

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 72, NO. 7

© 1981 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

APRIL 17, 1981

TWENTY-FIVE CENTS

New Librarian Chosen; Cohen to Yale

By Carl Oppedahl

Harold "Terry" Stratton Martin III will assume the position of Librarian of Harvard Law School starting July 1, 1981. Martin was selected several weeks ago by a committee composed of faculty and students from the Law School (see cover story, RECORD, Jan. 23). He is now law librarian and assistant

professor of law at Georgetown University.

Earlier this year, Morris Cohen and Robert Berring, currently librarian and deputy librarian, respectively, resigned from their positions effective July 1981. Cohen, who had been offered a position as HLS bibliographer and consultant on special programs by Dean Sacks, has decided to take the position of

librarian at Yale Law School. Berring will assume the position of librarian and professor of law at University of Washington Law School.

Prof. Lance Liebman, chairman of the search committee, said that Martin "seems to have the right background, ability and qualities" for the position of librarian, a job which Liebman feels requires "instinct and judgment. . . . There are really interesting challenges in the gathering of legal information. As law study becomes philosophy, history, psychology, and economics, librarians will have to decide what a law library is."

Students Approve

The two students on the committee were pleased with the process of the search. Celia Moore, 1L, was "surprised at the extent to which we were involved," and felt that "the students were included in every stage of the selection process." She added, "Time was set aside for us [the students] to talk with the candidates privately." Robert Yamin, 2L, agreed, saying, "We were equal with any professor on the committee . . . at the few points where we disagreed, our views were respected." He said that most of the committee's decisions were reached by consensus, though occasional votes were taken.

The issue of student input in hiring at the Law School last arose during Derek Bok's selection of the successor for Dean Sacks. Bok had invited students to give their sug-

(Continued on Page 9)

Scott Dies At Age 96

Austin Wakeman Scott, Dane Professor of Law Emeritus at HLS and renowned authority on the law of trusts, died April 9. He was 96.

"The Harvard Law School will never forget his presence," said Professor Emeritus A. James Casner, and the reason might be that Scott's presence at HLS dominated this century. From the time he began his studies here, in 1906, until his death, he was at HLS. Only one year was he absent, from 1911 to 1912, when he served as Dean of the College of Law at the University of Iowa.

From 1909 until 1961 he taught thousands of students, retiring only at the age of 77. But his scholarly work on trusts, first published in 1919, continued until just two weeks before his death, Dean Albert M. Sacks wrote in an April 10 message to the Law School community. "He was here every day,"



Prof. Scott

said Casner, who "worked very closely with him." *The Law of Trusts*, his preeminent treatise, is now in its third edition. Scott, from his cubicle in the faculty library, was constantly working on future revisions.

Prof. Archibald Cox, a long-

(Continued on Page 16)

HLS Grads Value Clerking Experience

By Mark Pogue

Geoffery Crawford says it's "loads of fun." Tamara Jacobs calls it "an incredibly positive experience." Howard Gutman put it this way: "This clerkship has been the best experience of my life. My only problem is deciding what to do next year — it couldn't possibly compare to this."

By and large, the 94 HLS alumni presently serving judicial clerkships around the country are extremely enthusiastic about their work. The clerks point to a long list of job benefits, including the opportunity to work closely with a judge, large amounts of meaningful responsibility, travel, the chance to learn by watching other lawyers make mistakes, and so forth. In general, the typical clerk from Harvard appears very satisfied with every aspect of the clerking experience except one: the process of getting the job in the first place.

"Hit or Miss" Opportunity

According to Crawford, the process of obtaining a clerkship is "like getting married, except that there's no engagement. It's hit or miss." The haphazardness pervades the process. There is no standard clerkship application form. Instead, interested students must check to see what each judge requires in the way of application materials. Most request a fairly standard packet of information — writing samples, HLS transcript, two recommendations. Judges also specify a class rank cut-off point — e.g., "law review required" — to indicate that certain students need not apply.

The judges' requirements pre-

sent two problems for many Harvard applicants. The first is deciding whether to disregard the class rank requirement. The fact is that judges often waive this criterion for Harvard graduates. Then there is the problem of asking professors to write glowing endorsements of students they wouldn't recognize in a one-on-one basketball game. Most students simply approach professors who gave them good grades. "The professors recognize that most of us here are in a big pack, and they'll make an effort to make you stand out," said Rich Llewellyn, a 3L who will be clerking in Los Angeles next year. "They usually talk with you first or at least ask for a writing sample."

Clerkship applications are not supposed to be submitted until April 15 each year, but the rule is ignored in certain jurisdictions. In fact, a good number of federal circuit judges have already chosen their clerks for 1981. Applicants who do secure interviews based on the application materials then pay their own way to fly out for brief meetings with the judges. They return to await responses and ponder the all-important question: Which judge is right for me?

It is the paucity of information available for answering that question which irks clerkship applicants more than anything else. One can read a judge's opinions or rely on the interview, but in the end most candidates pick their favorite on the basis of what the legal grapevine has to say. This has its hazards. "The misinformation circulating about judges is incredible," said Gutman. "Having seen the judges on this circuit [the 5th] in action, I can't believe some have the good reputations they do. By

the same token there are excellent judges no one has heard of. If Harvard would spend some money to fly up a clerk from each circuit, they could put on a substantive program that would really improve the process."

Stimulating Experience

Once the vagaries of the application process have been negotiated, most HLS alumni find the actual work of clerking very rewarding. Perhaps surprisingly, it does not appear that the job is enjoyable only when clerk and judge see eye to eye politically. Jacobs, for instance, who describes herself as "too liberal to be a Democrat," is very happy at her post with Nixon appointee Hon. Norman Roettger, Jr., in the southern district of Florida. She notes that Roettger seems to prefer politically liberal clerks, finding that they "stimulate his thinking."

While establishing a good working relationship with the judge is critical to the success of the clerkship, most HLS clerks seem to feel that other factors are equally important. These include the inherent appeal of the cases coming before the court, the amount of input each clerk has in the decision-making process, and the amount of time spent in court. The last factor seems especially important to clerks interested in becoming litigators. "Just by sitting in court you learn more about civil procedure in two weeks than you do in a year from the best civil procedure teacher in the country," Jacobs said. "I had Arthur Miller for Procedure and worked for him outside of class and I still think it's true."

Responsibilities of the clerk vary from court to court, but in most cases the time is spent screening and recommending action on new petitions, sitting in on court, and writing opinions. Harvard clerks felt that opinion writing was invaluable experience. All agreed that the question is: What can we possibly do for an encore next year?

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$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 1981 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. POSTMASTER: Send address changes to Harvard Law Record (ISSN 0017-8101), 23 Everett St., Cambridge, Mass. 02138.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$4.20 of his H.L.S.A. annual dues are used to purchase the Record subscription he receives. Dues paid at any time during the H.L.S.A. fiscal year which began in April 1980 and ends in March 1981 will purchase a subscription which begins in September 1980 and expires in August 1981, and so on in following years.

