

HARVARD LAW RECORD

America's Oldest Law School Newspaper

© 1978 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

VOL. 67, NO. 7

NOVEMBER 3, 1978

TWENTY CENTS

NAACP—Changing to Meet Challenges and Problems

By Michael Smith

Things are different now. No longer is the perspective limited to the issues of the fifties and the sixties. According to Margaret Bush Wilson, the National Association for the Advancement of Colored People must develop a "global perspective" if it is to continue to be effective.

Wilson, currently the Chairman of the NAACP National Board of Directors, brought this message to Harvard Law School when she spoke to a group of students on October 30. Wilson has been on the National Board of Directors of the NAACP since 1963. She graduated from the Lincoln University School of Law and is currently a practicing attorney in St. Louis.

The first thing she and the other

leaders of the NAACP are conscious of is the difference between the civil rights movement of today and that of ten and twenty years ago. In the fifties and sixties, it was a "thrust and push of Black Americans" for their constitutional rights. Now the civil rights movement is composed of other groups — gays, prisoners, women, and so on — who are using civil rights tactics to achieve their own ends.

Facing New Problem

The emergence of new civil rights is only one of the problems which face the NAACP. "Coupled with the broadened civil rights movement is the distressing problem of the economy." The NAACP is "finding more and more, overtly

(Continued on Page 5)

Prof. Baxter Elected to Sit On UN Court

Prof. Richard R. Baxter was elected this week to a seat on the fifteen-member International Court of Justice in The Hague. Baxter, who has taught international law at Harvard Law School for almost 25 years, was elected by the United Security Council and General Assembly.

Baxter is the first HLS professor elected to serve on the court, although the late HLS Prof. Manley Hudson served on the permanent Court of International Justice, the predecessor to the present court, during the 1930s.

The Charter of the United Nations declares the court to be "the principal judicial organ" of the UN. The court decides disputes between nations, in cases where all party states have agreed to the jurisdiction of the court. It also renders advisory opinions at the request of the Security Council, the General Assembly, and other organs of the UN.

A New Occupation

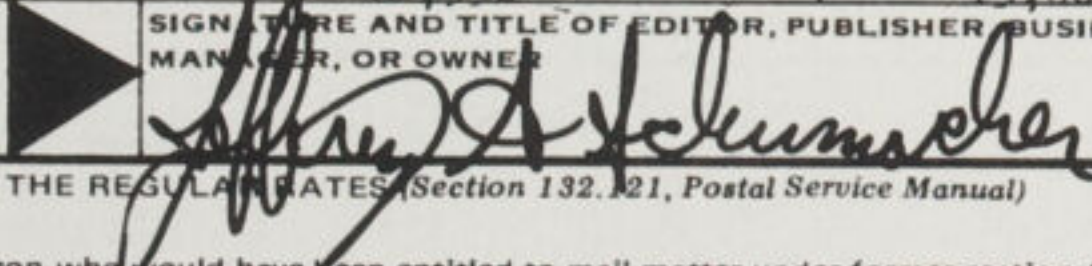
Baxter says he is "exhilarated by the prospect of moving into a new occupation and of trying something new after one has been for some years in one's present occupation." The court will actually be his third career — before teaching at HLS he served as an officer in the United States Army.

Since judges of the court are precluded from having any other

(Continued on Page 12)



Prof. C. Clyde Ferguson seems to be enjoying the Halloween party held in his Civil Procedure class this week. More pictures on page 6.

U.S. POSTAL SERVICE STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION (Required by 39 U.S.C. 3685)		
1. TITLE OF PUBLICATION Harvard Law Record		2. DATE OF FILING 10-31-78
3. FREQUENCY OF ISSUE approx. weekly Sept. -June	A. NO. OF ISSUES PUBLISHED ANNUALLY 20	B. ANNUAL SUBSCRIPTION PRICE \$3.00, \$6.00 mailed
4. LOCATION OF KNOWN OFFICE OF PUBLICATION (Street, City, County, State and ZIP Code) (Not printers) 23 Everett St. Cambridge, MA 02138		
5. LOCATION OF THE HEADQUARTERS OR GENERAL BUSINESS OFFICES OF THE PUBLISHERS (Not printers) 23 Everett St. Cambridge, MA 02138		
6. NAMES AND COMPLETE ADDRESSES OF PUBLISHER, EDITOR, AND MANAGING EDITOR		
PUBLISHER (Name and Address) Larry Zelenak 25 Wendell St. #3 Cambridge, MA 02138		
EDITOR (Name and Address) Larry Zelenak 25 Wendell St. #3 Cambridge, MA 02138		
MANAGING EDITOR (Name and Address) Tammy Jacobs 432 Hastings Cambridge, MA 02138		
7. OWNER (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given.)		
NAME	ADDRESS	
Harvard Law School Record Corp. (non-profit organization; no stockholders)	23 Everett St. Cambridge, MA 02138	
8. KNOWN BONDHOLDERS, MORTGAGEES, AND OTHER SECURITY HOLDERS OWNING OR HOLDING 1 PERCENT OR MORE OF TOTAL AMOUNT OF BONDS, MORTGAGES OR OTHER SECURITIES (If there are none, so state)		
NAME	ADDRESS	
9. FOR COMPLETION BY NONPROFIT ORGANIZATIONS AUTHORIZED TO MAIL AT SPECIAL RATES (Section 132.122, PSM) The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes (Check one)		
☒ HAVE NOT CHANGED DURING PRECEDING 12 MONTHS ☐ HAVE CHANGED DURING PRECEDING 12 MONTHS (If changed, publisher must submit explanation of change with this statement.)		
10. EXTENT AND NATURE OF CIRCULATION	AVERAGE NO. COPIES EACH ISSUE DURING PRECEDING 12 MONTHS	ACTUAL NO. COPIES OF SINGLE ISSUE PUBLISHED NEAREST TO FILING DATE
A. TOTAL NO. COPIES PRINTED (Net Press Run)	12,950	13,800
B. PAID CIRCULATION		
1. SALES THROUGH DEALERS AND CARRIERS, STREET VENDORS AND COUNTER SALES	815	807
2. MAIL SUBSCRIPTIONS	11,026	11,474
C. TOTAL PAID CIRCULATION (Sum of 10B1 and 10B2)	11,841	12,281
D. FREE DISTRIBUTION BY MAIL, CARRIER OR OTHER MEANS SAMPLES, COMPLIMENTARY, AND OTHER FREE COPIES	41	652
E. TOTAL DISTRIBUTION (Sum of C and D)	11,882	12,933
F. COPIES NOT DISTRIBUTED		
1. OFFICE USE, LEFT OVER, UNACCOUNTED, SPOILED AFTER PRINTING	1,068	867
2. RETURNS FROM NEWS AGENTS	0	0
G. TOTAL (Sum of E, F1 and 2—should equal net press run shown in A)	12,950	13,800
11. I certify that the statements made by me above are correct and complete.		SIGNATURE AND TITLE OF EDITOR, PUBLISHER, BUSINESS MANAGER, OR OWNER 
12. FOR COMPLETION BY PUBLISHERS MAILING AT THE REGULAR RATES (Section 132.121, Postal Service Manual) 39 U. S. C. 3626 provides in pertinent part: "No person who would have been entitled to mail matter under former section 4359 of this title shall mail such matter at the rates provided under this subsection unless he files annually with the Postal Service a written request for permission to mail matter at such rates." In accordance with the provisions of this statute, I hereby request permission to mail the publication named in Item 1 at the phased postage rates presently authorized by 39 U. S. C. 3626.		
SIGNATURE AND TITLE OF EDITOR, PUBLISHER, BUSINESS MANAGER, OR OWNER		

