

HARVARD LAW RECORD

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TWENTY CENTS

Written Work Change Killed; Class Attendance Emphasized

By Frank E. Sisson

The faculty has dropped consideration of the recommendation that credits involved in the fulfillment of the Written Work Requirement for Harvard Law students be increased.

The faculty had been primed for a possible vote on a proposal to increase the Written Work Requirement from two to four credits (with an equal increase in credits required for graduation). At last week's faculty meeting, however, Professor Robert E. Keeton announced that the Committee on Legal Education was not prepared to make a formal recommendation for change in the policy.

Keeton, chairman of the Committee, explained that this reversal of an earlier general recommendation for change was necessitated by the wide divergence of views among members of the Committee as to whether and how the credit policy should be amended.

Members of the faculty stressed that the failure to take a vote for change in the credit policy was by no means an endorsement of the view that the requirement demanded no greater commitment of time and effort than the fulfillment of a two credit course.

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Nader Rails Law School; Attacks Courses, Policies

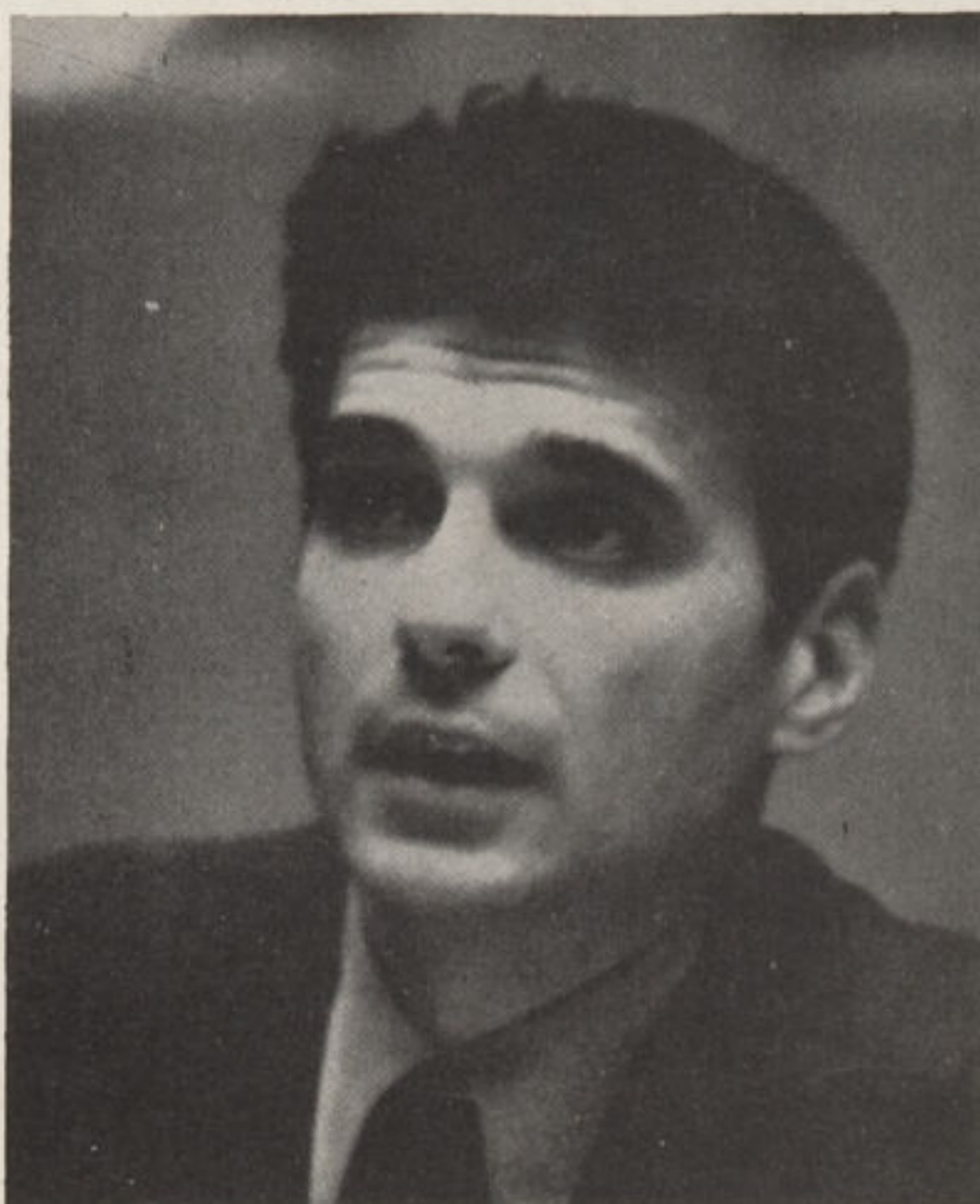
By Patrick F. Kennedy

Declaring that Harvard Law School has done nothing to solve the longstanding problems of our society, Ralph Nader '58 roundly denounced the Law School's curriculum policies and orientation in a recent interview with the RECORD.

"Looking over the history of the Law School, I think it is suffering under the worst leadership of its existence," Nader declared.

"We still have the same old problems of monopoly power, poverty, disastrous health care delivery system, high cost bar-

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Ralph Nader '58

Dukakis To Talk On Opportunities In Government

Governor Michael S. Dukakis '60 will appear Friday, May 9, at 4 p.m., in Burden Auditorium at Harvard Business School to meet with Harvard graduate and undergraduate students who are interested in pursuing careers in state government. Dukakis will discuss the possibilities for government careers in a number of different areas.

"I want to make sure that talented young people consider public service before heading directly into the private sector," Dukakis said in explaining his visit to Harvard.

"The great frontier of the future is in government, and it is there that the ability to change society really lies. Government is the ideal place for creative and dedicated young people who want to have a real impact on people's lives."

The Governor will talk about employment opportunities for qualified students in his administration. Available job positions include administrative positions in areas such as finance, economic development, environmental affairs, consumer affairs, educational affairs, and human services. Effective ways of finding work in state government will also be discussed.

The session is open to all members of the Harvard community who wish to attend.

FOCUS: PUBLIC INTEREST

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Law School Takes Action To Meet Female Demands

By Susan Gillette

Action is being taken to satisfy at least two of the demands by Law School women in recent weeks. The Dormitory Council and the University Health Service are making plans to provide training for Resident Assistants and the Health Service plans to hire a woman counselor by September.

The need for a woman counselor, as well as the desirability of training RA's to be aware of students' psychological problems and to assist them in getting medical help, were stressed in a flyer circulated among law-school women. These issues were also discussed in a Women's Law Association meeting.

Thomas L. Burroughs, 2L, Dorm Council president, said his organization backs the demand for training of RA's. No definite plans for the training have been set, but Dr. Preston K. Munter of the Law School Health Service has offered his assistance.

Burroughs, RA's and other interested students are studying student needs and the possible content of the training program. The training program will be held in September, Burroughs said.

Munter said the Health Service is seeking a woman counselor who can assist students with psychological problems, give vocational guidance, and fulfill various other responsibilities in the Law School.

According to Munter, Dean Stephen M. Bernardi has assured him that the Law School will provide the salary of the counselor. This financial arrangement apparently is necessary to secure a woman counselor who works at the Law School Clinic. At the present time the University Health Services' women counselors are all assigned to Holyoke Center.

Munter would like students to recommend women who might be qualified for the Health Service job. The "ideal" candidate would have counseling experience and also be familiar with Harvard Law School, he said. A lay therapist would be unacceptable.

Another issue raised by women is receiving the attention of Dean Albert M. Sacks. The women are concerned about a lack of treatment of women's issues in Law School courses.

Sacks is reviewing and distributing to professors a collection of material concerning these issues which has been prepared by teachers in various fields of law.

Sacks said that he could not force Law School professors to use the materials but expects professors will use those materials which are "educationally useful."

Solution to Cryptic Law

"To write to a policeman's superior that your tin-horn cop sits in nearby concealment sipping beer until he sees a car parked over twelve min. at a defective meter . . . then sneaks over, places a ticket on the car and then hustles back to his beer . . . imputes to a police officer qualities that would render him completely unfit to serve."

Thompson v. Upton, 146 A. 2d 880.

