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TWENTY CENTS

Burger to Hear Oral Arguments at Moot Court

By Emily Bresler

Chief Justice of the United States Warren E. Burger is scheduled to preside at the final round oral arguments in the 1978 Harvard Law School Ames Competition. The distinguished panel of judges will also include Irving L. Goldberg of the Fifth Circuit U.S. Court of Appeals and Vincent McKusick, Chief Justice of the Maine Supreme Judicial Court.

Chief Justice Burger was originally scheduled to preside at last year's final arguments but was un-

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Profs Flunk Pass-Fail

By Terry Keeney

The Law School faculty voted last week not to consider any proposals to adopt pass-fail grading for the first-year curriculum.

By a 24 to 15 vote, the faculty accepted the majority report of the Committee on Legal Education. Last May the faculty directed the committee to determine whether the issue of pass-fail grading should be considered by the full faculty. The Committee voted last month to recommend that the full faculty not consider the issue.

The faculty vote appears to kill faculty discussion this year of several alternative proposals for first-year pass-fail grading that

were advanced last year. These proposals were endorsed last year by a petition signed by 356 of the 550 member of the first-year class.

Cavalier Dismissal

Baker Kurrus, president of the Law School Council, was disturbed that the faculty refused even to consider any changes in 1L grading. "Just to dismiss this proposal, which many people feel strongly about, in a cavalier fashion without looking at the merits seems irresponsible to me," Kurrus said.

Although no single reason was advanced for the faculty decision, much discussion centered on the

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Are Women Underachieving at HLS?

By Bill Ross

Why women have been consistently under-represented on the Law Review and often under-represented among honors graduates is a question which baffles Law School women, Law Review members, and professors. Some attribute the phenomenon to a difference in career goals between men and women; others say that women are less competitive; and others contend that women simply have more outside interests that keep them away from their studies. But no one pretends to have any definitive answers.

"The women who are here have shown tremendous motivation in getting admitted here in the first place and are well represented in

"... Women clearly have drive, but that drive is not always oriented in the direction of making high grades."

most Law School organizations," Beth Willensky, a member of the co-ordinating committee of the Women's Law Association, said. "So women clearly have drive, but that drive is not always oriented in the direction of making high grades."

Statistics Tell

Although 27 percent of the members of the Class of 1980 are women, only one out of the 20 students who joined the Law Review this year on the basis of grades is

female. Only about 15 percent of the Class of 1979 Law Review members selected last year on the basis of grades and the writing competition are women, although 25 percent of that class is female.

Although it is not known how many women entered the first round of the writing competition, Law Review sources say that nine out of 50 students who qualified for the second round were female. Three out of the 19 students chosen for the Review after the second round — 16 percent — are women.

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New Periodical Covers Sports Law

By Brian Holman

Two young lawyers, Joseph H. Garagiola, Jr. and Joseph E. Fenzel, are carving their own niche in the field of sports law.

Garagiola and Fenzel are the founders and editors of *Sports Law Reporter*, a monthly looseleaf service covering cases, decisions, and legislation in the world of sports. According to Garagiola, "The purpose of the *Reporter* is to report on the substantive law of sports — to go deeper into court decisions and legislation than do newspapers or current sports periodicals."

Garagiola came up with the idea for the *Reporter*. "Whenever I went into a law library to look at the periodicals, I would be struck by their degree of specialization. As a sports lawyer, I would often need to research issues in sports law. I would find an article here, another there, but no legal periodical concentrated on sports law. I felt that a sports law reporter could become a financial success."

Famous Father

Garagiola is the son of former St. Louis Cardinals catcher and NBC sportscaster Joe Garagiola, Sr. Asked if he felt that his father's position with NBC would help sell subscriptions, Garagiola replied, "I don't think it will have a lot of effect. We have tried not to trade in on it."

Garagiola has impressive credentials of his own. He played baseball at Notre Dame University before attending law school. Upon graduating from Georgetown Law School in 1975 he became the in-

house counsel for the New York Yankees. In February 1977 he left the Yankees to establish his own practice and now represents many professional athletes. Fenzel, a friend of Garagiola's from high school, graduated from Fordham Law School in 1975. When Garagiola proposed the idea of the *Reporter* to Fenzel, Fenzel enthusiastically agreed to become co-editor.

*"As a sports lawyer,
... I felt that a
sports law reporter
could become a
financial success."*

Now in its sixth issue, the *Reporter* has approximately 100 subscribers. Garagiola and Fenzel are already above breaking even, and hope for even more subscribers. "We believe we have a potential market of four to five thousand subscribers." Current subscribers include major league offices, college athletic departments, law schools (Harvard does not subscribe), and individual coaches and lawyers.

Said Garagiola, "As more coaches, athletic directors, general managers, and sports administrators become aware of the *Reporter*, more will subscribe. For example, after a recent article we did on a Montana Supreme Court decision on hunting licenses, the National Rifle Association sent in its subscription."

Getting Bigger

The *Reporter* is growing in size as well. The August issue required four 8½" by 11" pages; the September issue has six.

"We are developing contacts throughout the country through law school students and private attorneys," said Garagiola. "As we get more leads and contacts we can become more selective in the articles we print and can expand the scope of our coverage." In a recent letter to the Harvard Law School the *Reporter* has offered \$25 to students for each story brought to its attention which is ultimately used.

So far, Garagiola and Fenzel have written all the articles for the *Reporter* themselves. "We are concerned with the accuracy of the reporting. We ask our contacts to send in the raw matter — the complaint, the decision, or the proposed bill — and then we write the article. As the *Reporter* grows, we will ease into having articles written by others."

The *Sports Law Reporter* is available for \$75 per year/\$125 for two years from Sports Law Reporter, Inc., P.O. Box 695, Bronxville, N.Y. 10708. A student rate has been set at \$45 per year/\$75 per two years, but Garagiola may consider lowering the student rate to attract a larger student following.



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Placement Office Tells 1Ls "Later."

By Amy L. Grossman

While second- and third-year Harvard Law students are presently interviewing for summer employment, first-year students will have to wait until late November to receive the major part of their assistance from the Placement Office.

