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TWENTY CENTS

Couple Workshop: Staying Together In Spite Of HLS

By Randy Phillips

She interrupted a rewarding career so he could go to Harvard Law School — or vice versa. He finishes a Ph.D. in English while she strains to make *Law Review* — or vice versa — and both work part-time to pay the bills. She languishes in a boring, dead-end job, while he prepares for a future of wealth, excitement, power or service in the legal profession.

All could be typical HLS couples. Despite their diverse backgrounds, they share certain concerns. Or so believe Dr. Jessica Oesterheld, HLS clinic psychiatrist, and Mark Byers, HLS vocational counselor.

The two have teamed up to offer a new service to an often overlooked sector of the Law School community. They have tentatively dubbed the project "Couples Workshop" — "that makes it sound more businesslike," quipped Byers. He and Oesterheld will meet weekly with a small discussion group of couples to share experiences and, hopefully, learn more about the emotional needs of the couples at Harvard.

The workshop, which at presstime still had room for at least one more twosome, is not a "therapy group" or, necessarily, a rescue mission for marriages on the rocks, Oesterheld stressed.

The couples need not be married, but they should be "personally

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2L Members Debating Law Review Changes

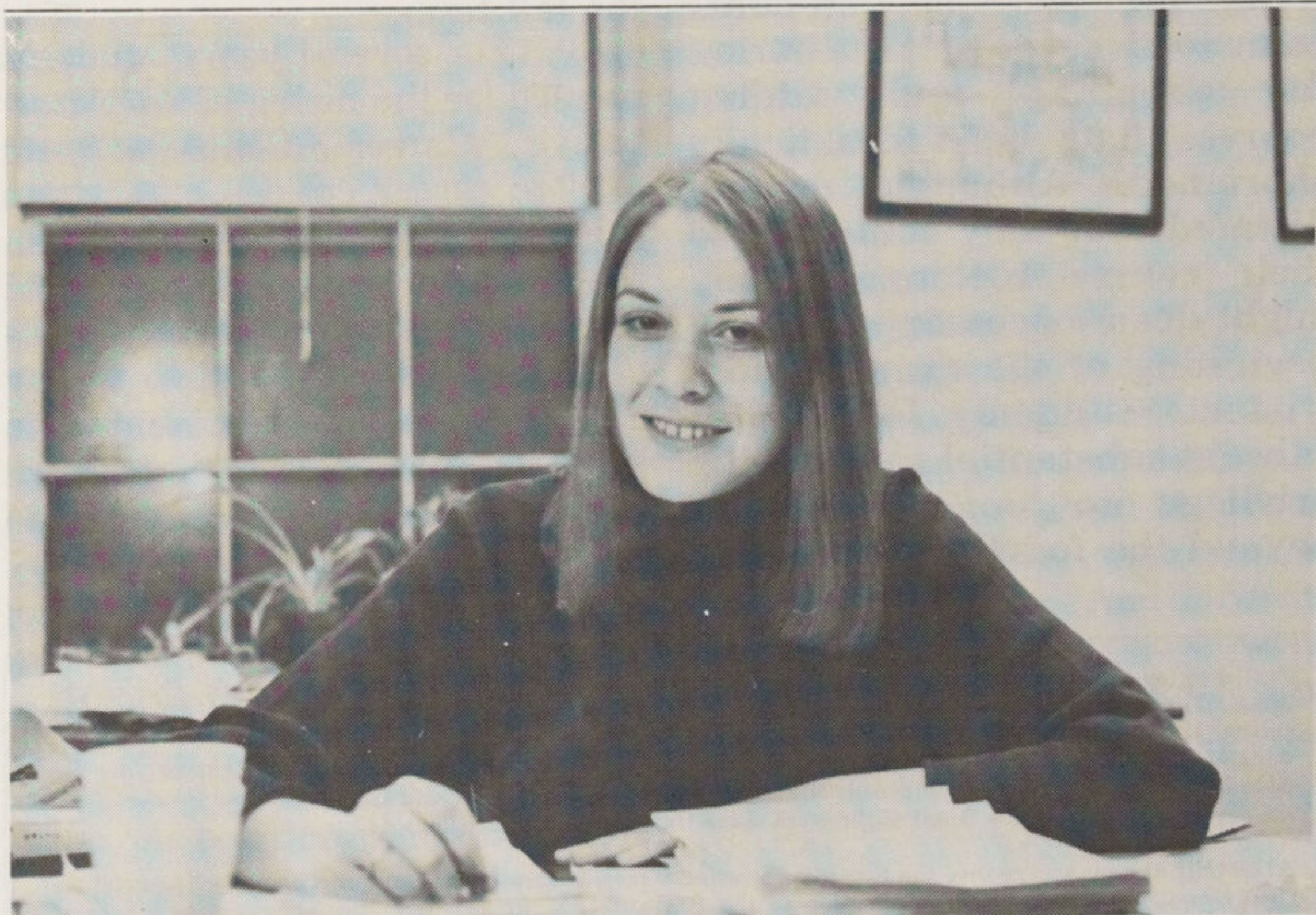
By Charles Jordan

Whether political football or egalitarian reform, change is in the air at Gannett House. At a meeting next Monday, 2L members of the *Harvard Law Review* staff will gather to debate and vote on proposals to increase the size of the *Review*, to render "officer" status voluntary (though the president will still be elected) and to sheathe student articles from substantive redirection in final editing stages.

The tentatively scheduled meeting will be held just prior to the election, on February 12, of the next president of the *Review*. Ratification of the proposals by a majority of the 2L members could have no legally binding effect on the incoming president, but proponents of the reforms suggest that an affirmative vote would have a "morally binding effect," regardless of the new president's personal feelings, or campaign "platform," with respect to the proposals.

In light of the timing of the proposed ratification meeting, just prior to elections at Gannett House, it is not surprising that essentially procedural proposals have taken on a political dimension. Potential candidates' stands on the proposals are well-known among *Review* members, and as a 2L member noted, "People are going to take into account [those stands] in voting."

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Susan Estrich: wide receiver for political footballs at Gannett House?

A Participatory Democracy?

Decision-Making At HLS

By Paul Coady

"... There's a real problem that faculty don't talk to students. Every time you throw something to the Administration, it gets subsumed in a ball of mush... By the time you know enough to start dealing with a problem, you realize the Administration can kind of outlast you."