Plans to Conserve as Energy Costs Soar

By Will Hunter

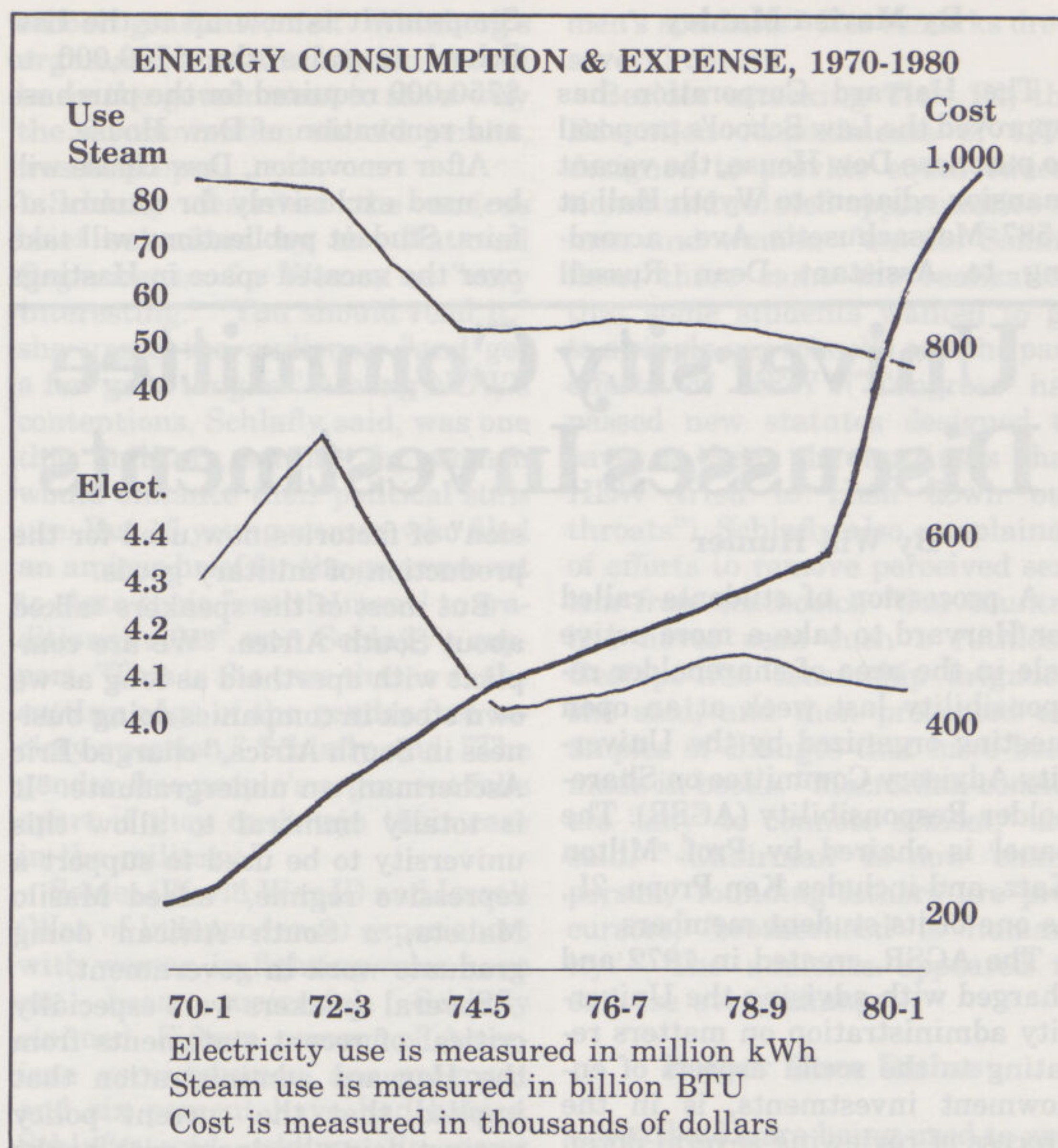
With the total Law School energy bill pushing \$1 million for budget year 1981-82, school administrators are preparing to invest "a substantial amount of money" in energy conservation before the next heating season.

According to Assistant Dean Russell Simpson, specifications are now being developed for a comprehensive energy audit of Langdell and Pound Halls, the two biggest energy guzzlers on campus. Together, they consume 51% of the electricity, and 44% of the steam used for heating and cooling, required by all Law School buildings. The audits, which will be completed in the next two or three months, will cost \$30,000 to \$50,000 and will present detailed plans for conservation investments, with estimates of the relative "payback periods" for each one. Depending on how attractive the payback figures are, the school administration will then decide which of the conservation measures to implement. Those implemented in Pound can probably be applied to Griswold as well, since the two buildings were built on the same design.

Simpson said this week that money for the investments will come from the school building reserve, with additional money to be borrowed from public sources like the Higher Education Financing Authority (HEFA) if required. He expects that some of the conservation measures will be able to pay for themselves in a year or two, while others will take longer.

Prior Attempts

Until now, energy conservation at the Law School has consisted mainly of turning down thermostats and shutting off lights in empty rooms. While these efforts have had some effect, the effect has been minor. Total electricity use at the school, for example, has dropped only 6% since the start of the energy crisis. Steam use has been cut more, in part because of a major



change in Pound Hall. The building, built in the late '60s when energy was cheap, was designed to use both hot and cold water simultaneously. Thus, when a thermostat was turned down, cold water would be piped into the registers, even if it was the middle of the

winter. Likewise in the summer, hot water would be piped into a room in response to turning up a thermostat. In the mid-seventies, the system was modified so that the water chilling mechanism is turned off in the winter, and the

(Continued on Page 9)

ENERGY CONSUMPTION — 1979-80

Building	Steam (million BTU)	Electricity (kWh)
Austin	2,033	110,140
Gannett	568	80,379
Langdell	14,068	1,066,700
ILS	1,748	364,790
Griswold	5,092	346,560
Pound	7,028	1,018,812
Hastings	3,110	216,100
Ames, Shaw, Story, Dane	8,260	600,323
Harkness	6,369	537,600
Holmes	1,063	81,680

Dow House Purchase Finally Approved

By Marisa Manley

The Harvard Corporation has approved the Law School's proposal to purchase Dow House, the vacant mansion adjacent to Wyeth Hall at 1587 Massachusetts Ave., according to Assistant Dean Russell

Simpson. It is now up to the Law School to raise the \$700,000 to \$750,000 required for the purchase and renovation of Dow House.

After renovation, Dow House will be used exclusively for alumni affairs. Student publications will take over the vacated space in Hastings

Hall. Simpson hopes that by the beginning of spring term 1982, the Dow House conversion will not only have provided the Alumni Office with better facilities, but will have allowed the Law School to provide its student journals with more and better offices, a word processing system and a business manager, so that students can focus on editing and substance.

According to Simpson, \$550,000 of the funds required for the Dow House project is already in hand and potential sources for much of the rest have already been identified. An anonymous donor has given the Law School \$250,000, and \$300,000 will be drawn from unrestricted alumni funds given in the 1979-80 fiscal year. The same donor has promised to contribute another \$100,000 to the project, and Simpson says the remaining \$100,000 may come from a variety of sources: from unrestricted alumni giving this year or next, from the solicitation of alumni who have over the years supported the development of an appropriate alumni center, or, said Simpson, one of the class reunions might decide to make this project a gift of funds rather than giving to some other Law School activity.

The architect retained by the Law School is now working with the University's planning office and according to Simpson final plans are expected to be drawn and ready to go out for bids within the next few weeks. The bidding process should be completed by May 15, and construction could start almost immediately, but according to Simpson, the really messy work will not be started until after commencement, about June 5. If all goes according to schedule, a rare occurrence in the construction business, said Simpson, work will be completed by November. ❧

University Committee Discusses Investments

By Will Hunter

A procession of students called for Harvard to take a more active role in the area of shareholder responsibility last week at an open meeting organized by the University Advisory Committee on Shareholder Responsibility (ACSR). The panel is chaired by Prof. Milton Katz, and includes Ken Propp, 2L, as one of its student members.

The ACSR, created in 1972 and charged with advising the University administration on matters relating to the social aspects of endowment investments, is in the process of reviewing several dozen proxy issues up for a vote this year. They include resolutions to limit new corporate investment in South Africa and Chile, to reduce the production of herbicides and nuclear weapons, and to regulate marketing of infant formula in the Third World.

Most of the resolutions are sponsored by church groups, including the Interfaith Council on Corporate Responsibility (ICCR). Some are sponsored by student groups, others by individual corporate shareholders. Though a few are the product of the Young Americans for Freedom (YAF), a right-wing group opposed to U.S. trade with the Soviet bloc, none of the speakers at Tuesday's meeting represented that part of the political spectrum.

Instead, everyone who spoke called for less corporate investment in South Africa, an end to the arms race, a moratorium on new investment in Chile, or a "peace conver-

sion" of factories now used for the production of military goods.

But most of the speakers talked about South Africa. "We are complicit with apartheid as long as we own stock in companies doing business in South Africa," charged Eric Ascherman, an undergraduate. "It is totally immoral to allow this university to be used to support a repressive regime," added Masilo Mabeta, a South African doing graduate work in government.

Several speakers were especially critical of recent statements from the Harvard administration that implied that the current policy against doing business with banks who loan money to South Africa might be relaxed. Another charged the University was hypocritical to "give a black South African an honorary degree and then do nothing when that same person is oppressed." (The statement referred to Bishop Desmond Tutu, recipient of an honorary degree two years ago, who is about to have his passport revoked for speaking out against apartheid.)

After nearly two hours of presentations, some of which were carefully documented and very detailed, Prof. Katz called the meeting to a close. He promised that the ACSR would consider the advice carefully in deciding what to recommend to the University committee which actually decides investment policy. He added that the ACSR would try to have more such sessions, in order to give students further opportunity to speak out on social aspects of University investments. ❧

EATON LODGE

511 EATON STREET
KEY WEST, FL 33040
(305) 294-3800

STYLISH GUEST HOUSE
in the heart of Old Town



Stevenson: The End of Liberalism?

By Jay Mann

Former Senator Adlai Stevenson, III (D-Ill.) spoke to a small group of students in Pound Hall on Wednesday, April 8. Instead of delivering a speech, Stevenson chose to answer questions from the audience.