Just before the Thanksgiving weekend all 1Ls will receive in their campus mailboxes a package



Eleanor Appel

from the Placement Office which will contain, among other materials, a list of all law firms and organizations where previous 1Ls have worked during their summers. The students themselves must follow up in contacting these firms, by writing or telephoning, and by setting up interviews.

Eleanor Appel, director of placement, explained that the procedure of having 1Ls begin their summer job hunt later in the semester is based on certain practical considerations. She claimed that there are just not that many job openings for 1Ls in the fall. In addition, the school is concerned that beginning students would expend too much time and energy in writing countless letters to no avail. Appel maintained that first-year students are not adequately acclimated to the "frantic and frenzied job hunting atmosphere" during the first few weeks of classes, and that to thrust the new

students into the interviewing system would be devastating.

Warm Welcome

After Thanksgiving, all of the Placement Office's resources will be available to 1Ls. At that time, Appel said, first-year students will receive a warm welcome and any aid that they may need in using the resources in the Placement Office. There will also be a bulletin board for 1Ls with notices of job opportunities with public organizations and private firms.

Appel assures all first-year students that there is "no rush at the present time"; there will be many job openings throughout the year. For example, during the second semester, after the Ames Competition, a number of private firms make their own arrangements for interviewing first-year students in Cambridge. However, based on her view of students' past summer experiences, Appel claimed that 1Ls derive great benefit from jobs in government and in the public sector. Although "the pay is not great" in these jobs, Appel noted, some students may be able to supplement their incomes with Student Funded Fellowships of up to \$125 per week for a maximum of ten weeks.

Orientation Help

In the meantime, 1L section meetings on the placement proc-

ess and career-related matters are being held under the direction of Douglas Phelps, to help orient students in seeking law-related jobs. The last meeting, open to students from all sections, will be today at 2 p.m. in Langdell North Middle. In addition, during the year there will be workshops, symposia and presentations such as a simulated interviewing show designed to introduce students to useful interviewing techniques.

Appel maintained that first-year students are not adequately acclimated... and that to thrust the new students into the interviewing system would be devastating.

Finally, Appel advises first-year students that it is not necessary to work in a law-related summer job after the first year. Students interested in other types of employment should inquire at Harvard's Office of Student Employment, located in the basement of Byerly Hall and open to all Harvard students and their spouses.



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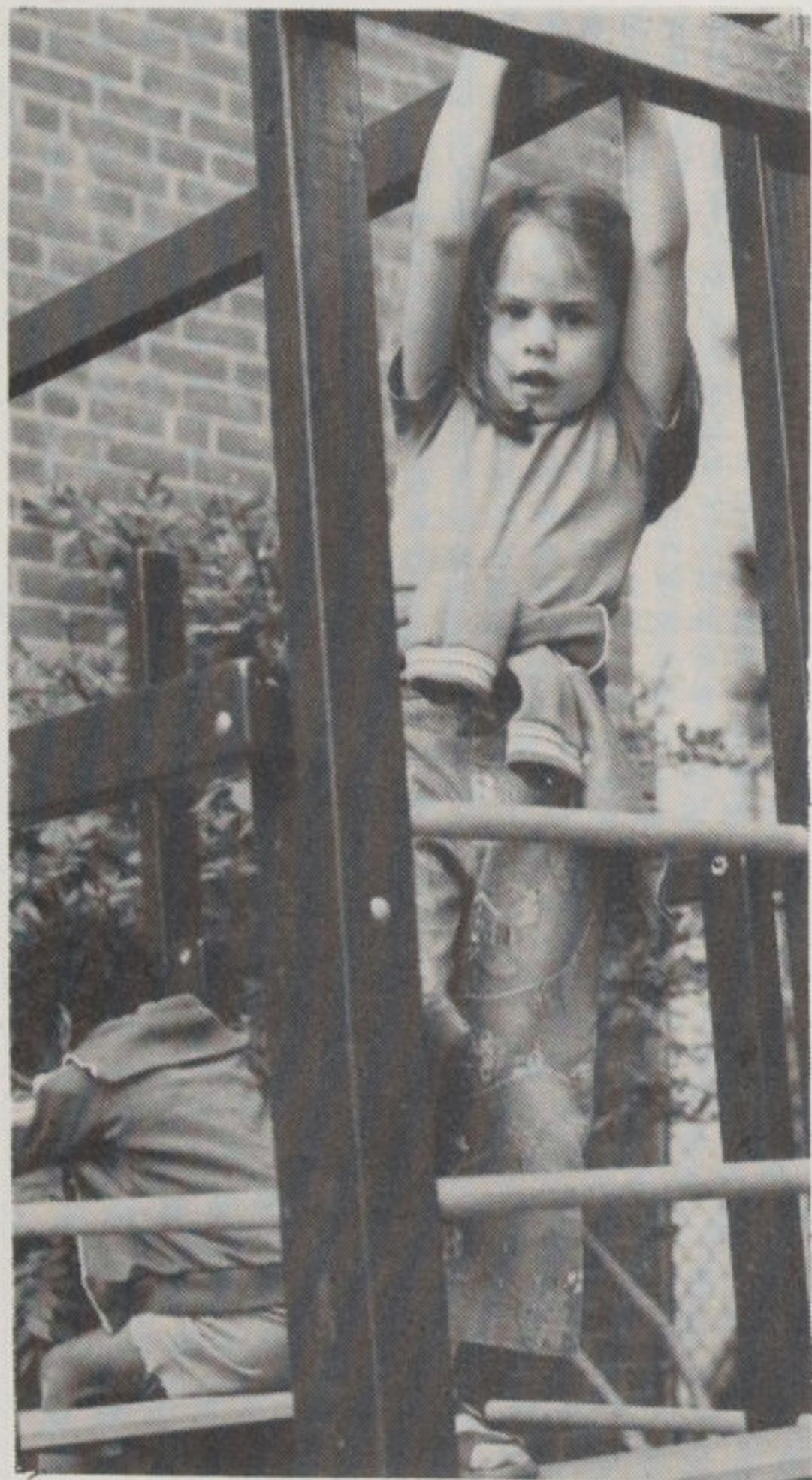
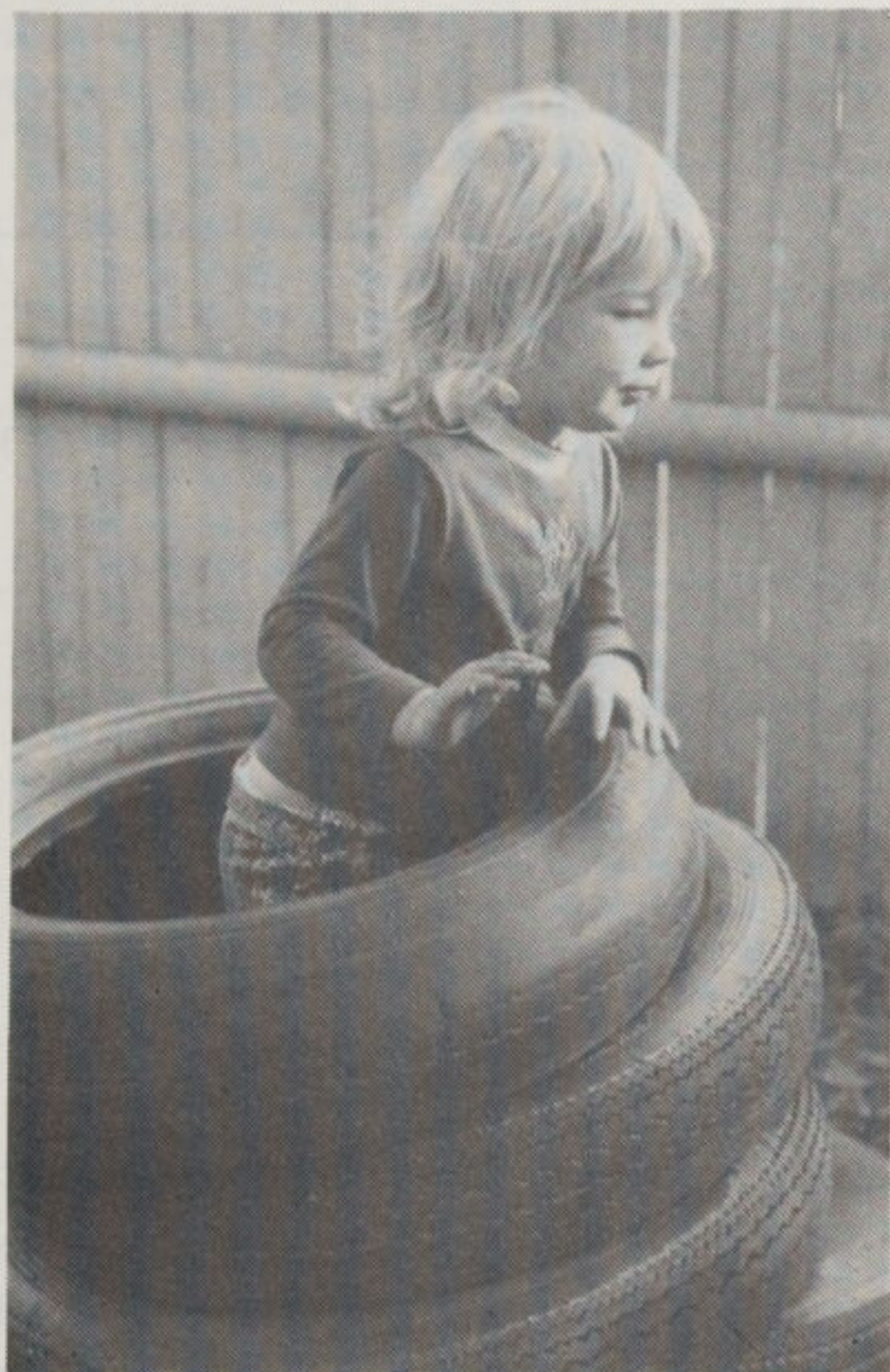
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Littlest Law Students:



Upstairs an anxious prospective lawyer impeccably attired in a three-piece suit awaits his first job interview, while downstairs ten little people assemble for their midday snack of crackers, raisins and grape juice.

Every day 23 Everett Street is the destination of many well-groomed law students seeking employment and 45 little people between the ages of one and six, who explore their world through the guidance of the Harvard Law School Child Care Center.

The Center, established eight years ago, was organized predominantly for the children of law students, explains Hermine Jones Fish, director of the Center. The Law School provides the Center with the facility and pays for utilities, Fish continued. Equipped with a staff of nine professionally-trained people, the Center also has several student teachers from nearby colleges.

Teachers work in teams so that there are always two staff members plus an aide working with a group of children. The children are divided into three groups based on age: toddler, middle and older. The older group is a certified kindergarten class.

Tuition varies depending on the age of the child and whether he or she is attending the Center on a full time (8:30 a.m.-5:30 p.m.) or half-time basis. Moreover, parent participation is encouraged as tuition is lower if a parent is willing to devote eight hours per month to the Center. This involvement embraces many types of activity, from helping on a one-to-one basis with the children to weekend cleaning of the Center or construction of outdoor play equipment.

With students from Israel, Germany, Norway, Japan and Argentina, the Center truly has an international student body. The ideals of the Center, however, span cultural differences. Fish feels that, "children need to grow in a social context." They need a "good sense of self and the effect they have on the world." She explains that for children, "Their play is their work."

In learning about their world, the children are involved in a regular series of day trips. Excursions to such places as the Children's Museum, the Cambridge Commons, the library and Lawson's Cider Mill are regular occurrences. With such an active schedule, Fish notes that volunteers are always welcome.

On your next interview at 23 Everett Street at least say "Hi" to Blue, the rabbit who is regularly at his post on the front porch.



Kids Try Day Care, Harvard Style



Photos and Story
by Chris Rinik



Few Women on Law Review:

(Continued from Page 1)

Although the disproportionate ratio of women graduating with honors is less dramatic, the same trend is evident. In the Class of 1978, which was approximately 21 percent female, only 15.5 percent of the cum laude graduates and 12.7 percent of the magna cum laude graduates were women. In the Class of 1977, which was roughly 20 percent female, only 16 percent of the cum laude graduates were female although 23 percent of the magna cum laude graduates were women.

Conflicting Reasons

Most persons contacted by the RECORD agreed that reasons why few women qualify for the *Law Review* on the basis of the writing competition are easier to determine than the reason why so few qualify on the basis of grades.

