

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 70, NO. 2

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FEBRUARY 15, 1980

TWENTY-FIVE CENTS



By David N. Johnson

Auctioneers Bonny Garcia, 2L, and Eddie Mishow, 2L, taking charge of affairs during last Friday's "Casino Night" at Harkness Commons. See story, page 2.

Liberties Lawyer Boudin Named Shikes Lecturer

By Steve Friedland

Leonard Boudin, a prominent civil liberties attorney whose clients include the Central Bank of Iran and the Socialist Workers Party, and who has represented Daniel Ellsberg, Dr. Spock and Julian Bond, will become the first Ralph E. Shikes Visiting Fellow at HLS this March 14th. Boudin, who was a Visiting Professor at HLS in 1970-1971, will remain at Harvard for one week.

The fellowship, established by a grant from a 1933 Harvard College alumnus, enables the Fellow to become an active and involved member of the law school community. According to Professor James

Vorenberg, Boudin will "spend time with faculty members on projects . . . , meet with students on an informal basis, and give at least one announced talk, the subject of which has not yet been determined."

Mr. Boudin has great expectations for his visit. When reached in New York City, he commented: "The Fellowship enables me in a sense to relive in a concentrated way the happy year I had at Harvard in 1970-1971 . . . , and to renew the acquaintances and good relationships with faculty, students, and staff." Boudin is familiar with many law schools and universities, yet he finds Harvard to

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Non-Delivery Of Newspapers Prompts Suit

By David Quinto

"In my opinion, the whole cause of all this ruckus is Harvard College Dean of Students Archie Epps III himself," says Eliot News Company Circulation Manager Arthur Conrad, explaining why Harvard University students so often fail to receive their copies of the *New York Times* and the *Boston Globe*, which the Harvard Delivery News Service (HDNS) has contracted to supply.

The "ruckus" which Conrad refers to has already led two Harvard College freshmen, Benjamin Zurier and Elliott Royce, to file suit against HDNS on January 28 in the Middlesex County Small Claims Court and has led College students in Winthrop and Quincy Houses to threaten suits. It has also led the *Boston Globe* to threaten a supply cut-off to HDNS and has forced Epps to strip HDNS of its franchise to deliver the *Globe* to Peabody Terrace and Soldier's Field Park. "Service in these areas has improved 100%," said Godfrey Kaufman, *Boston Globe* circulation manager.

In response to University-wide complaints of poor delivery service that date back years, HDNS, under the new student management installed by Epps, has launched a highly-controversial and possibly illegal refund policy.

"I think there's no money to give anybody — that's just my opinion," Conrad said in reference to the problems *Globe* subscribers in Peabody Terrace and Soldier's Field

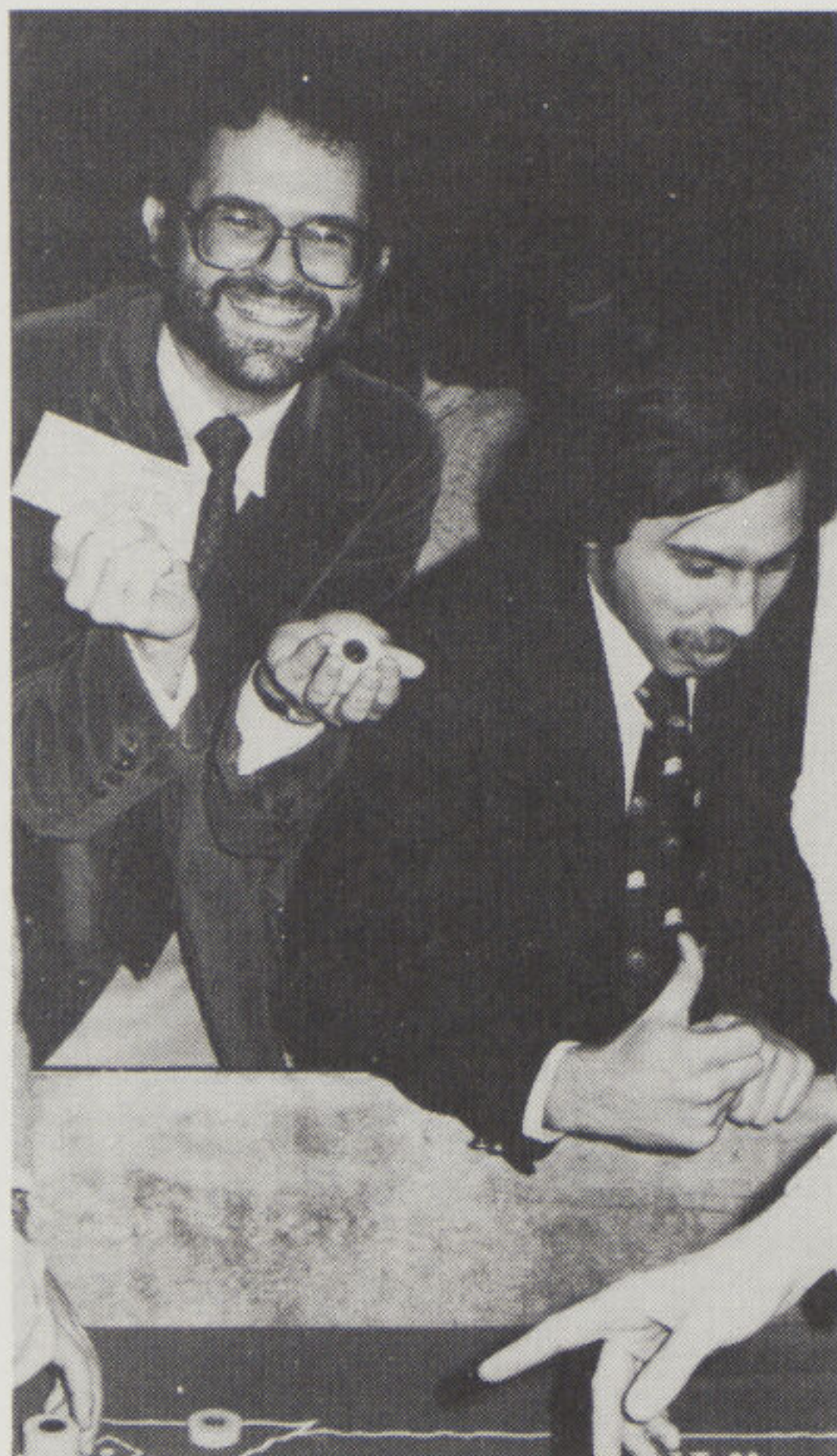
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'Casino Night' Offers Odds, Oddities

—Jim Coster

Would you risk \$2.00 for a trip to the Bahamas? Evan Slavitt, 2L, did and when Casino Night ended, he and his companion, Deborah Katz, were planning when they would be leaving for the Caribbean.