"... There are people around here who definitely resist student input, because they have the view that 'students don't pay me, students don't promote me, and I really don't have to listen too much to what they have to say.'"

These two jeremiads were recently uttered by students at the Law School who have shared in the nip-and-tuck of decision-making with the HLS Administration. One student is a BSA member. The other is an officer of the Law School Council. Whether grounded in fact or not, the complaints at the minimum reflect a student *perception* that when it comes to decision-making at the Law School, student views are too often ignored. Or, as one student put it, "We're left whistling in the night."

For some, the theme that students are seen but not heard, or heard but not listened to, has been divined of late in a number of specific areas.

(1). Near the middle of last term, for example, students came to discover that the period for dropping and adding courses had been drastically shortened. Although custom dictated that they could revise their course rosters as they might deem necessary until the beginning of the exam period, students suddenly found that "absent substantial cause," this privilege no longer extended beyond the fourth week of the

term. In truth, two students participated in the Administrative Board meeting when this idea was adopted as policy. But for the rest of the student body, it all too closely resembled a *fait accompli*. Though trivial-sounding, notice would undoubtedly have been appreciated by the scores of students accustomed to sorting out their selection of courses as the term progresses and examinations near.

(2). It was not until all the students had left campus after last spring term that the decision to implement an experimental Legal Methods program was reached. A full scale review of the Legal Methods program is currently

students thought that this input would include "screening" the full range of candidates, their expectations were disappointed. Instead, heads of student organizations, including the President of the Board of Student Advisors, were given word by the Dean of Placement that they could participate when the field had been narrowed to two. According to one student who received this invitation at the eleventh hour of the decision-making process, "It was very clear at that point which one the Administration favored."

(4). Last spring, only one student was informed when the head of the Placement Committee, together with Dean Sacks, decided to reduce

... Drop-Add Change ... Though trivial-sounding, notice would undoubtedly have been appreciated by the scores of students accustomed to sorting out their selection of courses as the term progresses and examinations near.

underway within a committee charged with that sole purpose. Nevertheless, students returned to the campus in September to be informed that a new Legal Methods "experiment" had been cooked up and was to be made operational for the fall term.

(3). For several years, students pressed for the hiring of an "Alternative Career Counselor" to explore career options other than "big firm" corporate practice. When the decision was finally reached some months ago to bring a qualified person to Harvard to satisfy this need, it was represented to students that they, as interested parties, could provide input into the hiring process. Though many

membership on that committee from six to four students. There appear to be sound pragmatic reasons underlying this shift — namely, to reduce the committee to a more manageable size and to bring it into line with the form of similar committees of the same nature. However, to the outside observer, the step can only be understood as an act "taken now and explained later."

Arguably, the above sampling of decisions is unrepresentative and paints an unfair and incomplete picture of the degree to which students *can* affect the outcome of decisions which have direct impact upon them. In fact, several highly active "joiners" around the Law School have expressed the view that regardless of what is open to them, students often prefer docility to activism. In relating how and when student views were recently side-stepped, for

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HARVARD LAW RECORD

Letters from Jimmy

Bruce Howard

(Editor's note: This is the first installment of "Page Three," a nine-part series investigating and exposing the seedy underside of the Harvard Law School. Grade fraud, sex-for-faculty-recommendations schemes, pin ball rigging, puberty — no sensitive issue at the law school will be left unmolested by this probing, exhaustive journalistic rampage. "Page Three" editor and chief correspondent is Bruce Howard, the veteran journalist who blew the whistle on the 1975 Somerville Car Pool scandal, brought to light the gory details of the Harkburger helper plot, and was the first to tell the true story behind the Hemenway gym squash reservation desk. For his debut column, Howard publishes several letters recently obtained in triplicate by the Washington bureau of Page Three. The Record, of course, makes the obligatory disclaimer. We're not even sure if the opinions expressed are Howard's, much less our own.)

Dear Duncan,

Just got your letter. I'm glad to hear you wear blue jeans too. Good for you! And what a resume! And what a clever idea, to write both of the letters of recommendation in your job application yourself! My, if you're one half as good as those recommendations claim, you're quite a catch.

But unfortunately, I'm afraid we are unable to offer you the job you requested. In fact, I'm afraid we don't even have a department of 19th century passive verbs and pop Marxism. However, we do need someone to tell bedtime stories to Amy to help her fall asleep. Do you think you could come down now and then to deliver your legal history lectures?

Hoping to hear from you soon,

Jimmy

Dear Mr. Cox:

Just finished reading your letter. First, I want to say that I fully sympathize with your financial difficulties — it's no fun getting fired, especially when it means having to go back to a town without a cocktail party circuit, much less autograph seekers. (Don't those brats at the law school realize who you used to be? Do they think you've spent your **whole** life reorganizing the probate courts in Middlesex County?) And getting back to your money troubles, I share your mystification at why your 50-page book on the Supreme Court, a steal at only \$15.95, isn't selling better. (Perhaps you might get your colleagues to mention that their exam questions will be taken from it too.)

But as for your job application, unfortunately I'm afraid we can't offer you your old job back. You see, the Watergate prosecutor's office has pretty much finished its work these days. (Though I do understand why you were confused — if your successors had worked at your pace, the case probably would still be in full swing.)

Well, good luck to you,

Jimmy

Dear Dean Sacks,

Thanks so much for the note. I realize it must have taken quite an effort to find time to write it considering all the other important things occupying your time up there at Harvard Law. Seriously though, I hear you've been quite busy these days, raising tuition, er I mean money, and investigating job interview complainers, er I mean complaints.

Unfortunately, I'm afraid we can't offer you a job as Postmaster General, although I do agree that it is the one position your current job has prepared you for. (Though, I would like to point out that "stamp-licking" is not exactly the



"Page Three" editor and chief correspondent Bruce Howard (left) is shown standing with the column's two research assistants during a rare break in their journalistic rampage. Howard commented, "I don't really like working in a suit and tie, but it's the only way to get respect."

same thing as what you mentioned as the skill which enabled you to get your deanship.) But I promise we will keep you in mind,

Cheers,
Jimmy

Dear The Dershowitz,

Thank you very much for your warm letter. I think, however, you may have sent me the wrong letter by mistake. I'm not being prosecuted for "doing my constitutionally protected thing with Linda Lovelace," as you put it. Also, I got a call from Harry Reems today and he says you wrote him asking him to appoint you to an undersecretary position. Perhaps you can straighten all this out for us.