A number of women say that the *Law Review* has such an unfavorable image as a male-dominated institution that many women eschew membership. **Snobs?**

"Among many students, the *Law Review* has a miserable reputation as a snobbish institution and women just don't try out for it," said Susan Orlansky, a *Law Review* member. "I personally don't know many women who tried out. There is so much fear and misunderstanding about the *Review*. When women already are outnumbered three to one in the Law School, many do not want to join an organization that is eight to one male."

WLA Encouragement

In order to help to dispel what she termed the "ridiculous view" that many women hold about the *Review*, the WLA and the *Review* cooperated this year in an effort to encourage women to enter the writing competition. Orlansky said that the effort seems to have suc-

ceeded, since more women tried out for the *Review* this year than have done so in past years.

According to *Law Review* member Ellen Schward, 2L women were told that "*Law Review* is a nice group and a lot of fun and even though it's a lot of hard work, you learn a great deal." Although the *Review* traditionally has not found it necessary to recruit members, Schward said that "we realized that we couldn't sit back and let the unfavorable image work itself out."

Law Review President David Leebron agreed that the outreach effort seems to have encouraged more women to compete in the writing competition.

"In the past, perhaps women weren't as interested in the *Review*, but I think this is changing," Leebron said. "We're grateful to the WLA for encouraging more women to participate, since the *Law Review* couldn't have done it alone. Our efforts seem to have paid off since the number of women participating this year seems to have increased."

Leebron noted that he believes there is a "trend toward accurate representation in the numbers" of women in the *Law Review*.

He pointed out that two of the eight third-year students offered *Law Review* membership this year on the basis of grades were female.

"Thanks, But . . ."

But some women suggested that even if the *Law Review* sheds its image as a male-dominated institution, it is likely that many women won't want to try out or join.

"A lot of women don't try out for the *Review* because they are here for different reasons than are men," according to Willensky. "Most women come here hoping they could help society and they're more oriented toward social service work" and don't believe that the *Review* provides the best sort of training for that type of work.

Another WLA member, Carey Corbaley, agreed with Willensky that "many women reject the idea of working for the *Review*." Corbaley said that she did not try out for the *Review* because "I've got more going on in my life. Someone once compared working on the *Review* to painting Tom Sawyer's fence — they get you to do a lot of work by making it an honor. I just couldn't see myself buried on the *Review*."

Age and Values

Although Corbaley noted that many men probably have the same reaction to *Review* work, the feeling among women may be stronger in part because women at the Law School are on the whole older than are men.

"More of them are married, have children or have a mate," Corbaley said. "They're not as caught up in the competitive grind."

"Women experience the Law School as an alien environment in which male values dominate."

She noted that since the average age of Law School women is declining the number of women on the *Review* may increase.

Women and professors found the phenomenon of why so few women qualify for *Law Review* on the basis of grades even harder to explain than the question of why fewer women try out for the *Review* in the writing competition.

Cultural Variations

A number of persons attributed the difference to cultural variations between men and women.

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Numerous Explanations Suggested

(Continued from Page 6)

"This is still a generation where most women haven't thought about going to Law School since the time when they were very small," said Orlansky. "Most women here didn't think they'd ever go to law school at all, much less to Harvard. Some think that being here alone is an achievement and they don't have to knock themselves out."

Orlansky added that the "education little girls receive differs from the education received by little boys. Women are encouraged to write in an embellished style which differs from the terse style for which professors, perhaps subconsciously, look when they grade exams. This might occasionally make the difference between one grade and another."

Willensky and some professors, however, rejected Orlansky's theory about writing style. "I don't think women write differently than men," said Willensky.

Schward suggested that there may be another reason. Schward agreed with Orlansky that women's early training may in part account for differences in the academic performance of men and women at Law School.

Quickness of Mind

"I have so little faith in the accuracy of grades that it's hard to say anything definitive, but it does seem that Law School exams require quickness of mind rather than strong analytical ability. Women are not encouraged to go into things like debate and spots that require quickness of mind."

Schward noted that as the culture changes to encourage women to enter previously male-dominated activities at an early age, it is likely that the academic performance of women will improve.

Alienation, Distortion

According to one professor, the failure of many women to

earn top grades partly results from a feeling of alienation they experience at Law School.

"Law has not yet given up its image as a largely male profession," he said. "Women experience the Law School as an alien environment in which male values dominate. There is a suppression here of feeling in the interest of thought and women experience this distortion more strongly than do men."

He added that "women have been socialized to be less aggressive. The prospect of success threatens some women because they fear that it means giving up their femininity. To be as ambitious as men is to adopt attributes that are not particularly pleasant."

The professor contended that "women are not as influenced as some men by the status of the market. To a man, an alternative career might be a mark of failure. But women are less likely to find high grades or *Law Review* to be important."

Different Goals

Orlansky agreed with him that the different career goals of women and men account in part for the difference in grade averages.

"Women bring a different career orientation to the Law School," Orlansky said. "Fewer are oriented to traditional corporate-type jobs. There's a general feeling that it's less important to have high grades if you're going into public interest work or legal aid." Orlansky said, however, that she disagreed with the view that *Law Review* is not relevant to such work.

Orlansky noted that women are over-represented in Students for Public Interest Law (SPIL), the Environmental Law Society, and Legal Aid. Women seem to be putting themselves into this rather than into studying.

Dale Doenges, a 2L member of the WLA's co-ordinating commit-

tee, agreed with Orlansky that "women may have different priorities. Many women believe that it is enough to do a reasonable amount of studying and get a decent grade. They channel their energies more into various outside activities."

Another woman, who asked to remain anonymous, said that "most men think success is measured by grades. With women, success is not an all-consuming purpose."

But many persons contacted by the RECORD said there do not seem to be any obvious answers as to why the academic achievement of women, as measured by grades, lags behind that of men.

"Shall We Overcome?"

"I don't understand it," said Prof. Alan Dershowitz. Usually the harder it is for a group to get into Law School, the better that group performs after it gets in, he noted. Since women have had to overcome cultural obstacles in order to compile the type of record necessary for admission, it would seem that they would do better than men, he said.

Dershowitz noted that at many other schools, the gap between the academic performance of men and women, as measured by *Law Review* membership, is not as acute as it seems to be at Harvard.