The Ropes-Gray Room sprang to life last Friday to the tunes of



Jeff Kichaven, 3L, and Stuart Goldberg, 1L, try their luck at craps.

"Formation" and the dancing of several hundred law students. The dress for the evening was predominantly formal, but there were some unique combinations of tuxedos and tennis shoes, cowboy hats and tweed jackets.

There was an air of exotic



By David N. Johnson

Evan Slavitt, 2L, and Deborah Katz rejoice after winning the evening's top prize: a trip to the Bahamas.

intrigue as the "high-rollers" grouped round the gaming tables, and the attractive waitresses (provided by Simmons College) mingled with the crowd.

Next to the 'Wheel-of-Fortune' stretched a string of Black-Jack dealers, their faces seeming rather familiar. Prof. Oldman and Asst. Dean Young were busily dealing out cards and Dean Sacks drew a crowd of spectators and chance-takers around his card table.

The dean handled his cards with a subtle finesse. He casually buried the top card of the deck and then proceeded to lay out two cards face up, and face down to the five players. As the players examined their cards, a smile from the dean signaled, "Do you want a hit or will you stick?" As the winner of each hand revealed his cards, the dean exclaimed, "Not bad!" and counted out the winnings to the lucky

player. On occasion I sensed a subtle slyness to the dean's smile when the house won the hand, but he seemed just as happy to pay a winner; fairness and justice to all.

I thought it would be interesting to get the crowd's opinion of the evening. I approached an attractive young woman and inquired what kind of time she was having. "Well I'm having a good time but they're not putting enough ice in the drinks."

I moved on to a group of women inconspicuously wearing green and blue children's sunglasses. They would only be identified as the "Canadian Contingent." "What do you think of the men of HLS?" I asked. "Not bad. There are possibilities."

I approached a blond-bearded 2L wearing a combination sombrero-Billy Jack type hat and suede coat. "Why did you come?" He answered, "I wanted to get trashed in a classy environment." Another famous face caught my eye. Mary Upton seemed jovial: "I'm having a dynamite time! I knew nothing about gambling before tonight. I gave away most of my chips before I found out what was going on."

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HARVARD LAW RECORD

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$2.80 semester, \$7.00 year mailed; \$9.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 25 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1980 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation.

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Seven Profs Late With Fall Grades

By Michael Smith

Only a few professors have missed the deadline for having their grades in the first distribution of fall term grades, according to Mary D. Upton, assistant dean and Registrar. As of 4 p.m. Tuesday, seven professors, whose grades should have been in the first distribution, will not have their grades included.

Of the seven, several received extensions of the deadline from Up-

ton. Prof. Laurence H. Tribe has been given an exception for the grades in his Constitutional Law class. Prof. Eric D. Green also has been given an exception for his fall Evidence class.

Prof. Robert C. Clark has turned his Corporations grades in to the Registrar's office, but they were not in time to be processed for the first distribution. Grades for Constitutional Law and Minority Issues and Educational Policy and the Law, both taught by Visiting Prof.

Charles R. Lawrence, are in the mail to the Registrar's Office.

There are several classes for which the grades are not in and for which no extension was granted. Prof. John H. Mansfield has not submitted grades for the twenty-six students in his fall Evidence class. He has, however, turned in grades for the fifteen people in Church and State. The 119 people in Prof. Martha A. Field's Federal Courts class will also not be receiving grades this go-round. The third professor for whom grades are missing is Prof. Charles M. Haar. He taught Land Use Planning to eighty-six students.

Examples of the classes for which grades are in and will be distributed are the 148-member Copyright class taught by Prof. Arthur R. Miller and the Criminal Process class of 134 taught by Prof. Lloyd L. Weinreb. Several other classes of over one hundred students also have their grades in, including Prof. Andrew L. Kaufman's Commercial Transactions and Ass't. Prof. Todd D. Rakoff's Administrative Law classes.

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Presidential Race Underway For Top Law Review Position

By Steve Friedland

As the race for the presidency of the United States gathers steam, a different presidential race is quietly progressing much closer to home — the campaign for the presidency of the Harvard Law Review. This race, which will culminate in an election on Feb. 23, is for the only elective office on the *Review*. All of its other administrative officers, including the managing editor, executive editor, and the treasurer, are selected by the president.

According to Brian Cartwright, 3L, the current president, it has been the tradition in recent years for the process to begin by 2Ls submitting their own names to the president. All 2L members are eligible, regardless of age or whether they joined the *Review* on the basis of grades or writing competition. Even so, there appear to be preferential candidate qualifications.

In past years, two third-year students were assigned to read each candidate's file (which consists of all the work the candidate has done for the *Review*), and report on the quality of the file. The reports were traditionally given during a meeting of the 3L *Review* members at which the number of candidates is pared down to six. The criterion used to determine which candidates shall remain in the race was — and remains — "the editorial

ability of the candidates on the basis of their files," Cartwright stated.

Process Revised

At a *Law Review* meeting on Jan. 16, however, the procedure was revised so that now the entire *Review* will participate in the preliminary selection process. Moreover, two

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Loss Gets Research Award

By Richard B. Bernstein

"Now and again an individual becomes so identified with a particular area of the law that his fellow lawyers find it impossible to write a brief or an article touching on that area without citing his work as authority. So it is with Professor Louis Loss and securities law." With these words, the Fellows of the American Bar Foundation conferred their 1980 Fellows Research Award on Prof. Loss at their 24th annual meeting in Chicago on Feb. 2.

The Foundation, the research arm of the American Bar Association, has granted the award "for outstanding research in law and government" since 1957. Prof. Loss is the fifth HLS professor to receive it, the others being former Dean Erwin N. Griswold, Austin Wake-

man Scott, A. James Casner, and Paul Freund.

Loss, who has taught at HLS since 1952, is the author of *Securities Regulation*, the authoritative treatise in the field. His most recent accomplishment was serving as Reporter to the American Law Institute's Federal Securities Code Project. It was in recognition of the completion of the Code that the Foundation honored Prof. Loss.