Detlev F. Vagts Is Most Popular In Registration

By Ricardo Hinojosa

For the second straight year, Professor Detlev F. Vagts is the most sought after professor with both his *Accounting* and *Corporations* courses oversubscribed. Law School Registrar Mary D. Upton released this information to the RECORD based on preliminary results of last week's pre-registration.

Upton, who emphasized the preliminary nature of the figures, also stated that there are only three other courses which are oversubscribed. They are *Antitrust A* with Professor Donald F. Turner, *Evidence* with Professor Laurence H. Tribe, and *Taxation* with Professor William D. Andrews. Upton did add that she did not know how many people Andrews would take into his course, so she was not sure "how many people will have to be cut from his course, if any."

Due to the small number of oversubscribed courses this year, as compared to last year's total of 11, Upton opined, "I would think that no one will be cut from more than one course, unless people are in both *Accounting* and *Corporations* with Professor Vagts."

"We will put into the *Adviser* what courses really need to be cut and which are closed," Upton added.

Commenting on the fact that over 50% of 1Ls and 2Ls turned in their pre-registration materials on the last day of the four days scheduled for pre-registration, Susan Zdonik, Assistant to the Registrar, stated that next year "we'll have 1Ls and 2Ls assigned different registration days."

"This registration period was at times like a three ring circus" said Upton, who is the great-great-great granddaughter of circus magnate P.T. Barnum. She attributed the hectic registration period to the fact that "students didn't really read their pre-registration materials closely."

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Clerkship Record Set Despite Problems

By Phil Heagney

Reports to Assistant Dean James N. Bierman's office indicate that members of this year's graduating class are accepting judicial clerkships at the same record pace set by the class of 1974, but some students have reported dissatisfaction with the clerkship selection process.

Bierman said he expects 80 to 85 3Ls to work as clerks beginning this June. Last year, 84 students reported that they had taken clerkship positions, and this number represented a 20% jump over the totals for 1973 and 1972. The Law School's records on judicial clerkships depend on voluntary reports from third-year students.

Bierman said that the reported positions seemed to be about two-thirds federal and one-third state.

Despite the abundance of judicial clerkship positions available to Harvard students this year, some 2Ls have criticized the current selection process for such jobs. Several students have attacked the trend toward earlier and earlier selection with some judges now making final decisions before the start of the third year. Other students have noted that application procedures are not well publicized and that some opportunities are privately channelled through faculty members or made known only to members of the *Law Review*.

Bierman observed that in the past two years the practice of early selection has been increasing and is causing problems especially for students who want to clerk in the First, Second, or DC circuits or with a few of the state supreme courts. Bierman felt that "both students and judges are pushing for these early selections and no one knows how to stop the trend." But he added that "for the majority of clerkships, except those in New York, Boston, Washington, and San Francisco, students will still have no problem if they hold their applications until September."

Dean Albert M. Sacks said that he and several other law school deans recently sent an informal letter to a number of judges noting their concern for

the acceleration of the clerkship selection process. Sacks explained that many judges responded that they were also concerned but felt powerless to reverse the trend.

Sacks explained that he and 6-12 other law school deans may issue a formal statement urging judges not to ask for clerkship applications before a set date and urging students and faculty to withhold applications and recommendations before a set date.

F. Whitten Peters, 2L, president of the *Law Review*, noted that early selections put unnecessary pressure on students and that he would prefer to see applications delayed until the late summer. "We're waiting to see what effect the Sacks' letter will have," Peters said, "and, if there's a role we can play, we'll take some action on our own for next year."

Neither Bierman, Sacks, nor Peters felt that publicizing clerkship opportunities presented as serious a problem as the issue of early selections. Bierman explained that the Placement Office did not handle

judicial clerkships because they rarely involved on-campus interviews. And Sacks added that "the judges are entitled to be selective and there's really no way to control them."

Peters said that the *Law Review* had only one special clerkship letter to date and only receives a few such letters each year. "How the whole clerkship process works is unclear," Peters explained, "but most judges don't solicit applications at all. Instead students write a lot of letters and uncover most of the positions on their own."

Bierman said that he will send a memorandum on judicial clerkships to all present 2Ls through their Langdell mailboxes in a week or two. In the past this memorandum has included the names of present Harvard clerks and a list of faculty members who conduct clerkship interviews for particular judges, as well as general information about application procedures.

Bierman urged students to apply for clerkships and to use the services his office provided. "If they want to clerk, there are plenty of places for Harvard students all over the country."

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Nader Attacks HLS Courses, Policies

(Continued from Page 1)

riers preventing people from using the legal system, and contamination of the environment. Who is going to work on these problems?"

Nader claimed that the failure of the Law School to direct the attentions of its talented student body to the ills of the society helped to squander one the nations most valuable resources. "The question is:

of Corporations. He cited the failure of courses to consider how the world's giant corporations, can be controlled. Instead, Nader described Harvard's courses on *Corporations* as a stroll through the Delaware statute — the least common denominator in corporate regulation.

Nader suggested that the Law School should teach the *Corporation* class, at least in part, from the point of view of the worker,

ought to have blue-collar workers visit HLS and sit in on classes. He predicted that two things would happen. First, students would start to see possible law suits as they discussed matters with the workers. And secondly, the workers themselves would begin to understand their rights. The purpose would be to get them to rub shoulders. He described the present environment as contrived isolation. "It's the kind of environment they want to train the power elite of the future. Don't tell me that Al Sacks and Abe Chayes don't know the corporate score. They know how power is used and abused in this country."

Nader added that the challenges for public interest lawyers in Washington have become greater. "You used to be able to come to Washington and save the taxpayers a million; today you can come to Washington and save the taxpayers a billion."

Nader also had strong criticism for the *Harvard Law Review*. "If you had 50 bright law students, would you put them in Gannett House? And if you would, would you have them put out the kind of publication they do?"

"Why don't they put out 'Law for Laymen.'" Nader asked. "I suppose a charitable description of the *Law Review* is a journal that makes the law less intelligible to most people, and more intelligible to a few people."

Nader asserted that *Law Review*ers should be working to give blue collar workers the right to know the name and effects of the chemicals to which they are exposed. "But nobody ever asks how the *Law Review* could be different. It is not the subject of either imagination or contemplation."

Nader asserted that the *Legislative Research Bureau* has made a greater contribution to society than the *Law Review*, in spite of a tiny staff and virtually no resources.

Nader concluded his remarks by saying that he would like to hear from any Harvard Law Student who would be interested in studying the Law School over the summer.



Ralph Nader with Mark Green '70

Should Harvard Law School's horizon extend beyond *Sibbach v. Wilson*? They are pursuing the old game of making students sharp by making them narrow."

"The constituency of a great law school are the people of the country. Harvard will put out 50 books on international tax problems, yet they never put out a book on how to develop a small claims court, because that wasn't funded."

The former RECORD editor also declared that the Law School's courses are lacking in empiricism. Nader noted that when you study an automobile crash you should consider three things: the driver, the vehicle, and the highway. "In class you never consider the highway or the vehicle. The reason is the courts never brought the vehicle into consideration, and Harvard only studies what the courts do."

Nader claimed the same empirical deficiency extends to the field

the consumer, and the political system. Nader asserted that the answer was to study these diverse issues together inside the basic *corporations* course, not in a seminar or special course which relatively few would take.

"You don't study the purpose; you battle over the linguistic interpretation. Harvard Law School is a place where you have the intellectual freedom to roam around in a cage."

Nader also claimed that law professors fail to ask students the most important, evaluative questions about the legal system such as how many can afford to use it in terms of money, time and aggravation. "We never discussed this because the answer was embarrassing. People are generally shut out," Nader declared.

As an experiment, Nader suggested that the Law School

Future Of Public Interest Law Discussed

By Patrick F. Kennedy

Facing the gradual attrition of foundation support amid the present economic crisis, Charles R. Halpern and Mark J. Green '70, two eminent Washington public interest lawyers, recently discussed with the RECORD their thoughts on the future of public interest law and described the efforts being made to find the necessary resources to insure the movement's continued vitality.