Jimmy

Dear Jason Cord-Pavlovich,

It is my pleasure to offer you a job in my New Spirit administration. Boy, I knew I was an outsider, but imagine my not even recognizing the name of a former U.S. President, all-American quarterback, and Catholic Pope! And how did you ever find time to ghost-write **War and Peace** and **The Brothers Karamazov**? You're just the kind of hard worker we need down here. Meet you soon for ribs!

Your friend,
Jimmy!

Lewis: Journalist In A Lawyer's World

By Bob Ruxin

Lecturer on Law Anthony Lewis is a journalist, not a lawyer. Yet he often finds himself "less gung-ho for the press" than many of the students in his constitutional seminar on *The Law and the Press*.

"I am not an absolutist," Lewis said recently. Other values, such as privacy, also matter for him.

Lewis, a regular columnist for *The New York Times* since 1969, disagrees with editors who claim that members of the press should have an absolute privilege not to testify in court.

"The press doesn't do itself any good to the public when it makes such outlandish, far-reaching claims," he said. "I can't separate out why I as a journalist should have that privilege if Ralph Nader, who writes on important matters, doesn't."

"The judge ordinarily should make people testify unless there is a strong reason not to." He suggested that the judge should balance the interests involved, including possible damage to the witness and his sources.

Except for a brief stint on the campaign staff of Adlai Stevenson during the 1952 Presidential campaign and a year as a Nieman Fellow, Lewis has worked for newspapers since his graduation from Harvard College in 1948. He won a Pulitzer Prize for national reporting at age 28 for a series of investigative stories that revealed a civilian naval employee's discharge as a security risk to be totally unjustified.

As a Nieman Fellow (a program that brings journalists to Harvard for a year's study) Lewis took courses in the Law School, including civil procedure, constitutional law, federal courts, and a constitutional litigation seminar taught by Professor Paul A. Freund.

"I liked it very much. I made friends with a number of faculty members," Lewis recalled. After-

wards, he "remained close to the school."

Meanwhile, Lewis covered the Supreme Court for *The New York Times*. Although he felt no need for a law degree, he believes the year of law school was essential to his court reporting.

"Now it's changed," Lewis said, noting the tendency for lawyers, such as Leslie Oelsner of the



Anthony Lewis: fit to print.

Times, Carl Stern of NBC, and Fred Graham of CBS, to cover the Supreme Court. But he still does not believe a law degree is essential for a Supreme Court reporter.

"It would be helpful to be a graduate of Harvard Law School to be a serious journalist in any field," Lewis said. However, he advised, "anyone who went through all the work here would probably be well off practicing law."

Lewis senses that lawyers are playing a bigger role in newspapers, both as reporters and as legal counsel. He praised his newspaper's in-house legal staff for its constructive role in looking for ways to publish controversial stories, such as the Pentagon Papers, rather than for ways to avoid publishing.

After his year as a Nieman Fellow, Lewis chose not to get a law degree for one reason: "I like newspaper work."

Ideas for his column "just come out of the news." Rather than search for scoops, he writes analytically about "things that move" him. Lewis reads four daily American newspapers (the *Times*, *Boston Globe*, *Washington Post*, and *Wall Street Journal*) and about 20 other publications weekly.

He rarely watches television news.

Writing one 800-word column usually involves hours of telephone calls and sometimes library research. He often travels from his Boston office.

"If it's Griffin Bell that I'm writing about, I might call lawyers who practiced before him, colleagues on the bench, and law professors. I'll go upstairs (from the spartan Langdell basement office that he occupies once a week) and read 20 opinions of his," Lewis explained.

The *Times* editorial page editors never suggest topics, noted Lewis, whose columns have a "legal flavor" more often than those of other *Times* columnists. "Columnists at the *New York Times* are independent creatures," he said. "As long as you remain rational, the editors are very good."

The same cannot always be said for his readers. Of the 50 to 100 letters that Lewis receives in a typical week, he answers all of the signed ones.

During the Viet Nam War, his anti-Administration columns generated the most bitter criticism. "I dream of bombs dropping on you," one person wrote.

Such letters no longer bother Lewis. "I've gotten used to them." He spends more time replying to a critical letter than to a supportive one.

Although Lewis wrote two books in 1964 — including the widely acclaimed *Gideon's Trumpet* — he wrote none before and has written none since.

"I'm not a book writer by temperament. I have a shorter attention span," he said. "My wife says that I think in 800 word segments."



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Voluntary 'Officer' Status, Larger Staff, Some Editing Limits Among Proposals

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To counter what she sees as the potentially corrosive effect of that politicization, *Law Review* president Susan R. Estrich, 3L, called a general meeting of the journal's staff, scheduled to take place Thursday, February 3. At the meeting, both 2L's and 3L's were expected to air their views on the reform slate.

Although, as *Review* member Jim McComas, 2L, put it, "the thing is in a very fluid state," one thing seems clear: the proposals have created a fundamental schism at Gannett House. Since the proposals were made public, debate has raged not only over their substance, but over the means by which the "core" group (a small number of 2L's generally credited with the basic formulation of the proposals) presented the issues to the staff.

The reform slate is the product of a continuing debate among certain 2L *Review* members dating back to this past summer. Dissatisfaction with the traditional six-day August work week caused a large group of 2L's to approach the president, requesting (or demanding, depending on the source) a reduced workload. At that time, Estrich denied the request because of felt production necessities. However, she did grant extensions to writers and other workers when she deemed them necessary, a practice of few *Review* editors in the past.

Dissatisfaction with what one *Review* member termed the "political structure" of the publication grew from this root. The "core" group of 2L's continued informal discussion of potential reform of the *Review* at weekly intervals during the fall semester. Out of these discussions, rooted in a mistrust of avowedly meritocratic procedures, there developed three proposals which the "core" group felt should be implemented.

At a formally scheduled meet-

ing on Thursday, January 27, all 2L members gathered for a presentation of the proposals. At this meeting, support for the proposals was difficult to judge accurately because, according to one participant, dissenters were silent while proponents were quite vocal.

Yet most *Review* members interviewed agreed that a large measure of opposition to the proposals was created because some 2L members felt that the "core" group had deliberately excluded them from discussion of the reforms. A member of the "core" group conceded that "some of the polarization is legitimate, some illegitimate. There was a natural reaction by some of those not present that they had been deliberately excluded. But the plain fact is, we just had lunch and griped about the *Review* . . . and the outrageous elitism it stands for."