"It is fitting that The Fellows of the American Bar Foundation should honor Prof. Loss with the Research Award . . . in recognition of this important scholarly achievement as well as earlier ones," said the Fellows' citation. "We are fortunate to have as a colleague a lawyer and scholar so rich in talent and so generous in sharing that talent with the rest of us."

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Byers Inquires into 1L Job Interests

By Bennett Murphy

Fantasize for a moment: As you kneel into the soft earth your knee sinks two inches in the muck. You scoop up a handful of soft black dirt and nod knowingly at the yokel who gapes attentively at your side. You start your pitch on furrow width, proceed to stalk sizing, and finish with a flourish, confident you've concluded a major seed transaction. How does that sound? Would you enjoy selling the better ear of corn to farmers far and wide? No? Try this: The red light goes on over camera two, the floor director signals, and Jane Pauley starts her introduction. She hasn't read your book, but even if she had, you could handle any question she could think of. She bares her grin and you bare yours. Why shouldn't you smile? You're articulate and a good writer, too, and your most recent critique of the political process is on its way to best-sellerdom.

If the latter fantasy piqued your interest but the former left you limp, you're in good company, because your answers match those of the typical first year student at Harvard Law School. About a third of the Class of 1982 returned survey forms and were scored on the Strong-Campbell Interest Inventory, a standardized test which purports to measure overall interest in 23 general career activities, including "Law/Politics", "Agriculture", "Writing" and "Sales", and



Dr. Mark Byers

M.M.

compatibility with the "lifestyle and world view" of workers in over a hundred occupations, from "psychologist" to "highway patrol officer."

Though it makes no inferences about an individual's abilities, the inventory is useful in career planning, according to Dr. Mark Byers of the HLS Placement Office, who sponsored the 1L survey. Dr. Byers has also begun applying aggregate results in his ongoing analysis of the characteristic motivations of the HLS student body.

Feeling Like a Lawyer

Two quanta likely to draw the attention of the 233 1Ls who responded to the survey are the law/politics general interest scale and the lawyer occupational scale. The mean score for the group on the general measure was 59, well above the national means of 47 for women and 52 for men. The standard deviation of the 1L scores was 6.94 which means, for those with a low score on the mathematics scale, that 68% of the group scored between 52 and 66.

Occupation scales for lawyers are scored separately for men and women because male and female lawyers have, in fact, given significantly different responses to the same questions over the years. But because the female lawyers were

sampled when barriers to female participation in the profession were stronger, the female lawyer scale, according to Byers, "over-values the rejection of the stereotypical feminine role." The two scales measure different things, according to Byers, and a 1L of either sex can learn from both scores.

The 1L sample as a whole scored higher on the female scale, with a mean of 51, than on the men's scale, with a mean of 45, though both were well above the national average. A 1L with a high female lawyer score and a low male lawyer score has "a strong general career orientation, rejecting the traditional role of housekeeping and family responsibilities," Byers suggested, while a 1L with the reverse pattern is "a lot like male lawyers, with an interest in power politics and verbal expression but retaining an interest in traditional activity as well."

Of the 1Ls with high scores on both scales, Byers said, "They can't lose in the field they have chosen — they will be very happy." Low scores on both scales, particularly a male lawyer score below 36 and a female lawyer score below 42, indicate that the 1L "may be feeling some alienation from his or her classmates and from the profession of law."

Over a hundred other occupational scales are reported, each of which measures compatibility with the career according to the degree of similarity between the subject's responses and those of a pool of workers in each occupation. Byers reported that the odds that one will end up in a career with which one is statistically "compatible" are 3 to 1, while the odds against ending up in a career with which one is "incompatible" are 5 to 1.

More certain predictions are possible in the general interest categories. It is very unlikely that the typical first year student would enter the field of agricultural sales, since the job would represent a convergence of three interests tied for last in the survey, each with a

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Charles Fried's 'Right and Wrong':

Chris Savage

Charles Fried, *Right and Wrong*. Harvard University Press, viii + 226 pp., hardcover \$15.00, paperback \$4.95.

Prof. Fried is fighting the good fight. *Right and Wrong* is an attempt to create an intuitively satisfying moral theory that is neither mere utilitarian calculation nor simply a description of our society's behavioral norms. His creation is not wholly adequate on either ground. Even so, it is worth some effort to see what the theory is, and to understand why it is not equal to the tasks he sets for it.

Fried's prime enemy is consequentialism. Utility theory, in its various forms, is the leading example of this moral approach. Consequentialism says that the only way to tell the moral value of an act is by the value of the results it produces. If by killing one person, X, you can save Y and Z, then under consequentialism your killing of X is certainly justified and may be required, even if you yourself are not threatened by X. Fried argues that this is an invalid approach. For him the relevant notions are "respect for persons" and "intentional action." An act is absolutely, categorically wrong (rather than just *bad*) if it is an intentional violation of the respect to which another person is entitled. In the example, even though a bad thing will happen if you don't kill X (*viz.*, the deaths of Y and Z), it is wrong for you to do so, since you would have to treat X as a mere means to your end (saving Y and Z). You cannot do this, Fried argues, and still treat X as a human being.

Theory of Rights

Based on these notions, Fried develops a theory of rights. Rights come in two types, negative and positive. Negative rights correspond to intentional harms — if it is wrong to stab someone intentionally, then everyone has a right



Prof. Charles Fried

not to be stabbed intentionally. Positive rights are much more complicated. Roughly, everyone has a right to a fair share of society's scarce goods (distributive justice) and the right to choose one's own life path (freedom of choice).

Especially convincing is Fried's critique of the economic analysis of rights. Under that analysis, rights are bargained for (or bargained away) in order to reach efficiency; they have no intrinsic moral value. The only moral issue is the just distribution of the efficiently produced goods and services. Fried correctly points out that unless one has a pre-bargain right not to be coerced by violence or deceived by fraud during the bargaining, then that bargaining is invalid as a procedure for determining rights. The economic approach to rights is seen to be at best a mere description of how people behave (rather than a moral theory) and at worst self-contradictory.

Despite the value of this critique, Fried's own analysis of rights and wrongs presents a number of prob-

lems. The most important of these is that it isn't at all clear that he has broken the bonds of consequentialist thought. The first sign of this is that some of the versions of consequentialism which he attacks in the first section of the book look like straw men, their defects exaggerated to make them easier to shoot down. Another indication is that he himself seems to concede in a footnote on page 13 that the main difference between his view and the sophisticated utilitarianism of modern economic theory is in style of presentation. The most serious sign is that one can reach Fried's conclusions about appropriate behavior within a consequentialist system.