Halpern, a founder of the Center for Law and Social Policy (CLASP) in 1969, one of the first public interest law firms, has recently been named the executive director of the newly formed Council for Public Interest Law. The Council represents a major effort by private foundations and the private bar to assure long-range financial security for public interest law. It has embarked upon a two or three year project which will hopefully transform public interest law into a permanent part of the legal system.

Until now, financial support for public interest law activities has come almost exclusively from a very small number of foundations in the form of short-term grants. This support is almost bound to diminish, according to Halpern, who explains that the intention of the donors was simply to get the program underway.

Halpern warns that if the efforts of himself and others are unsuccessful at "institutionalizing" public interest law, the advances made during the past years toward representing various segments of the public, including consumers, minorities, environmentalists, and other diverse and often unorganized interests, will be lost.

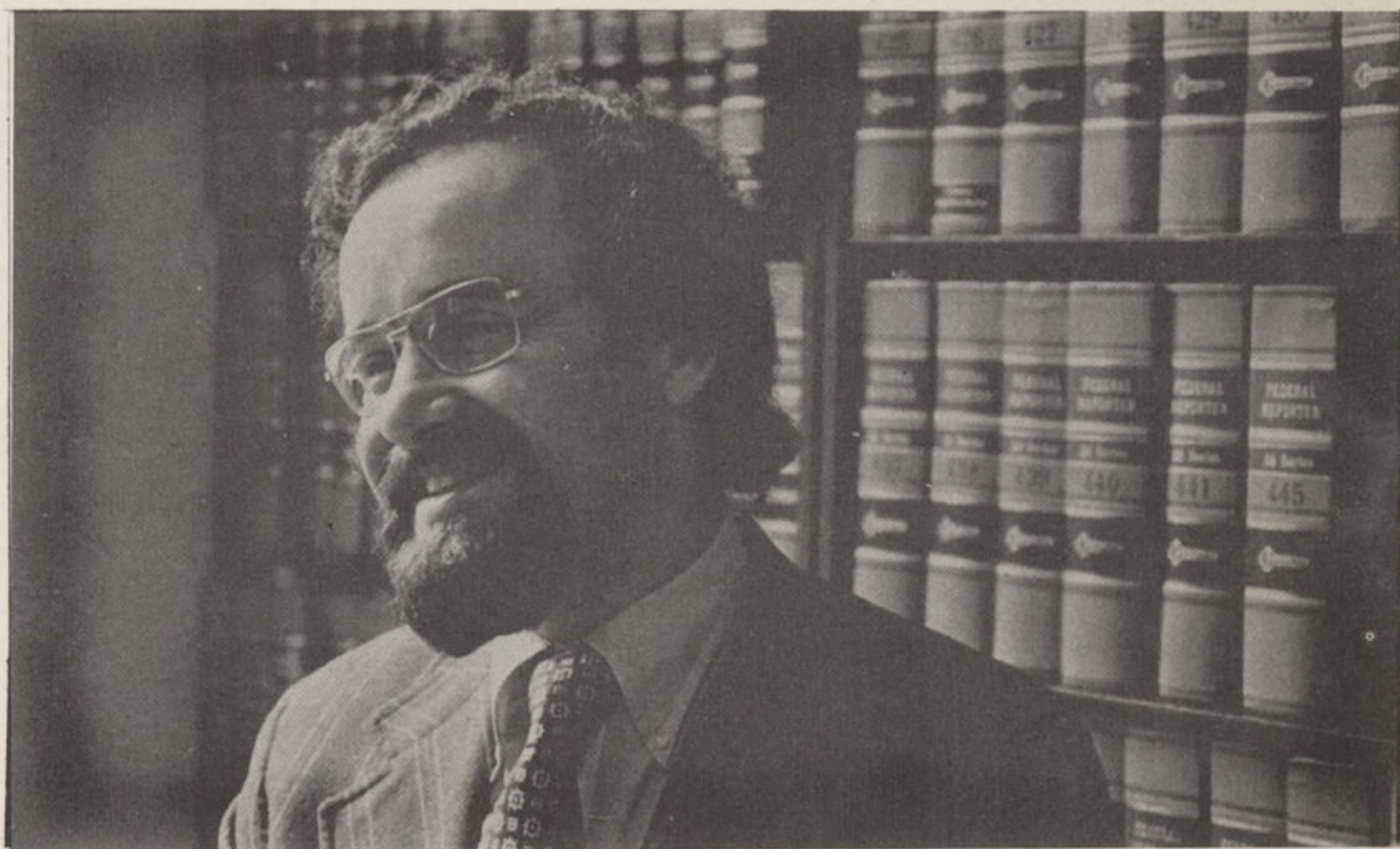
To Halpern, one of the primary tasks of "institutionalizing" public interest law is to instill in students the belief that they can have a legitimate career in public interest law. "People who get to be my age (35) start to think about where they will send their children to college," Halpern explained. "The Nader approach and mine are different. I think it is important to have a career pattern. My own view is that the sacrifice element is not neces-

sary, and that the Nader approach is extremely short-sighted. You just aren't going to staff an ongoing institution with Ralph Naders."

The Council will explore a number of new methods of funding public interest law representation during its two to three year study.

One possibility is to make federal funds available, either through the alteration of current administrative practices or through the establishment of new agencies for citizen representation. As an example of the former, Halpern noted the Federal Trade Commission was re-

task of the Council will be to enlarge by statute the number of suits for which attorney fees will be recoverable. Also at issue are the hourly rate that courts will grant in assessing attorney's fees and the limitations imposed by the IRS upon the amount of funds a public interest firm may recover. Some courts have recently employed a "public interest discount" to assess attorney fees at only \$20 to \$30 an hour. And recent IRS pronouncements state that a public interest firm may not receive more than 50% of its total litigation budget from attor-



Charles R. Halpern in his Washington, D.C. office

cently authorized to spend \$1 million to underwrite the costs, including legal fees, of citizen representation in FTC rule-making procedures. An example of the latter is the proposed Agency for Consumer Advocacy (ACA), a bill presently pending before Congress which is likely to be passed this Spring. The bill would create an agency with no regulatory obligations and a budget of \$15 million. That amount would be twice the total combined budget of current public interest law firms.

The Council will also attempt to develop citizen advocacy at the state government level, as typified by the New Jersey Office of Public Advocacy. (See the related story on the New Jersey office in this issue.)

Attorney fee awards are also regarded as an important source of funds in citizen suits. Halpern notes that a primary

ney's fees.

The Council will also attempt to establish an obligation of the organized bar to support public interest law, to cultivate new sources of private financing, and to add a citizen action component into group legal service.

To Mark Green, the crucial test for public interest law is whether it can outlive its founders. Old public interest groups periodically fade out, but new groups are begun. The balance has been kept. "But it is not clear to many," Green avers, "whether the public interest movement will be as permanent as the Lincoln Memorial, or simply a footnote in Washington's history."

The former editor of the Harvard Civil Rights-Civil Liberties Law Review sees three major issues.

"The big issue is money. Money
(Continued on Page 8)

Visiting Committee Hears Student Critics

By Bruce Antkowiak

Zak Taylor, 2L, editor of the *Civil Rights-Civil Liberties Law Review*, promised the Visiting Committee on Student Concerns from the Board of Overseers that they would hear themes of alienation and frustration. For nearly three and one half hours student speakers made Taylor's prediction good. The meeting, held April 25th in the Pound building, was attended by approximately 60 students. The specific proposals put forth to the Visiting Committee were, perhaps, familiar to resident members of the HLS community but did serve to underscore the themes Taylor had indicated.

The discussion formed itself around the "overriding facts of existence" which Taylor felt permeated the Law School's lifestyle. The overall size of the school was seen as contributing to the perception that meaningful student faculty relationships were not possible. Nadine Strossen, 3L, noted that one reason for such alienation is the lack of student input into the faculty selection process. Strossen observed that while the precise criteria for selection is not clear, a definite "anti-practitioner," journal-output bias seems to exist. Suzanne Stocking, 1L, (WLA) and Larry Patrick, 3L, (BALSA) were also critical of the hiring procedures, pointing in particular to the gross underrepresentation of blacks and women on the faculty. Both cited

the need for role models on the faculty which better approximated the make-up of the student body.

