, "Most of my concern is 'Have we been fair?' I am acutely aware of the effect of a broadcast."

The discussion ended abruptly at four o'clock when Prof. Oliver Oldman stunned the audience by entering the overcrowded room repeating, "Excuse me, excuse me,

(Continued on Page 15)

Welcome to New York, John Harvard. Have You Considered Joining The Harvard Club Of New York City?



On Friday, April 27, members of the Admissions and Membership Committees of The Harvard Club of New York City will be in Cambridge at the Program for Management Development lounge of Mellon Hall at the Business School and at the Hasty Pudding Club at 12 Holyoke Street between 11:00 A.M. and 5:30 P.M. to make it easy and convenient for Faculty, University Officers and graduates to become a member of the Club.

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Two HLS Students Win China Fellowships

By Steve Friedland

James V. Feinerman, 3L, and Timothy A. Gelatt, 2L, are China-bound, courtesy of the Committee on Scholarly Communication With the People's Republic of China. The two HLS students were part of a select group of 30 advanced graduate and post-doctoral students — chosen from a nationwide applicant pool for a year-long fellowship to study in China next year.

The HLS fellowship winners share a strong interest in China, which is readily reflected by their backgrounds. Feinerman studied Chinese in high school and at Yale. After graduation he received a fellowship from the Yale-in-China Foundation and taught college-level English in Hong Kong for two years. Feinerman then returned to Yale to pursue a Ph.D. in East Asian languages and literature. Before completing the degree, he enrolled at HLS. Continuing his peripatetic career, he returned once again to Yale — this time to finish his thesis — following his first year at HLS. Feinerman reports that he will officially receive the degree this May.

Gelatt majored in Chinese studies at the University of Pennsylvania and spent a semester of his junior year studying in Taiwan. He is now involved with East Asian Legal Studies at HLS,

and has retained his rabid enthusiasm concerning China.

China in Their Future

Gelatt commented on his academic plans for the fellowship: "I'll probably study primarily in the history area. However, I hope to take classes in the law school at Peking University." He added that the unique perspective offered by his studies will enable him to look at China more from a "China point of view."

While Feinerman will study Chinese literature, his specialty, it will not figure directly in his future plans. "Although I haven't abandoned academics, I'm looking for something more active than a

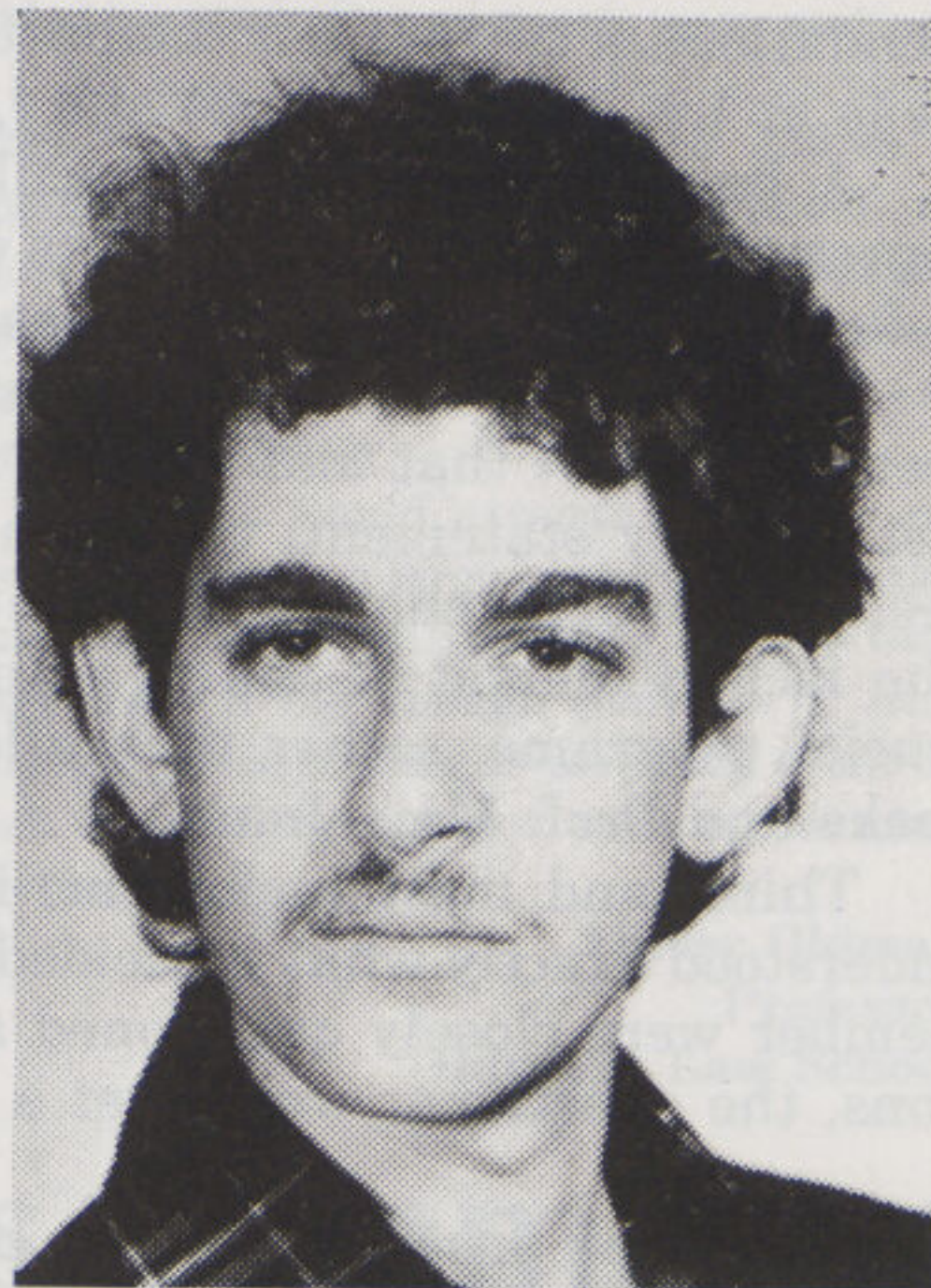
"Huo dao lao, xue dao lao, hai you sanfen shang bu dao"