Consequentialism in general does not tell you how to value results, but it does say that only results count. One can reach Fried's results in a consequentialist system by treating a good outcome achieved by proper means as a different outcome entirely than the same "result" achieved by im-

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Fighting the Good Fight

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proper means. The perfectly natural vehicle for making this distinction is memory. Since we will remember how we got to the good result, giving a high negative value to the memory of having used an improper means (lying, killing, and so on) will cause us to avoid them. The memory of the means is bad enough to cancel out the good results we may get by using them. On this view, Fried is just a consequentialist who cares more about means than about ends.

The second problem with Fried's theory is the source of his substantive moral judgments. They are based on his notion of "respect for persons," which appears in turn to be based on two things: Fried's intuitions and Kant. Both of these are arguably simply cultural

artifacts, the result of being socialized to believe certain things about people, society, and appropriate conduct. (There isn't enough space to demonstrate here how this argument applies to Kant.) This criticism reduces Fried's theory to a description of his own moral socialization, but nothing else. Part of the challenge Fried faces is how to give a moral scheme some teeth while resisting the charge that the prohibited and required acts are nothing more than a statement of modern Western values. He has not met that challenge.

Free Choice?

The third major problem with Fried's theory is his reliance on the notion of free choice. When people have unequal economic, cultural, and educational opportunities, some of us will be pushed by poverty, ignorance, and oppression to choose "wrongly." This is the idea that a person can be a victim of

circumstance. Once we accept this idea, though, the concept of free "choice" becomes obscure. This highly theoretical matter hides a serious problem: since those most likely to be "victims of circumstance" are the least advantaged, a theory which fails to take account of their circumstances allows the privileged, educated segment of the population to morally condemn the victims of society's currently unjust arrangements for precisely the acts which the victims see as the most effective means of resistance. One wonders about such a theory.

Despite its weaknesses, Fried's view is interesting and valuable. It is certainly on the right track in trying to avoid consequentialist thinking, and certainly on the right track in searching for "absolute" moral judgments. It seems, thought, that a more serious departure from traditional moral theories is needed to escape from their limitations.



SPORTS QUIZ

Note: This week's Sports Quiz deals with some of the minor factors of some of the greatest moments in sports history. Don't worry, it really isn't that picky . . . but you may think otherwise!

1. The longest professional football game in history was the playoff battle between the Miami Dolphins and the Kansas City Chiefs which lasted over 7 minutes of the second overtime period. Who scored the winning points in the game? (Hint: the winning margin was a field goal.)

2. Red Berenson holds the modern-day National Hockey League record for most goals in a single game, scoring 7 in a game against the Philadelphia Flyers. Who was the Flyers goalie in this rout?

3. The Los Angeles Dodgers provided the opposition for the Atlanta Braves when Hank Aaron hit his record-breaking 715th home run. Who was the Dodger pitcher who served up this momentous round-tripper? (Extra credit if you know who caught the ball in the Braves' bullpen when it landed.)

4. Tom Dempsey holds the National Football League record for the longest field goal ever made. What team did Dempsey's famous kick in the final seconds beat?

5. On March 2, 1962, Wilt Chamberlain set a single-game scoring record for the National Basketball Association when he scored 100 points in a single game. What team provided the opposition in this one-sided contest?

(Answers on Page 16)

Liberties Lawyer Boudin Named Shikes Lecturer

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have a particular allure: "The Harvard student body is one that I'm most interested in meeting . . . and the character of Harvard has a special attraction."

The choice of the 67-year-old Boudin as the first annual Shikes Lecturer was made by the same faculty committee that chooses the Biddle and Holmes lecturers. The selection is not surprising, said Vorenberg: "He was an obvious choice as the first lecturer. He's a leading civil liberties lawyer." In addition to having famous clients and having taught at HLS, Boudin also is a founding partner of Rabinowitz, Boudin and Standard of New York City, serves as general counsel to the National Emergency Civil Liberties Commission, and has taught at the Boalt Hall School of Law.

Boudin will live at Kirkland

House during his stay, and will be available to the college as well as the Law School.

"The theory behind the fellowship," commented Boudin, "is to introduce periodically someone who comes from the field of civil liberties/civil rights who may give a short insight into the practice of law in those fields . . . I will try to have a number of informal seminars and talk about the practice of law from my point of view."

Given the probable demands on his time and the number of friends and acquaintances he has at Harvard, Boudin will undoubtedly have a jam-packed week. Boudin takes pain to emphasize, however, that he can and should be snared by interested students: "I do hope students will feel perfectly free to hunt me down and talk. I am very definitely available."



'Trumpet' Blows Off-Key

Joshua Dratel

It is difficult to transform constitutional law into good cinema. A process that relies on detailed yet broad argument and a depersonalized appeal for relief does not lend itself easily to an art form that thrives on personal drama and nail-biting plot development. Unfortunately, "Gideon's Trumpet," David Rintels' television adaptation of Anthony Lewis' acclaimed book of the same name, fails in its attempt to make the transition.

The strength of Lewis' book lies in its careful yet fascinating description of the constitutional apparatus against the backdrop of a quite ordinary criminal case and the combination of the two in formulating new legal doctrine. However, Rintels' production (which he wrote) is basically a bore and it left one yearning for a station-break during Monday night's special preview, held in the Ames Courtroom.

Lewis pointed out that the problem of compression (from book to the screen) is a severe one, but added, "I think it (the movie) was faithful to the character of Gideon and to the Supreme Court process as well."

But the film was still ponderous and unevenly paced. Although Rintels claims, "I've always revered the book, and I tried to do it accurately," he could not resist indulging in the classic television excess: gratuitous, superficial and contrived sentimentality.

HLS Professor John Hart Ely, who worked on the case in the office of Abe Fortas, Gideon's appointed counsel before the Supreme Court, remarked, "The story was changed and stylized to make the movie more interesting, but as a result it was not [in line with] the book, or what happened as I remember it."

But the major problem is the casting, particularly the choice of Henry Fonda as Clarence Earl Gideon, the Florida defendant whose

case, *Gideon v. Wainwright*, resulted in state criminal defendants having the right to a lawyer at trial. Fonda's portrayal of Gideon enables the show to follow the cinematic/television model that combines both moral and legal conclusions, creating a unified moral and legal absolute that rarely occurs in reality. The overwhelmingly positive image that Fonda represents by virtue of his acting career (as shown by the spontaneous applause that greeted his name during the opening credits) makes it imperative that Gideon be vindicated. This reversion to the "American Hero syndrome" obscures the real value of Gideon's struggle: that everyone, including ordinary (Gideon) and even despicable defendants, is entitled to the protection provided by constitutional guarantees.