Lawyers Fleece Common People, Secretary Says

By Barbara Kritchevsky

Claiming that a large proportion of the American population is "being denied access to the courts by the protectionist actions of the bar," Rosemary Furman, a secretary being sued by the Florida Bar Association for the unauthorized practice of law, set out to prove her thesis to a small audience at the Law School last Monday. Furman spoke at the invitation of Visiting Professor Alan Morrison, who is representing her in the case.

Furman, who has been a legal secretary and court stenographer and is now owner of a secretarial service, said she began typing divorce petitions almost four years ago through her involvement in the Jacksonville, Florida women's movement.

Battered and abandoned wives came to the Jacksonville shelter in which Furman was involved, but they were ineligible for public assistance or food stamps as long as they were officially married to a man whose income was over a certain level. If a woman could get an immediate divorce, she would then be eligible for assistance. To get such a divorce, under Florida's no-fault divorce law, she needed a petition stating that the marriage was "irretrievably broken."

\$50 Fee

Furman explained that she would type the petition for divorce and the service of process and give them to the woman along with instructions on what to do next. She would also give the woman copies of the statute with pertinent parts underlined, and answer questions on its meaning. When necessary, she would type papers for restraining orders and motions for contempt.

Furman said that another Florida woman had been sued by the state bar for typing divorce petitions, and that the Florida Su-

(Continued on Page 9)

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$2.80 semester, \$5.60 year mailed; \$8.00 year mailed outside U.S.; students \$3.00 year distributed at the Law School. Individual copies including back issues: 20 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1978 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$2.80 of his H.L.S.A. annual dues are used to purchase the Record subscription he receives. Dues paid at any time during the H.L.S.A. fiscal year which began in April 1978 and ends in March 1979 will purchase a subscription which begins in September 1978 and expires in August 1979, and so on in following years.

Did Blacks Lose the Brown Case?

By Pat Hanifin

"Nearly 25 years after *Brown* there is little evidence of better educational quality for blacks: we are still searching for *Brown* victory," Prof. Derrick Bell said last Thursday setting the keynote for the symposium, "Elusive Equality: Searching for the Remedies in *Brown*."

Eight speakers discussed the impact of *Brown v. Board of Education* on the condition of blacks over the last 25 years. Much needs to be done, the speakers said, to give minorities real, rather than merely legal, equality. Several stressed the need to pay more attention to providing real equality of educational opportunity in black urban schools which are likely to stay segregated for another generation.

Just One Victory

Federal Judge Robert L. Carter (SDNY), who before going on the bench served as NAACP general counsel and argued the *Brown* case in the Court of Appeals, said that "*Brown* was just one victory in a long campaign. It has sparked a radical social transformation of attitudes towards race relations." Although racism has become unfashionable it has not been eliminated. The legal segregation attacked in *Brown* was only a by-product of white supremacist attitudes which were and are found nationwide, not merely in the South, Carter said.

The irony of the *Brown* victory was that "the present and future that we sought to defeat was already past. Demographic changes leading to black concentration in Northern cities were already under way. Industrial changes that would close unskilled blacks out of the labor market were also happening," Carter said.

Carter argued that public intransigence towards desegregation of Northern metropolitan areas "makes it clear that we must search for alternatives to integration in the short run although full integration must remain our long-term goal." The focus must be on the

black urban poor and what equal educational opportunity means in terms of educational output. The need is to keep black urban youngsters from being "destined for the dunghill of our society."

"The dominant class . . . is interested in the bourgeois-ification of some blacks but wants to leave the black underclass where it is."

Parental Involvement

Columbia Professor of Government Charles Hamilton, whom Bell introduced as "the intellectual guru of the black movement," stressed the need to involve both black and white parents in school desegregation projects. He also expressed the fear that the schools might be called upon to achieve reforms of the whole society beyond their "institutional capacity" to do so.

Hamilton cited studies showing that the degree of parental involvement in busing programs was the most crucial factor in their success. Both black and white parents are most favorable to those programs which they helped to create. Therefore, Hamilton said, "public policy should encourage parental involvement."

He criticized the idea that the schools can remedy all major social problems such as those arising from housing and the labor market. "The effectiveness of the school system is greatest when it concentrates on teaching, especially on teaching the basics," Hamilton argued.