scholarly career," he said. At this point, Feinerman anticipates the right balance will be struck by pursuing a career in international law at the New York law firm Davis, Polk and Wardell upon completion of the fellowship. Stated Feinerman: "I'm going to New York because that's where the greatest activity in private international law takes place. However, it will be hard to tell if this remains true when China opens up."

Gelatt would also like to work in the area of international law, specifically East Asian trade. He is flexible, however, as to the legal nature of his career. His primary requirement is that the job "concern U.S.-China relations in general."

Only Second Group

Next year's fellowship winners will be only the second American group to participate in the reciprocal program. The Chinese will send four hundred people to the

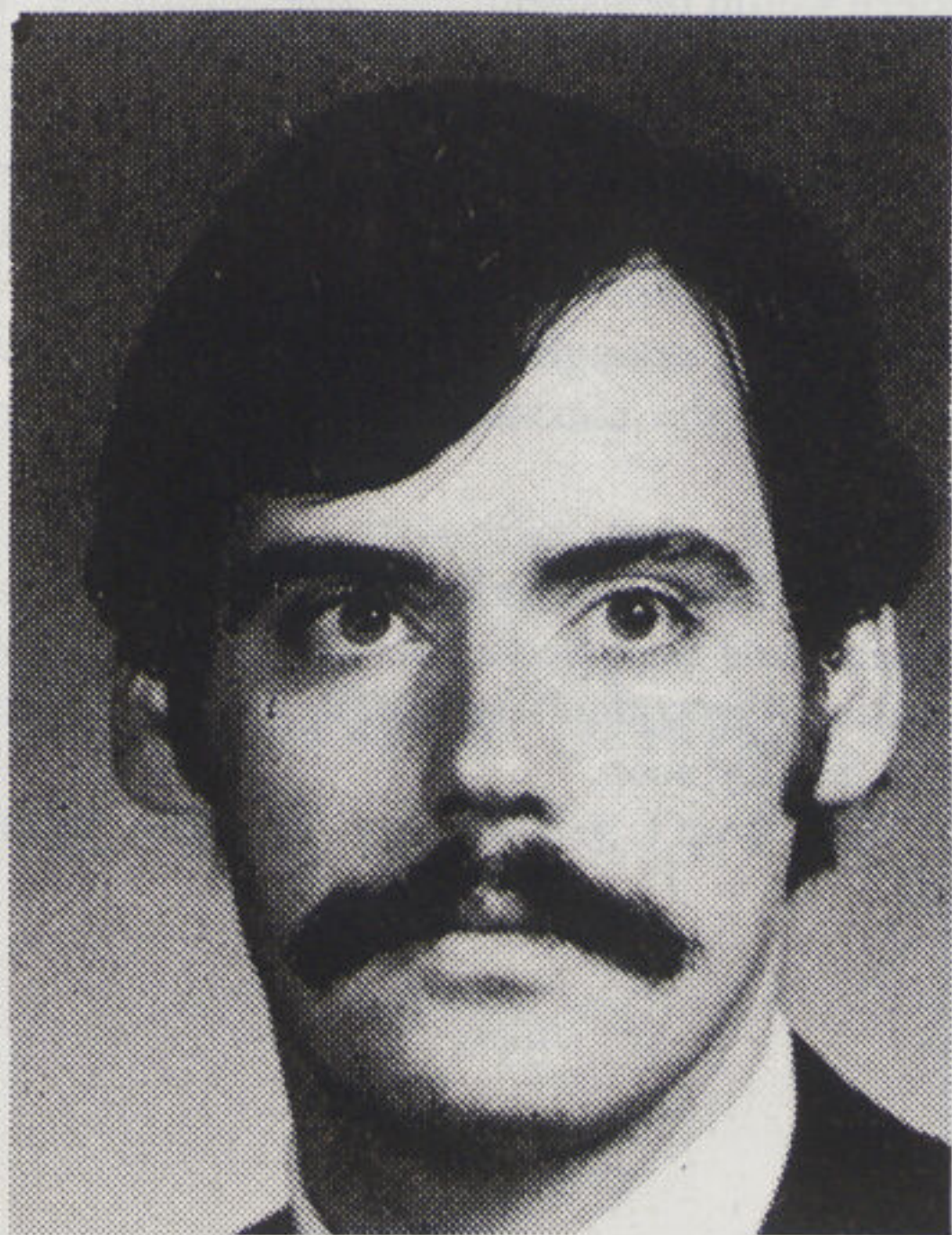


Timothy A. Gelatt

U.S. as part of the exchange. The reason for the disparity in numbers, according to Gelatt, is that unlike their American counterparts, the Chinese will study diverse subjects, and not only those related to America.

Gelatt's enthusiasm has bubbled over to the extent that "a lot of people don't believe I'm going to come back. But I will." Feinerman is also looking forward to the studies. In a statement equally applicable to other academic pursuits, he said: "Huo dao lao, xue dao lao, hai you sanfen shang bu dao"; or "live a long life, study till old age, and you haven't begun to master it all."

☞



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Louder, Please

After weeks of spirited debate, the faculty has endorsed recommendations of two of their committees, leaving the dean to implement the ideas at his discretion. (See story, Page 3.)

A few things about the faculty votes are troublesome. First, it is depressing that the endorsements were made by less than half the faculty — fewer than 20 people, in the case of the Clinical Committee proposals.

Second, from the way the discussion at Wednesday's meeting went, it seems apparent that many of the voters took the position: "Oh well, it's just a policy statement; the dean will do as he sees fit, anyway; and, besides, it will all change after the Michelman Committee does its thing." The faculty should be taking strong roles in the development of these crucial programs, rather than allowing the buck to be passed to Dean Sacks and Prof. Michelman.

Third, and most important, it is not really clear that the faculty understood exactly what it decided. Our instincts are that, if each faculty member were closely questioned as to the proposals and their implications, the questioner would get a wide variety of conflicting answers.

* * *