"This reversion to the 'American Hero syndrome' obscures the real value of Gideon's struggle: that everyone, including ordinary (Gideon) and even despicable defendants, is entitled to the protection provided by constitutional guarantees."

In response Rintels maintained, "Even if Adolf Eichmann played the character (Gideon), he would have inspired sympathy." One need only see films such as "The Onion Field," or "Dirty Harry," or television series like "Starsky and Hutch," "Hawaii Five-O," or any cops-and-robbers drama in order to dismiss Rintels' claim as at most a modest fantasy. Fonda is good, he is innocent, and therefore the audience cheers his constitutional victory. James Woods, "The Onion Field's arch-villain, is evil and guilty, so the viewers are unwilling to grant him any constitutional favors. In the moral/legal code of the trite melodrama, the good get their just reward, the bad receive their due punishment.

But there are other casting mistakes, although there are fine performances by Dolph Sweet, solid as the prison librarian, Jose Ferrer, convincing as Fortas, and, most entertaining of all, Lane Smith as Fred Turner, Gideon's lawyer in the subsequent re-trial.

And while Ely's historical role is relegated to dutiful listening ("I remember talking occasionally," he noted), the Supreme Court is woefully miscast. John Houseman ("The Paper Chase's" Kingsfield) brings an inappropriate professorial arrogance to the role of Chief Justice Earl Warren, and Sam Jaffe exhibited more wisdom as the High Lama than he does as a withered Associate Justice. As for the simulation of a Court conference, forget *The Brethren*. This one is closer to Abbott and Costello or a senile gin rummy game at the old

folks' home. Gideon is more articulate and coherent than are the Justices.

But the key flaw remains the use of Fonda to play Gideon. The latter's heroism, and the greatness of his story, is founded upon his anonymity — and when you employ Henry Fonda, you're not talking anonymity. Instead, Fonda lends an image of honor and nobility that allows for the perpetuation of the mythology that our criminal justice system contains an inherent morality.

Yet Rintels insisted any character in such circumstances would enjoy the sympathy his production inspires in Gideon's behalf. "What about Dolree Mapp?" Rintels

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Byers Inquires into 1L Job Interest

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mean score of 45, namely, sales, nature and agriculture. The life of a politically-minded author-lecturer, on the other hand, would involve the top three interest categories, law/politics, writing, and public speaking. The variances of the scores for the top two were quite low, indicating a consistent interest in these areas among the 1Ls.

The fourth-ranked interest category, music/dramatics, produced a mean measure of 54 with a high variance, evidence of what Byers termed a "bi-modal split" between 1Ls with a yen for self-expression and those who are more reserved, "an observation confirmed by experience in class and in court."

Byers noted that interest is only

'Trumpet' Hits Hollow Notes

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asked. Yeah, what about Dolree Mapp? Dolree Mapp, a black woman peddling pornographic pictures; Dolree Mapp, who embarrassed Ohio in a landmark search and seizure case; Dolree Mapp, who, for her contribution to American legal history, was framed on a heroin rap and is currently serving one of those Rockefeller eternity-terms in a New York State prison. Yeah, what about Dolree Mapp? Her story has yet to rate a television dramatization or even a book — just some articles of concern and outrage in New York City's alternative weeklies.

Perhaps Gideon is a better subject for television than Mapp. But Rintels still took the easy way out, passing up a perfect opportunity to help America come to grips with the ironies, triumphs and ramifications of its constitutional protections: he would have done better to have either Richard Boone or Jack Palance play Gideon. Or maybe, consistent with the casting scheme, Rodney Dangerfield — he don't ever get no respect.



one criterion in the career-choice process, but he believes it to be a crucial one "unless you have a reason to court unhappiness." Some have "a lot to gain from challenging the value structure of an occupation and choose alienation," he pointed out. Other non-interest criteria, including family traditions and economic constraints, operate to diminish the predictive value of the survey. And of course, because the 1L sample represents a group that has already made significant career choices, the guidance value of the inventory is diminished as well. Nevertheless, Byers believes that "the test is a useful tool for self-assessment." A first year student who has scored highly in the business or public policy-related categories, for

example, should consider combining his J.D. with another degree or otherwise steering himself toward a career in that field.

Dr. Byers intends to use the survey results in his efforts to match HLS students with careers in public interest law. He believes that the test can reveal "what kinds of law students are willing to make the commitment and the sacrifices" required of a public interest lawyer. Byers plans to follow up on those with public interest goals and see who continues in public service and who drops out. A comparison of the scores of these two groups could yield a means for making a prospective judgement of the stamina of HLS students considering a public interest career.



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MIO-633

Pencils Ready?

This test is to be taken by all HLS students about to receive grades:

A. TRUE/FALSE

1. Most students consider feedback from their professors to be an important component of their education.
2. At HLS, the primary source of feedback is the examination.
3. At HLS, the prompt return of grades enables the student to relate the grade to the content of the examination and the course.
4. Careful criticism and responsive comments by professors on graded exams allow the student to glean great insight into the strengths and weaknesses of his legal knowledge.

B. MULTIPLE CHOICE

1. Grades, which purportedly measure students' understanding of courses, are instead used as:
 - (a) A student's measurement of self-worth
 - (b) An employer's measurement of a candidate's ability
 - (c) An accurate indicator of a student's competence (see essay 1 if you believe this one)
 - (d) A liberal institution's humane substitute for fingernail pulling and the Chinese water torture
2. When grading exams, professors look for:
 - (a) Lucid prose and a keen grasp of the issues
 - (b) Ability to apply difficult concepts to novel situations
 - (c) Stylish penmanship/Kelly Girl typing
 - (d) The nearest flight of stairs

C. ESSAY QUESTIONS

1. "Once you get the hang of them, Law School exams make sense." Comment.
2. "A" slips and falls. Discuss all legal consequences to "B."
3. Although we did not discuss this issue in Criminal Law, discuss the relevance of the Clayton Anti-Trust Act to the Model Penal Code murder provisions.

(Exams will be returned next June, without comments, upon presentation of an I.D. card at Boston Garden, Elsie's, and the usual ticket locations.)

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Fenno

"Okay — hold it right there. Put your hands on your heads and turn around slowly."