"I am concerned that as we work for the ultimate goal of *Brown* we do not fall into policies that build up inferiority. Don't think that black parental participation is irrelevant or bad or that all-black schools are necessarily fatal to good education," Hamilton said. To do so

would be to imply black inferiority, he explained.

Bell, in a question and answer session, suggested that Carter and Hamilton were beginning to sound like Justice William Rehnquist, who last year stayed a busing order on the grounds that it would bankrupt the Columbus, Ohio school system and hence hurt education. Both Carter and Hamilton immediately rejected any comparison with Rehnquist. Symposium participant Alan Freeman, a law professor at the University of Minnesota, explained that "We should both look for alternative remedies and denounce the hell out of Rehnquist."

Freeman argued that racism is "institutionalized in American society" and that "antidiscrimination law since *Brown* has served to rationalize this discrimination rather than to achieve liberation." The law has taken the "perpetrator perspective," an attitude that ignores results as long as no evil intent can be proven and which ignores the institutionalized nature of racism in favor of dealing only with illegal behavior by individuals.

Criticizes Color-Blindness

In opposition to this, Freeman proposed that the law should take the "victim perspective" which looks to results. This would require a great deal of affirmative action. Freeman criticized Justice Powell's decision in *Bakke* for bringing back the "color-blindness theory": that government should treat "all ethnics as fungible" and not give any special assistance to blacks.

He claimed that eradicating institutionalized racism would imply the falsity of "the myth of equal opportunity" and meritocracy which the "dominant classes need to maintain the class structure."

"The dominant classes are interested in the bourgeois-ification of some blacks but want to leave the black underclass where it is," Freeman said.

Prof. Sara Lawrence Lightfoot of
(Continued on Page 14)

HLS Installs Aids for the Handicapped

By Michael Smith

The key to the development of a program designed to meet the needs of handicapped members of the Law School has been cooperation. Assistant Dean and Registrar Mary D. Upton, coordinator of the program at HLS, states, "I'm in the luxurious position of having the Law School one hundred percent behind this."

The development of a program to meet the needs of handicapped persons at the Law School is mandated by section 504 of the Rehabilitation Act of 1973 and the regulations implementing it. The essence of the regulations is that any institution which receives federal financial assistance administered by the Department of Health, Education, and Welfare must make all of its programs accessible to handicapped persons. In addition, there must be no discrimination against the admission of handicapped students who meet a university's technical and academic standards. And there must be no discrimination in the hiring of handicapped persons who are able to perform the duties a job requires.

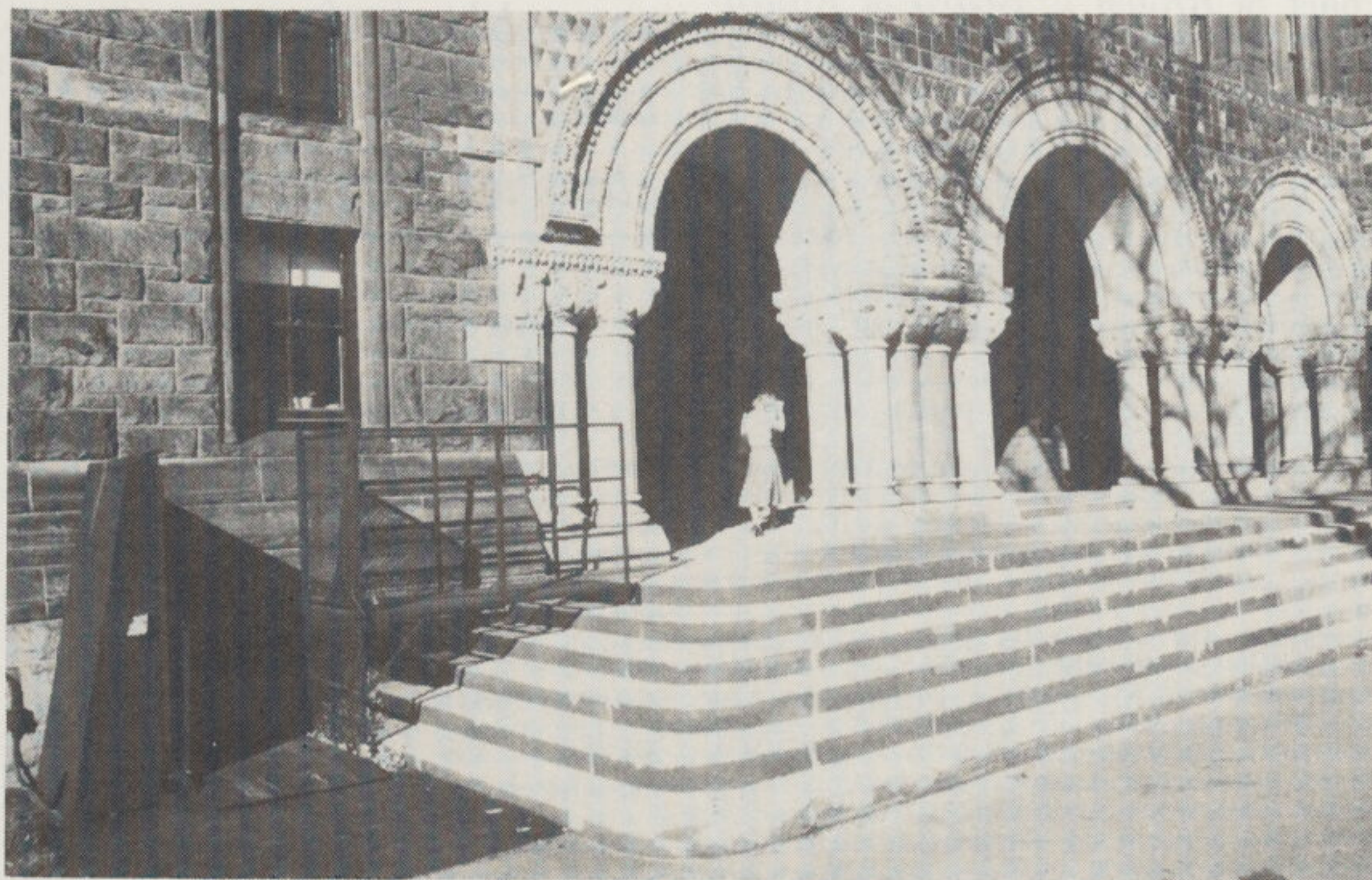
The regulation is quite specific. "No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity . . ." 45 C.F.R. §84.4.