As to the specifics of both proposals, the committees' hearts are basically in the right place.

The writing program needs solid, immediate strengthening, and most of the committees' proposals would further that end. The most objectionable suggestion, that of a required student writing portfolio, has been moderated. Further, the faculty wisely voted down a suggestion, aimed at coercing students into keeping such a portfolio, that outside employers be encouraged to consult it in making job decisions. Students should write because the school fosters an atmosphere where writing is emphasized as a useful skill, rather than because it's going to make or break a job try.

As Prof. Charles Fried noted, it is "unaesthetic at least and slightly repellent at most" to use job pressures in order to get students involved in educational programs.

The Clinical Committee's proposals are also steps in the right directions, although the door should be left open to more than the modest natural growth suggested by the committee.

As the committee stressed in its report, the program will depend on its staffing; and the dean and Appointments Committee members should heed the call for aggressive recruiting of people to teach clinically-oriented courses.

The ball is now in the dean's court — and while the votes were less than an enthusiastic mandate, the suggestions, in this case, bear implementing. As the Legal Aid Bureau has suggested, students should play a major part in that implementation.

Fenno

Fenno's palms were sweating as he stood before the Faculty Appointments Committee. He was nervous.

"Welcome, Mr. Fenno," the Dean said with a smile. "We've asked you to come here in order to get some student input into the decision-making process."

One of the professors began to giggle. Fenno gulped.

"I've never been in a room filled with faculty members before," Fenno said. "It's not — contagious — is it?"

"Not unless you've published four books and seven articles within the past month," the Dean said. "Now Mr. Fenno, if you'll just answer a few questions."

"Fire when ready," Fenno said bravely.

"First of all," the Dean began, "What is your favorite color?"

"Blue," Fenno said puzzledly.

"Blue," repeated the Dean to his secretary. "Take that down. And what is your favorite sport, Mr. Fenno?"

"Hockey," Fenno answered.

The Dean smiled. "You've been very helpful, Mr. Fenno," he said. "Thanks for your time."

"You mean I'm finished?" Fenno asked.

"You're welcome to make any additional comments," the Dean said. "But I'm warning you, if you say anything substantive there will be no student input next year. And no beer after exams either."

Fenno smiled. "Just a question I've been wanting to ask for a while," he said. "Why are there no students on this committee?"