Estrich noted that 3L's were left out in the dark, as well. She commented, "There's been some feeling that 3L's are a monolithic block committed to the status quo. . . . It just ain't so. They [*Review* 3L's] have an interest in seeing problems

solved here. They also have some experience in production which would be helpful in problem-solving." Estrich later confessed, "If I feel bad about anything, it's that people planning reform (and I use the term advisedly) couldn't be open about it."

As the reforms attack the premise of meritocratic rule, arguments over the proposals have inevitably centered on the validity of that premise. Perhaps the greatest debate has centered on the proposal to abolish appointed offices. As the procedure now stands, the various *Review* offices below the president are appointed, ostensibly on the sole basis of merit, by the newly-elected president. There results a well-recognized "pecking order" among these offices; the Developments and Supreme Court editors stand at the top of this super-elite, while the Case Notes editors are at the bottom.

Under the suggested reform, candidates for these editorships would simply volunteer for their choice of 3L assignments. The number of offices would be sig-

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Remember the late great Harvard Law Review? If you thought they had problems in September, wait until you read this.

HLS Center For Criminal Justice: Prostitution Study

Last December, the concern of Harvard and Boston was sharply focused on the realities of life and death in Boston's notorious Combat Zone by the stabbing death of Harvard football player Andy Puopolo. Yet, as time and time again happens in urban areas throughout America, public indignation over the American system of prostitution and the viciousness it engenders, seem to have been short-lived. But the evils of prostitution in its present form do not fade away after short bursts of public scrutiny. They continue to eat away at the core of urban life, not just in Boston, but in major cities all across the country.

In recognition of the proportions of the problem of prostitution in American cities, and of the need for hard data and analysis on modes of coping with the situation, the Center for Criminal Justice at the Law School is undertaking a major study of prostitution and its treatment by the criminal justice system. The project, which will be gearing up in the coming weeks, will attempt to define the strategies presently used throughout the nation for coping with the realities of prostitution. The study will provide an opportunity for a fuller understanding of the relationships among the police, the courts, and the community in handling critical urban problems. More basically, the study may aid in the development of new and more successful strategies for eliminating the dangers to both the public and the participants of the underground world of pimps and prostitutes as it presently exists.

Professor James Vorenberg, director of the Center for Criminal Justice, described the project as existing on three somewhat independent levels. Work has already begun on a limited scale in the first project area, the preparation of an up-to-date survey of state and municipal



Vocational counselor Mark Byers dusts off couch for Law School couples.

"Couples Workshop": How To Live and Love at HLS

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committed" and living together. "You're not really a couple until you've faced the problem of who has to do the dishes," Oesterheld argued.

She and Byers hope the group can help fill a perceived void in law school life — the often-noted absence of small-group interaction. "There are things about the Law School that facilitate isolation," Oesterheld elaborated, both in the structure of the Law School itself and in the competitive personalities the Law School attracts.

In this uncongenial environment, Law School couples face a number of pressures. The large commitment of energy professional school requires leaves little time or attention for personal relationships. The couple may face a painful readjustment of roles. "When people go off to law school, they are

sometimes making a statement about becoming a new person. You can get into some complete redefinition of roles. People start changing before each other's eyes," Byers said.

"There are certain issues that every couple faces," Oesterheld said. "How they are going to use their time; energy and financial resources; who does what — the housework or child care; who needs to study and where; emotional resources, who gets what and when."

Oesterheld and Byers see the workshop as serving several purposes: an exercise in being explicit about problems and needs, a chance to back off and look at relationships more objectively, and an opportunity to benefit from others' successes and failures.

Equally important, added Oesterheld, is "the wonderful sense that others share the same difficulties."

laws dealing with prostitution and of their interpretation and application by the courts. The second focus of the project will be an empirical survey of the enforcement of such ordinances and statutes in a number of cities and the actual effects of that enforcement. Vorenberg hopes to coordinate

this aspect of the Center's work with other groups already studying the relationship between prostitution and the legal system. In addition, he will probably employ a small number of students to do field research and interviews in sev-

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HLS Decisions: Why Aren't Students Heard?

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example, Board of Student Advisors President Charles E. Bachman, 3L, bluntly commented, "The other side of the coin is that students don't really give a shit. You have to remember," he said, "that this is a professional school. Students are four years older than they were entering college. Many have outside interests . . . Many are married . . . Lots have jobs. Many view this place as only a place to get skills to make money with, rather than a college with the whole rah-rah experience."

The president of the Law School Council, Meldon S. Hollis, 3L, struck a similar chord. Pointing to the wide array of student organizations, such as the various writing journals, Hollis observed, "Students dissipate their energies in doing things other than affecting this school. . . . It's very difficult after students get into the second or third year kind of escalator to ask them to stop and focus on the quality of life here," he said.

That a host of students is, in fact, interested in governance at the Law School is a reality that can be inferred from the level of dissatisfaction that they occasionally voice with how their views are received. This conclusion was cast in bold relief, for example, during last spring's vitriolic Board of Overseer's Visiting Committee Meeting (RECORD, May 7, 1976), and the inchoate boycott of alumni gift-giving by the Class of 1976. (RECORD, Nov. 19, 1976). The problem of "how much" student participation to allow was itself defined by Dean Albert M. Sacks's reaction to the proposed boycott. At one point, for example, he stated that students should have the chance to convey their views on "significant policy matters." At yet another juncture, however, he claimed that the final

decisions on HLS policies can only be made by the faculty, when he stated that, "I think most students and most alumni/ae will conclude on reflection that the faculty should set the important and continuing policies of the school."

Opinions divide, of course, over the fruitfulness of student determination of HLS policies. And while a precise measure of *how much* discretion over policy matters is given to students may be incapable of estimation, it is a question which is begged time and again when dissension erupts over particular issues. Was the student

At least in the province of tenure decisions, the charge that student views are somehow systematically ignored is broadly undercut.

merely venting his spleen and unfairly indulging in hyperbole who stated that "We're a discrete and insular minority here . . . a powerless group?" In short, what *are* the channels — institutionalized arrangements as well as ad hoc arrangements — through which students can advance and protect their interests, voice their complaints, and bring to bear whatever expertise they might possess in a given area?