According to two of the speakers, student pressure for change in certain areas often meets with considerable frustration. Helen Trilling, 2L, stated that demand for clinical courses is perennially high, yet such courses amount to only about 10% of the credit offering. Russell Goldsmith, 3L, was highly critical of the handling of the student demand for a change in the Written Work Requirement. He recalled that efforts in this area have yielded only a "tightening of the screws" to the extent that student members of the Legal Education Committee were forced to fight simply to maintain the requirement in its present condition. Even in the face of three successive Visiting Committee reports on the

deficiencies in the present system for 3rd year papers, the faculty, according to Goldsmith, has remained inflexible. Many students called for active efforts by the school to equalize the recruiting position of the public interest agencies as much as possible, and to combat the feeling that being on "the conveyor belt to the corporate firm" is the only means to a worthwhile legal career.

A generally expressed feeling was that the school must begin now to correct, as Ann Morelli, 2L, of the Law School Council put it, "the general sense of impersonality at HLS." The Visiting Committee hoped that their proposals this year would stir some changes in this direction. Interestingly, at the conclusion of Strossen's presentation, one of the Committee members remarked that he had no questions as "some of us, at least agree with everything you say"



University Wine Quiz # 9

1. What is the other famous french wine called "Pouilly-" besides 'Fuisse'?
2. What does Cepage mean?
3. What great Italian region lies at the foothills of the Alps?
4. Why is the University Wine Shop so popular with H.L.S. students?

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HARVARD LAW RECORD

CS Morrison and Schuck: People's Lawyers

By Patrick F. Kennedy

Sitting in his office on the top floor of a seven story building near Dupont Circle, without tie or jacket, Alan B. Morrison '66 surveys the scene about him and notes that the people in his office believe they have the best jobs in Washington.

Morrison heads the litigation department of Public Citizen, a public interest law firm funded through contributions solicited by Ralph Nader. By October, 1975, his group of six lawyers will have had five arguments on the merits before the Supreme Court in less than two years. Morrison reflects that this is the single best fact he can think of to indicate that they are on the right track.

The business of the litigation group, Morrison explains, is law reform. Noting that there is rarely disagreement as to which cases they should take, Morrison listed the factors the group considers. "We look at the case, consider the likelihood of success, the precedential value of the case, whether someone else is likely to bring the suit, and a few other things. Every case we have brought we have had a strong belief we were right on the law."

There are several themes that underlie the suits brought by the litigation group. The first theme is to make the professions and services accountable. The Goldfarb minimum fee schedule litigation was handled by the group. Other suits in this same general area included an action which successfully challenged the constitutionality of a Virginia statute prohibiting the advertising of prescription drug prices, and a pending suit challenging the constitutionality of a Maryland statute which prohibits doctors from providing factual information to consumer groups who wish to publish medical surveys on physicians in a given area.

The second group of cases are primarily meant to make the government obey the law. As examples, Morrison cited suits attempting to enforce highway safety provisions and to require agencies to collect the data they are supposed to collect.

A final theme is represented by consumer cases. Currently suits are pending against both the telephone company and the airlines.

Despite the heavy schedule, the atmosphere in the office is decidedly relaxed and informal. Lawyers drift in to relate tales of the morning's encounters, joke about adversaries, and plan the afternoon's strategies. In Morrison's words they have fun, but also work hard. "I can't think of anything I'd rather be doing. I think that is true of the other people in the office, but I don't think it is true of the other lawyers in Washington."



Peter H. Schuck '65, director of Consumer's Union Litigation Department in his Washington office.

To date Morrison has had little trouble staffing his office with talented people. This year they will hire three new lawyers which Morrison believes any law firm in the country would be eager to get. But Morrison admits that his office is much more interested in people who have four or five years experience, and that these people are hard to find.

"A lot of people say, 'if Ralph would pay me "X" number of dollars, I'd come to work tomorrow.' That of course is an easy thing to say knowing that he won't pay them that."

Peter H. Schuck '65, who directs the litigation office of the Consumers Union, the organization which publishes *Consumers Reports*, found public interest law by a rather circuitous route. Upon graduation from law school, Schuck originally went to practice in a Wall Street firm, but he found

himself stifled and dissatisfied and left shortly thereafter to join a small mid-town firm. The smaller firm, however, was not the answer. In 1968 he left to enter graduate school, planning to take a Ph.D. in government and to teach.

Eventually the desire to return to law, and put his training to use, prompted Schuck to join Ralph Nader's Center for the Study of Responsive Law. After approximately one year, the position with the Consumer's Union opened up and Schuck was selected for the post.

Schuck describes his present job as similar to being a senior partner in a small law firm with

the opportunity to make decisions and bring important cases. The work is "terribly rewarding" according to Schuck, even by conventionally selfish standards. "You can establish expertise and reputation very quickly." While Schuck adds that these are not the primary reasons one should have for entering public interest law, he admits that these considerations may co-exist.

"One spends far longer in a large institution gaining experience," Schuck commented comparing his present job with his New York experience. "It is not necessary to take seven to ten years to tackle an important case. There are some exceptions, but most people are bound by the hierarchy and the pressure of institutional norms."

Virtually all of the lawsuits brought by the Consumers Union

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Interest in Aid Programs Remains Stable At HLS

By Roger P. Evans

Interest in voluntary "legal aid" type programs at the Law School remains high for at least 3 of 4 student organizations surveyed earlier this week. While Student District Attorneys, Prison Legal Assistance Project, and Legal Aid Bureau all have more than adequate personnel to carry on through the next year, the Voluntary Defenders are potentially understaffed for 1975-1976.

Karla J. Letsche, 2L, President of HVD, was "very disappointed" at the 60-person turnout at the joint recruiting meeting of LAB, PLAP and HVD. Last year, 150 students came to a similar meeting. Letsche was unsure of the reason for the drop. "The timing might have been poor, but as I understand it, there is generally a lowered degree of interest in all clinical programs," she said. (The RECORD has learned that pre-registered enrollment in all clinical courses stands at 154 students, compared to last year's 172 students.)

Letsche characterized the strength's of her organization as the provision of clinical work experience in the criminal area and a "more flexible time commitment" than LAB.

Altogether, 25-30 students have expressed some degree of interest in HVD and Letsche hopes for more recruits in the summer and fall.

Although Carol B. Kellerman, 2L President of the Legal Aid Bureau was also initially worried about the size of the turnout at the recruitment meeting, 69 applicants were eventually considered for 43 openings. This compares favorably with the 77 applications received last year.

Seven new members came from the Ames Alternative Program, 28 were selected by lot, and eight women were added to this number "to more fairly reflect the composition of the law school." All minority applicants were selected in the original lottery.

Membership on Legal Aid usually involves a two year time commitment, during which members spend a "substantial number" of hours at Gannet House.

PLAP has no structured recruitment program and in this respect is more similar to HVD than LAB. According to Michael H. Bierman, 2L, Director, the organization presently has 45 members, of which "maybe 10" are 1Ls, "more than last year." "This is certainly enough to operate with," added Bierman.

He avers that his organization offers "a chance to see inmates as people, to view a different environment, to experience a different system."

The fall recruiting season went extremely well for the Student District Attorneys, according to Martha L. Chadie, Office Manager.

Public Interest Future Explored By DC Lawyers

(Continued from Page 5)

to public interest law is like water to a plant; without it, it will wither and dry up."

The second issue is manpower. Green recognizes a diminishing interest in public interest law on the part of students. He attributes this in part to the economic condition, noting that some students may consider public interest law a risky career route. But he admits that he is largely unsure of the precise reasons. This problem could become acute from the public interest standpoint. Few Washington lawyers are willing to cross the line over to public interest law, and so such organizations have largely relied upon law students to meet their manpower demands.

As the third major issue, Green cites the present prohibition against lobbying faced by public interest groups. This allows courtroom opponents to shift the field of conflict to the legislature where the public interest firms are unable to follow.

The impact of public interest law, according to Green, has been very significant. Previously, bureaucrats would violate laws without fear. Today they know that if they act illegally, they will likely be sued by some public interest lawyer.

But whether further advances will be made, or whether the movement will recede, today remains unresolved, resting perhaps in the hands of the economic situation and the inclinations of the current generation of law students.