"That's an easy one," the Dean said. "If you ask my opinion, I'll tell you that there are no students on this committee because if there were students on this committee, then there would be students on this committee."

"Well put," a faculty member agreed. "And they'd want us to hire all the popular visiting professors. Do you have any idea what that would do to faculty morale around here?"

"It's bad enough that students actually attend their classes," another professor sighed.

"Well a word to the wise," said Fenno. "Figuratively speaking, of course. The threatened Root Room Riots might become a reality if you don't get some new blood on the faculty soon."

"You aren't getting any Younger, after all."

HARVARD LAW RECORD

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Letters to the Editor of the RECORD

Worthy War

To the Editor:

Becky Wesley's article (RECORD, March 23) on the visit of Dean Rusk to the Law School was astoundingly offensive and misinformed. Apart from the blatant and pervasive editorializing that violated every norm of responsible journalism and was worthy of *Pravda* or other propaganda, Wesley's article was just plain wrong. Vietnam was neither more nor less moral than any other war; indeed, the goal of fighting a loathsome and oppressive totalitarianism was a worthy one, as subsequent events in Indochina have plainly shown. Vietnam's misfortune was that it was carried on television into American homes. And Vietnam's mistake was one of strategy and politics, of fighting a guerilla war on the Asian mainland and at half strength. I for one am fed up with mindless mouthing of the party line.

Richard Sybert, '77
Los Angeles, California

Editor's Note: We regret that Mr. Sybert did not notice the inch-high "Off the Record" headline that identified Ms. Wesley's article as a column. In our newspaper, as in most, columns reflect the opinions of the writer. We stand behind our RECORD for "responsible journalism."

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A Matter of Necessity

To the Editor:

No one was more upset than I to have to interrupt, and abruptly so after 4 p.m., the talk given by CBS news reporter Dan Rather in Pound 201 on April 24. It was a disagreeable act that I felt it necessary to perform in the interests of a regularly scheduled 4 o'clock class, with distinguished visitors on that particular day. I spent the 20 minutes previous to the interruption trying to arrange an alternative, practical solution, since I had inadvertently become aware of a likely problem when I went to the classroom early to use the blackboard. When I arrived back at the classroom shortly after 4:00, it was quite clear that no

solution had been put into effect in the short available time and that the talk was going to go on for some considerable time. Value added tax students and guests were waiting.

I am sure that Dan Rather understood what was happening, and of course I apologized to him on the spot. Also, I believe most of the students present appreciated the necessity of the intervention. Nevertheless, since some may not have understood, I have written this letter.

Those who would arrange meetings expected to attract a large crowd ought to take sufficient time and trouble to be sure that they have a big enough place for a long enough period of time to cover the event as well as the time it takes to clear the room thereafter.

Oliver Oldman
Professor
Harvard Law School

3L's Elect Class Committee

Third year students were to vote yesterday and today for the class officers who will serve the class of 1979 after graduation. Twenty-four 3Ls are running for eight positions.

The top position is that of Class Marshal. The Class Marshal will lead the class through graduation ceremonies and, depending on the Marshal's interest, serves as one of the liaisons between the class and the Alumni Office at the Law School. Those running for the position are: James Feinerman, Karl L. Kellar, Madison King, Baker Kurrus, Ted Rogers, Daniel Small, and David Unkovic.

Five 3Ls are seeking the Class Secretary position, traditionally the most active of any of the class officers. The Secretary is responsible for maintaining contacts between the members of the class and the Alumni Office and between the members of the class itself. In addition, much of the burden for arranging future class functions, such as reunions, falls on the Secretary's shoulders. Those seeking the position are: Laura Carroll, Patricia Irvin, Ken Neisser, Sha-

ron Readhimer, and Patti Wells.

Six persons will be chosen as Class Committee Members. Those running are: Arthur Bryant, Laura Carroll, Marc Dettman, James Feinerman, Jeremy Hovland, Patricia Irvin, Karl L. Kellar, Jim Kentch, Madison King, and Baker Kurrus.

Also running are David Lillehaug, Ken Neisser, Paul Perlman, Sharon Readhimer, Ted Rogers, Rob Saltzman, James Ray Stremz, Tom Warrick, Patti Wells, Betsy Zeldin, and Lena Zezulin.

Many candidates addressed segments of their platforms to the issue of the funding boycott started by the Class of 1977; but no one position seemed predominant. A few candidates endorsed the boycott outright.

A large majority of those who mentioned the use of alumni giving suggested earmarking funds as a way of implementing desired changes in the Law School. Several candidates do not mention the topic of funding.



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Furor Grows Over MBTA Extension:

By Joshua Dratel

RECORD Special Report

John Mitchell was on his feet, agitated, as he motioned out the window toward the construction apparatus busy digging up Massachusetts Avenue at the Garfield Street intersection.