Appointments

At least in the province of "tenure" decisions, the charge that student views are somehow systematically ignored is broadly undercut. The chairman of the Appointments Committee, Prof. Frank I. Michelman relates that when the system for soliciting student opinion on a tenure-hopeful's teaching abilities is explained, the typical reaction of students is "satisfaction."

"What is going on out there, I don't purport to have complete knowledge of," Michelman stated. "But if you ask me if students have

been bugging me to have more of a role, I would have to say 'No'."

Although little if any student input is injected into the question as to whom to bring to Harvard as a visiting or assistant professor, every "tenure" decision entails interviewing students through a technique Michelman termed "crude, but random." From class lists of the individual under consideration, student names are systematically culled. Members of the seven-person Appointments Committee then interview the designated students in a free-style format. The faculty members then report back to the full committee and pool their information.

According to Michelman, the perception of students is but one of the two main components — "teaching" and "scholarship" —

that enter into every tenure decision. Michelman went on to state that the relative weight assigned to each factor "depends," but that in certain situations, student preferences "could be" dispositive. In illustrating his point, he referred to an example several years ago in which the committee tried to poll every student in an individual's class.

"You can infer from the fact that we did this that we thought the teaching in the class was very important as a factor in that case," Michelman explained.

Though the Appointments Committee also relies upon their members' perceptions upon "sitting in" on an individual's classes, student opinions that are "spontaneously offered" also help to round out the scope of student input. "We always get those," Michelman volunteered, "because it doesn't happen that it doesn't become clear and fairly widely known that this is happening. For one thing, faculty members start showing up in the

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Efficacy Of Representative Bodies Questioned

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classroom. For another thing, students who are getting these funny phone calls are not asked to keep it confidential, and they talk to their colleagues."

Michelman also singled out the data supplied by the course evaluation questionnaire administered by the BSA as an additional vehicle for arriving at a sense of student opinion. Their believability, however, was taken as a variable dependent upon the student response rate, and the committee members' own outlooks. "Everyone has his own theory about how students may or may not be shading their responses. But we're not asleep. So we make out whatever in our best judgment we can." Paul Ryberg, 3L, a BSA member who was instrumental in formulating this year's questionnaire, sided with Michelman's assessment.

Committee Seats

Aside from structured dialogue on an individual tenure decision, interchange between Appointments Committee members and students also takes place in a somewhat informal manner. Michelman, for one, has made himself accessible to individuals and groups to discuss matters such as overall deficiencies in the faculty or in the school's educational offerings. The meeting held last spring with a group interested in public interest law was one feature of this sort of input, Michelman stated.

A second prominent aspect of the "institutionalized" side of student participation takes the form of student representation on faculty committees. The labyrinth of faculty committees — the Administrative Board, the Committee on Legal Education, the Placement Committee, the Library Committee, the Grievance Committee, and "ad hoc" committees — permit anywhere from three to four students to sit as full-fledged voting members.

Because these student committee members cannot pretend to represent student opinion, be in any way held accountable to their fellow students, or be expected to carry the word that actions which could vitally affect their interests are upcoming, their legitimacy as the student voice is open to substantial doubt. But as Dean Sacks remarked in discussing whether the views of these student activists are typical, "On any issue, representativeness is a problem that would not go away with any particular system we used."

Notwithstanding the built-in liabilities of "committee input," it is by virtue of the Law School Council's ability to recommend student committee members that it can install its own members in committee seats. The upshot of this arrangement is that the 15-member Council can learn of issues pending before the various committees and make known the "consensus of the Council" through its committee representatives.

The influence which the Council exerts over the committees, however, is somewhat constrained. As Council president Hollis detailed the relationship with one committee that also included non-Council student members, "What we are actually doing is 'beating out' the ideas and then passing them in the form of a resolution to the person who is on that committee. It is normally the member of the Council who sees himself or herself as bound by what the Council is saying. But you also have two other students who are working independently."

Assessments of the Council's efficacy vary. One faculty member has characterized the Council as "the closest thing to a representative body that we have here." Yet to at least one 3L well-acquainted with the internal workings of the Law School, the Council is "a worthless organization if ever there was one." The Dean is per-

sonally of the opinion that its efficacy changes with its yearly make-up. "With respect to proposals, ideas, and expressions of view, I think that's been very much a matter of the individuals who compose it. There have been times when there have been people in it who function effectively and times when there haven't been," he said.

The Council president himself has charged that the Law School is "anything but serious" about seeing that the Council is effective. He singled out his obscure office location as but one symptom of the larger problem of how the Council must work in spite of the institution. "Understanding that the Faculty Resolution [creating the Council] says that it is supposed to stimulate communication, assess student opinion, and make input on very valuable committees, they give the Law School Council a very small room over in North Austin Hall. But they don't do that for organizations over which they can assert more control, who have more traditional objectives, and whose energies are directed other than towards trying to have an impact on the decision-making in the school," Hollis said.

Independent of the Council's own problems, Hollis identified several "barriers" to student participation in the Law School's policy-making. First, Hollis claimed that the fac-

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Fine Moroccan Dining
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CLASSICAL GUITAR
TUES. EVES. By JOHN JERVIS

Decisions, Decisions

The method of factoring student input into Law School policy decisions has been aptly, if idiosyncratically, termed "ad hococracy." And it is true: informal channels of student communication all too often give way to extravagantly time-consuming consultations or unilateral Administration decisions. Yet formal student participation cannot be considered representative of students other than those participating in the organizations themselves — notably the BSA and the Law School Council. If asked to explain the frequently perceived lack of student activity, students assume attitudes ranging from apathy to frustrated despair.

It is fruitless to ponder the chicken-or-the-egg dilemma of whether lack of interest in an institution which houses its inmates for only three years is the cause of student nonparticipation, or whether the minimal effect of participation has led students to decide to expend energy elsewhere. It is also fruitless to compare the Law School community to a town meeting and decide that democratic values demand formalized channels for student participation to place students on a par with the Administration.

But we do not conclude, therefore, that students should not have any input. One of the positive aspects of special interest groups is that they provide information and focus attention on issues which might otherwise not be spotlighted; students are ideally situated to provide such feedback. The cautionary observations above merely illustrate that in a community with both transient and permanent members, the transients are less likely to consider the long-term effects of a decision on the whole community.