The first questions led him to speak of his career. Stevenson graduated from Harvard College in 1952 and from Harvard Law School in 1957. Like his father, Stevenson was attracted to politics and held elective office for a total of 16 years until he retired from the Senate in 1980. He is now a partner in the Chicago law firm of Mayer, Brown and Platt, and is a Visiting Fellow at the Institute of Politics at the Kennedy School of Government.

As to Harvard Law School, Stevenson commented that he found the Socratic method "humiliating" but a good experience, and that "the happiest day of my career was the day I graduated."

Fresh Ideas Needed

Stevenson said he looked forward to life outside of the Senate, because he believes that there "may be larger opportunities for public service outside of Congress." He was pessimistic about life in national politics, though. "If I thought that anything was going to happen, I might have stuck around," he asserted. Reagan, according to Stevenson, "takes us back to the '20s — the normalcy of Warren G. Harding." The liberalism of the '60s is gone, he claimed, "and, if so, maybe the Democratic Party is dead." Stevenson does not see anyone attacking the problems of complete lack of faith in government and the deeper causes of insecurity in the national economy. "I don't see our politics leading us into the future," he concluded.

The former Senator looks to a new party to provide fresh ideas, a new democratic-oriented party that returns to Jeffersonian principles. He feels that John Anderson gave third-party movements a bad

name, however. "A campaign of ideas is very exciting, but then people discovered he didn't have any ideas," said Stevenson. He feels that Anderson lost his credibility in his drive to find public acceptance. "There was going to be a difference, but then he hired David Garth, a pre-eminent flesh peddler of American politics."

Stevenson sees himself as formulating some of the badly needed answers to current problems. "My job is to develop alternative ideas, and develop them in a universal context," he asserted. He wants to deal with "structural problems in the economy" such as "increasing the competitiveness of the U.S. and recognizing the limits of macro-economic policy." Ways to attack these structural include "investment for the long term," "reallocating resources from declining sectors to developing sectors," "co-operative efforts to develop new generic technologies," and "international cooperation."

The former Senator seemed hesitant about going beyond generalities, but when questioned on how he would reallocate resources he said that he saw a need for government capital in basic industry, but that the government should pick winners, as Japan does, instead of losers like Chrysler. The government should "demand modernization and adaptation," he asserted. Stevenson went on to say that the government should also respond to market imperfections with infusions of capital, targeting certain "long-term, high-risk enterprises."

Stevenson feels that even thinkers armed with superior ideas will have a difficult time in politics now, however, due to the problems involved in transmitting ideas through the media. "People have the ability, with information, to make intelligent decisions," he opined, but since the data the media provides is "deceptive and misleading," informed decision-making by the electorate is impossible. According to Stevenson, the American media focuses on the sensational, and as a result stresses Poland and El Salvador instead of the more enduring and complex issues of global interdependence. His answer to this problem is only partial — "we should use Public Broadcasting Service more" — and he believes that, in the long run, the irresponsibility of the media "raises questions about the fundamental assumptions of the system and the First Amendment."

Apply Pressure

On prescriptions for the present, Stevenson thinks that because "audiences out there are hungry for truth and new ideas," grass-roots education is the road to success. "Politicians are far too weak to create policies, and only respond to pressure," he asserted. But because of this, externally-generated pressures can affect Washington. Liberals should strive to emulate the conservatives' techniques in the last election, he claimed. "Democratic think-tanks produce reports that gather dust, but the AEI [American Enterprise Institute] produces TV programs." ☛



1680 Mass. Avenue
Cambridge, Mass.
(Opp. Holiday Inn)
Open
11:45a.m.-10:00p.m.
492-0900 354-8335

AUTHENTIC GREEK DINING DINNER FOR TWO 10.95

Includes Choice of Main Course, Soup, Salad, Coffee
and a Half Carafe of Chilled Wine
(Offered Sunday thru Wednesday)

FEATURING

Shishkebab, Lamb Dishes, Greek Salad, Mousaka
Fresh Seafood and Cocktails

LUNCHEON SPECIALS SERVED DAILY
UNDER \$3

Commencement Tickets Scarce at HLS

By Carl Oppedahl

Law School students will get fewer Commencement tickets per person than will Harvard College students, according to Mary Maynard, Commencement coordinator in the University Marshall's office. While the graduate schools will receive 3.3 tickets for each graduate who actually attended Commencement last year, the College will simply be issued four tickets for each senior.

One source indicated that about 1700 tickets have been received by

the Law School. This would mean that some 515 law graduates attended last year. Marion Pierce, the Langdell Receptionist, explained that she distributes two tickets to each law graduate, and that the remaining tickets are distributed randomly to those who have requested more.

Reactions among law students have been unfavorable. "I see absolutely no basis for distinguishing between student bodies" when distributing tickets to the various schools, said Carolyn Armour, 3L. Patty Bowman, 3L, agreed, saying,

"I don't think it's really fair . . . I guess they feel college graduation is a bigger thing than law school."

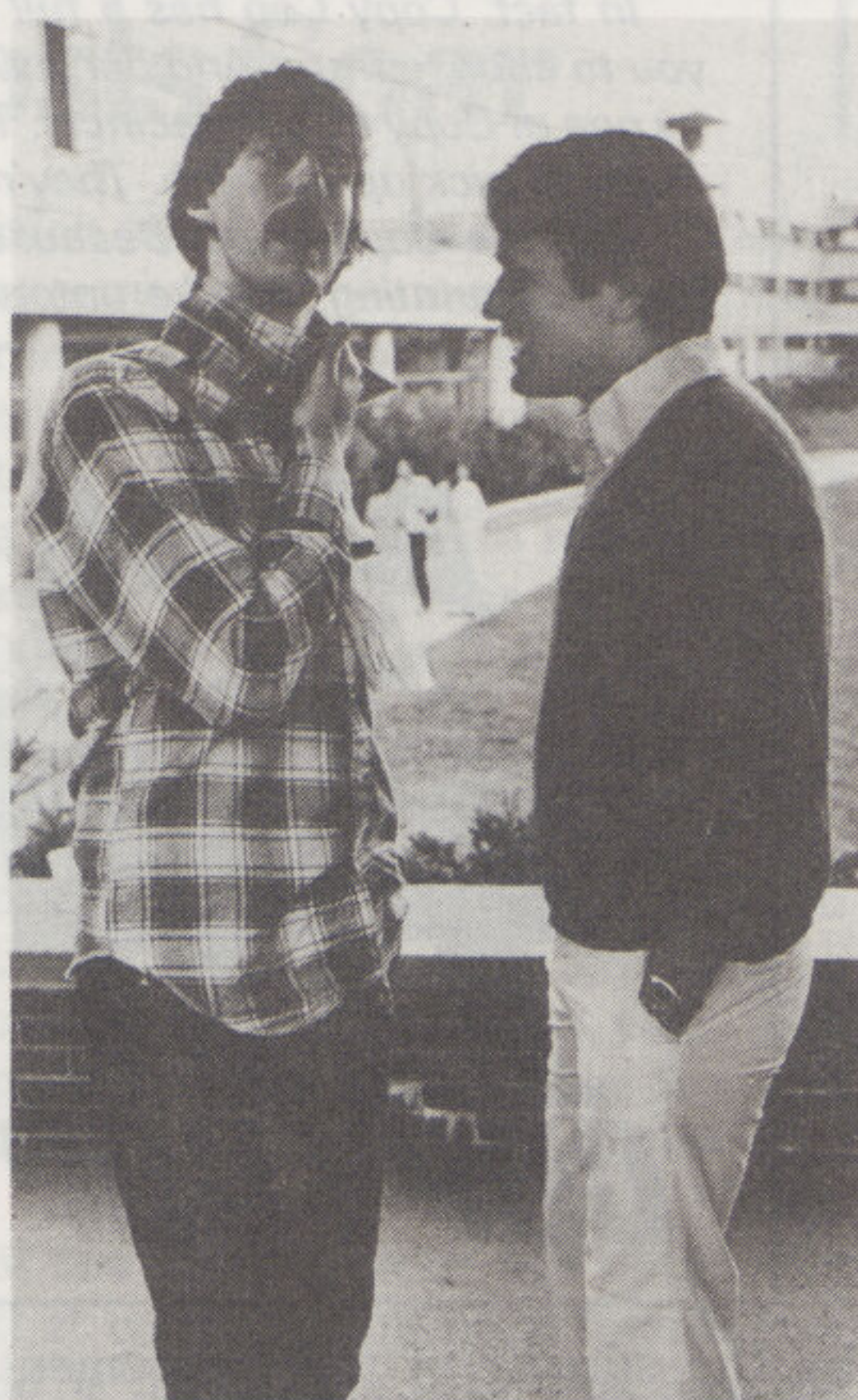
Maynard explained that the individual schools decide for themselves how to distribute their share of the tickets. According to a spokesperson at the Business School, the tickets there are given out by the Registrar's Office. Since B-school students must wait until just before Commencement to pick up the tickets, there is little danger that tickets will go to graduates who do not plan to attend the ceremony. It is expected that each student will receive three tickets, as long as the number attending this year's Commencement is not much greater than last year's. The spokesperson pointed out that since alumni can get Commencement tickets, some families will have more than three tickets.