"They told us it wouldn't affect business," he declared. "But there's no parking, my customers are being ticketed to death, and I've had to cut from ten help down to six. I'd say it's affected 40% of my business."

"They" is the Massachusetts Bay Transportation Authority (MBTA) and "it" is the Red Line Extension Project that will establish stations at Porter Square, Davis Square, and a terminus at Alewife. Mitchell, owner of John Mitchell's Crops at 1722-A Mass. Ave., is one of many merchants along the avenue who claims the excavation at Garfield Street, only four blocks from HLS, is hurting business.

The MBTA is also being attacked by the Red Line Alert, a coalition of three Cambridge community groups, and the City of Cambridge. The latter two have joined as parties in a suit against the MBTA, already filed in Federal District Court, which is aimed at postponing all construction-related activities, forbidding blasting between Harvard Square and Porter Square, abandoning the Garfield Street/Mass. Ave. intersection as a major staging area, and prohibiting the MBTA from taking the Russell Athletic Field in North Cambridge.

The issues raised include more than compensation for suffering merchants. The controversy over the Red Line Extension involves the need for responsive government, comprehensive regional planning, environmental protection, and simple respect for ordinary citizens and their property.

Worst Fears Realized

"Our worst fears have been com-

pletely realized and more so," noted Henry Shawah of the Alert. "The MBTA did not tell us the truth as to the nature of the project. These people (the MBTA) simply do not care about us in the community. There are serious problems, yet they go merrily digging along."

A primary focus of the Alert's dissatisfaction is on the lack of an Environmental Impact Statement (EIS) that includes Alewife as the terminal station. The original plan called for a terminal at Arlington, but the EIS was never revised.

Alewife residents fear that post-terminal-construction development will affect the drainage in the area and create flooding problems. Moreover, sludge buried by the W. R. Grace Chemical Company is right in line with the projected tunnel from Davis Square to Alewife. A report by the geotechnical consulting firm of Goldberg, Zoino, Dunncliff and Associates Inc. (prepared for use by MBTA consultants) cited "extraordinarily high acidity and sulphate concentrations in the groundwater."

Residents are worried that the sludge, if not treated properly, might contaminate nearby Fresh Pond, a public water supply. The MBTA is currently studying the problem, but, according to Donna Garofano, the Assistant Project Coordinator, "results of the study have not been received yet."

Deliberate Deception

Although the above environmental concerns provide the basis for a suit under the National Environmental Policy Act (NEPA), area residents and merchants are most up in arms over what they consider to be deliberate deception and disregard on the MBTA's part.

"We thought at first that the MBTA was looking out for our best interests, but we learned differently later on," recalled Stephen Gay of the North Cambridge Planning Team.

Foremost among complaints of this nature is the Garfield Street excavation. MBTA literature des-

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What Would Charley Think of It All?



(Continued from Page 12)

ignated the Garfield St. site as an "Egress-Ventilation Shaft," with the bulk of the tunnel material being drawn from the ground via Porter Square (by an almost three-to-one ratio). Now the Garfield St. site is the major point from which the tunnel will be cleared. In addition, Morrison-Knudson, the contractor, is erecting a building at the corner of Garfield and Massachusetts Ave., despite the City of Cambridge's position demanding that the contractor receive prior permission from the city zoning board.

"It was the opinion of our general counsel that the MBTA and its contractor, having stated authority, did not have to go through local zoning boards," Garofano commented.

Residents also claim blasting was not predicted, but there will be some blasting at Garfield St. There will also be blasting down as far as the Holiday Inn, and the possibility exists that blasting will be required to clear bedrock from underneath the Harvard Square Station.

HLS was also taken by surprise. "We had no idea they would be pile-driving until they started to do

it," explained Russell Simpson, Assistant Dean for Financial and General Administration and supervisor of HLS's physical plant. In the future, though, the MBTA will give notice of noisy activity, and no structural problems are foreseen except for the recommendation that Gannet House be protected from excessively noisy construction activity, perhaps by soundproofing.

Present Problems

Massachusetts Ave. businesses are concerned with the present, however. The MBTA has not offered any monetary compensation for possible lost business, and Garofano states, "There is no precedent for making dollar compensation. So many factors are involved in computing sales figures."

Yet many merchants do attribute sales problems to the Garfield St. digging.

"It's had a lot of effect," offered Jim Ball of the Small World of Books at 1728 Massachusetts Ave. "We lost parking spaces, the walk-in crowd, and we do a large children's business that's hurting. With all this dust flying, too, it's going to be worse during the summer."

Others echoed these sentiments, and Jan Cornish of Reddog (1737 Massachusetts Ave.) added, "Customers have called to say they're wary of coming here by car because of the construction. We're losing business for sure." Reddog may also lose the advantage of its street displays due to the accumulating dust. The store has, however, filed photographs with the Buildings Department to certify the present condition of the building, in case of structural damage caused by the vibrations.