A Three Year Program

To meet these requirements, the Law School has embarked on a three-year program under the direction of Upton. Special problems having to do with the library are dealt with by Assistant Librarian Melinda Golub. June Thompson, assistant director of admissions and placement, handles interviewing problems for handicapped students.

According to Upton, the Law School has established a three-phase plan to bring Law School facilities up to compliance. This

plan began with the work that occurred during the summer of 1978. The most noticeable change was the addition of the mechanical lifts in Pound, Austin Hall, and Harkness Commons. These are key-operated devices which allow persons confined to a wheelchair to gain access to areas which before were accessible only by a flight of steps.



Newly installed wheelchair lift (left) changes the appearance of H.H. Richardson's Austin Hall.

Other changes were also made. Both drinking fountains and telephones were modified to make them easier to use. Several restrooms were altered and the doors into the International Legal Studies building from the Langdell Bridge were modified so that handicapped persons would find them easier to use.

Planned Changes

The second phase of this plan will include the modification of more restroom facilities. This is proceeding on a priority basis with the more frequently used ones being altered first. Lever handles will be installed on doors. A bathroom in Shaw Hall will be modified so that there is one dorm floor for each sex with facilities for the handicapped. It is also planned that work will be done to Langdell North and Langdell North Middle,

but as yet the exact details have not been worked out.

Phase three will occur in the summer of 1980. The Law School is considering altering the current freight elevator in the Hark for passenger use. The wooden ramp outside the Pound Building will be replaced and a ramp into Gannett House is under consideration.

No plans have been made to alter

23 Everett Street, the large old house which contains the offices of many student organizations. Also no definite plans have been formed for the problem of access into the upper floors of Austin Hall. An elevator for that building would cost between \$125,000 and \$150,000. Currently that cost is prohibitive.

The Law School has already spent about \$16,000 on the improvements which were made after the 1977-78 school year. The ramp into Shaw Hall, the ramp into the Pound Building and several restroom modifications which occurred earlier are not included in that total. Upton estimates that future spending will range between \$20,000 and \$50,000, depending on what is done.

Upton explained the development of the three phase plan oc-

(Continued on Page 7)

NAACP Is Changing, Chairman Says

(Continued from Page 1)

and covertly, a tendency for these groups to vie for a piece of the pie." In Wilson's opinion, the competition between minority groups for opportunities will be "catastrophic for the nation." The "real challenge for these groups is to find a way to deal with these problems without going off on this dangerous and destructive road.

There is also a problem with the change in the goals of the organization. No longer is the NAACP "girding to challenge overt segregation. The dimensions of the struggle are very subtle, very covert, and very deadly." Paired with the change in the character of the struggle is the fact that there are still areas of the country where an open society has not been achieved.

The change in the problems has also meant that "the NAACP can't look at society and think of functioning as we have in the

dilemma is "lacking."

The NAACP has been criticized because it still retains the word "colored" in its name. Wilson is adamant when she declares, "Under no circumstances will I support the move to change the name." For her position she gives three reasons. The first is that the

measure the economic distance between whites and blacks and how fast the blacks are "closing the gap." According to Wilson, "We haven't done much about that at all" and it will become more important to the future as the NAACP becomes more concerned with "where Black Americans are."

No longer "girding to challenge overt segregation.

The dimensions of the struggle are very subtle, very covert, and very deadly."

initials have become famous around the world, like a trademark. As such they are a "potent and formidable way of communicating what we are and who we are." Secondly, the name is "a part of the history and tradition" of this country. Her final reason is that it "just is not realistic to suggest there is something wrong with the word 'colored'."

The NAACP has also concluded that it must develop a more global perspective on many of the problems it tries to face. Because of the increasing realization that many problems, like those of the economy, are not really under the control of the United States, there is "some notion that it will require us to look beyond our borders and establish global perspectives." Wilson indicated that the NAACP will be "particularly concerned with the continent of Africa."

Another important conclusion made by the leadership of the NAACP is that the "problems can't be solved by government." The organization must relate to the private sector in "some more significant way." The private sector is "far from fulfilling its social responsibilities in terms of all Americans." The NAACP must "begin to get a handle on how we get opportunities broadened in the private sector."

It is too early to judge the success of the new outlook, according to Wilson. There are encouraging signs, however. The NAACP has been invited to speak to the constituencies of many major industrial associations. In addition, the basic support for the NAACP still exists. Referring to the NAACP's legal troubles in Mississippi, Wilson said: "If I learned anything from the Mississippi crisis, it is that the people that support us are out there." That support comes from "all walks of life."