Fenno shone his flashlight beam on the faces of the two well-dressed men quaking before him. He smiled — a grim, remorseless smile of recognition. "Of course — the Napoleons of Crime, Deans Albert Sacks and Charlie Nesson. And what have we here?"

He ripped open one of the cartons at their feet. "Just as I thought. Graded exams. That just about wraps it up, doesn't it?"

"We don't know what you're talking about, Fenno," Nesson rasped.

"I doubt that," replied Fenno, "but I'll tell you anyway."

"I always wondered why HLS tolerated a Child Care Center. All this space here around us devoted to kids — it wasn't in character. Well, I finally figured it out. Every now and then during January, professors sneak over here with overstuffed shopping bags. Six to eight weeks later, grades come out. All I did was put two and two together. Using pre-schoolers to grade Law School exams, corrupting children at such an early age, making them unwitting accomplices in a colossal fraud — you should be ashamed of yourselves!" Fenno said in a rare burst of rage. The deans hung their heads. "Well, this little racket of yours is washed up. When I expose the *true* source of random grading —"

"And how do you propose to do *that*, Mr. Fenno?" interrupted Dean Sacks, with an evil grin which, for some reason, made Fenno nervous.

"Why, the news media — the *Times*, *People*, '60 Minutes' —"

"What makes you think they'll print it?"

"Oh, I see — you're pulling strings, weaving conspiracies. Well, it won't work," Fenno said bravely, concealing his apprehension. "There's always the *RECORD*, isn't there?"

The dean smiled even more fiendishly. "What makes you think anyone will *read* it?"

Still holding the hand phaser on them, Fenno looked down at his painstakingly-assembled collection of evidence. He sighed and tossed his notes and videotapes into the trash can. "I guess you're right." ☿

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Letters to the Editor of the RECORD

Why Use Quotas?

To the Editor:

With reference to your issue of October 19th recently received, those of us who graduated as many years back as I did had the belief that we had to prove our aptitude for the law during our first year and give promise of such an aptitude before being admitted.

Thus, I read the desire of the ladies to have equal representation of sexes in the law school with a rather jaundiced eye. If the fair sex has members who give promise of having an aptitude for the law, then by all means admit them, but why the quota, because that is what it would be however you term it in today's language.

Edgar J. Schoen, '19
Chicago, Illinois

We're Sure

To the Editor:

I enjoy your publication and find your Sports Quiz most challenging.

Are you sure that the answer to Question Three in your November 20, 1979 Edition is

Bud Collins, the Boston Globe Tennis Commentator.

Henry W. Lyons, '47
Lowell, Massachusetts

Cryptic Law

A thought perhaps relevant to most of law school work . . .

Xnt feoxhelthim di "r xhldra gexnth"
. . . , r atht gedox ew neoh, ew ifrhftzm aeht
xnro dhdxrxdeo, dolezldob oe ijqixroxsrz
doxthtix. Tkftgx xnr dx hrditi ro doxthtix-
dob gedox ew zrp, dx pejzu qt r prixt ew xdat
weh tlthm eot feofthotu.

(Solution on Page 16)

'Casino Night' Offers Odds And Oddities

(Continued from Page 2)

I walked past the Wheel-of-Fortune to the Chuck-a-Luck and heard someone say, "You know you should never count your money while you're sitting at the table." It sounded a little like something from an old Western. I asked cowboy-hat wearing Ed Mishow, 2L, for his reactions. "Everyone is having a swell time. It's all for a good cause (Los Niños children's orphanage in California, helping Mexican children) and would not have been possible without the Dorm Council. Special mention must go to Chip Parks, Steve Smith, Barb Hanson, and all the great girls from Simmons who helped serve drinks."

I noticed Judy Sussman gathering up chips and putting things away. I asked if she had had a good time. "Call me tomorrow morning."

BY

BUTTNOSE

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BY KELLY & LEVINE



Stop (Protesting) the Draft

Richard B. Bernstein and Kaye Thomas

On a cold day in January, President Carter increased the wind chill factor for some by setting the first hint of a new draft blowing across the land. The opposition of many liberals on this campus and elsewhere was immediate and unequivocal, leading us to wonder whether we can be liberals and *not* oppose the draft. We know there are conservative arguments for the draft, but are there liberal arguments for it as well?

George McGovern thinks the President's registration proposal is an unwarranted encroachment on individual liberties. We must assume that he was talking about the draft itself, for which the registration program is a necessary prelude; after all, the proposed registration plan is at best a trivial encroachment on one's rights. The slogan "Hell, no, we won't go" has a hollow ring to it when the place we're refusing to go is the post office.

Certainly the draft interferes with personal liberty. But the choice is not between having a draft and not having an army; it is between having a draft and preserving our present volunteer army. That army is composed largely of men whose "voluntary" choice was between the risks and hardships of military life on one hand and a life of poverty and unemployment — or crime — on the other. The volunteer army infringes on liberties no less than the draft, but it adds an evil inequity: the hard choices are imposed upon the poor. These choices are like those protected so zealously by our courts at the end of the previous century: freedom to work twelve hours a day and to accept payment in scrip, worthless except at the company store. In those days it was the hard-line conservatives who supported a status quo favoring the privileged classes, not the liberals.

Another liberal argument against registration is that regis-

tration leads to a draft, a draft produces a larger army, and a larger army is more likely to go to war. The conventional answer to this stock argument is that wars begin more often because of a want of strength than because of an excess. It is only a guess whether greater military strength will ultimately hasten or prevent the outbreak of war.

There is a more compelling reason to suppose that a conscripted army is less likely to go to war. We think that a certain knowledge that the sons — and perhaps the daughters — of middle- and upper-class America will be on the firing line of our next war would act as a powerful check on war fever. Consider whether public opinion would have turned as strongly against the Vietnam War had it not been fought by our neighbors and relatives conscripted into service.

Student opposition to draft registration is understandable. Opposing "the establishment" is perhaps the second most enjoyable extracurricular activity available to students, and it is never more fun than when done in one's self-interest. Students oppose the draft, athletes oppose the Olympic boycott, and farmers oppose the grain embargo. A colleague of ours may be correct in suggesting that the appropriate name for the decade following the Me Decade is the Not-Me Decade. Lost in the din of these blatant appeals to self-interest is reasoned discussion of America's role in a rapidly changing world.