What to Do?

At Irish Imports, 1735 Massachusetts Ave., the saleswoman suggested, "There's nothing we can do as a business short of laying down in the middle of the street."

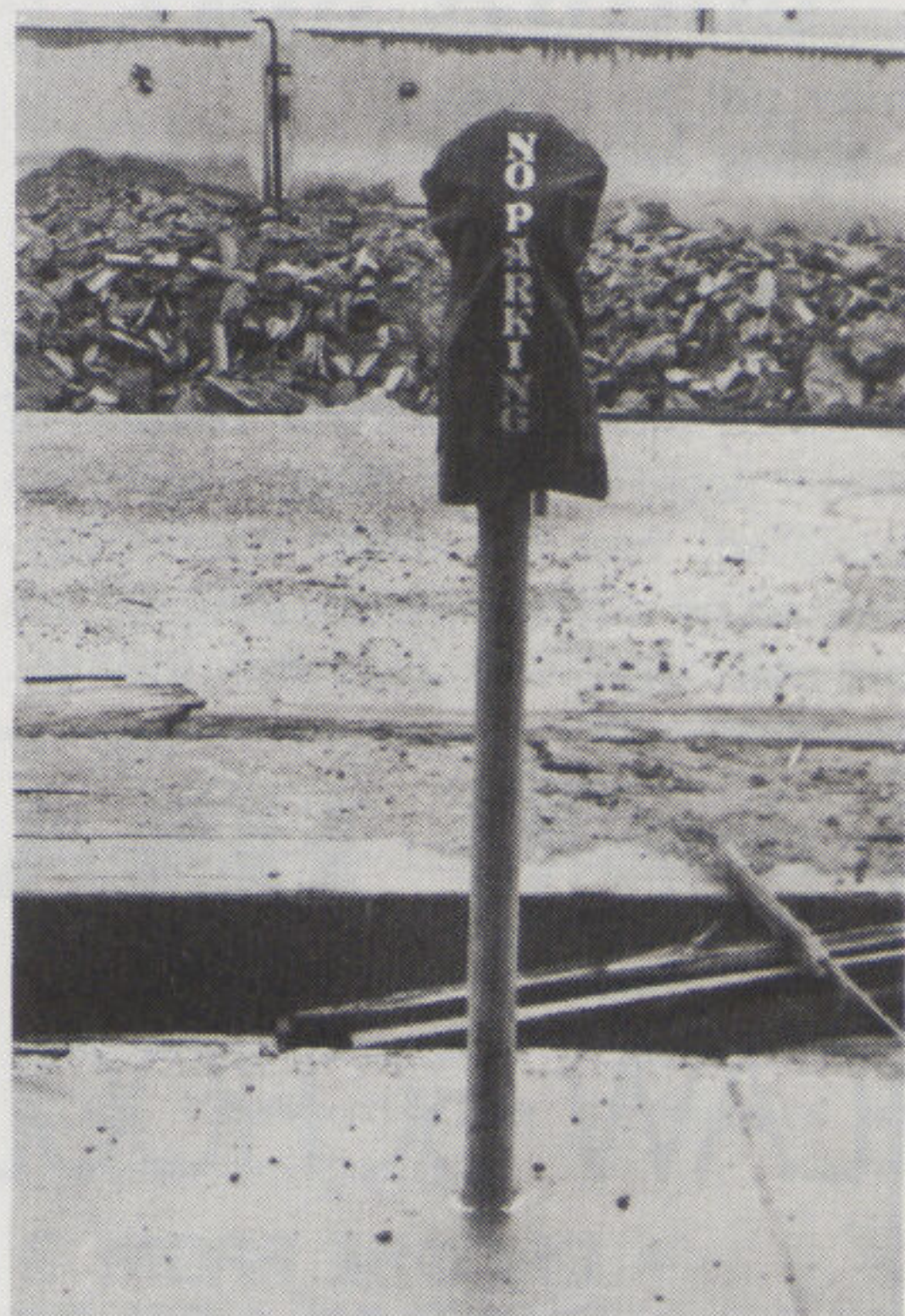
John Mitchell is in favor of doing something.

"We've got to fight, scream and yell; carry signs, march — Let's do something," he suggested. "If I turn my cheek to this thing, I'm out of business."

Some merchants believe the extension will improve business and do not see the problems with construction as so severe. Simon Shapiro, owner of Tag's Hardware in Porter Square and member of the MBTA-sponsored Merchants on the Line said, "People seem to be doing business. We'll have an economic growth and stabilization program beginning in June."

Indeed, the MBTA believes a promotion campaign to attract shoppers to the affected areas is all it is bound or willing to do to alleviate the project's adverse effects on area business.

"But it's not an ongoing thing and it (Merchants on the Line) can't solve the real problems businesses are facing," argued another



member of Merchants on the Line, Wendy Landry of Fabrications (1740 Massachusetts Ave.) Everything is tied up in bureaucratic channels."