At the Medical School, tickets are distributed by the Student Affairs office. "A kink came to light recently," someone in that office told the RECORD. In past years, it seems, graduates were "not sure how many had to be in caps and gowns." Since the Marshall's office had apparently counted only those graduates that were in robes, the number of tickets issued to the Medical School was small. The Medical School has since "gotten a few more," so that there are now barely enough tickets for each graduate to get two, and all graduates will be asked to wear caps and gowns.

In the Graduate School of Arts and Sciences, the Associate Dean's office will give out tickets. "We give each graduate two tickets," an assistant to the Dean explained, "and if there are extras we will give them out the day before Commencement."

Pierce stressed that the deadline for ticket requests is May 1 at 4:30 p.m., and that diplomas are not handed out at Commencement, which is in the morning, but at the Law School ceremonies, where more people will be able to watch, at about 12:30 p.m. on Commencement day.

SBR Reunion Festivities



Photos by John Morris

The Somerville Bar Review held its annual reunion this past weekend and carried on much as it does all year long.

The highlight of the weekend's celebrations was the "roadrace" on Friday. The races require the contestants to run a course with stops for beer. The five-mile marathon to the Eliot Bridge beerstop and back was won by Russ Daggatt, '80 (above left, receiving his certificate from Ben Preziosi, 2L).

The two-mile course required three laps around the Law School

campus and the Yard, with a stop by the Hark for beer on each round. First place was shared by Giovanni Prezioso, 2L and Scott Brown, 2L.

The contestants in the grueling whaler event ran (more or less) back and forth between two tables 30 feet apart on the walkway between the Hark and Childs hall. That contest was a draw between Rex Van Middlesworth, '80 and Greg Kiernan, 2L (shown left to right, above right). In a guzzle-off to resolve the tie, Kiernan was declared the winner.

Oldman: Tax Reform, Not Rejection

The property tax will always be with us, or at least it should be, according to Prof. Oliver Oldman. Recent revolts against the tax in Massachusetts and California should be seen as signals that there is need for some minor reforms in tax administration, not that a major overhaul is required.

Speaking to a group of students at last week's Root Room talk, Oldman expressed his strong support for the tax on real estate as a major source of local government revenue. "In a rough and ready way, the tax is relatively more burdensome on upper income people than taxes like the sales tax," he explained, refuting the oft-made claim that the property tax is regressive. "If you believe in independent local government, then the property tax is the best single instrument to finance it."

Without the ability to tax real estate, Oldman argued, local government would either have to rely entirely on grants from central authorities, or have to try to tax income or wealth. The first route would lead to a loss of local autonomy, while the second would be doomed to fail as communities competed with each other, setting up "tax havens" to attract wealthy taxpayers.

Despite his general support for the property tax, Oldman did express concern over its current administration. In many places, assessments are out of date and out of balance. In others, local officials have placed so great a burden on property owners that they have ended up rebelling by enacting restrictive tax limits like Proposition 2½ in Massachusetts and Proposition 13 in California.

Although both propositions have the same kind of result, Oldman maintained that they resulted from very different problems. In California, the tax revolt was sparked

by the success of the assessment program. As real estate prices skyrocketed in the 1970s, local assessors kept the tax rolls up to date and kept tax rates steady. But since assessments were rising, the steady tax rates resulted in fat government revenues and ever-increasing tax bills for residents.

In Massachusetts, on the other hand, administration of the property tax has been less uniform and more arbitrary. Taxes have traditionally been high, and the "classification system" has resulted in some classes of property owners, usually business, paying at a higher rate than residential owners. Since

many people feel they are paying more than their fair share, the state has been fertile ground for a tax revolt.

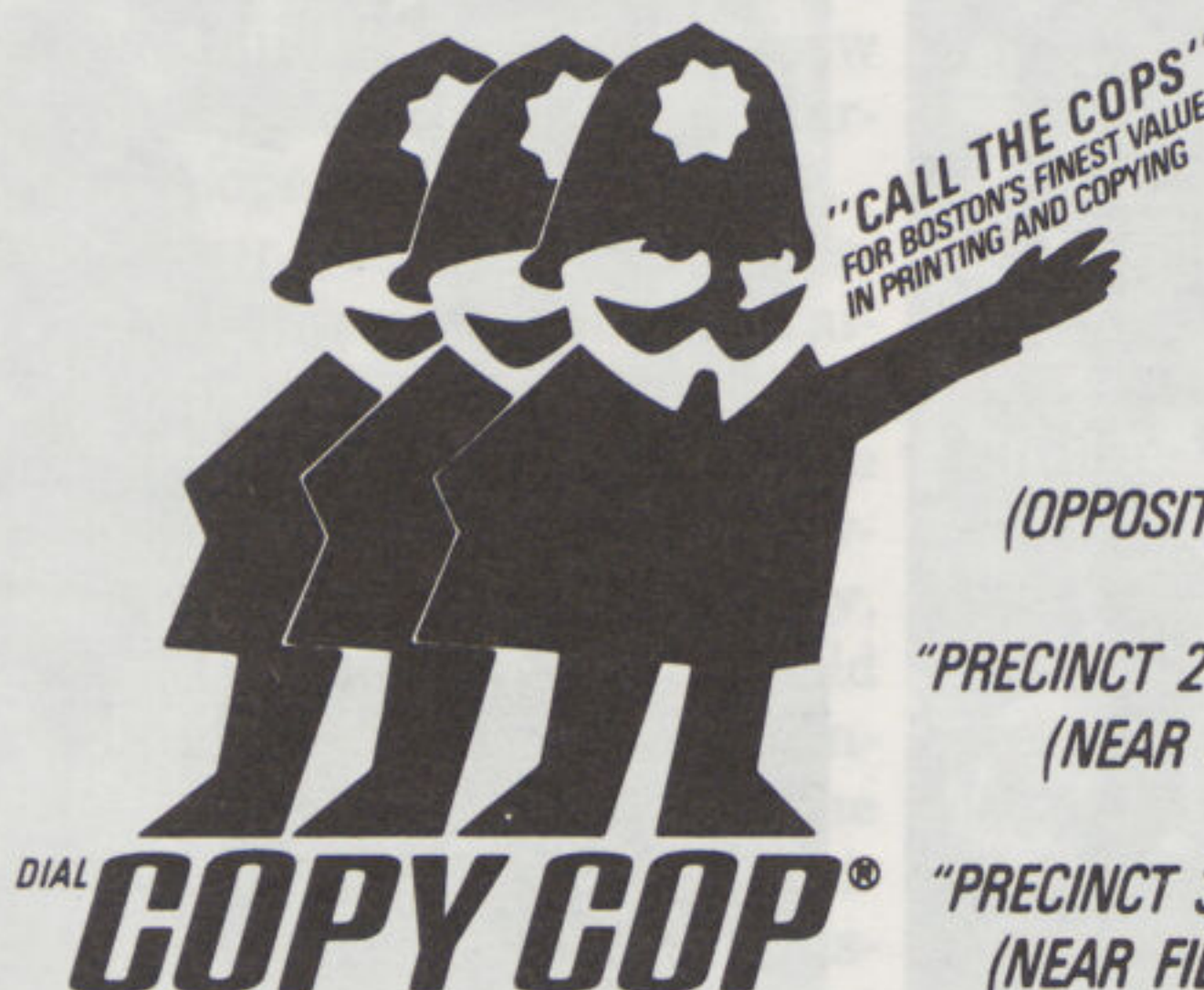
Looking ahead, Oldman recommended efforts to even out the burden of the property tax by repealing the classification system and eliminating property tax exemptions for non-profit institutions which do not have a "charitable" purpose. That would mean taxing the buildings used by the Bar Association, but leaving exempt the buildings at Harvard "where learning goes on." Oldman wouldn't say whether that meant the classrooms — or the dormitories. ☛

THE PRINTING POLICE ARE AFTER YOUR JOB.