Most students and professors agreed that as women become more assimilated into the Law School experience, it is likely that they will compile better academic records.

"I'm hopeful about the future," Orlansky said. "I think that barriers on the whole will break down. It has got to change within a generation. But I would be worried if women became as overly ambitious as are some men."



See page 16 for the names of the new members of the Harvard Law Review.

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Pertschuk Finds Fulfillment at FTC

By Dan Hershman

The largest public interest law firm in the United States has 600 attorneys, headquarters in Washington, D.C., and ten field offices. Its young lawyers direct major cases against multinational corporations, the oil oligopoly, price-fixing opticians, and the makers of sugar-coated cereals. The work is hard, the responsibility is great, and the pay is low. The firm is the Federal Trade Commission, an independent regulatory agency of the United States government.

Michael Pertschuk, chairman of the FTC, spoke to more than 100 people at the Law School on Thursday, September 28, about the opportunities and frustrations for an attorney in an independent regulatory agency. In a casual talk peppered with humor, Pertschuk described the FTC's role and the field of public interest law for aspiring advocates.

High Public Interest

Pertschuk polled the audience on their interests in law. Of the three-quarters present who were law students, almost all indicated an interest in public law. Only two or three indicated an interest in corporate practice. Pertschuk said nobody in the first year class at Yale expressed an interest in corporate law, yet he felt 90% of that class would end up there anyway.

Pertschuk gave what he called a litmus test of negative indicators propounded by those predisposed against public interest practice. These included assertions that there is no public interest law firm, that public interest lawyers don't get a living wage, that corporate firms provide better training, that commercial law is the real thing, that *pro bono* is dead, and, most important, that you will have a better life if your professional life is divorced from your personal values. He then went on to dispel most of these myths.

Pertschuk said he liked his job as FTC chairman and would recom-



Michael Pertschuk

mend it to anyone. He also spoke of several instances where young public interest lawyers had made good. One woman, two or three years out of law school, joined the Office of Policy Planning and soon became the head of the task force on food and nutrition. She has been marshalling the study of the impact of advertising on children.

A young man joined the FTC, quickly became involved with the generic drug pricing project — a sensitive area of federalism where the FTC has cooperated with Health, Education and Welfare, and helped to draft a model state generic substitution law. Other attorneys are involved in litigation with multinational corporations and projects on the diseconomies of scale.

One of Pertschuk's own young attorney-advisors got himself ensconced in a Congressional conference committee meeting discussing legislation to limit the FTC's powers, and with both Houses thinking he represented the other, somehow managed to rewrite the legislation in the FTC's favor.

HLS Grads

Dan Koch, HLS '75, in his short tenure at FTC has been given high priority cases, drawing standards on mergers and developing the cereal and the Exxon cases which might be tried eight years from

now. The work is often challenging and requires plenty of patience. Art Lerner, HLS '76, has worked in the Bureau of Competition and is now trying to end physician dominance of Blue Shield plans.

Some attorneys have pursued careers on Capital Hill, where there sometimes is more excitement than in the "Siberia" work with the FTC, but more frustration too. One young man became general counsel of the Senate Appropriations Committee and was instrumental in fighting off an effort to kill the Environmental Protection Act. In three months one young woman became the Senate's expert on airline deregulation and now serves as the senior member of the Domestic Council for transportation.

There are enormous opportunities in government work, Pertschuk stressed, if one has the requisite tools. One must have analytic skill and discipline, but also native judgment and an ability to work with people. One who has political skill — a sense of strategy — to seize the essentials and find the alternative paths can be successful in public service. One risks becoming bogged down in arcane legal questions if he or she doesn't have the ability to know where to turn for answers.

Depressing Paint

Pertschuk admits there are problems at the FTC. Inferior secretarial help is a real drawback and the "terrible green paint is depressing." The FTC has tried to circumvent the General Services Administration, "most of whose officials are in jail," Pertschuk wryly stated, to get better facilities. The FTC doesn't pay its top litigators well enough to keep them, but is looking for cheap help.

Summer employment opportunities for 1L's are limited. But there is a formal summer program for 50 or 60 2L's, many of whom are minority candidates sought by affirmative action.

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Placing Priorities

The news that all Placement Office facilities will be available to 1Ls after Thanksgiving should offer some solace to those who think that the limitations on 1Ls' access to the Placement Office are the greatest denial of equal protection since *Plessy v. Ferguson*.

It may well be, however, that what this school really needs is not more, but fewer placement services. As things are now, the fall semesters of the second and third years are nearly total academic losses, with classes taking a distant second to interviews in the priorities of most students. As more placement services are extended to 1Ls, the academic integrity of the first year will also be threatened.

Besides threatening the Law School's educational effectiveness, the heavy emphasis on fall on-campus interviewing inevitably favors the large corporate law firms. The explanation of why 3Ls depart from Harvard to take jobs in private corporate practice, even though as 1Ls they were determined to find public interest employment, lies not so much in any bias in the curriculum as it does in the simple fact that the cost of on-campus interviewing is beyond the means of most public interest employers. Despite its well-intentioned efforts to aid students searching for public interest jobs, the Placement Office has made corporate practice the path of least resistance.

The problems with the present system are obvious; unfortunately the solutions are not. Perhaps the school's academic integrity could be maintained by setting aside a two- or three-week period before the start of the fall semester, during which all on-campus interviewing would be conducted. Thus students would not have to choose between interviewing and school, as they do now, but between interviewing and vacation.

Such a system would also reduce the recruiting advantage currently enjoyed by large corporate firms. If students had to give up part of their summer vacations in order to interview with firms on campus, corporate practice would no longer be the path of least resistance for many students.

A system along the lines described is working well at Columbia. It might work here too.

HARVARD LAW RECORD

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Fenno

Fenno knocked on the Law Review office door and waited. When no one answered, he crept in quietly and found a single editor asleep at his desk, his head resting on a small blue book.

"Excuse me," Fenno said, tapping the sleeping student's shoulder. "Can I talk with you for a minute?"

"Grmpf," replied the Law Reviewer. "Grmpf sprgglk."

"My name is Fenno, and I've been named activities liason by the new assistant dean in charge of those things."

The editor opened his left eye. "You mean young Dean Boyish?" he yawned.

"Well, actually it's boyish Dean Young," Fenno corrected. "But why quibble?"