And while some Harvard Square merchants adopted a wait-and-see attitude, Shawah issued a warning.

"The thing that amazes me," he

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Yale's Black Gives Holmes Lecture;

By Richard B. Bernstein

If Prof. Charles L. Black, Jr., has his way, the Ninth Amendment will assume a new role in constitutional jurisprudence, as the textual source of constitutional protection of non-enumerated rights.

Black elaborated on this theme in this year's Holmes Lectures, entitled "Decision According to Law," and delivered last Tuesday and Wednesday evenings in the Ames Courtroom.

Black, Sterling Professor of Law at Yale Law School, described his plan for the lectures: "I shall take some problems in constitutional law, and try to show that they are susceptible of solution by methods that may at least point toward the quality of lawfulness. These few thrustings at this great problem can have at the most a suggestive outcome; I am not ready, nobody is ready, for a general theory of lawfulness in decision. Still, we may catch glimpses, if not of the goal, at least of the start of the road. The prospect is not full of glory. But it may not be a dream."

Black began by considering general problems of judicial review, stressing the importance of the distinction between federal review of federal acts and federal review of state acts, a distinction which, he insisted, has too often been overlooked by writers on the subject. He argued that "federal-on-state re-

view" is by far the more important class of cases of judicial review, and, additionally, that it has a clearer basis in the text of the Constitution itself and in the functioning of the federal system.

Black denied that there is any "paradoxical" conflict between judicial review and democratic values "in the mere fact that a state statute is annulled by the Court on grounds in some way implicating national consensus." Rather, "the national judicial power, interpreting the national Constitution, can be in relevant conflict — relevant, that is, to the problem of consonance with democratic assumptions — only with the national

that "it recognizes certain enforceable rights other than those named elsewhere in the Constitution." The question remaining for discussion — "ascertaining what such rights are" — poses difficulty. But, Black contended, this is equally the case with "constructions [of the Constitution] under any other method of deriving unnamed rights." In the course of this discussion, Black sharply criticized the dominant methods of deriving such rights from the "due process" and "equal protection" clauses of the Fifth and Fourteenth Amendments.

"The Ninth Amendment," Black concluded, "makes possible fully

"The Ninth Amendment . . . tells us nothing as to the nature of substantive rights outside the text, but, unlike 'due process of law' and 'equal protection of the laws,' it irresistibly implies that they are there and fairly implies that they are to be given effect. . . . We need the Ninth Amendment for the sake of honesty and for the sake of utility."

democratic branch," that is, the Congress.

Unnamed Rights

Black then shifted his focus to the Ninth Amendment, claiming

rational discourse in the formation of personal rights law toward the construction of a coherent system. [It] could be the gate to the best kind we can make out of decision according to law. The drive for adoption of the Ninth Amendment is a quest after something very precious."

Black pointed out that, contrary to the fears of some Ninth Amendment scholars, "each single Ninth Amendment argument stands on its own." Giving it the dignity he argues it deserves would not necessarily open a floodgate to indiscriminate creation of rights not previously accorded Constitutional status.

Drawing from recent Supreme Court decisions, Black suggested how a Ninth Amendment analysis would have produced both results and rationales more consistent with

(Continued on Page 15)



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Urges Adoption of Ninth Amendment

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his conception of "decision according to law."

He levelled his sharpest criticism at two recent cases which narrowed the range of interests protected by the Fourteenth Amendment. In *Ingraham v. Wright*, a divided Court ruled that corporal punishment in public schools is not "cruel and unusual punishment" within the meaning of the Eight Amendment. In *Paul v. Davis*, the Court held that a person has no protected interest in his reputation. "I commend this case to you as antidote for any thought that textualism is allied to rationality, while the Ninth Amendment approach is not."

Addressing Many Issues

During the remainder of the lectures and in a free-wheeling discussion held on Thursday afternoon, Black also addressed a variety of related issues. One of the most important was the question of Congressional power to restrict the subject matter jurisdiction of the federal courts so as to foreclose federal adjudication of certain

"I think the idea itself of justice might never have come into being without the idea of law. . . Let us keep then to its quest."

kinds of cases. Black asserted that Congress has the power to remove clearly delineated classes of cases, but not to remove specific cases from the Court's attention. He suggested that "the contradiction to democratic assumptions is maximized" by accepting the idea of "an implicit constitutional reservation (saying) that all constitutional claims against the states must have a federal judicial forum for their assertion."