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'Government Under Glass' Is Begun In NJ

By Steve Miller

It is a long road from the days the King could do no wrong to the present "government under glass" of New Jersey Governor Brendan T. Byrne '50. In May 1974 a Department of the Public Advocate (DPA) was enacted by the New Jersey legislature, establishing a unique institution which has been characterized by Ralph Nader as potentially "a philosophical as well as practical turning point in the citizens struggle to control government decisions." The Public Advocate, wielding a broad statutory mandate and a substantial staff, will do battle as a defender of the public interests.

The nucleus of the Department is the old Public Defender's office which receives \$9.4 out of \$11.4 million budget. Stanley C. Van Ness who was appointed to be the Public Advocate was formerly the Public Defender and points with understandable pride the record of his old department which has reduced the backlog of criminal cases while cutting costs and posting a remarkable 46% acquittal rate at all jury trials.

But the really novel aspects of the DPA are what its 60 other lawyers are doing in offices like the Office of Inmate Advocacy and Parole Revocation, the Division of Mental Health Advocacy, the Division of Rate Counsel, and the Division of Public Interest Advocacy.

The Inmate Advocacy Office, for example, has been investigating prison and parole practices, representing potential parolees at their hearings, negotiating with prison officials and filing suit when necessary. As Van Ness noted in a telephone interview with the RECORD, "Prison Inmates are hardly the most popular group." The state legislature has slashed the funding for the program for the coming year.

Eleven attorneys have been working in Mental Health Advocacy, investigating abuse at the State Hospitals and filing successful class action suits to establish greater due process protection for

the involuntary civil commitment procedure, and better treatment. *In Re Garrity*, in which the Division won a lower court order providing for counsel in all commitment proceedings, is now pending before the N.J. Supreme Court. *Doe v. Klein* was certified by a Superior court judge as a class action enabling the Department to represent nearly all of Greystone State Hospital's 2,000 patients in a long planned and heavily researched constitutional right to treatment case. These and other possible landmark cases have thrust New Jersey into the forefront of mental care reform.

But glory is not always shared easily. The Attorney General's office which had opposed the Garrity suit, is now arguing in government circles that even if counsel must be provided, Van Ness's office should not be the source of counsel. On the subject Van Ness said diplomatically, "The relations between the Office of the Public Advocate and the Attorney General's are basically friendly. The overlapping jurisdiction gave us some trouble at first. Now sometimes we defer to them and sometimes we don't wait."

The old days of Public Utility hearings pitting the utilities with their armies of experts and tables against numerous but technically unsophisticated citizen groups are over in New Jersey. The rate division staff of 10 lawyers "represents and protects the public interest" in proceedings before any state department commission or agency which regulates industrial or utility service or rates. Recently the Division announced it will enter the hearings on Blue Shield's request for a 37% increase and is presently lining up consulting economists, an accountant and an actuary to thoroughly evaluate the application.

Another unique aspect about the Rate division is that it is financed through assessments on the industries seeking rate hikes.

The most novel and potentially significant part of DPA is the Division of Public Interest Advocacy. The Public Advocate

has "sole discretion to represent or refrain from representing" the public interest. He can decide to intervene in or institute proceedings before any state agency or file suit in the name of the Public Advocate or through class action. But the Public Advocate winces a little when he hears "THE" public interest. "We've stopped representing ourselves as representing 'THE' public interest. We represent significant public interests which otherwise would not be adequately represented."

The DPA law foresees the possibility of inconsistent public interests and allows the Public Advocate if necessary to represent competing interests by using different divisions or appointing outside counsel. One such difficult problem was the Division's opposition to the shipment of highly volatile liquified Natural Gas in heavily populated areas. "We realize the state faces an acute shortage of natural gas. It's an absolute necessity to have the gas, but there are critical problems of safety. We'll just represent this end knowing the utilities and gas companies will present the other side and let the Federal Power Commission or someone else do the balancing."

After tackling sex discrimination in the State pension system, rent control, utility cutoffs and deposits, and beach access, the division is now stalking bigger game: the powerful Real Estate Commission. The division is testing the constitutionality of the eligibility requirements for the 7 man board. "If this suit is successful almost every professional board will be suspect. This one may call down pressure on us."

About 25 other jurisdictions have requested information about the department's experience. Though most of Department is permanent as long as funded, the Division of Public Advocacy's authorizing legislation expires in 1978. Certainly it will have collected some powerful enemies, but hopefully the idea will have demonstrated its potential and gathered its own support.

The Immovable Block

Almost 18 months ago a student on the Legal Education Committee wrote a memorandum calling for study and revision of the third year writing requirement. This memorandum set off a round of discussions on the matter in the Committee during the course of which the student representatives argued that the paper should be made optional; that more faculty supervision was needed; and that other writing courses should be offered to enable students to select a program better suited to their particular needs.

Virtually none of the student's suggestions were accepted. In fact, the net result of over a year of debate was the recent proposal to increase the credit which, largely due to students who paradoxically ended up opposing the "reforms," has now been dropped in favor of the status quo.

At the recent meeting between the Visiting Committee on Student Concerns and various student representatives, the written work requirement, as well as other areas of student dissatisfaction, were persuasively brought before the Committee's attention. The Committee's response may have surprised students, but it certainly did nothing to encourage them. Joseph A. Califano, speaking for the Committee, told the students that they had recommended a change in the program for the past three years — last year in very strong language. "There's nothing else that we can do," Califano told his student audience.

All of this makes one wonder about the process of reform and decision making at the Law School. There seems to exist an attitude among the faculty that everything is best left alone. This attitude combines with a sense of renewed power over students during the current recession to produce an almost immovable block to any student initiated reform which hasn't already been discouraged.

Looking over the recent history of the Law School, it appears that students were most effective in fostering change during the late 60's with the kind of pressure tactics it is customary for school officials to decry. It may be better that all "work within the system," but that is hollow advice when student opinion and input is given such short shrift.

Contrary to the prevailing attitude, there is little reason for complacency at the Law School. The sad facts are that most students learn most of what they learn at HLS through outlines at the end of the semester; that most students are unhappy with day to day existence at the Law School; and that many find themselves following career models they do not find particularly attractive, but which appear to be the only alternatives.

We urge the Law School to embark on a program to tackle these problems, and to call upon their students for assistance.

HARVARD LAW RECORD

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Fenno

"I really find this quite irritating," the 2L said, quietly shredding a copy of the RECORD with his bare hands.

Fenno winced as the mutilation of the paper continued.

"What do you find quite irritating?" he asked, trying to be pleasant.

"It says here that requiring students to buy a couple of hundred dollars worth of food coupons for the Hark is 'one of the options' they're considering for meeting the Hark's deficit."

"And you find that irritating?"

"Yes, frankly. I mean, it's not just the anomaly of a Law School whose faculty includes a former head of the antitrust division adopting a policy that involves simultaneously the deliberate creation of a monopoly, the foisting of a tying contract on a resistant market, and the anticipatory breach of a written agreement. I don't find *that* irritating."

"No," Fenno agreed, "that's just a natural outgrowth of instrumentalist jurisprudence."

"A student is a reflection of his tutors," the 2L retorted.

"Well," Fenno asked at length, "if you don't find the immorality irritating, and you don't find the mendacity irritating, what is your objection to the proposal?"

"It's the irrationality of it," the 2L exclaimed. "If you're going to rip people off in order to subsidize a losing and inherently inefficient operation, the very least you can do is to do it right. The proposed requirement will barely cover next year's projected deficit. They've obviously failed to appreciate fully the heights of fiscal fecklessness that the Hark is capable of scaling in its own right, much less the balance-sheet bath that place could take if someone imaginative really put his mind to it."

"I really think you're approaching this with the wrong attitude," Fenno remarked.

"You do?"

"Mm hmm. Instead of condemning the proposal out of hand, I think you should concentrate on changing it to your own advantage—using the term 'you' in its corporate signification, of course."

"What do you mean?"

"Require each professor to take, oh, three meals a week there. Before long, there would be irresistible pressure from people who know how to use their muscles to improve the food to the standards the faculty is used to—i.e., 4 stars on the Michelin scale. When the food got good enough, students could sell their coupons at a profit."