"Some people like to quibble," said the editor, lifting his head off the little blue book. "Some people make careers out of quibbling."

"Yes," Fenno smiled, thinking of a polite way to change the subject. "Not to change the subject," he began, "but Dean Young would like to see some changes made over here."

The editor opened his right eye. "Like what?" he asked.

"Well to start with, we'd like to open up Law Review to whoever would like to join," Fenno said. "Sort of make things more casual."

The editor opened both eyes and stood up. His face was red. "Grmpf," he said. "Grmpf sprgglk!"

"I hope I'm not upsetting you," Fenno said calmly, "but there are a few other things. We can't seem to figure out why the RECORD gets published once a week and the REVIEW only once a month. Must be that the RECORD staff is working harder. You guys should get your act in order."

The editor grabbed Fenno by the arm and began showing him to the door. "Grmkrlg mrfrt!" he screamed.

"A few comic strips wouldn't hurt either," Fenno continued. "'Superjudge' and 'There Oughta Be a Law' would make your magazine a lot more interesting."

"And including a section of TV Topics might increase readership. Maybe you can highlight whenever John Houseman, Raymond Burr or Alan Dershowitz appears on the tube."

The editor opened the office door and threw Fenno out. As he regained his composure the editor realized that something was wrong.

"Hey, summer's over," he said surprisedly.

"How long have you been cooped up in there?" Fenno asked.

"Since the beginning of August," the Law Reviewer said. "Guess I missed a few things. Say, have the Red Sox won the Series yet?"

Fenno smiled and began to walk away. "Look it up in your little blue book," he said as he put on his Yankee baseball cap.

Letters to the Editor of the RECORD

An Error in Plurals

To the Editor:

Re RECORD of September 29, p. 3, Law Notes, 2d ¶: The plural of "notary public" is "notaries public," not "notary publics." Cf. "attorneys general" and "sisters-in-law."

An Anonymous Sometime
Admirer on the Faculty

Law Notes

The M.I.T. China Study Group will be hosting "Free China Day — Celebration of the 67th National Day of the Republic of China" on October 8th from 10 a.m. to 10 p.m. at the M.I.T. Student Center. There is no admission charge for the day and only a \$2.00 charge for the evening variety show at the Kresge Auditorium.

* * *

The following people are notaries public at the Law School and will be able to certify absentee ballots: Betty Allebach at Legal Aid in Gannett House, Donna Chiozzi in FOB 200, Libbi Lepow in FOB 100, John Muller, Jr. at the Law School Fund Office in Hastings Hall, Suzanne O'Connell at Law Review in Gannett House, Mary Upton in FOB 100, Lisa Winsor at Harvard Defenders in Austin Hall.

* * *

The Law School Library is hosting an exhibit of drawings by Kathleen Tighe Clark, wife of Visiting Professor Robert Clark, in the South Colonnade of the Langdell Reading Room. The exhibit runs until December 21.

* * *

The Honorable A. Leon Higginbotham will be speaking at the Law School Forum tonight at 8 p.m. in the Ames Courtroom in Austin Hall. Higginbotham is a judge on the Court of Appeals for the Third Circuit and has just written a book entitled *In the Matter of Color: Race and the American Legal Process*. Admission will be either by season ticket or \$1.50 at the door.

* * *

The Placement Office is sponsoring a workshop on "Combining Pro Bono Public Interest Work With Private Practice" on Thursday, October 12th at 4 p.m. in Pound 110.

* * *

The Honorable Eugenio Anguiano will be the speaker at the East Asian Law Speakers Program on Friday, October 6th at 12:45 p.m. in Pound 419. Anguiano will be speaking on "My 3½ Years in China." The former Mexican Ambassador to China is currently a Fellow in the Center for International Affairs.

OCTOBER 6, 1978

The RECORD's policy on letters is simple. We read all of them. We print most of them, subject only to editorial discretion. We encourage letters on any subject, and especially on subjects which have appeared in the RECORD. Write today and speak your mind to the students, alumni and faculty of the Law School.

Cryptic Law

This week's Cryptic Law should prove especially interesting to tearful Bo-Sox fan and smug Yankee fan alike. (Hint: Each letter stands for a different letter of the alphabet.)

Asnp asnbm mbn asn ympv pmynw,
gnonebmanl cfb fpn bnmwfp fb mpfasnb,
asma smzn wqmbinl asn lnmyfpl mpl
haw npzhbfpw mpl asma smzn qbfzhlnl
ahplnb cfb bngmqatbnl asbhoow, cfb
bnyhphwgnpgn mpl gfyqmbhwfpw, mpl cfb
gfpznbwmahfp mpl mpahghqmahfp hp-
wnmwfp mpl fcc-wnmwfp: Av Gfee, Emen
Btas, Abhw Wqnminb, Jmoanb Dfspwfp,
Snpbv Gsmjlhgi, Nllhn Gfoohpw, Oft
Xnsbhh, Xbfznb Gonznompl Monrmplnb,
Bfxnbw Sfbpwev, Smbbv Sffqnb, Xffwn
Xfwohp, Dmgihn Bfehpfwp, Sfptw Jmxpnb,
Dfn YgGmbasv, Dfsp YgXbmj . . .

(Solution on Page 16)

Public Interest and the FTC

(Continued from Page 9)

Prof. Abram Chayes asked Pertschuk if he felt one should get experience in a law firm and then go into public service or vice versa. Pertschuk replied that he was ambivalent about how to approach the decision. But he did feel that, in a 260-member corporate law firm, a young attorney is a glorified document collector while a young government attorney is trying cases he or she has developed.

Pertschuk said, "I have a great feeling when I get up in the morning knowing that what I'm doing is worthwhile."



SPORTS QUIZ

1. By what name is Marion Morrison, formerly of the University of Southern California football team, currently known?
2. Jim Rice has 406 total bases this season. Who was the last American League player to exceed 400 total bases in a season?
3. Who is the only former National Basketball Association player currently serving in the House of Representatives?
4. Who is the most recent person to play professional basketball and also play major league baseball?
5. Five players have hit ten or more career World Series home runs. Name them.

(Answers on Page 13)

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Pass-Fail: Down for the Last Time?