Margaret Bush Wilson

past." Wilson stated that "we are not going to be able to solve these problems by marching in the streets and walking the picket lines." She cited as an example the problem of the black who has spent a significant amount of time and energy to become trained and competent and who then finds that a ceiling has been placed on his advancement. Despite the fact that "nothing is more devastating," Wilson feels that sensitivity to this

Changing to Meet Challenges

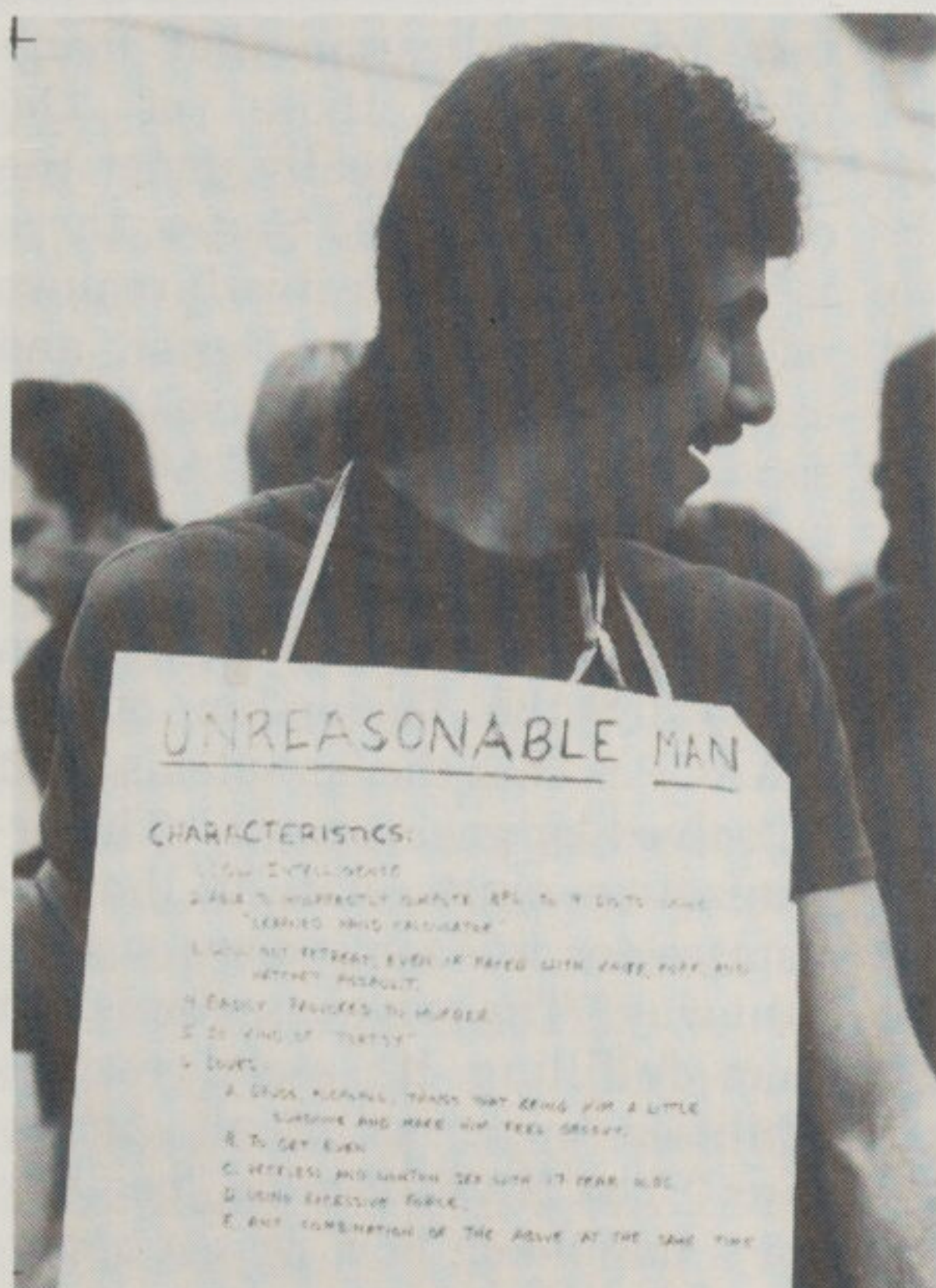
The NAACP is changing to meet better the challenges which result from these new problems. "Some of us are beginning to take a new look at everything." Several conclusions have resulted from this re-examination.

One of these conclusions has led to a concern with the "CTG quotient." This is a figure designed to



Halloween: An Erie Experience at HLS

Section IV
celebrates
in Civil
Procedure
with Prof.
Ferguson



Photographs by Chris Rinik



Law Library Escapes

by Robert C. Berring

It's late on a Thursday night — you are trapped in the Law Library grinding out yet another masterful combination of analytic thinking, thorough research and unmitigated animal byproduct. Your mind reels and you need relief — what are your options? Forthwith an incomplete (and highly selective) list of things to do in the Law Library besides study:

1) *Look at the art.* The Law Library houses a great number of interesting paintings that put faces on the legendary names of yore. There is almost always an exhibit at the south end (currently Kathleen Clark's) and the portrait gallery is only one flight down (though outside the library).

2) *Read for pleasure.* Not enough people know about the Root Room, the most comfortable place to read in the library. (Old Elihu's heart was correctly positioned). The room has old comfortable chairs, good lighting and interesting books and magazines. (It is located at the far south end of the reading room.)

3) *Scope out the Reading Room Lights.* The Langdell Reading Room's lights were designed by a man famous for doing the lighting on Broadway musicals. It's designed to provide maximum on-table illumination with minimum glare. It does not really work, but it's still interesting. (Right?)

4) *Go find a book of Japanese Codes.* To get such a book, you will have to go to the North sub-basement. The worn phrase "bowels of the library" was written with this area in mind. Now that you are down there, think about the ending of *Psycho*, the fact that some Manson family members are still at large and then think about going up to the Reading Room.

5) *Read the Suggestion Book.* The green binder that holds the Suggestion Book is an excellent barometer of moods in the Law School. Whole theses could be written about it. Gladly they have not been.

(Editor's note: Robert C. Berring is Associate Librarian at Langdell Library.)

NOVEMBER 3, 1978

HLS Meeting Spirit and Letter of Laws to Aid Handicapped

(Continued from Page 4)

cured when she and a member of the University's planning staff inventoried all of the Law School's facilities. This inventory was designed to point out difficulties for any kind of handicap and are not confined to just those which would be a problem for blind or wheelchair bound persons. According to her, "A lot of it was legislated and a lot of it was common sense" when it came to the physical plant evaluations. The needs were then divided into three years for budget purposes."