"But that just means 1L's and entering students would have an even bigger deficit to underwrite year after next."

"True enough. But it also means next year's 3L's could make their Harvard education pay off in the only way a Harvard education can pay off: in money."

HARVARD LAW RECORD

Letters to the Editor of the RECORD

Abortion Views: "Irrelevant, Silly"

To the Editor:

The pages of the RECORD have contained some pretty irrelevant, even silly, comments on abortion of late. On the one hand we are told that abortion is "bourgeois" (and therefore?); on the other we have exchanges as to which side of the abortion argument is closer to Hitler.

The issue is too commonly misstated, as whether or not one "favors" abortions. For the most part, I do not, and I doubt that many people really do, but I am firmly opposed to the use of the criminal laws to prohibit them. Unfortunately one tradition of authoritarian government that our Bill of Rights has had too little impact upon is the received knowledge that the only way to deal with any imperfection in the human condition is to lock up those involved in the dungeon or, in an earlier era, to execute them. Our prisons are more than half filled with the products of this misguided notion, persons who do not belong there.

Those seeking a Constitutional amendment to ban abortions argue that abortion is murder, but this will not do until and if there is wider agreement on the matter. Not only is there widespread and sincere belief that abortion is a decision entirely up to the woman and her physician, but there is also widespread disagreement among abortion opponents. The purist position is that abortion is always murder, even where the woman may die. Next come those who believe abortion is moral only when "necessary" (in the opinion of one or more physicians) to save the woman's life. Then there are those who would add cases of rape and incest to the woman's right to choose. Others add cases of extreme potential deformity or idiocy. Next come those who, like the Italian supreme court, add cases where there is a severe threat to the woman's physical or mental health. Finally there is the English common law view now enshrined by the Supreme Court that allows only abortions after "quickening" to be made criminal. Furthermore, no society has ever treated abortion as seriously as murder. The typical hypocrisy is to prosecute the doctor but not the woman.

The women's movement is quite correct when they point out that the political decision on the abortion issue is largely being made by men, while women have a distinctly greater stake in it. The religious groups most opposed to abortion tend also to be the most patriarchal in character, where women adherents are inferior. Yet it is the women who will return to the butchers if the Constitution prohibits all abortions.

Without general agreement on what ought to be criminal in this area, including general agreement among women, the State

May 2, 1975

should not employ its power to force a particular view on any woman. Those opposed to abortion are fully entitled to their view of utopia and to work toward achieving the necessary consensus. But they should do so with words of persuasion rather than the shackle and dungeon and the shrill cry of murder. If a fraction of the time and treasure now devoted to amending the Constitution were diverted to finding voluntary alternatives to abortion, to education, birth control, adequate pre-natal and delivery medical care for the poor, psychiatric counseling, the number of abortions would fall substantially.

Richard B. Collins
Window Rock, Arizona

Cohen Praises Sporty Donation

To the Editor:

Those of us who, by professional duty, perverse curiosity or simple masochism, regularly peruse the Library's Suggestion Book are aware of a growing concern on the part of sports-minded readers over the lack of suitable fare among the Root Room periodicals. I am therefore pleased to report an anonymous cash donation to the Library specifically designated for a subscription to *Sports Illustrated*. Although the acquisition of this sporting journal (now ordered) may not satisfy the more serious devotees of *Sporting News*, it does set a commendable example of community spirit for which I express public gratitude (since I cannot do so privately). The Library's budget, largely devoted as it must be to research materials, cannot adequately meet every recreational need or special interest. Others who wish to further enrich Root Room offerings can address their assistance to the undersigned.

Morris L. Cohen, HLS Librarian
Cambridge, Massachusetts

WLA Reporter Missed Major Session Point

To the Editor:

Although I have not been an active member of the Women's Law Association and took no part in the initial drafting of proposals for action, I did attend the WLA meeting last Monday night and I feel compelled to respond to the report of that meeting published in the RECORD on April 18. The reporter, unfortunately, left the meeting long before the conclusion and perhaps as a result seems to have missed the major point of the session.

To begin with, the initial proposals had not been drafted by a WLA committee but rather by a group of concerned women who hoped to stimulate thought, discussion and action on campus. The impetus was no single event but rather a broad awareness of

the need to deal with women's problems and women's issues in the Law School community. It is true that much time during the meeting was devoted to discussion, and I believe rightly so. As with any attempt to seek orderly change within an institutional setting, it is crucial that individuals be free to express their opinions and to learn from one another. Those who had drafted the initial proposals made every possible effort to allow the woman present who had responded negatively in print to voice her opinions and her beliefs on the issues. What was most surprising, perhaps, was the unanimity of concern. Each proposal was discussed separately; votes were taken and task forces were formed.

The meeting on Monday night was not intended, nor could it realistically be, a final statement on the position of women in the Law School. Rather, its purpose was to bring as many women as possible together to think about and discuss the needs and problems we share and to begin working towards their solution. It is an effort which will require a great deal more discussion — between men and women, students, faculty and administration — but it is an effort which is worthy of the interest and support of all of us in this community.

Susan R. Estrich, 1L
Cambridge, Massachusetts

What's Next — 'Chairperoffspring'?

To the Editorperson:

My Godperson! With reference to your article on the CR-CL Group in the March 7 issue, does the RECORD or the CR-CL Group really adhere to the term "chairpersons" for the heads of this organization?

Would you not agree that one of the duties of a lawyer, and of law student as well, is to analyze problems in search of solutions which are not ridiculous? "Chairpersons" is ridiculous. Surely you can do better than that.

To begin with, I don't see why a woman can't be a "chairman". Why does the suffix "man" or "men" on a word necessarily denote the male sex? And if it did, and one wished to remedy that sexist reference, presumably we would have to stop referring to "women" and call the "wopersons".

If the ladies don't agree, and find "chairman" objectionable in spite of my arguments, then why not use a title which they would agree is free of any male connotation, such as "president, general, first secretary, or leader"?

I am in favor of equal rights and equal opportunity for women, but I wish the ladies would devote their attention to real problems, and not to imaginary ones.

While we are on this subject, how many of the editors of your estimable journal are women? If I may judge by

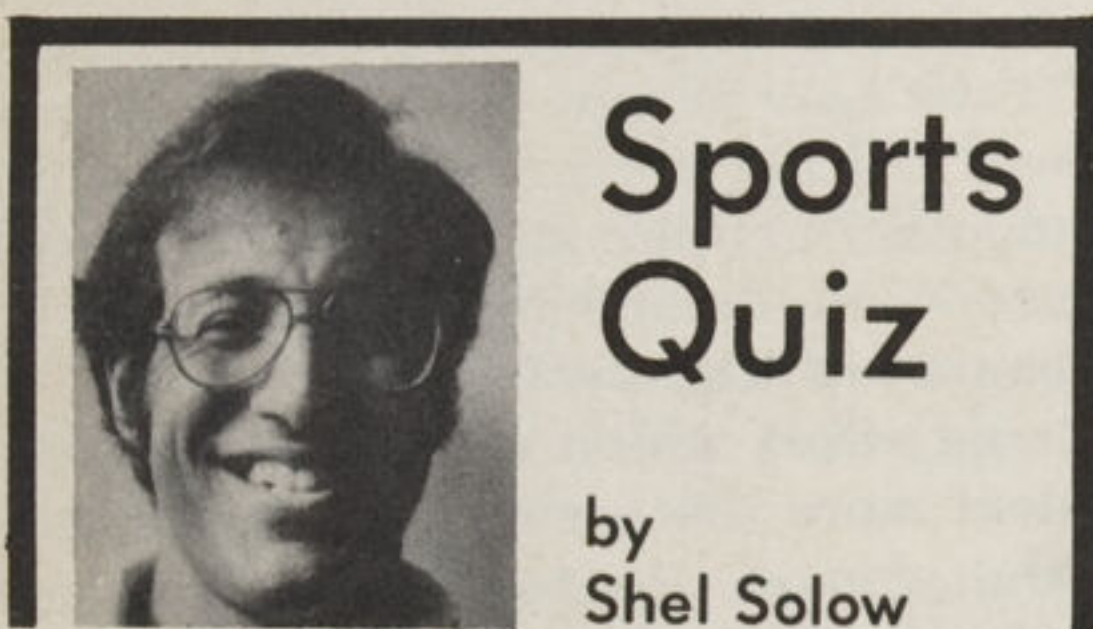
(Continued on Page 12)

(Continued from Page 11)

their names, there isn't a single one, and there are only six or seven on the entire staff.