Universal Draft

In the past the draft produced inequities perhaps as serious as those generated by the volunteer army. This need not be so. We could have a universal draft. Women included? Yes. Students? Yes. Homosexuals, Friends, paraple-

gics? Yes, yes, yes. All will serve, every last American, upon graduating from high school or turning nineteen. Will all serve in combat? No. Will all serve in the military? No. Will all serve away from home, receive expensive training, give up important freedoms? No, no, no. Many will do the kinds of things conscientious objectors used to do, but it won't be an alternative to service — it'll be service. The universality of the service, and the opportunity to serve in a variety of ways, each with its own value, would help lead to a new, unselfish patriotism, and a healthy involvement in the democratic process. The nation would be stronger, more people would vote, more people would care.

No one is saying any of this. Such a program is expensive, complicated to administer. And it's risky. How would the public react to such an ambitious program? It isn't a new idea, of course. It may be one whose time has come, but that won't matter unless some leader will seize the moment. You might ask, at last, whether we, as liberals, advocate such a program. Will we go out on a limb in support of it? Not us. ☛

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Why are so many first year students enrolling in bar review courses?

Until a few years ago no one thought about a bar review course before their senior year. Today, however, close to half of all those taking courses enroll in their first or second year of law school and early enrollments in at least one major bar review course — the Josephson BRC (Marino-Josephson/BRC in New York) — are at an unprecedented rate. There are three apparent reasons for this development none of which have anything to do with preparation for the bar exam itself.

First, more and more law students are looking ahead at the spiraling costs of legal education in general, and bar review courses in particular. Over the last three years tuition costs of bar review courses have risen between 20-30% (\$100-\$150) in most states and the next three years could be worse. *Under special early enrollment programs, students (with only a moderate deposit) actually roll back tuition costs to less than 1979 prices.*

In New York, for example, this means that a student enrolling early will pay only \$325 as against a likely \$495 tuition in 1981 and \$525 tuition in 1982. In New Jersey and Pennsylvania (where fewer subjects are tested), the early enrollee may receive the course for \$250 (Basic Course) or \$325 (PLS Course) representing at least a \$100 savings from 1981 prices.

Second, in return for the benefit of assured enrollments and anticipated lower marketing costs, the BRC course has developed an extremely attractive package with the Center for Creative Educational Services (CES) called National Alliance to Fight Inflation (NAFI), which provides immediate benefits that substantially exceed the required deposit. The newest program (terminating March 21 in most states) provides a generous assortment of study aids and cash discounts which many first year law students have found to be irresistible.

For a payment of \$50 (which will be fully credited toward bar review tuition), the student receives free first year outlines in four major areas (Contracts, Criminal Law, Criminal Procedure and Torts), a free cassette tape program on "How to Write Law School Exams," two 50% cash coupons on *Sum & Substance of Law* tapes (worth about \$30) and a Preferred Student Discount Card entitling the student to a 10% cash discount on all CES purchases made from a CES or BRC office. Moreover, the student can exchange the four first year outlines for another four outlines in the second year at no extra cost. The value of the outlines and discounts exceeds \$100 and the ability to roll back the bar course tuition probably saves well over \$100.

Third, there has been a conscious effort by BRC and Marino-Josephson/BRC to remove psychological impediments to early enrollment by allowing free transfer to any BRC course in the country in the senior year (for the student who is not sure what state he or she will practice in), and a no penalty withdrawal for students who drop out or fail out of law school.

Another factor which has undoubtedly contributed to the early enrollment momentum is the increasing reputation of the BRC courses and CES materials and tapes. Special impartial studies done by law school administrators have consistently shown that BRC students outperform others at each level of class standing. Much of this success is attributed to BRC's unique Programmed Learning System (PLS) and its emphasis on writing and testing skills. As a result, in 1980, BRC expects to enroll over 14,000 students nationwide. At the same time, the CES *Sum & Substance* series of books and tapes has gained widespread recognition among both law students and teachers as the finest law study aids available.

Whatever the reasons, however, the facts are clear: more and more first year students are thinking ahead and enrolling in BRC courses now.

Josephson Bar Review Center of America, Inc.

Marino-Josephson BRC / New York Office: 71 Broadway, 17th Floor, New York, NY 10006, (212)344-6180

Non-Delivery of Newspapers at Harvard . . .

(Continued from Page 1)

Park have had in getting refunds from HDNS for delivery service which was terminated on December 17. Eliot News has begun providing deliveries to these areas at the request of the *Globe*. "HDNS has been telling the subscribers that they'll be getting their money very soon — they've been telling them that for eight weeks," Conrad added.

Too Many Complaints

"I've referred all the calls to Dean Epps's office but they've told me not to refer any more calls because they're getting too many," Conrad continued. Eliot News held the franchise for deliveries to Peabody Terrace, Soldier's Field Park, and HBS offices before Epps decided that HDNS should have the franchise.

Epps stated that Eliot News was originally terminated as the distributor for the Business School and Soldier's Field Park at the request of the Business School. He refused to say why he terminated their franchise to deliver to Peabody Terrace.

Kaufman stated that the *Globe* is concerned that "people are not getting the *Globe*," and added that the paper was able to get Epps to allow Eliot News to deliver the *Globe* anew to Peabody Terrace and Soldier's Field Park. "The problem with the remainder of the campus is that the decision on who delivers is left to the dean of students," Kaufman continued. Conrad ex-

plained that HDNS's service to its restored franchise areas was "so bad that the *Globe* decided that they would not deliver any more papers" until the franchise was returned to Eliot News.

According to Epps, "50 percent of the complaints were coming from Peabody Terrace and Soldier's Field Park and they accounted for only 2% of the service. We asked the [Harvard] Delivery [News] Service to stop service there because they had overextended themselves."

In addition to vastly improved delivery service, *Globe* subscribers in Peabody Terrace and Soldier's Field Park now have an added benefit: Eliot News charges \$1.00 to deliver the *Globe* for a week. HDNS charges \$1.23.

Refund Policy

The refund policy as announced by HDNS Manager Mitchell Smith and Epps extends back only to September, 1979, is discretionary, and does not include newspapers delivered days late.

Jeffrey Matthews and Daniel Esty are contemplating filing a suit for \$300 which they claim is owed to Winthrop House residents. Matthews stated that HDNS "has refused to reimburse us for our replacement costs — cover — for the newspapers we bought" when HDNS failed to make deliveries. Matthews said that talk of refunds is "the same old story," adding that Winthrop House was promised refunds all last year by then-HDNS manager Marty Olive for undelivered newspapers. "We're going to assume that we're never going to get a check," Matthews added.