Copy Cop has a full squad of crackerjack printing police to collar your toughest printing job. From typesetting resumes to producing multi-color brochures with photographs. Not to mention manuals, pamphlets, newsletters, envelopes, reports and proposals.

In fact, Copy Cop has a full line of typefaces and papers for you to choose from. And don't worry if you don't have time to come by one of Copy Cop's precincts. They've got an entire patrol of trucks ready to pick up your job. They're even open nights and Saturdays.

Call the Copy Cops. Because when it comes to high quality, low cost printing, they're untouchables.



"HEADQUARTERS"
AT 815 BOYLSTON ST.
(OPPOSITE PRU) DIAL 267-9267

"PRECINCT 2" AT 13 CONGRESS ST.
(NEAR STATE) DIAL 367-2738

"PRECINCT 3" AT 85 FRANKLIN ST.
(NEAR FILENE'S) DIAL 451-0233

New Librarian Chosen; Cohen to Yale

(Continued from Page 1)

gestions only in writing, expressing concerns that if they were given a formal role in the process, students might scare away some candidates or leak confidential information. Yamin did not feel that such problems arose during the librarian search process. A few of the candidates were "uncomfortable, at least at first," with the presence of students on the committee, while others "sort of expected that students would have some input," Yamin said. He explained that everyone on the search committee knew the importance of maintaining confidentiality, and neither he nor



Photo by John Morris

Terry Martin

Moore felt any distrust on the part of others on the committee.

Born Jan. 22, 1943 in Hartford, Connecticut, Martin received his A.B. in history from Harvard in 1965, and had lived in Quincy House. He received a J.D. from University of Minnesota Law School in 1968, and a Masters in Library Science from University of Pittsburgh in 1971. His previous positions include instructor of law at the University of Liberia from 1969 to 1970 while in the Peace Corps, and associate law librarian at University of Texas from 1972 to 1976.

Berring said Martin is "the ideal administrator. . . . He took Georgetown Law Library, which . . . was in pretty bad shape, and turned it around in five years." Martin is "very good in crisis, and always stays calm," Berring said, and "has the talent to get good people and keep them." He added that Martin "plays French horn and is a devoted member of the Harvard Band. His wife is a fanatic figure skater."

Energy Costs Soar

(Continued from Page 3)

heating disconnected in the summer. The change, accomplished with little cost in comfort, cut the building's demand for steam by more than 40%.

Other efforts aimed at conservation in recent years have been less successful. A fan system, designed to move hot air from the lower depths of the Langdell tunnels up into the colder parts of the building, was foiled this year by the failure of the upper fan to function. The result was another year of hot tunnels, cold stacks, and aggravated students. Attempts to cut heating bills by lowering the temperature of dormitory rooms have been partially undermined by increased student use of space heaters. Thus, while use of steam in the Ames, Dane, Shaw, and Story buildings has dropped 30% since the onset of the energy crisis, electricity consumption in the same buildings has risen 24%.

Soaring Costs

Of course, price increases have continued relentlessly, wreaking havoc with student and school budgets alike. In each of the last several years, the memorandum from Dean Albert Sacks to the Law School community announcing tu-

ition increases has cited "rising energy costs" as one of the primary reasons for the price hike. The total energy bill for the school was less than a quarter of a million dollars a decade ago. Despite reduced consumption, the bill came to \$584,000 in the last budget year (1979-80), and is expected to jump 65% to \$965,576 in 1981-82. The unit price paid for steam from Cambridge Electric has risen 21% in the last year, and is expected to climb another 20% next year. The price of electricity is slated to climb 25%.

Both Simpson and Paul Upson of the Dean's office are optimistic that conservation investments can do a lot to cut into this soaring budget item. Other schools in New England, of which Middlebury College in Vermont is perhaps the most successful, have managed to eliminate hundreds of thousands of energy dollars from their budgets by installing additional insulation, double-glazing windows, hanging ceiling fans in lecture halls with high ceilings, and replacing high-wattage lights with ones that use less electricity. It all amounts to making more efficient use of the energy the school must consume to keep its students and faculty from freezing in the dark.

SPORTS QUIZ

NOTE: This week's Sports Quiz deals with athletes whose last names are the same as a royal title.

1. A rookie goaltender for the Boston Bruins, this player was called up from Springfield earlier this season when it was determined that Olympian Jim Craig needed more experience. Who is this player?
2. Currently the third baseman for the Cincinnati Reds, this man had the unenviable task of replacing Pete Rose when he moved on to the Philadelphia Phillies as a free agent. Who is this athlete?
3. Although not technically an athlete, this man was closely aligned with sports for a considerable period of time as the play-by-play announcer of the Pittsburgh Pirates. Who is this man who also did the play-by-play on ABC's Monday Night Baseball?
4. One of the best forwards in college basketball, this man was instrumental in the University of Maryland's victory in this year's ACC Tournament. Who is this athlete?
5. A big fullback for the Chicago Bears, this man is known for his bruising running style and his ability to block for such stars as Walter Payton. Who is this player?

A Valuable Precedent

The selection of Terry Martin as Librarian of HLS did more than fill a vacant post — it showed that students can participate meaningfully in a process designed to pick new members of the Law School faculty and staff.

The students on the librarian search committee dispelled the myths surrounding student participation in such decisions, myths which abounded recently in the University's selection of a new Law School Dean. The students on the committee did not leak any confidential information. Candidates were not scared away from the position because of student involvement in the selection process, and some candidates even expected such involvement. And the students' value to the committee was not limited by the fact that they will be at HLS "only for three years." Instead, students were able to provide the committee with insights that only students have, and were able to represent the interests and needs of both present and future students.

The RECORD congratulates the two students of the library committee who, by their behavior, have set an example for student participation in future Law School decisions. We hope that President Bok will take notice, and that a similar process will be used in the selection of future Law School Deans.

Hopes Soar With Shuttle

The return of the space shuttle Columbia was an awe-inspiring event. Seeing the shuttle blast off on Sunday and then float down from outer space to land within inches of its projected path and within minutes of its ETA on Tuesday is a reminder to the U.S. and the world that American technology can produce spectacular advances in human capabilities to explore and use the resources of the world and outer space.

Even more awe-inspiring than the events of the past week, however, are thoughts of the possible uses to which the shuttle can be put. Commentators have suggested that outer space, made more accessible by the shuttle, is an ideal place for the growing of antibiotics and more perfect silicon crystals for use in electronics. Other spokesmen have contended, however, that the shuttle will be used primarily for military purposes.

Space offers many potential benefits for the improvement of life of all people. Its use, through the shuttle, should not be avoided; however, Americans should watch that it is not misused.

HARVARD LAW RECORD

EDITOR Mary Tarduno
MANAGING EDITORS John Morris, Gretchen Rule
BUSINESS MANAGER Eileen Brownell
EDITOR EMERITUS Dan Hershman
CONSULTING EDITORS Bennett Murphy, Laura A. Taylor
BOOK REVIEW EDITOR Fritz Byers
SENIOR EDITORS Steve Friedland, Jack Lange
ASSOCIATE EDITORS: Tom Heywood, Ben Littauer, Erich Merrill, Carl Oppedahl, Rob Woolmington
EDITORIAL STAFF: Alison Arnold, Joe Danowsky, Will Hunter, Benne Hutson, Thomas Isenberg, Marisa Manley, Jay Mann, Wanda Payne, Mark Pogue, Gabe Varges
PHOTOGRAPHY STAFF: Ben Littauer, Erich Merrill, John Morris, Wanda Payne, Monica Rodriguez, Newton B. White, Rob Woolmington
BUSINESS STAFF: Monica Rodriguez

Fenno

Fenno skipped out of his room — it was mail time *and* meal time — Fenno's favorite hour of the day. "Ice cream — that's what I want. Ice cream from Emack's for lunch, that's the thing!" Fenno hummed to himself as he opened his mailbox.

Fenno quickly sorted through his mail: a bank statement; a letter from his mother; and something strange — a letter with "Ronald Reagan" as the return address. Fenno did not much like getting unsolicited letters in the mail from aging former actors. "Wonder what this is," he mused to himself. "I'm pretty sure that he's not writing to tell me he wants me to replace Al Haig."

Opening the envelope, Fenno found in his hand a letter commanding him to send \$1000 immediately to the "1981 GOP Victory Fund" to help the Republicans get a majority in the House in next year's elections. Had Fenno eaten his ice cream before opening his mail, he would have lost his lunch. The letter went on to inform him that, unless he forked over the bucks, his children and grandchildren would not be able to live in a free world with lots of nuclear weapons. Fenno's heart, needless to say, was touched, as if by an icepick.