Now, it happens that I am the head of the legal department of a French corporation which, four years ago, did not have one single woman executive; but in my department today, out of 11 lawyers and legal executives, there are 3 women. That would seem to me to indicate that an old MCP like me is doing better at giving the ladies a chance than you are. When are you going to liberate the ladies where it counts, instead of where it makes them look ridiculous — like calling "chairmen" "chairpersons"?

William W. Dunn '50
La Celle-St. Cloud, France



Sports Quiz

by
Shel Solow

This Quiz is a short but difficult one in anticipation of the year-end superquiz for the Sports Trivia Championship of the Law School. The quiz will be administered next Wednesday & Thursday, May 7 & 8, from 9 to 5 in the B.S.A. office. Instructions will be posted there. You may bring your casebook, notes, and any outlines prepared by you. Good Luck!

1. The only year Babe Ruth won the A.L. batting title was 1924. Which slugger kept Ruth from the Triple Crown by driving in 8 more runs? a) Goose Goslin; b) Bob Meusel; c) Lou Gehrig; d) Harry Heilmann; e) Heinie Manush.
2. In 1919, Sir Barton won the 1st Triple Crown of Racing. The next year Man O' War won the Preakness and Belmont, but was not entered in the Kentucky Derby. What horse was the Derby winner that year?
3. What Former manager of the Braves, Reds, Dodgers, Senators, and Tigers once quarter backed the Decatur Staleys, the forerunner of the Chicago Bears?
4. For years, Oscar Robertson (WOW-WEE, KAREEEEEEM!!) was the outstanding guard in the N.B.A. while playing for the Cincinnati Royals. His running mate at Guard, a dead-eye shooter took much of the pressure off the Big O. Name him.
5. Walter Johnson is the all-time major league strikeout king. What pitcher is the all-time major league strikeout leader in the National League? a) Warren Spahn; b) Robin Roberts; c) Dazzy Vance; d) Christy Mathewson; e) Bob Gibson; f) Juan Marichal.

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Law Notes

Registrar Mary D. Upton has requested that 3Ls check their names on the **degree candidate's list** in her office as soon as possible.

"Who Killed Robert Kennedy?" will be the topic of discussion by former Representative **Allard Lowenstein** in an **HLS Forum** program on Wednesday, May 7 at 8 p.m. in Langdell South Middle. According to Lowenstein, "The evidence doesn't sustain the theory that Sirhan Sirhan is the murderer . . ."

President of Duke University **Terry Sanford**, who is presently serving as Chairman of the Democratic National Party Charter Commission **will deliver an address** on "Managing the Economy and Foreign Policy" on Sunday, May 4, at 8:30 p.m. in the Science Center.

Cryptic Law

The following excerpt from a rather dated opinion is in "judicial code." Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

Eh xkjel eh u mhrjgl'nub'c cqmlkjhk eaue shqk ejb-ahkb ghm cjec jb blukys ghbglurnlbe cjmmbd yllk qbejr al clle u guk mukpli hwlk exlrwl njb. ue u ilolgejwl nlelk . . . ealb cblupe hwlk, muglc u ejgple hb eal guk ubi ealb aqcerlc yugp eh ajc yllk . . . jnmqelc eh u mhrjgl hoojglk tqurjejl eaue xhqri klbilk jog ghnmrlelrs qboje eh clkwl. . . "

Sports Answers

1. a) Goose Goslin
2. Paul Jones
3. Chuck Dressen
4. Adrian Smith
5. e) Bob Gibson

HARVARD LAW RECORD

Attorneys Serve Public Interest In Washington

(Continued from Page 7)

cies. An example is a recent case against the Federal Power Commission challenging the 73% increase in natural gas prices awarded at the agency level. This increase was reversed by the U.S. Court of Appeals which ordered the FPC to prescribe a lower price.

Other pending litigation includes a suit against the Antitrust Division of the Department of Justice seeking access to correspondence concerning mergers approved by the government, a Freedom of Information Act suit seeking information on interest rates on consumer loans, and an action challenging HEW's impoundment of Federal grant funds for outpatient health care facilities and the illegal diversion of those funds from poverty areas to non-poverty areas.

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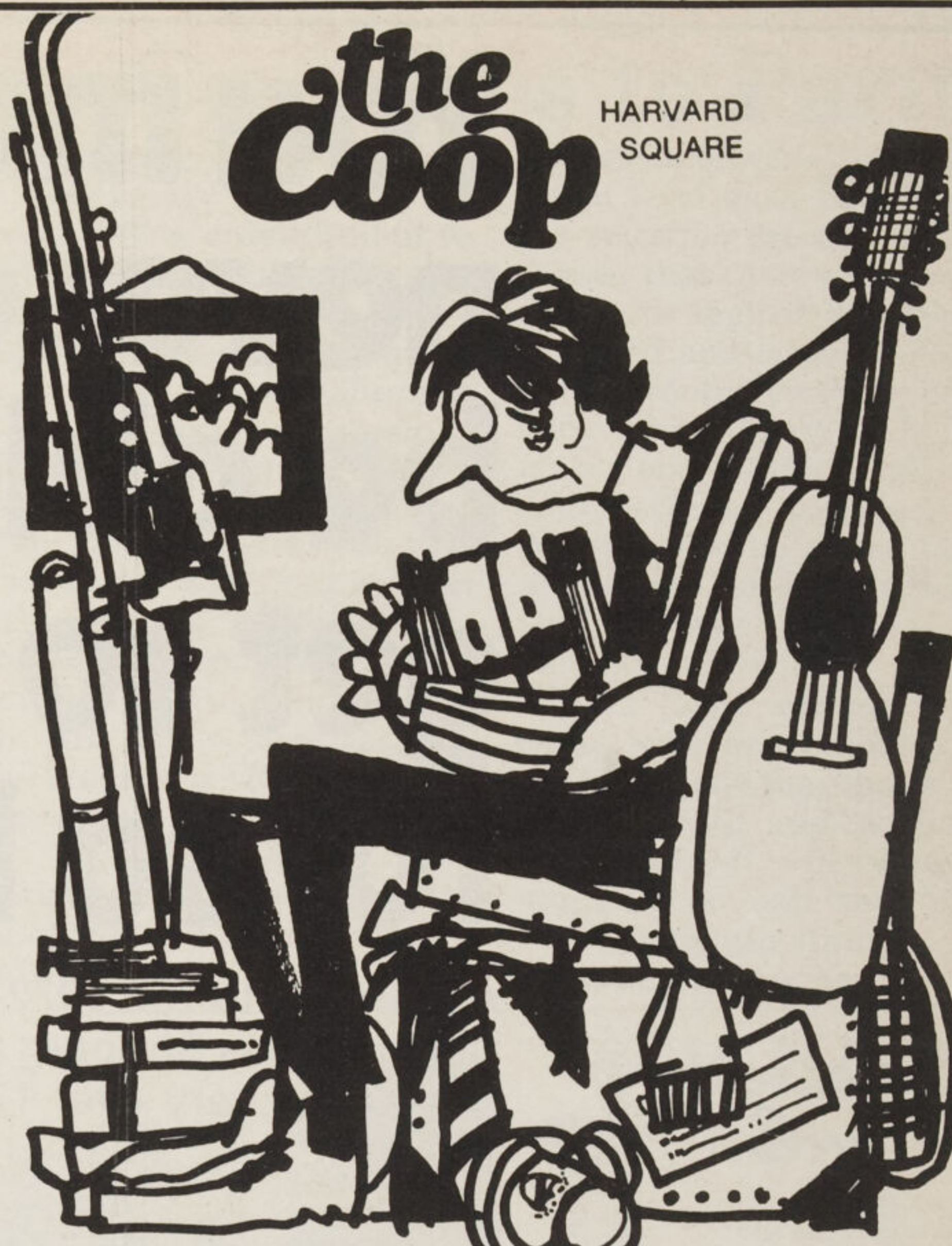
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HLS Women: Six Centuries to Parity?