Perhaps in tacit recognition of this transience problem, few call for student equality in the decision-making process. But a common gripe about lack of representation is that lack of notice at crucial times seems to be the rule, rather than the exception. If students were routinely informed of pending policy decisions, it might not significantly increase the amount of actual student participation. But it would give those students sufficiently interested in the proposed changes an opportunity to be heard.

The positive attitude of the Administration towards student input when it is supplied illustrates a lack of hostility to strong student feeling, although the decision-makers may not actively put their ears to the ground. It would increase the legitimacy of policy decisions among the student population to know that if students cared they could influence the Administration. Whether many would, in fact, care is a separate question that hardly serves as a fit objection.

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Fenno

Fenno hardly recognized the reading room. At the door Charley was smearing 1Ls with Wesson Oil so a few more could squeeze in. Decennial Digests were open for the only time all year. Fenno even noticed someone reading *Am. Jur. 2d*.

"Fenno," a frantic voice cried. "I need some help on my Ames Alternative."

"Well," said Fenno, trying to look like Richard Parker. "I'm always ready to help my little student friends." He patted the 1L on the head.

"I was looking for an easy argument and signed up for the Law School Child Care Center project. Last year's case on baby food was such a gut. The winning team proved pablum's enduring value by quoting Dean Sacks' introductory speech to 1Ls."

Fenno said he had heard that when the judges woke up it was unanimous. "Something harder this year?" he asked.

"We got this employment discrimination case on appeal. Some Italian guy didn't make partner at Cravath just because his name ended in a vowel."

"Hmmm," replied Fenno. "I can sympathize with the plaintiff."

"That's funny," the 1L replied. "Judge Gagliardi felt the same way."

"What are the issues on appeal?"

"Assuming *arguendo* that, except for his Italian background and the fact that he didn't go to Harvard, the guy would have made partner, we have to prove that a cause of action is stated under federal law."

Fenno puzzled for a moment. "How do you propose to proceed?"

The 1L paused. "At first we tried to get advice from all the Italo-American faculty members."

"Yes, well, that can't have taken long. How about Christopher Columbus Langdell?"

"We thought it would be dispositive that Title VII used Roman numerals, but Bernardi said that wasn't enough. Then we found out that the guy revealed some confidences of a client, so he couldn't claim to be a discrete minority."

Fenno suggested that they could try to plug the facts into model IV of Tribe's *Treatise*. "If there's a fit, you could claim the case arose over the Constitution."

"Great," said the 1L. "We've got Cox on the panel and he doesn't understand any of that stuff."

"You have the idea. Just make sure your patter . . . I'm sorry, your oral advocacy, shows you aren't any smarter than your panel and you'll have no trouble. And of course it can't hurt to have a couple of black Chevrolets parked outside of Pound."

Letters to the Editor of the RECORD

Classroom Betting Is Attention-Abetting

To the Editor:

We read with great interest Randy Phillips' article in the January 28 RECORD ("Class Participation Workshop Upcoming") which described the techniques that Mark Byers intends to employ in his efforts to encourage reluctant students to participate in their Law School classes.

Dr. Byers fails to recognize the major such factor which inhibits class participation: to wit, uncontrollable drowsiness in the face of unmitigated classroom tedium. Moreover, the Byers program disregards an effective tool which could be used with great success to modify the behavior of Harvard Law students — money. No one who knows HLS can quarrel with the proposition that the prospect of a little "green" ("bucks", "moolah", "\$\$\$\$") changing hands provides far stronger motivational impetus than Byers' "mutual psychological support."

We recommend to Dr. Byers that he consider the following system of wagering which we have used with success in surviving what would otherwise be an intolerably soporific seminar in which we are currently enrolled.

Basically, our system anticipates that participants will enter into two types of bets prior to any given class meeting.

The first of these, the "word counting wager", functions to enhance basic attentiveness. Two students (hereinafter denominated "buddies") choose one or more words which are likely to be uttered during the course of the class meeting, and assign to each word a "frequency expectation". One buddy wagers that the frequency expectation will be exceeded (for example, "I bet that the word 'disclosure' will be spoken 12 times or more in today's class") and the other buddy takes the low side. The buddies' own utterances are not counted.

Buddies must communicate during class in order to assure that none of the utterances of the key words escapes detection and that final word-tallies correspond. We have found the "blowing of noses" mode of signaling to be an effective and discreet means of communication.

As one can well imagine, in a close race the tension builds as the end of class approaches, often reaching a level of exhilaration that makes the culmination of class a retrospectively rewarding experience for winner and loser alike.

Our other form of wager, the "preposterous word dare", serves to encourage participation by the buddies themselves. In this wager, the buddies choose a group of words whose relation to the subject matter of the class is at least tenuous and, preferably, ludicrous as well. (For example, the "bird

words" we selected for our last seminar meeting were "avocado", "paraplegic", and "transsexual.") The buddies challenge each other to be the first to volunteer an in-class comment incorporating one of the day's "bird words." Such a dare may be used to greater effect than Byers' "If you'll speak, I'll speak" technique.

Our scheme is adaptable to any classroom situation. The word "avocado" certainly meets the "preposterous" test in a class like *Corporate Finance*, but would fail to meet that standard in *Duncan Kennedy's Law of Fruit* seminar. And there is probably no word sufficiently preposterous for use in *Professor Mansfield's Law, the State, and Religion in India* seminar.

A choice of words which may occur with excessive frequency for the "word counting" wager may make tallying burdensome and the attendant communications rather conspicuous. Words like "case", "court", and "attorney's fees" should be avoided.

We fervently hope that Dr. Byers will find our system compatible with the techniques he has developed. Our system has enhanced the tolerability of our own Law School classes to the point where we currently attend almost half of them.

"Buddies"

Ed. note: Let no one think that this letter is merely an attempt at humor. We have witnessed the "buddies" in action (in Wednesday night poker games as well as in class) and we will attest to the practical benefits of their suggestions. We, too, are a little surprised that new vocational counselor Byers (who is not yet "Doctor" Byers, but soon will be) did not recognize the potential effectiveness of money as a behavior modification tool — after all, he worked at the Harvard Business School for the last five years.

SPORTS QUIZ

1. Who are the current basketball coaches at UCLA and Kentucky, the successors of John Wooden and Adolph Rupp?
2. Who is the middleweight boxing champion of the world?
3. Who won the 1972 Olympic gold medal in the decathlon, setting a world record (since broken)?
4. In 1971, Mr. Justice Douglas reinstated a district court's injunction, overturning the stay by the Court of Appeals, in order to allow an NBA player to play and to "preserve the interest and integrity of the playoff system," despite the league's opposition. 401 U.S. 1204, Who was the

player?