Fenno was very disturbed. Perennially apathetic, he'd watched politicians and Law School Deans come and go, but this "new wave" of conservatism seemed like something more than a harmless passing episode.

Fenno had always rationalized his political apathy by figuring that at least one or two law students each year would engage in socially productive and responsible activities. This belief also excuses his yearly failure to graduate — "someone will always go to Legal Services."

Now, however, Fenno's rationalizations were being torn from him, one by one. "No more legal services, and no one will care until they start making all corporate lawyers do mandatory pro bono work."

Fenno decided that it was time to break his time-honored habits and act. He went to the Hark and wrote letters protesting the cutbacks in Legal Services. He bought a stack of stationery so that he could send off missives against the Human Life Amendment. He put a green ribbon in his lapel in memory of the Atlanta children.

Then Fenno thought, "Maybe I should finally graduate. I may not be very smart, and I may not have a particularly dynamic personality, but this country will really go to hell if all of the young lawyers are off proofreading at the printers' every night."

"Leave HLS?" Fenno shuddered at the thought. "I hate it, but it's been home for so long . . ." Fenno put the last stamp on his stack of letters to the Senate; he decided to take a nap before making any big decisions.



Letters to the Editor of the RECORD

More on the Review

To the Editor:

For some time I have hesitated to add my voice of disapproval to the comments that have already been made at length in your column criticizing the affirmative action proposals made by the editors of the *Harvard Law Review*. I have overcome this hesitancy for two reasons:

First, it is worthwhile to report the large number of non-lawyer clients and friends who have sorrowfully spoken to me about the matter. The general opinion has been that the proposal is another example of the decline of excellence which we witness every day and is constantly eroding the values of our society. One person commented to me that the next step would be a quota system for Phi Beta Kappa but, for all I know, that may have happened already. In all events, the editors of the *Review* should be aware of the fact that they are dealing with a symbol of merit and intellectual achievement which has significance beyond the legal profession itself.

The current editors should also have some responsibility to the continuum of effort to which they belong. Although the hours of work these editors are now enduring may make it appear that their place on the *Review* is endless, the fact of the matter is that they too will pass over to the stage of being mere alumni. I do not suggest that the admissions standards of the *Review* be subjected to a vote by all editors past and present, however, it is worth considering whether or not the current transients have greater concern and greater wisdom than those who have passed before them. At the very least, the current editors should understand that their decisions not only affect the *Review* during the temporary period of time they serve, but also affect the institution which was built by the intellect and efforts of earlier editors and may well irrevocably alter the value and shape of this institution for the future.

I make no apology for my own credentials past and present as an enthusiast for the principles of equal opportunity. Those principles are in no way inconsistent with a belief that there is a place and a need in our society for selection on the basis of merit alone. On that basis, if permitted, this former editor of the *Law Review* would vote against the proposals.

Martin C. Seham '57
New York, NY

Ed. note - A copy of the following letter was sent to the RECORD.

Dear Dean Sacks:

I have been following with interest and concern the recent injection of "affirmative action" into the selection process for membership on the *Law Review*. The introduction of non-merit considerations for *Law*

Review membership has stirred up a hue and cry of protest and even evoked an editorial in the New York Times.

I was therefore pleased to note that you had set up a committee of the faculty to go into this question. Whatever corporate structure the *Law Review* may have, the fact remains that any particular *Law Review* Board should not be permitted to set the standards for selection of members. In the minds of the public, of the American Bar and of the tens of thousands of students who have graduated Harvard Law School, the *Harvard Law Review* has been considered a top honor society directly related to excellence in law school work. To permit the particular board to change radically the significance of *Law Review* membership is to encroach upon the authority of the Law School itself. For it is the Law School which confers honors and which judges the work of students and determines those best qualified for membership. It is the Dean and the faculty of the Law School which should establish the criteria for qualification in the School's top honor society.

The sudden departure from long precedent and the introduction of non-merit elements for membership on the *Law Review* is by the very structure of the Law School governance and the long established relationship between the *Law Review* and the Law School a usurpation of powers which the *Law Review* Board should not have. What is to prevent each subsequent Board from continuing to make radical changes in the selection process injecting a chaotic situation and diluting the long accepted status of membership on the *Law Review*?

The Law School must take a firm stand with respect to the jurisdiction in a matter of this kind in the interests of the Law School and of the *Law Review* itself. I hope that your committee and the faculty and yourself will recognize the importance of establishing once and for all that the administration of the Law School should determine the qualification for membership on the *Law Review*. The prestige of the Law School and of the *Law Review* are at stake in this matter.

Abraham S. Guterman, '36
New York, NY

To the Editor:

It is difficult to conceive a more effective plan calculated to depreciate — if not destroy — the traditional excellence that has characterized the members of the Board of Editors of the *Law Review*, than that put forward by the present editors.

In the name of "affirmative action" — a shibboleth disingenuously employed to translate "equal opportunity" into "equal achievement" — the editors have succeeded in imposing a gross discrimination on those "minority" students who are not primary candidates for the *Review*.

Since egalitarianism appears to be the objective of these "activists", a simpler proposal to achieve that end — applicable to all "minority" students (and more just) — is suggested: upon request, the grades of any such student will be automatically advanced one step, thus affording him (her) the benefits of "affirmative action" proposed to be accorded the *Review* candidates.

I. H. Jurow, '29
Chevy Chase, MD

Abortion

To the Editor:

I had hoped I might age a few more years before I began writing cranky letters to the RECORD. But I found your editorial on elective abortions (April 10th issue) so provocative that I've had to abandon that hope, one of the last of a disillusioned law student. Though I disagree wholly with your advocacy of a right to elective abortions, I make no complaint about that portion of the editorial. You have your opinion and you have a right to express it.

But your characterization of the acts of the five anonymous students who publicized the Health Service refund and of the other anonymous students who destroyed their materials amazes me. You control your indignation over the vandalism very well. I wonder what your view would have been if, say, I had had the opportunity and inclination (because of my disagreement with your editorial) to destroy the press run of your April 10th issue. Would my vandalism have been a "petty reaction" to "what was admittedly a frustrating situation"? Would you have criticized my act with the same anticlimactic syntax? — "Not only is such reaction unconscionable, but it also does not help to improve the atmosphere for freedom of expression at HLS." Or would I have merited a somewhat stronger reprimand?

Perhaps even one as strong as that meted out to the five students who distributed the flyer. You call them "irresponsible," because they didn't sign their names to it. (It's a bit ironic that you make such a criticism in an unsigned editorial. But — the size of your editorial staff being what it is — you at least give your readers a 1 in 24 chance of guessing your identity, rather than the much longer shot of 5 in 1500. I suppose that makes a difference.) But I would have thought the worst charge you could have laid against the five students would have been cowardice. Is it irresponsible to hold firm moral beliefs and to try to persuade others of their validity, even if one chooses to make such efforts anonymously? Perhaps, in many cases, it is impolitic. But it is not irresponsible. And if it sometimes is cowardly, it may at other times be merely prudent — especially if one is operating in a hostile environment where the response to argument is calumny and violence.

William Porth, 3L

Letters to the Editor of the RECORD

Class of '71

Ed. note — Copies of the following exchange of letters were recently received by the RECORD.

Dear Mr. Mitchell:

I have reviewed your letter of February 24, 1981 requesting me to increase my gift of \$250.00 (actually my husband Edward B. Greene, Jr. and I gave a total gift of \$500.00). We had carefully considered the amount of our gift before we made it. I in fact wanted to give less, but my husband persuaded me to agree to the \$500.00 figure. I thought it appropriate to let you know why our gift (which is a small percentage of our charitable contributions) is at the \$500.00 level.

My experiences at Harvard were not particularly pleasant. Women were not in favor during those times. I can vividly recall the snide references to women in the law school and some of the humiliations (like "ladies' days" in class). I realize that changes have taken place, but my more current experiences with Harvard have not assuaged me.

I tried at length to get the law school to reissue my diploma in my married name. I was told that it was impractical for Harvard to comply with my request since that would require reissuing a great many diplomas. Nevertheless, my undergraduate school (Cornell) had no difficulty complying with my request and Harvard had no difficulty in reissuing thousands of JD diplomas to LLBs.

During my last trip to the law school, I approached a faculty member I knew to say hello. I was rebuked with words to the effect that I was a member of the miserable class of '71 and then ignored.

I receive various publications from the law school and have some idea of what is going on there. I have watched with interest as the school primarily taught torts from the point of view of a professor who wanted to abolish the tort system (I am a personal injury lawyer).

As if all this were not enough, I recently read that the *Law Review* had decided to adopt a preferential admissions policy for women. This misguided, patronizing decision is so inane that at first I thought the *LAW RECORD* which I had received was the April Fool's issue.