(Continued from Page 1)

fact that the issue had been considered in the past. Prof. William Andrews, chairman of the committee, noted that many of the faculty concurred in the reasoning of the committee's majority report.

"All the report says is that this issue has been sufficiently discussed within the last decade," said Andrews.

"The faculty was sticking their heads in the sand and showing a lot of insensitivity to an issue students feel strongly about," said William Chriss, 2L member of the Law School Council, who spoke at the meeting.

Both Kurrus and Chriss expressed the opinion that faculty consideration of pass-fail grading in the early 1970's should not preclude further faculty consideration. "This hasn't been considered fully in several years," said Kurrus. "What really aggravates me is that they just tossed it without looking at it."

Pass-fail grading was last considered by the full faculty in 1973 after the Committee on First Year Evaluation and Related Matters recommended dividing the first year schedule into semesters along with pass-fail grading. After four meetings to discuss the report, the faculty voted to break up the curriculum into semesters, but disapproved the pass-fail recommendation.

Lengthy History

The history of a pass-fail proposal goes back as far as 1969 when a committee of 1Ls included a recommendation for pass-fail grading in a report entitled, "The Trouble With Grades." A special faculty committee concurred with the student report. After an all-night "study-in" the faculty accepted several reforms of the grading system, including making membership in the Legal Aid Bureau and the Board of Student Advisors no longer dependent on grades and several alternatives for an optional pass-fail grading system. The

pass-fail proposal was never implemented.

Kurrus points out that the faculty vote was "strictly procedural," and that faculty members cannot point to the meeting as an occasion when the substance of the issue was decided. "They may feel like they've dealt with it, but they haven't really considered it at all," he said.

Sacks' Promise

At the close of discussion at the meeting, Dean Sacks made a statement dealing with problems of the curriculum and promised to appoint a committee to study curriculum in all three years, even if the faculty voted, as it did, not to consider pass-fail.

Sacks envisions a committee that will study "long-range curriculum planning." Such a study has not been done in over 15 years, according to Sacks.

"This committee will be asking questions and there are a lot of questions to be asked about the three years," said Sacks. "The committee will be looking to what

kind of legal education framework we'd like to have over the next five to ten years."

Sacks expects to appoint the committee members by the end of the semester and hopes to receive a report within two to two-and-a-half years.

Kurrus called the Sacks statement a "stall tactic." Chriss felt Sacks "swung the vote. He defused what appeared to be a steam-rolling effect." Andrews believed the Sacks statement did not affect the outcome.

Despite the faculty vote, Kurrus hopes to bring the pass-fail proposal before the full Committee on Legal Education after the student members are appointed. The Committee had voted, without the participation of two student members, not to recommend faculty consideration of the issue.

Chriss thinks that students should follow up Sacks' promise to study the curriculum. "The best and most useful thing to do is to focus on Sacks' promise and hold him to account for the promise he has made."

✽

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Chief Justice to Preside at Ames

(Continued from Page 1)

able to attend after he was hospitalized for a back ailment. Associate Justice Thurgood Marshall presided instead.

The Ames final round officially began on September 29 with the issuance of the mock records to the competitors. The case, captioned *Jane Malloney et al. v. Municipality of Lincoln, Lincoln Fire Department and Rescue Squad, and Kenneth Greer et al.*, is a class action alleging discrimination against women in the hiring of certain fire department personnel.

According to the record, the initial complaint was filed on April 18, 1979 after the passage of the Equal Rights Amendment. Thus, the finalists will be dealing with a case of first impression in this country, the application of a constitutional amendment prohibiting denial of equal protection on the basis of sex.

The defendant fire department has a ban on hiring women for "firehouse positions" which entail living in the fire house during shifts and doing actual fire-fighting. The department justifies the policy on the basis of privacy considerations. In addition, applicants must meet certain height and strength requirements.

The plaintiff Malloney represents a class of women applicants who were denied employment as firefighters. All these applicants failed to meet the height and strength requirements. The plaintiffs will argue that the fire department ban violates the Equal Rights Amendment and, alternatively, that the physical requirements, although facially neutral, are also unacceptable under the E.R.A.

Defendant Greer has intervened on behalf of a class of black men who previously brought a racial discrimination case against the defendant fire department under Title VII of the Civil Rights Act and the Equal Protection Clause. These defendants were awarded affirmative relief by a consent order which provided that the next 15 available "firehouse positions" would be awarded to black men. This class now intervenes to protect these positions.

Final Round Ames

topic is ERA:

Ratification, rescission, extension and factual applicability.

In addition to arguing the merits of the case and the applicability of the Equal Rights Amendment to this particular fact situation, defendants will also attack the validity of the amendment due to alleged infirmities in the ratification procedure. According to the record, 37 states, one short of the necessary two-thirds, had ratified the amendment when the constitutionally permitted time for ratification expired. At that time, two states had also attempted to rescind their ratification. Congress passed an extension of the time al-

lowed for ratification, after which two more states ratified the amendment and another arguably revoked its support. Thus, a key issue in the arguments will be the constitutionality of time extensions and state rescissions of ratification of a constitutional amendment.

Both finalist teams are sponsored by the Marshall Club. Representing the plaintiff-appellants is the Marshall Arts Team. The oralists will be Patricia Brannan and Robert Osborne, and Craig Spiegel, David Lillehaug, Don DeAmicis and Robert Reznick will assist on the brief.

The Marshall Club team will represent the defendant-appellees. Arthur Bryant and P. Michael Jung will be the oralists and Daniel Small, Milly Whatley, Patricia Wells and Kenneth Van- deVelde will help prepare the brief.

The final Ames arguments will be held on Thursday, November 16 at 8 p.m. in the Ames Courtroom.



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An informal discussion will be held at 3:00 P.M. on Wednesday, October 18, 1978 in the John Chipman Gray Room, second floor, Pound, for those interested in learning more about strategic consulting and BCG.

On Judging a Firm by Its Clients

—by Michael Smith

Now that Collier, Shannon, Rill, Edwards and Scott has left Cambridge, it is appropriate to examine what happened and what the consequences could be.

At this time last year, Collier, Shannon was the registered lobbyist for the Republic of South Africa. Then — Dean Alfred C. W. Daniels, in charge of the personnel office, issued a statement to the students stating that the Law School does not normally inquire as to what clients a firm represents, but that it had discovered Collier, Shannon was the registered lobbyist for South Africa. Collier, Shannon did not come to interview because nearly all of the students who had signed up cancelled.