5. Henry Aaron was born on February 5, 1934, in Mobile, Alabama. What was his lifetime home run total?
6. Another famous baseball player was born on February 6, 1895, in Baltimore, Maryland. Among other things, this player was a left-handed pitcher with a 94-46 record, plus three World Series wins, with a 2.28 career ERA. Who was he?
7. Identify the colleges whose athletic teams bear these nicknames:
 - a) Vandals
 - b) Cyclones
 - c) Student Princes
 - d) Little Quakers

(Solution on Page 16)

Cryptic Law

The following excerpt from a 1929 property case is in "judicial code." Decode it. Those who enjoy alliteration should pay particular attention to this week's selection. (Hint: Each letter stands for a different letter of the alphabet.)

"Etfz ife etfqztixfz lcvp as rijqzs ncofz jpec
ojez etdt zffqfl aceecqifzz; etfs biypk ec
zbdpes tdpilcilz dz etfs zhjnefl etf anjphz cr
onfbjojbz vtjif etf rijbhfnjkh ridnf cr etfjn
ridqjkh ridqafdyw ljzbiczf pc aceecq ec etf
sdvpjpk kyir afpfdet etfg; . . . etfs rcypl
btdqafnz, zedn-zeyllfl xcs rjiifl vjet
zbjpejiidejpk ijkte nfrifbefl as d
otdpedzqdkenjdnfxfdijpk rdpbjfl otdpecqz,
xcs edofzenu vcxfp as etf ecijjpk kclz jp etf
lcqjpjcp cr Fnfayz" (The last word is a
proper noun.)

(Solution on Page 16)

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Review 'Core' Group Actively Seeking Procedural Reforms

(Continued from Page 6)

nificantly expanded, presumably, and if one office became overloaded, assignments would be shifted by lottery.

Proponents maintain that this by-passes the traditionally *ad hoc* appointment process, eliminating the "false" hierarchy of offices. Not incidentally, the president would be divested of the appointment authority. Finally, it is predicted that the change would serve to maintain the interest of non-editor 3L's, who traditionally desert the *Review* when passed over by the incoming president.

Though 2L Michael Peterson characterizes his reform position as "somewhere in the middle," he noted that "the present system does provide some indicia of commitment. That's important. The 2L class carries the lion's share of shitwork," Peterson continued, "and I'm not convinced that some carrot [like a prestige-laden 3L editorship] isn't necessary to keep 2L's going during the year."

Proponents of voluntary offices reportedly had a heyday with Peterson's "carrot" argument at the 2L open meeting last week, noting with confidence the near-mythical drive of *Harvard Law Review* members.

One 3L source at the *Review*, who preferred to remain anonymous, cast further doubt on the proposition of voluntary editorships: "It would drasti-

cally decrease our working efficiency. And the same thing would happen here that has happened at Yale." Reportedly, that school's *Journal* instituted a volunteer system and a hierarchy promptly grew up, based on grounds other than offices held—grades, research assistantships and others.

"All the 'goodies' went to all the wrong people for all the wrong reasons," concluded the source, referring to jobs and judicial clerkships coveted among the super-elite law students of the country.

The proposal to institutionalize in some way the integrity of student-authored articles by fending off overweening 3L editors at the final editing stage was reportedly not subject to such intensive debate. McComas reported that this was the only proposal "that seemed to be agreed on [at last week's open meeting], that pieces should not be substantively redirected at their final stage."

Peterson, however, disclosed at least one ground for criticism. Addressing the impetus for the suggested reform, Peterson said, "Part of it's an irrational concern with editing. There is a varying degree of sensitivity to criticism. In some ways, it's easier to fall back on 'author integrity' than to meet criticism. On the other hand," Peterson acknowledged, "there's a thin line between invading integrity and doing the job a good editor should."

Most *Review* members contacted agreed that author "compromises" this year were not an impetus for the "author integrity" proposal. One commented that "most of the hard cases come from years before this. Sue [Estrich] has been better than most, probably because her political sympathies are on keel with the majority of the *Review*." Estrich herself revealed that "the direction I've given to those editing is that where there is a conclusion that reasonable people could differ over, the author's view should prevail. My position is that a piece should not go to the printers ignoring arguments on either side. Anyway, my experience is that people [who read the *Review*] really don't care about our bottom line."

Estrich emphatically denied ever having "politically redirected pieces, except when the author said to me, 'I'm not happy with this piece . . . is there any way we can work with it?'"

It is predicted that the third proposal, to expand the size of the *Review* (to a presently indeterminate number), will be "tabled" until after the upcoming election. There is no pressing need to act on it until next school year. In light of the many questions most *Review* members polled had about the proposal, resolution of the issue will probably be delayed.

The "core" group members have also discussed longer-range reforms for the *Review*, including discarding of grades as a selection criterion, various affirmative action proposals, the inclusion of explicit editorial stances in certain *Reviews*, and format changes.

(Continued on Page 16)



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contact with the forum state to
ensure fair play and substantial
justice if personal jurisdiction...



AAAK



OH H H H H H H H

I'll never make it...
This is the end...
The end of Herb
Garnish... Frozen
like a fish stick!

No
summa...
No
clerkship...
No
millions...



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hall, I'm
sure glad
I'm not
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Adhocracy: Decision-Making At HLS

(Continued from Page 9)

ulty takes advantage of the "short-memories" and transient nature of the student body. "There is a high appreciation of those faculty members running organizations affecting students that they will hear the same complaints over and over from each class coming through. By the time you get to your third year, it's time to do your third-year paper. And that's your focus. Then you just want to get out of here." As evidence of this attitude, Hollis cited a proposed modification of the third-year paper requirement to take effect upon "the next class that comes in."

Hollis went on to refer to the passage of important resolutions at times that students are unavailable as another obstacle that the Law School throws in the way of students. As an example, he cited the Administrative Board's decision to shorten the drop-add period, a step that was taken in early June, 1976.

Finally, Hollis bemoaned "just plain delay" and the endless discussion that surrounds some issues. He specifically identified the proposal to change the calendar as one such proposal that has repeatedly become caught in procedural gears.