Black's presentation was shot through with humor, as was Prof. Henry J. Steiner's introduction to the lectures. Steiner, commenting that Black was the latest in a line of distinguished scholars invited from "small, modest, yet perhaps promising law schools," also noted

that by following this policy, Harvard had inverted John Kennedy's description of how to have the best of both worlds — "a Harvard degree backed by Yale's instruction." Yet Black's basic message was serious and challenging, as is illustrated by his concluding paragraph:

"... I think the idea itself of justice might never have come into being without the idea of law — that the idea of something's being due is coeval with and eternally bound to the idea that the ascertainment of what is due is a matter of reasoning from commitment — a matter of decision according to law. As with some other precious things, we cannot have this as a sure possession. Let us keep then to its quest."



Dan Rather on Protecting The Press

(Continued from Page 7)

you'll have to move; there's a class scheduled here."

Rather, who was to have completed his talk momentarily anyway, apologized to Oldman, as the embarrassed crowd gave the newsman a warm ovation and filed out.

One student was heard to remark, "And some people wonder why Harvard Law professors are called arrogant."

Oldman said later that a few students had mentioned the incident to him, expressing their unhappiness over the incident.

"I think most of the students realized it was a confused situation," he said. "There was an impossible conflict due to bad arrangements." [See "A Matter of Necessity", Page 11.]



Harvard Announces Ban on 'Gay' Discrimination

Committee on Gay Legal Issues
News Release

The Law School has adopted a policy forbidding discrimination against homosexuals, the Law School's Committee on Gay Legal Issues has announced.

The policy affects the admissions and placement offices. Any law firm or other organization which discriminates against gay people may not use the Law School's placement office to contact and interview students. Also, admission to the Law School or its graduate programs is not to be influenced by an applicant's sexual orientation.

The administration changed its anti-discrimination policy in response to requests by the Committee on Gay Legal Issues, a student group. In addition to forbidding discrimination based on sexual orientation, the policy change also bars discrimination on the basis of age, marital or parental status, or status as a Vietnam era or disabled veteran. Previously, the Law School had prohibited discrimination based on race, color, creed, national origin, sex, or handicap.

Other law schools whose placement offices forbid discrimination based on sexual orientation include Yale and New York University. New York University has banned the military from its placement office as a result of its policy.



Notes from the Underground



(Continued from Page 13)

confessed, "is that people at Harvard and Harvard Square don't realize what's happening and what's going to happen when construction really gets underway."

James H. Quinn, a realtor above Harvard Square (1384 Mass. Ave.) was equally pessimistic.

"I don't think MBTA has addressed the economic problems along the route at all," he charged. "If business is affected, what can be done? It could be that a lot of places will fold up and won't be around five years from now (when the project is scheduled for completion)."

Harvard Gets Bucks

Harvard University, though, is getting more than a mere promotional endorsement. Instead, it will be getting monetary compensation from the MBTA for easements and the removal of portions of the wall around Harvard Yard.

Although L. Edward Lashman,

University Director of External Projects, denied that any settlement had been reached, the MBTA confirmed that the figure will be in the neighborhood of \$1 million.

In contrast, the MBTA offered 56 Porter Square residents \$300 each for easements under their property that Quinn said "will diminish their clear market value."

The MBTA, while spare in its allotments for the non-Harvard community, is "spending money like a drunken sailor," according to Quinn.

The original projections were for a \$244 million project, with construction beginning possibly in 1976. But construction began last fall, and the cost increased first to \$440 million, and the current figure is \$561 million. And the bids for the Porter Square and Davis Square stations have yet to be received. The scheduled date of completion is, according to Garofano, "sometime in 1983."



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Jaffe Tells About HLS In Bygone Age

(Continued from Page 4)

cated", published shortly before he moved on to HLS in 1950. Jaffe recalls, "I started the Law Review — that was fun!" Remembering his decision to come to HLS, Jaffe continued, "My son, who was then about nine (now a lawyer in private practice in NYC) was only excited above the move because he would be closer to the Red Sox and Martha's Vineyard."

Notable Changes

Having spent 29 years on the HLS faculty, Jaffe has noticed several changes in the institution. "Women were admitted right after my return, and the coeducation of HLS has been the major change." Jaffe also observed, "The school has grown bigger — with more professors and courses." Formerly, "the only extracurricular activities were *Law Review*, Legal Aid, and Moot Court." While Jaffe is ambivalent about the increasing clinical orientation in many courses, he believes firmly that, "It is very valuable to teach courses that touch on law but connect it with other disciplines — such as law and economics, society, or philosophy."

Since retiring several years ago, Jaffe has advised "several labor arbitrations," an interest which dates from his Buffalo days, which he "enjoys very much." Jaffe is also an avid reader, having "recently completed two volumes of Dickens, *Wuthering Heights*, and Bate's biography of Johnson," and now is enjoying the works of Proust "for the second time." Jaffe also plays bridge frequently, swims daily, and is a movie buff.



Sports Answers

1. Luke Appling
2. Roy Howell of Toronto
3. Sheraton-Boston
4. Jeff Millar and Bill Hinds
5. Babe Ruth (59 in 1921)