Support from Law School

The Law School Administration has been very helpful, according to Upton. "Dean Sacks is one hundred percent behind this. The Dean is equally enthusiastic about areas that are social — like the Hark for TG's."

The faculty has also been cooperative. "The Law School has always been sensitive to it, this just raised our sensitivities to new heights." An example of this cooperation has been the willingness the faculty shows in helping make assignments and book lists available to blind students early.

Upton also cited the helpfulness of the Buildings and Grounds crews. They have asked what areas of campus need to be cleared of snow first so that handicapped stu-

dents don't have to deal with that additional problem.

The attitude of the Law School has been one of meeting the spirit of the law as well as the letter. Upton indicated that the Law School has done its best to allow handicapped students to participate in certain activities, such as speeches, by videotaping the programs. She feels that the Law School will do what is necessary to allow students to participate. "You can cut a lot of corners and still technically comply. We weren't prepared to do that kind of thing."



Atilla the Hun Is Back

As the Roman legions retreated before the savage onslaught of Attila and his horrid Huns, Marcus turned to Cassius and said, "Things could be worse. We could get a nasty rejection letter from a law firm." In memory of Attila, the RECORD is sponsoring a contest for the most despicable rejection letter from a law firm. Send your entry to HARVARD LAW RECORD, 23 Everett St. The names will, of course, be kept confidential.

Low Cost Term Insurance

Most financial advisers recommend life insurance as the basis of any financial plan. As independent insurance brokers we can provide the lowest cost term life insurance. If you would like to find out how inexpensive \$100,000 of term insurance is, please call us.

W. T. Phelan & Co.

Insurance Agency, Inc.

11 Dunster St., Harvard Square (next to the Holyoke Center)
876-0876. Representing Aetna, Travelers, Hartford.

Press Case Heard — And HLS Was There

By Tammy Jacobs

"Sixty Minutes" Case

Some two dozen students from Anthony Lewis' Constitution and the Press class took time out from reading Supreme Court cases Tuesday and went to see the real thing, in Washington, D.C.

The optional "field trip" was to hear the arguments in *Herbert v. Lando*, studied earlier this term by the class. The case centers on the question of whether the media has a privilege not to disclose aspects of the editorial process such as the thoughts, opinions and conclusions of a journalist during the preparation of a broadcast.

"You get a more concrete idea of how you have to argue before the Court."

Lewis, a lecturer on law and nationally-syndicated columnist for the *New York Times*, has organized such trips this year and in previous years because, he says, "I find that very few students have ever seen a Supreme Court argument. They read a lot of cases and they have very little idea of the open part leading to the result.

"You get a more concrete idea of how you have to argue before the Court," he added. "If you're Floyd Abrams (who argued for respondents in *Herbert v. Lando*), you're not in there to write a treatise on Constitutional Law, you're in there to win the case."

The case arose after a CBS "Sixty Minutes" broadcast produced by Lando and highly critical of Herbert, an Army colonel who had been relieved of his command in Vietnam. Herbert, saying that he had been mistreated by the military for reporting war atrocities, became somewhat of a folk hero. Lando's report, broadcast after a lengthy investigation, debunked the Herbert myth, specifically questioning several of Herbert's allegations.

Herbert filed a libel action in U.S. District Court and massive discovery followed. Although Lando underwent a deposition that resulted in some 2903 pages of transcript, he refused to answer questions involving his mental processes. A motion to compel discovery was granted by the District Court, but remanded by a divided Second Circuit panel. Judge Irving Kaufman wrote "that due regard to the First Amendment requires that we afford a privilege to disclosure of a journalist's exercise of editorial control and judgment."

"Unbalance" Sullivan

The interlocutory appeal by Herbert was argued by Jonathan Lubell, HLS '54, who maintained that an affirmance of the Second Circuit would "completely unbalance the accommodation struck by the Court in (*New York Times v.*) *Sullivan* and its progeny." The *Sul-*



livan case controls in a libel action brought by a public figure or public official and mandates that the plaintiff prove the defamatory statement was published with "actual malice" — either knowing falsity or reckless disregard of whether it was true or false.

Abrams, arguing for respondents, urged that "close inquiry into the editorial process is barred or at least presumptively barred by the First Amendment."

The plaintiff, he said, ought to be able to prove his case by allowing the jury to draw inferences from "objective facts."

Some Surprises

As class members had expected, both attorneys were pressed by rapid-fire questions from the Court. Not all the classroom beliefs about how specific judges would act were realized, however.

(Continued on Page 9)

Mass. auto insurance, explained.

Mass. automobile insurance can get a little complicated. And if you're under 25, it can get expensive.

We'll simplify things. And we'll help you keep your premiums as low as possible.

W. T. Phelan & Co.

Insurance Agency, Inc.

11 Dunster St., Harvard Square (next to the Holyoke Center).
876-0876. Representing Aetna, Travelers, Hartford.

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

SPORTS EQUIPMENT AND
APPAREL FOR THE
ENTIRE FAMILY

• Squash • Soccer • Skating
• Skiing • Jogging • Basketball
Warm Winter Clothes • Down Parkas
& Vests, Socks, Gloves & Sweaters

Students Hear Media Issue Argued in D.C.

(Continued from Page 8)

"I was surprised at how some justices took positions contrary to what we had expected," said Jack Trope, 2L.

Dede Neal, 2L, agreed, noting that she especially had expected Justice Byron White, often on the non-media side in First Amendment cases, to be "more vociferous." Indeed, some observed, he seemed almost "helpful" to Abrams.

The Abrams argument impressed Susan Erburu, 2L, who commented that he seemed "very flexible, very able to go with the drift of the arguments, then weave back to his own points. I thought it was very interesting to see how responsive the lawyers were to the judges."

Others were amused — or bemused — by some of the action on the bench. "Burger would frequently look over at the press box to see how the press was reacting," said Neal. Others noticed that only one justice said nothing at all during the argument, that another justice was "pretty nasty" in some of his comments, and that a third asked questions seemingly irrelevant to the case.