Informality

Apart from the above sorts of mechanisms — like Appointments polls and the process whereby students can sit on committees — the balance of student input into Law School decisions is expressed in a manner that is much less regular and methodical. BSA president Bachman maintains that the key word to describe decision-making is "informal." "No procedures exist," said Bachman, "except in areas like appointments, salaries, and the like. Beyond that, decision-making is very 'piecemeal' for general school-wide policies."

The BSA, for one, plays more than a bit part in this "informal"

model. Referring to how his views might be sought out on changes in the Legal Methods program, for example, Bachman related, "He [Dean Sacks] will call up and say 'Let's talk about Legal Methods. He'll say that 'I'm talking with so-and-so about such-and-such.' Then I'll go over." The Dean himself placed a high value on this informal means of interchange. "We have the possibility of views being expressed in a great variety of ways. It seems to me the Board of Student Advisors is the most useful of these sources."

The drawback in relying on such informal channels is closely related to the liabilities inherent in student membership on committees: there is no guarantee that their opinions will be representative or that students themselves can be in any way held accountable to some "constituency." As Bachman put it, "I cannot be representative of all other students because I don't know them. But I *do* talk with students all the time about different problems. Of course, they have the right to say, 'Big Deal, you're not accountable. I didn't elect you.'"

The more undefined and informal the manner in which student input is solicited, the greater the possibility that at times little will be received. The decision to hire an Alternative Career Counselor is an example. Although student input was in fact invited, some to this day claim that it was too little and too late. As one disgruntled student put it, "The Administration started out with the best of intentions. But they failed to describe up front what the nature of the input would be." The outcome, as explained above, was that students went unconsulted until the eleventh hour.

The problem of utilizing students in so unstructured a process was highlighted recently by Dean Alfred M. Daniels, the administrator charged with making the hiring decision. "My view is that it

was my decision, and I chose to share it voluntarily," Daniels said. "The picking of a propitious time to have the kind of input that students can fruitfully make is an 'adhocracy'. . . . I feel that the choice we made was 'colored' by the students, and I think the students are delighted," Daniels declared.

The defects presented by the informal nature of HLS policy-making may very well be rooted in the central fact that this is precisely the way that many students like it. The loud grumbling that goes on may only come from the mouths of an eclectic group of "joiners" who share a common interest in the goings-on at the Law School. At least in this view, the Law School does not and *should not* operate as a scaled-down version of a political system. As Dean Sacks put it, "There are people here who have said that we cannot expect to have a full working, entirely satisfactory political process in this school because most students are not here for that purpose."

But there is an opposing outlook. The Administration, in a conscious, sinister manner, chooses to prevent students from being parties to HLS policy-making. The caustic observations at the outset of this article, that the Administration succeeds in "outlasting you" and that its members "resist" student input, might best express this conviction. But on the whole, this more cynical viewpoint cannot be borne out. The elaborate mechanism for soliciting student views in appointments proceedings and the fact that students are free to sit as full-fledged committee members, at the minimum, serve to dispel the notion that when students talk, the Administration covers its ears.

In the final analysis, it may very well be true that the informal, somewhat behind-the-scenes style of decision-making is what lies at the bottom of student complaints and prevents those who might otherwise be interested from "having their say."

Law Review

(Continued from Page 12)

Another long-range proposal discussed, which seems to have majority support at this time, is the creation of a standing committee to explore reform alternatives and amass data from the experience of other law reviews with their own reforms. Such a self-study group will probably include some non-*Review* members (students and faculty alike), in light of the feeling that the *Review* represents Harvard to the legal community, and should therefore be subject to Harvard community criticism.

Various characterized by *Review* members as "wishy-washy," "timid," "reasonable" or "far-reaching," the *Review* reform proposals might better be likened to the proverbial arrow (falling to earth . . .), rather than political footballs. The proposals have been subjected to intense debate, irrational opposition and, inevitably, to compromise. There is little doubt that the arrow will fall to earth on schedule before the upcoming *Review* election. It is only the precise target that is still doubtful.

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SECOND CLASS POSTAGE
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Prostitution Study to Focus On Pimps, Whores, Johns, Tricks

(Continued from Page 7)

eral major cities this coming summer. Due to the possibly grave dangers of any attempt to interview prostitutes actually on the streets, this work will largely be done with city officials, citizen groups and, it is hoped, with the aid of established prostitute groups where they exist.

Perhaps the most intriguing aspect of the project is its final component. The Center hopes to persuade two cities to temporarily experiment with a system of *de facto* prostitution zoning, a practice widely used (and with great success) in a number of European cities. Under such a strategy, a city would enforce its anti-prostitution statutes vigorously except in one defined neighborhood where they would not

be enforced at all. Instead, the police would redefine their patrol function in that area as one of suppressing violence and promoting the safety of both prostitutes and their customers. Vorenberg recognizes that because of long-established American feelings towards prostitution it may be difficult to find urban leaders willing to participate in such an experiment. Yet he is optimistic. He notes that the increasing concern about prostitution in our cities and the seeming inability of present legal strategies to prevent the violent crimes with which prostitution has become associated are already forcing urban law enforcement officials to develop new responses. The system has worked for many years in Europe and may someday be regarded as the best solution here, Vorenberg said.

Solution to "Cryptic Law"

"They let themselves down by flimsy ropes into pits that seemed bottomless; they clung to scanty handholds as they skirted the brinks of precipices while the flickering flare of their flaming flambeaux disclosed no bottom to the yawning gulf beneath them; . . . they found chambers, star-studded and filled with scintillating light reflected by a phantasmagoria revealing fancied phantoms, and tapestry woven by the toiling gods in the dominion of Erebus . . ." *Edwards v. Sims*, 232 Ky. 791, 24 S.W.2d 619 (1929) (Logan, J., dissenting, describing the defendant's initial exploration of a cave later found to lie under plaintiff's land). Oh, for the bygone days when a judge brought with him to the bench a sense of humor and his *Thesaurus*!

Sports Answers

1. Gene Bartow and Joe Hall.
2. Carlos Monzon of Argentina.
3. Nikolai Avilov of the USSR.
4. Spencer Haywood, then of the Seattle SuperSonics. He had been signed within four years after his high school class graduated, contrary to NBA rules.
5. 755.
6. Babe Ruth.
7. a) Idaho.
b) Iowa State.
c) Heidelberg.
d) Swarthmore.

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