By Suzanne Stocking

Sexual discrimination and prejudice at Harvard Law School are manifesting themselves as a multi-phase disease. During the long primary phase, the symptoms were unmistakable: total exclusion followed by open hostility and ridicule.

Now we are entering the second phase. Professors who used to indulge in sarcastic humor and harassment with abandon now tend to treat women students with the delicacy appropriate to invalids or snapping turtles. There is still an occasional insult to remind us that we are not quite acceptable raw material for the "white male corporation lawyer or professor" mold. And, like our brothers, we are punished if we resist that mold.

The spoken symptoms have become more subtle and ambiguous, so that even the best of our fellow students sometimes counsel us to be more tolerant, not so sensitive. Unfortunately, lack of sensitivity will not bring about a cure. Sexism—like racism and elitism—thrives on passivity.

If anyone doubts that the patient, though ambulatory, is still riddled with the disease, let him or her look at some basic statistics: In 1975, after 25 years of desegregation efforts, the Law School Yearbook pictures 52 male professors and one female; five male assistant professors and one female; twelve male lecturers and one female. Our administrative staff is comprised of nine men and one woman. Rapid calculation indicates that if desegregation of the professorial ranks continues at the same rate it will take women six centuries to achieve parity.

After the first quarter-century of the process, we have arrived at precise tokenism. Under the token system, one woman is called upon to serve as role model, advisor and representative for all women—a time-consuming, debilitating and finally impossible task.

Women comprise less than 20% of the student body. This underrepresentation could be corrected with no lowering of

Harvard's present grade and score standards. What is required is a firm commitment to equitable representation, an active recruitment program to encourage talented women to apply here, and a reevaluation of all the subjective admissions criteria — the "sparkle factor" as one Admissions Committee member has termed it — so that such women are not filtered out by the selection process.

Unfortunately, once admitted, a woman must face inadequate health care and counselling services, a Placement Office which at best acquiesces in hiring discrimination against women and minorities, and, of course, a dearth of role-models on the faculty and administration.

Absence of women at the professional level must be attributed to the selection process. We are informed that there are no objective standards applied. Whatever unarticulated and largely unconscious criteria control entry are developed and applied almost solely by white males, and yield a faculty and an administration composed almost entirely of white males. Given the process and results, it would be absurd to contend that bias does not play an active role.

To a large extent, however, these men are captives of the environment they have trained for, created, and perpetuated. Ultimately, it will be up to the students to call that environment into question — and to compel a response.



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Professor A. James Casner asked whether this left the faculty with any policy at all, drawing an analogy to the revocation of a revocation in the law of wills. Dean Albert M. Sacks commented that current requirements would continue, and that the application of the law of wills was inapposite.

The faculty also voted down a motion to cancel a previous tentative vote making B- the minimum acceptable grade for WWR projects.

New language on class attendance will appear in the next Harvard Law School catalogue as the result of another faculty vote. A preliminary minority proposal had been made by the Committee that the catalogue state "regular attendance at class is required" rather than the current policy statement: "The Law School considers regular attendance of classes to be an important part of its educational program." No motion was made to adopt this proposal but a separate motion was made and passed (24-9) that "the catalogue ought to convey to the student that regular attendance at class is expected."

No proposals were made concerning systems to monitor class attendance; the catalogue states that there are no "formal" monitoring systems. But several faculty members stressed that the Law School will continue to reserve the right "to expel, in effect," a habitually non-attending student from a class after proper notice of jeopardy.

The meeting continued with discussion on possible changes in policy concerning the provision of names to the *Harvard Law Review* of top first year students. The Committee expressed concern over the unequal distribution between the four first year sections of *Law Review* candidates. The majority proposal was to continue the policy of providing the *Law Review* with names (in alphabetical order without grades) of the top 20 or 24 students (based on first year examinations). The majority proposal, however, would supply the *Review* with an equal

number of names from each section, rather than continuing the current section-blind policy.

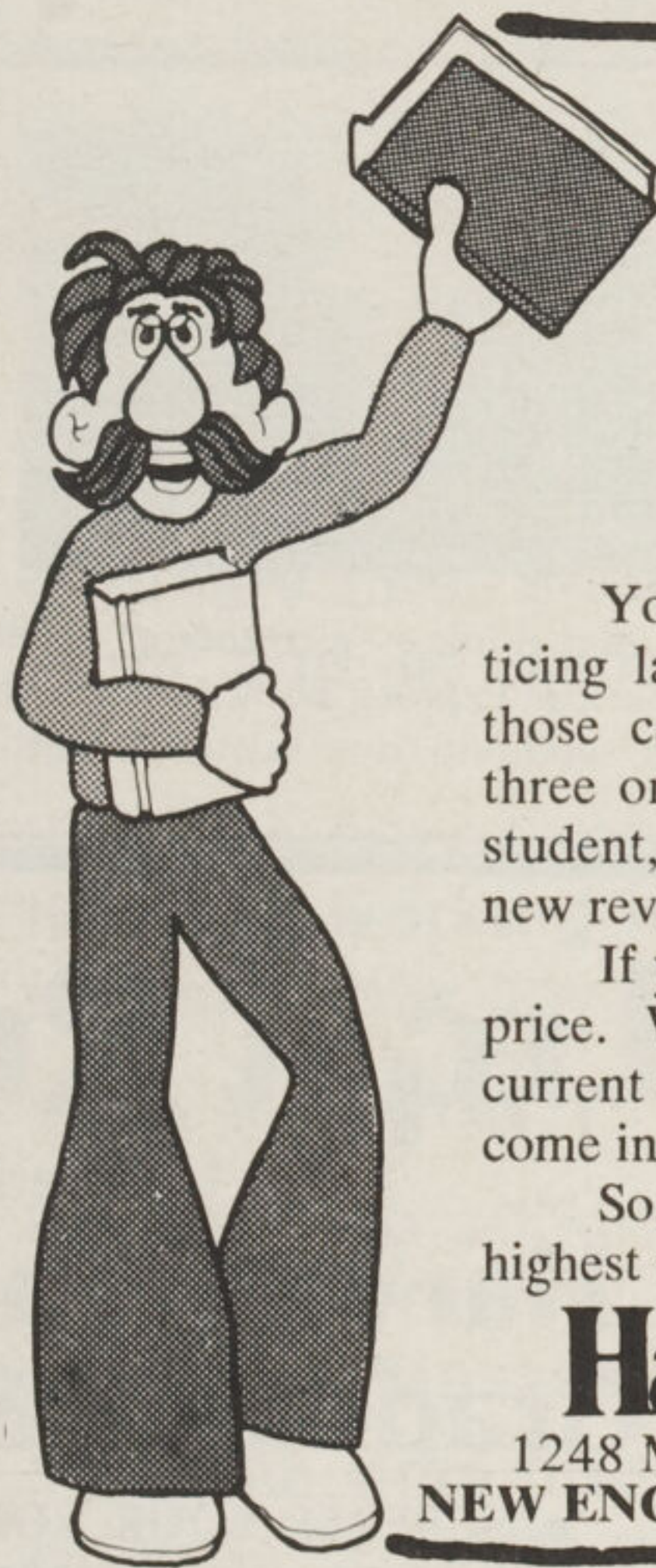
An alternative proposal would follow the majority approach except that the last four students chosen would be selected without regard to section.

Professor Duncan M. Kennedy spoke for a third proposal that the faculty stop the release of names to the *Law Review* and to treat that organization as others are treated. This would leave the *Review* free to ask the students to supply their grades. Kennedy stressed the shortcomings of the tendency of the Law School to foster the feeling that grades unfailingly mirror ability. Professor Henry J. Steiner

noted the lack of correlation between those who he felt to be good students and those receiving the top grades.

Arguments concerning the second proposal focused on the lack of consistency in grading methods of faculty members for each section (ie., given different professors, the same section would yield a different ranking of students). Majority proposal supporters countered that the sectional divisions should not be assumed to represent an even distribution of ability.

Due to a shortage of time, Dean Sacks tabled resolution of the *Law Review* problem until the next faculty meeting.



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