The students seemed pleased with the experience, which individuals had funded for themselves. "It was really nice to get away from the terribly artificial world that we're in these days, and see what we're studying in a living sense," said Trope. "It was a good change of scenery."



TGIF: Friday, Nov. 3 from 4-6 p.m.
in the Hark.

"Meet Me in St. Louis"

Saturday, November 4
at 8:00 p.m. and 10:00 p.m. in the
Harkness Commons Dining Hall.

Admission: \$1.00 or \$.50 with
HLSDC Activity Card.

Bar Sues Secretary For Practicing Law

(Continued from Page 2)

preme Court had ruled that she could type the papers as long as she had no verbal communication with her clients. Furman claimed it was impossible to operate following those rules due to the high illiteracy rate and the number of blind and otherwise handicapped clients.

For her services Furman charged \$50. She waived the fee for battered wives who could not afford it. In contrast, she reported, the fee for a "simple divorce" in Jacksonville was about \$350, with complications raising the price to around \$1000. Legal clinics would advertise \$100 fees for divorces, but Furman said none would do the work for that price if they perceived complications.

The Florida Bar Association sued Furman, alleging that her work constituted the unauthorized practice of law. She denied the charge, claiming that she was only providing a "secretarial service," typing forms and giving them to her customers with instructions. She said she never gave "legal advice," and signed the forms only as a notary public. She typed the pleadings, she asserted, so the women could argue their own cases in court.

Manufactured Complexity

Furman said she would define the "practice of law" as arguing in

court, since she has never received a clearer definition. She said it was "insanity" to require someone to see a lawyer to execute simple documents, such as deeds within the family, and maintained that the bar now rests on the supposition "that the whole public is intellectual basket cases." She asked: "Why all the mystery? Why all the manufactured complexity?"

Furman recommended that legal work, other than appearing in court, should be handled by self-employed paralegals, since the bar did not respond to the needs of the public. Ideally, however, she said no lawyers would be necessary in a democracy where citizens all understood their rights. Lawyers, she said, "have spread their influence like a fungus."

When asked why she needed an attorney, Furman said that when the suit was filed she typed a counterpetition and motion to dismiss, which the bar did not answer within the required time. When the Florida Supreme Court did not dismiss the suit, refusing to follow its own rules, Furman requested counsel.

Furman remarked that there were two legal innovations necessary in the divorce area, a Uniform National Divorce Act making divorce an administrative procedure, and an automatic and compulsory child support collection service.



ASSOCIATED HARVARD ALUMNI OFFER

"A Cruise of The Americas"

Queen Elizabeth II

Depart New York January 18, 1979

Depart Port Everglades January 20, 1979

for information and brochure write

Associated Harvard Alumni, Box 291, Cambridge, MA 02138

or phone Mrs. Helen Flanagan (617) 864-7800

A Civilized Society

It's not entirely clear to what extent the recent expenditures by the Law School for the aid of handicapped students are due to the basic good-heartedness of the HLS administration, and to what extent they're due to the threat of a denial of federal funds if such aids aren't installed. Regardless of who's responsible, the new aids should be heartily applauded.

The flinty-hearted may criticize the expenditures because it seems unlikely they would be justified under a rigorous cost-benefit analysis, considering the significant costs and the small number of handicapped persons who will benefit.

But the fact that these aids fly in the face of a cold economic appraisal is precisely the reason they deserve such praise.

Two of the most important characteristics of a civilized society are a level of resources over and above that needed for basic survival, and a willingness to spend that surplus in a worthwhile fashion. In other words, a civilized society is civilized precisely because it is able and willing to flaunt cost-benefit analysis when there's a good reason to do so.

It's hard to imagine a better reason to do so than to help the handicapped members of society. Justice and compassion both mandate whatever expenditure of resources is necessary to enable the handicapped to participate as fully as possible in society.

The success of the handicapped at HLS both today and in the past shows that they can participate fully, if given a fair chance. Thanks to the mandate of Congress and the prompt compliance of the HLS administration, they are assured of getting that chance.

Congratulations

The RECORD joins the Harvard Law School community in congratulating HLS Prof. Richard R. Baxter on his appointment to the International Court of Justice. To be chosen to serve on the Court is perhaps the highest honor achievable in the field of international law. It is an honor that Prof. Baxter richly deserves.

HARVARD LAW RECORD

LARRY ZELENAK	Editor
TAMMY JACOBS	Managing Editor
TERRY KEENEY	Senior Editor
BILL ROSS	Senior Editor
MICHAEL SMITH	Feature Editor
JORIE ROBERTS	Feature Editor
PAT HANIFIN	Associate Editor
LARRY VILARDO	Associate Editor
ROBERT REZNICK	Associate Editor
CHAZ FITZHUGH	Photography Editor
JEFF SCHUMACHER	Business Manager
Staff: Richard B. Bernstein, Emily Bresler, Joshua Dratel, Terry Greene, Amy Grossman, Dan Hershman, Brian Holman, Charles Johnson, Steve Karel, Madison King, Gina Markey, Ezra Merkin, Mark Nadel, Chris Rinik, Dave Quinto, Joan Shear, Beckey Wesley.	

Fenno

The television executive spotted Fenno trying his hand at the pinball machine in the Hark game room. "I understand that you're Mr. Fenno," he said as he extended his right hand.

"No, just Fenno," said Fenno as he used his right flipper to keep the ball in play. "What can I do for you?"

"I'm from ABC-TV," the executive explained, "and I've been told that you can help me."

"*The Paper Chase* has been such a smash at CBS that we thought we'd jump into the ring. Any ideas about law school situation comedies?"

Fenno looked up, saw that the executive was wearing an ABC blazer, and became immediately suspicious. Anyone wearing an ABC blazer reminded Fenno of Chris Schenkel.

"This whole school is a situation comedy," Fenno said as the ball went out of play.