This year the registered South African lobbyist is de Kieffer and Associates, a firm made up of three partners in Collier, Shannon who occupy space in their offices. Student organizations requested action, Dean Bernardi issued a memo, a demonstration was held and few, if any, students interviewed with the Collier, Shannon representative.

The inconsistencies in Bernardi's memo are the first problem. He claims to adhere to the Law School's normal policy of not restricting access to Placement Office facilities to firms on the basis of who their clients are. Yet because of "unusual and intense interest" and student requests for "accurate information," the facts concerning Collier, Shannon were investigated and made available to the students.

Firm Investigations

Bernardi's actions have placed the Law School in the position of evaluating a firm by its clients. Potentially, the Law School would be compelled to investigate every firm that interviews here and to disclose any client that might be politically or morally reprehensible from the

perspective of some part of the student body. This would be a tremendous expenditure of time and energy and would endanger Harvard's reputation as an intellectual meeting place mature enough to accept and work with the entire spectrum of political and moral thought in an even-handed manner.

Bernardi's memo also suggests a balancing test as an alternative. The test would consist of several elements: unusual interest, intensity of interest, and some minimum number of interested students to trigger an investigation. By exercising this test the Law School would be taking a stand on certain moral and political issues. Through their selection of issues of "unusual and intense interest" and choice of "accurate information," Law School administrators would be singling out firms that they believe represent reprehensible clients. This backhanded validation of the political views of some and repudiation of the views of others would be a tragic element in a country where private higher education has stood for free expression.

Firms may react adversely to an investigation carried out by the Law School. Some might be willing to forego interviews at Harvard to avoid the process of political and moral "endorsement" which would

be a prerequisite to a successful interviewing trip. As the number of interviewing firms drops, graduates will find a diminished market for HLS lawyers. Further, Harvard's attractiveness as a national law school would decrease.

Students will also have to consider this matter. Will students allow an administrator to select their potential employers based on his perception of political and moral proprieties?

Similar Treatment Warranted

Students asked to boycott Collier, Shannon must also decide which other firms merit the same treatment. Is it appropriate to boycott firms that work for the ACLU? After all, they represented the Nazis in Skokie and the Nazis were responsible for the worst human rights violations in history.

Students should be prepared to boycott any firm connected with any country, such as the U.S.S.R., that does not exemplify Harvard's model of acceptable political and moral etiquette.

Closer to home, why should the firms that represent Ford continue to interview at Harvard while Ford refuses to recall the Pintos some see as little better than mobile firebombs? The list of firms that

(Continued on Page 16)



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Administration Sets Dangerous Precedent

(Continued from Page 15)

have at least one client to which someone could object on political grounds is probably all-inclusive.

Someone must define a limit as to how far the Law School's investigations and disclosures will go. If not, the Law School and its students will become locked into a continuing cycle of pressure-responsive situations resembling a vulgar version of "Kiss and Tell."

If the Law School continues on its current course, it must face the inevitable problems of implementation. The endless hairline judgments about which group to respond to, which side of an emotionally charged issue is right, and which law firms and clients are acceptable simply can not be made objectively. No harried administrator or faculty committee would relish such a task.

Students cannot ignore the underlying issues. They must define how far they would go, beyond providing the client with legal counsel and assistance. Does representation of a client amount to de facto endorsement of that client's political and moral stances?

The Law School has an extremely varied student body. If each student will no longer have an opportunity to find a firm whose views are compatible with his own, should the selection process begin at an even earlier point, with the Placement Office defining exactly what political and moral views are going to be acceptable this lifetime, this year, or even this month?

The easiest answer would be to close the Placement Office. Then no

student would have to tolerate or listen to anyone else's political beliefs. No student would have to give serious thought to what "representing a client" means to him. The administration would be spared all the difficult judgments. If the Placement Office were closed, no administrator or student could foist his political and moral views, no matter what they are, on any other

is capable of making decisions which will meet the approval of each and every student.

The only option left is to require the Placement Office to allow all interested firms to interview here without any disparities in treatment by the Law School. This is the only way to prevent the Law School from becoming a judge of political and moral philosophies. The dis-

"... exactly what political and moral views are going to be acceptable this lifetime, this year, or even this month?"

student at the Law School.

To close the Placement Office would be foolish. Nothing would be accomplished. The option of having some administrator decide which firms are proper and which are not is equally foolish. No administrator

comfort some will suffer from the presence of an objectionable firm will be far outweighed by the advantages of an unrestricted interviewing policy.



New at the Review

While the newest *Harvard Law Review* members will not be formally elected until next week, the following is a tentative list of those given slots on the journal this year, including 2Ls who earned places due to grades as well as through the writing competition, and the 3Ls who earned spaces based on their 2L grades:

Allan Arffa, Bridgit Arimond, Mike Barrett, Jim Braden, Brian Cartwright, Michael Clark, Lindsay Conner, Chris Davis, John Douglass, Adam Eilenberg, Larry Eppler, Ralph Gants, Jack Geise,

Jane Ginsburg, Steve Glover, Robert Goodman, Tim Harner, Carl Jenks, Ken Kettering, John Kieran, Jeff Kindler, Harold Koh, Jim Linfield, David Matheson, Marla Miller, Winthrop Minot, Paul Mogin, Joseph Moodhe, Gerald Neuman, John Nockelby, Michael Novey, Dan Rashin, Steve Reed, Rich Robbins, Betsy Runyan, David Schraa, George Soule, George Spera, Kaye Thomas, Victor Thuronyi, Hugh Tobin, Larry Vilardo, David Wilkins, Daniela Winkler.

Solution to "Cryptic Law"

Then there are the many names, celebrated for one reason or another, that have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in-season and off-season: Ty Cobb, Babe Ruth, Tris Speaker, Walter Johnson, Henry Chadwick, Eddie Collins, Lou Gehrig, Grover Cleveland Alexander, Rogers Hornsby, Harry Hooper, Goose Goslin, Jackie Robinson, Honus Wagner, Joe McCarthy, John McGraw... *Flood v. Kuhn*, 407 U.S. 259, 262 (1971) Justice Blackmun continued for 73 more names.

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