Smith confirmed that HDNS plans to give refunds "only for our costs." U.C.C. §2-712 permits aggrieved buyers to "cover" by purchasing substitute goods and recovering the difference, if any, between the contract price and the price of the substitute purchase. Thus, Massachusetts law, which incorporates the U.C.C., seems to require that buyers who cover be given refunds of \$.30 (the cost at

Bence's Pharmacy) rather than the \$.16½ offered by HDNS for non-delivered *Times*, for example.

More interesting is the problem presented by U.C.C. §2-713 which allows aggrieved buyers who do not cover to recover the difference between the contract and market prices. It is certainly arguable that the market price is the cost of the *Globe* and *Times* at newsstands.

Finally, the contract forms state in large red letters "Save money when you have [name of paper] delivered on the day of publication," suggesting that late delivery of papers is clearly a breach of contract and should, therefore, be subject to refund.

Complaints in Person

"Of course the refund policy has to be discretionary," Smith stated. Refunds are to be given only to persons who made an attempt to complain about poor service and who appeared in person in the HDNS office this week between 9 a.m. and noon or between 7:00 p.m. and 8 p.m. Monday or Tuesday night, Smith added.

"We realized that there was faulty service from the complaints we got but did not realize the magnitude of the problem. Obviously you should complain when there are missed deliveries. You can imagine what would happen if no one complained. There would be no impetus to deliver papers," he continued.

Law students may have had a hard time complaining and appearing in person. HDNS only acquired a telephone in "late October" (according to Smith) or "early November" (according to its office manager). It only moved into its present office sometime in late October. The memorandum which HDNS distributed to law students last week concerning the refund policy included neither HDNS's phone number nor office number.

According to Smith, law students were expected to have that information because it was included in the "Under New Management"

(Continued on Next Page)

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. . . Prompts Suit, Complaint, Shakeup

(Continued from Previous Page)

memo distributed to law students during the first week of February. The RECORD contacted subscribers in all seven Law School dorms. They stated uniformly that the "New Management" memo had also not been delivered. (For the record, HDNS is located in Memorial Hall room 187 [in the basement] and its phone number is 5-1994.) Smith, when questioned about this, promised that the memo would be distributed.

Smith stated that first-semester subscribers should have received 113 daily and 18 Sunday newspapers. Newspapers should have been delivered continuously from Sept. 4 through Nov. 21, Nov. 26 through Dec. 22, and Jan. 1 through Jan. 27. "Based on those figures, we missed 51 deliveries of the *Times* first semester," one Hastings resident said.

Hastings R.A. Ken Christoffersen, 2L, confirmed that "their service has been absolutely lousy. A lot of people have complained to me."

Christoffersen also criticized HDNS's refund policy, saying "they're really being sleazy trying to make it appear that they're refunding the money in good faith."

Refund Problems

Smith stated that HDNS is making "no attempt to limit the refunds. We're not limiting them to \$2,000. If we owe \$2,500, then we'll pay it." Although HDNS says that it plans to begin issuing refund checks "early next week," Smith says he is "uncertain how the deficit will be paid" and "won't know until the end of next week." Epps told the RECORD that HDNS has run a deficit "over the last couple of years" which has been "rolled over from year to year" and financed by periodic borrowings from banks. "They are not subsidized by the College," Epps stated.

Smith stated the requirement that law students show up in person during narrowly circumscribed hours in order to request a refund is not intended to reduce the

number of refunds promised. "The problem is that we have, obviously, with all the phone calls. It's too much hassle. We only have one phone line but five people at a time can fill out the pink cards (the refund request forms)." Students deserving refunds will not be allowed to mail in their refund requests but may, if they contact HDNS this week, arrange to appear in person next week. "What other alternative [to appearing in person] is there?" Epps asked.

Epps defended the policy of not offering refunds for past academic years, even to persons who complained about poor service then and who were promised refunds then. Epps, however, is "sure" that HDNS will make the promised refunds to this year's unhappy subscribers and stresses that "[t]he essential message that I want to get across is that customers should be treated fair."

According to Smith, the problems with HDNS's service this year stem from a combination of "semi-unresponsive service, bad luck, and the manager's truck breaking down." Smith explained that "semi-unresponsive service" refers to the ten delivery persons (only one of whom handles the Law School) and that "bad luck" refers to newspapers arriving late at HDNS due to newspaper strikes, plant slowdowns, and weather conditions which delay delivery. No refunds are made for late deliveries because, according to Smith, both the "bad luck and the truck breaking down" are "out of our control."

Globe Circulation Manager Kaufman stated that the *Globe* has had "excellent production. It's been better this year than in the past. We have not missed a delivery [to HDNS] yet." Kaufman added that he believes the *Times* has had an excellent delivery record to HDNS, noting that there have been no *Times* strikes this year and that the weather has been excellent.

"If I had an alternative [to using HDNS], I'd certainly go to it," Kaufman said, adding that both he and Skip Wilhelm, the *Times* circulation manager, have had several meetings with Epps this year to

discuss the delivery problems.

Law School Assistant Dean Russell Simpson was not aware of how HDNS acquired the exclusive right to distribute the *Times* and *Globe* at the Law School, adding that it is "possible that there might have been some agreement in the past. I don't have any files which would show me the answer. But it does seem to me strange that the College could grant a franchise for the Law School." Epps stated that only the manager of HDNS would know of an agreement with the Law School giving HDNS an exclusive franchise. HDNS's manager was unaware of any agreement.

Epps stated that HDNS was formed "at my request because there was no service to provide amenities for College students." Conrad told the RECORD that Sheldon Cohen of the Out-of-Town News Service provided papers to the College prior to HDNS's formation and that Eliot News Co. delivered the *Globe* to Peabody Terrace and Soldier's Field Park.

Improvements Promised

Smith promises that HDNS's service will improve. In addition to new management, it is no longer relying on its manager's truck to make the morning drops of papers for its delivery people to distribute. It has contracted with Home Delivery Service to perform that function; service was scheduled to begin yesterday.

Not everyone is waiting to see whether HDNS makes good on its promises. Donna Chiozzi reports that Dean Sacks' office "always got the *Globe* and the *Times*, but we've had such trouble that we finally let our subscription run out."

HDNS is an independent student agency of Harvard College and, as such, is regulated by Dean Epps. It is not a part of Harvard Student Agencies and is not intended to make a profit. It is expected to earn only enough to pay the wages of its employees. However, it does not disclose its wages.



Next RECORD Feb. 29