I could go on ad nauseum but will not. Suffice it to say that just about everything I am and fight for was and still is being belittled or ridiculed by Harvard. I can see no good reason to give such an institution extensive support.

Robyn Cooper Greene, '71
Miami, FL

Dear Ms. Greene:

Thank you for your extremely informative letter of March 5 responding to my letter of Feb. 24. I sincerely appreciate your willingness to share your thoughts about

Harvard Law School and donating to programs associated with that institution.

Understanding better now what your own experiences have been, let me begin by highly complimenting you on your generosity having pledged what you have pledged. I'm not so sure that I would have been as generous as you have been had the same events occurred in my life.

I'm especially glad that you sent a copy of your letter to Dean Sacks, President Bok and the *HARVARD LAW RECORD* because the thrust of your comments needs to be understood by those responsible for administering the Harvard Law School.

I have thoughts about each point you have made and come out the same way you do. In other words, I think you're right. These situations do need to be changed, and I hope that when we look back upon this day in 1981 some years hence, we can laughingly describe it at some point as the battle days and be quite impressed by the progress that has been made in the meantime. If I might pause for a moment's isolation on one comment that you made, the rebuke that you had about being part of the miserable class of 1971, your experience with that is one I've shared many times as well. We must be the least admired and respected class in the eyes of the faculty of any class that ever attended Harvard Law School in recent decades. Having become aware of that, I've decided to take that as a compliment to our effectiveness in trying to challenge some of the existing ways of doing things.

I have made it a personal commitment to show the other side of the coin to the Law School, which is that our class was probably one of the best that they've ever had for two reasons. First, the class contained an extraordinary number of talented people and second, the class contained people who really cared about improving the society and the institution that they encountered. One way that I have taken to accomplish this is by accepting the chairmanship of this fund drive. You might be interested to know that our class to this date has proven to be by far the most generous in financial support of any tenth reunion class in the history of Harvard Law School and by a wide margin. I also strongly suspect that we will set a record for percentage of the class choosing to donate money.

This may at first seem like a contradiction to you. I find that participating with the Law School in representing outstanding support for the school gives us a greater voice in trying to influence changes, and I greatly appreciate the support that our classmates have given, including you and your husband, to making that possible. For example, our endowment fund to assist people who wish to pursue public service careers will be one of the few constructive steps taken to expand the availability of

these careers to students. Basically, I see financial support as helping students, students who probably need help as much as I did when I was a student. You might be interested to know my own version of your experiences in the financial aid area. I had recently married before coming to the Law School and was counting heavily on receiving financial aid. My parents at that point were not prepared to provide any continuing financial support. I received a curt note from the financial aid office telling me that because my parents would not fill out a financial aid form, I did not qualify for financial aid. I spent three very hardworking years earning my way through Law School as a result of that policy. Of course, I don't know whether I would have gotten financial aid anyway. Despite that, I have made a personal pledge of \$5,000 to this program in particular because I hope some other students won't go through the same experiences I did.

Despite the fact that I'm less than enthralled about a number of things about Harvard Law School, I strongly suspect that it will retain a role in providing much of the direction of the development of legal education in our country. If we are going to improve the profession, we have to improve Harvard Law School, and I don't feel we have much choice but to try to influence that institution. It is in that context that I am especially glad to read your letter. You are the third of our classmates to take the time to write a long thoughtful letter describing the concern that you have about experiences that used to occur and are still occurring at Harvard Law School, and I am particularly proud that each of you decided to provide some financial support despite your misgivings.

I hope you'll find this letter to be some source of comfort to you that at least there is one other person whom you don't know well in your class who shares your concerns.

I hope that you and your husband will be attending the reunion and that this will be a very enjoyable event for you.

Thank you for your continuing interest in helping students at Harvard Law School.

Donald W. Mitchell, '71
Cambridge, MA

Where's My Saab?

To the Editor:

Briefly, this is my plight: Someone stole my Saab so I will need the services of the new Harvard/MBTA subway stations at HLS.

Would you have information on where I can purchase a subway pass, or have you seen my car?

Linda Beyer
Editor, In Brief

HARVARD LAW RECORD

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



On Friday, April 24, members of the Admissions and Membership Committees of The Harvard Club of New York City will be in Cambridge at the Morris Hall lounge 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.

Candidates for membership will be proposed, seconded and interviewed in one step. Requirements for supporting letters, etc., are waived for this event. Information about the Club will be available and Committee Members will try to answer any questions you may have concerning membership.

The Harvard Club of New York City can be a most comfortable and convenient amenity that will make New York more enjoyable. It offers a central location in the Grand Central area, with spacious dining rooms, bedrooms, bar, lounge, library and extensive sports facilities.

Brochures describing the Club in detail are available at the A.H.A. office in Wadsworth House, at the desk in the Faculty Club and in the Business School Faculty Club.

If you cannot be in Cambridge on this date but are interested in Club membership, please call or write Ms. Thelma Leventhal, Secretary to the Admissions Committee, Harvard Club of New York City, 27 West 44th Street, New York, NY 10036 (212 840-6600) and request information for the regular membership procedure, rates and brochures.

DATE: Friday, April 24, 1981

**PLACES: Morris Hall Lounge
Business School
and Hasty Pudding Club
12 Holyoke Street**

TIME: 11:00 A.M. to 5:30 P.M. (No appointment necessary)

Harvard Club of New York City

27 West 44th Street, New York, New York 10036 (212) 840-6600

Through Wills-Colored Glasses

Richard B. Bernstein

Garry Wills, *Explaining America: The Federalist*. xxii + 286 pp., Doubleday & Co., \$14.95.

In *Explaining America: The Federalist*, Garry Wills continues his projected four-volume series on "America's Political Enlightenment," a series he began in 1978 with *Inventing America: Jefferson's Declaration of Independence*. At first glance, these books have a common pattern. Each attempts to overturn our traditional understanding of a basic document of American intellectual and political history. Each emphasizes the importance of reading the document in its historical, philosophical, and linguistic context. Each locates the origins of key elements of our political culture in the ideas of the Scottish Enlightenment philosophers. Yet *Inventing America* works surprisingly well as an exploration of the climate of ideas and opinions in which Jefferson lived, thought, and wrote, while *Explaining America* is riddled with errors, slipshod and forced in its analysis, and predominantly unconvincing as an elucidation of the meaning of *The Federalist*.

The easiest explanation for the failure of *Explaining America* is that Wills rushed the book into print. It is disorganized, cryptic, fragmentary, and shot through with minor but annoying mistakes. There is far too much undigested information for the reader to assimilate, and the book demands of the reader a wide knowledge and easy familiarity with *The Federalist*, the other works of Madison and Hamilton, the writings of David Hume, and commentaries by dozens of historians and political scientists. This is definitely not a work for the general reader.

Bearding Beard

But the main problem with *Explaining America* is not its sloppy and confusing presentation of its

thesis, but that thesis itself. To understand what Wills is up to, we must review the history of our understanding of the framing of the Constitution and the writing of *The Federalist*.

Until the publication of Charles Beard's *Economic Interpretation of the Constitution* in 1913, *The Federalist* was generally regarded merely as the first and most authoritative commentary on the Constitution; it was more revered than understood. Beard emphasized the importance of understanding the role of economic self-interest in the motives of the Framers, and he seized upon Madison's *Federalist* 10 as the keystone of his theory. Here, Beard declared, Madison gave the game away, for Beard read *Federalist* 10 as a brutally frank sketch of class conflict proposing the construction of an expanded nation as a way to prevent the lower classes from uniting to destroy the property rights of the upper class.

Beard's interpretation has been exploded so many times since 1913 that hardly anyone makes the effort any more. And yet this is precisely the dead horse that Wills beats all through the pages of *Explaining America*, sometimes by name and sometimes in the guise of "most commentators." In *Inventing America* Wills's main target was the Progressive historian Carl Becker; here he chases the ghosts of Beard and his fellow Progressive historians Claude G. Bowers and Vernon L. Parrington.

The Progressive historians rejected the reverent attitudes of their predecessors. When opponents of such Progressive measures as the income tax and child labor laws took refuge behind the Constitution, the Progressive historians set out to prove that the Framers were not demigods but men animated by the desire for gain and for protection of their property and that the Constitution was not a disinter-

ested act of political genius but, in the words of a Progressive newspaper editor, "the retreat of privilege."

Wills is right to criticize the Progressive historians' attempts to interpret history in the light of present political crises, but he spends too much of *Explaining America* gleefully knocking down the straw men set up by Beard and his colleagues. And his glee leads him to ignore the revelation of one of his most important "discoveries" — that James Madison was at the time of the Constitutional Convention and the writing of *The Federalist* a staunch nationalist who dreamed of, planned, and fought for a vigorous national government — by the late Irving Brant in his definitive biography of Madison published in the 1940s and 1950s. But this is typical of Wills's method: he lambastes those scholars with whom he disagrees, but ignores those who have anticipated him — with one exception.

Adair's Presence

If *Explaining America* were a novel, then the late Douglass Adair would be its tragic hero. Wills not only acknowledges that he is following in Adair's footsteps; he claims that the interpretation he offers in *Explaining America* is Adair's interpretation carried to its logical conclusion.

Douglass G. Adair, one of the great tragic figures among American historians, deserves to be better known. In his Ph.D. thesis, "The Intellectual Origins of Jeffersonian Democracy," and in later articles and review essays, Adair offered an illuminating new way of looking at the Revolution and early national periods. Though he published little, he generously

(Continued on Next Page)

Book Review

(Continued from Previous Page)

served as mentor and sponsor to dozens of his fellow historians. When in poor health and depressed at what he mistakenly believed was his failure to make a significant contribution to historical literature or to establish himself in the eyes of his peers, he took his own life in May of 1968, the act deprived the American historical profession of one of its most brilliant minds and one of its finest writers.

Adair broke with the Progressive historians by emphasizing the ideas, modes of expression, education, and reading of the Revolutionary generation. He revealed the influence on their statecraft of classical writers, seventeenth-century English "Commonwealth" thinkers, and eighteenth-century Scottish Enlightenment philosophers. As his friend and colleague Trevor Colbourn noted, "His concern was always with motivation and the frame of reference that can help us to understand that motivation."

Wills's other two major points are derived from Adair's work. The first of these — and the more questionable — is Wills' claim that the presiding genius of *The Federalist* was David Hume. This idea comes from Adair's discovery that some of Madison's ideas in *Federalist* 10 came from Hume's political essays. But Wills purports to find Hume's intellectual fingerprints throughout *The Federalist*; he even begins each chapter of *Explaining America* with a quotation from Hume pointing the moral and adorning the tale.

Too Much Hume

Wills does not prove his case, for emphatic assertion is not proof. He misreads Adair in leaving out of the picture the influence of classical republican thought, the Commonwealth ideology, and practical necessity. He also fails to distinguish between ideas original with Hume and the climate of opinion for which Hume was merely an eloquent spokesman.

Occasionally Willis's reading of *The Federalist* through Hume-col-

ored glasses leaves the text convoluted and incomprehensible, as in his attempt to transform Hamilton's *Federalist* 78 from a defense of judicial review into a defense of legislative supremacy.

In the last chapters of *Explaining America*, Wills abandons his focus on Hume and presents a sober and perceptive analysis of *Federalist* 10. According to Wills, Madison argued that the size and diversity of the American republic would allow the numerous quarreling local factions to cancel each other out; those who would be chosen to administer the national government would be free of local or regional prejudices, devoted instead to the general good.

What Went Wrong

These last chapters of *Explaining America* and its historiographical Prologue are as good as anything in *Inventing America* and follow reasonably from the work of Douglass Adair. Then what went wrong in the rest of the book? Adair himself provided the key when he wrote: "It is my own feeling that we really

can't break into the eighteenth century semi-closed circle that determined [the Framers'] meaning and expectations when they talked about the limits and possibilities of political and social organization."

For all Wills's admiration and close study of Adair, he forgets Adair's warning. His concern to refute modern analysts of *The Federalist* often leads him into the error of shaping his readings of the essays specifically to explode their readings; unwittingly, he suffers from the same present-mindedness he denounces in others. Wills also forgets, as Adair did not forget, that the statesmen of the Revolutionary generation were intellectual packrats who ransacked all of history and Western political thought for guidance. The reader who wants to understand *The Federalist* on its own terms would do better to read Adair's collection of essays, *Fame and the Founding Fathers*, and his dissertation (available from University Microfilms, Ann Arbor, Michigan); *Explaining America* is only partly satisfactory. ❧

Professional Dry Cleaning
and Shirt Laundry
at

Rite-Way
DRY CLEANERS, INC.

547-8008
4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

KOBY
PHOTOGRAPHERS

8 Boylston Street
Harvard Square
547-7552

Graduation Portraits
and
Instant Passport
Photographs

容儒樓 *YOUNG LEE*
CHINESE AND AMERICAN
RESTAURANT



29 Church Street - Cambridge at Harvard Square
For take home service call UN 4 - 3018

Gino & Mike's
Barber Shop

A CUT
ABOVE THE REST

ONE BLOCK FROM THE LAW SCHOOL
OPPOSITE HOLIDAY INN

354-6878

We do razor styling

Austin Scott: Gone But Not Forgotten

(Continued from Page 1)

time colleague, recalled how Scott may have earned from late Dean Roscoe Pound the title "Mr. Harvard Law School." "Walking through the Yard, Mr. Scott once said, 'I suppose that the Harvard Law School is my religion.' So was he the Harvard Law School — the Harvard Law School that seeks to be: the dedication to reason and civility; the sparkling mind; the clarity of thought and expression; the gentle spirit, true concern and humility that shone through the humor, showmanship and constant intellectual pressure that both enlivened and taxed his students. His

knowledge of the Law School and, while teaching, of his students, was exceeded only by his loyalty to both.

"In my life, as for more than 40 years, the final question will continue to be, 'What would Mr. Scott think?'"

Sacks wrote that HLS was "immeasurably blessed" by Scott's presence, and that "[h]is passing leaves a place that can never be filled." Casner said Scott "lived a life which will cause him to live on." Sacks concurred in his statement, "He was dearly beloved, and each of us must be a little better because we have known him."

Scott was known in recent years to give annual Root Room talks on his recollections of Harvard Law School. "A life in the law is a very, very happy kind of life to lead," he said two years ago (RECORD, March 9, 1979, p. 6); he had begun to reflect that happiness in the fall of 1906, in his letters to home that many HLS students have been privileged to read in the *Adviser*.

Scott was born in New Brunswick, New Jersey, and educated at Rutgers College before coming to HLS. He also received numerous honorary degrees and the University's coveted Ledlie Prize in 1956 for his work on trusts. He leaves a son, Gordon Kendall Scott, '41, and three grandchildren, Peter Crandall Scott, '78, Charity Scott, '80, and Stephen Scott.

There will be a memorial service at Harvard's Memorial Church on Friday, May 1 at 1:00 p.m.; a reception will follow at 17 Quincy Street, Cambridge.

— By Dan Hershman
and Carl Oppedahl

Schlafly Sparks Controversy

(Continued from Page 5)

men and women." Schlafly also felt that male-controlled institutions were not exploiting her for their own sexist purposes. "There are more women than men — let the electoral process work," she said. She felt most women were not interested in running for Congress because "it's a dog's life; they don't like to be so far from home or to eat rubber chicken." Some in the audience reacted with disbelief when Schlafly said she found no discrimination against women when she was at Harvard-Radcliffe "decades ago."

Blunt Answers

Audience hostility seemed to mount when Schlafly's answers were blunt, and perhaps callous. Asked about protection for rape victims, she said, "I'm absolutely

against rape," flashing a wide smile. She did urge strong prosecution of rapists. One questioner pondered why nurses in the field in Vietnam, who were shot at and sometimes wounded or killed, did not receive battle pay. Schlafly calmly responded, "They were all volunteers; I applaud them." The audience was noticeably disappointed with her answer. Of abortion, she said, "I'm not for killing people."

Schlafly tried to encourage women to do whatever they wanted to do, relating her own school-of-hard-knocks success story. But she feared ERA would place a burden on women electing to fill traditional roles. Among things women would lose, she said, would be their husbands' obligations to support them. One role, Schlafly indicated, is exclusively a male's: "I believe," she said, "that God is a man."



SECOND CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS:
HARVARD LAW RECORD
(ISSN 0017-8101)
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138

SPORTS ANSWERS

1. Marco Baron.
2. Ray Knight.
3. Bob Prince.
4. Albert King.
5. Robin Earl.

JAMES F. BRINE, INC.
29 BRATTLE ST.
HARVARD SQ. 876-4218

SPORTS EQUIPMENT AND APPAREL

SPRING EQUIPMENT IS HERE

BASEBALL	TENNIS	SOCCER
GLOVES	RACKETS	SHOES
BATS	SNEAKERS	BALLS
SHOES	CLOTHING	UNIFORMS

ATHLETIC SHOES BY: ADIDAS, BROOKS,
ETONIC, SAUCONY, AND NIKE

"BETTER BUYS AT BRINE'S"