"We already have a few ideas ourselves," the executive offered. "For instance, we thought that *Star Wars* would be a good name for a show about what happens every time Alan Dershowitz and Larry Tribe are in the same room together."

"And *Mogin's Heroes* will be about a group of mischievous law reviewers who manage to escape from Gannett House by tunnelling into the basement of Austin Hall."

Fenno smiled. "As a matter of fact I've given the idea some thought," he said.

"*Michelman's Island* can be about a group of four zany Property professors who get shipwrecked on a desert isle along with Dean Albert "Skipper" Sacks. The five spend the rest of their lives arguing about whether to devise the island 'to A and his heirs' or 'to B and his heirs.'"

"Not bad," said the executive. "We can get Farrah to play Lance Liebman."

"And you don't have to limit yourself to Harvard," Fenno continued. "*Hannah and the Plumber* can be a situation comedy about the Warren Court starring Shirley Jones and Buddy Hackett as Hugo Black and William O. Douglas."

"How about *The Irving Younger Variety Hour*?" the executive interrupted.

"It's already being done every Wednesday through Friday morning in LNM," said Fenno. "But you might put together a made-for-TV movie entitled *The Roberto Unger Story*."

"We'd have to use subtitles," the executive said.

"Even if it were in English, you'd have to use subtitles," Fenno smiled, as he plunked another quarter into the machine and began to play the next ball.

Letters to the Editor of the RECORD

Salaries, Not Training

To the Editor:

I have read the proposal of Gary Bellow, Jeanne Kettleson, *et al.* for a Legal Services Institute, which, I believe, was recently discussed in the RECORD (Oct. 27). As a legal services attorney on the South Side of Chicago and a former student of Jeanne's, it made me a bit angry.

The proposal assumes that what legal services lawyers need most is training. As a veteran of Jeanne's course and a number of training programs, I respectfully disagree. What legal services lawyers need most are salaries and working conditions that would induce or enable them to stay in legal services, and in the communities in which they are working, longer than the usual two or three years. Legal services lawyers fail to adequately determine the problems of the communities where they work, and to solve those problems, primarily because by the time they become familiar with them through experience, and by the time they have earned the trust of community groups, become known in the community, and learned the ins and outs of local litigation practice, they leave legal services. The problem in most legal services programs is *turn-over*, not lack of training. Perhaps the desirable city of Boston, with its glut of young lawyers, is an exception to this rule.

I do not mean to imply that training programs are useless. Clearly they are helpful, as was Jeanne's course. However, the significant amounts of money that would be devoted to implementing the Legal Services Institute on a national scale would be better spent on increasing salaries, staffing, and improving working conditions.

Probably the first response will be that anyone not sufficiently devoted to the poor to work for low salaries shouldn't be in legal services. This common refrain ignores the tendency of staff to take on family obligations as they get older, and the tendency of law school graduates from poor and working class backgrounds, who are often more familiar with the problems of the client communities, to have heavier debts in the wake of seven years of higher education. It also ignores the fact that salaries in other jobs frequently chosen by those committed to social justice, such as the Equal Employment Opportunity Commission, are several thousand dollars higher than those in legal services.

Although the proposal is silent on these critical problems, legal services staff are not. More than thirty unions have been formed in legal services programs, including Greater Boston Legal Services, most of them within the past year. Several have been certified by the National Labor Relations Board. The idealistic goals of those involved in the proposal are overshadowed by the

ugly reality of legal services directors in such places as Seattle and Richmond spending thousands of dollars intended for the poor to try to bust legal services unions.

At one time it may have been appropriate for legal services offices to be staffed by young idealists spending a year or two doing their bit for society at low pay. This is no longer the case. The poor are better served by a moderate number of career legal services lawyers and staff recruited from the communities in which they work than by hordes of Harvard or Institute-trained theoreticians unfamiliar with their new client communities who will be gone in a couple of years. The Institute proposal clings to the old notion that those transient hordes are adequate as long as they are well-trained. However, a continued emphasis on training at the expense of continuity of staff can only exacerbate the tensions now erupting in legal services programs throughout the country, and ultimately, will disserve the interests of legal services clients.

Arnold S. Rosenberg '76
Legal Assistance Foundation
of Chicago
Chicago, Illinois

Gone, and Forgotten

To the Editor:

A number of students at a prestigious Ivy League law school, modelled vaguely after the law school in T.V.'s "Paper Chase", have told me that they feel something is lacking from this year's HARVARD LAW RECORD. Like a skyscraper without a 13th floor: the pages are all there but something else is missing. The cause of all this ennui is, of course, the absence of the much beloved "Son of Nerd Comix".

I recently spoke with Joe Turkey, former star of that greatly missed newspaper feature, to find out how life was treating him. Mr. Turkey, as you may remember, was forced to prematurely terminate his Harvard Law School career due to a slight altercation over his Third Year Paper. Although the *Law Review* had agreed to publish the paper, having fallen in love with the record number of footnotes (47,329), Mr. Turkey had neglected to write any accompanying text. This oversight was discovered on the 7th rewrite, but too late for Mr. Turkey.

Although never having completed law school, Mr. Turkey was eventually able to find a job. Saving his pennies from sweeping floors, he decided to invest in the entertainment business. Having secured all the rights to a speculative science fiction film, entitled "Star Wars", Mr. Turkey looked

around for other opportunities. He convinced John Travolta that disco was the coming thing, and bought the Bee Gees. Next came gambling stocks, land swaps in Atlantic City, Iranian oil, Arabian banking and finally a few really big deals.

Dabbling in politics, Joe Turkey was awarded the Nobel Peace prize in 1978.

I met with Mr. Turkey recently on the big island of Hawaii, which he owns. His wife, a former Miss California and a Nobel Prize winner in her own right (nuclear physics), joined us for dinner on the deck of their yacht, the former aircraft carrier *Enterprise*.

I asked Mr. Turkey how he felt about failing out of Harvard Law School. He replied that he regretted never having completed his Third Year Paper, "The Lawyer as Casual Acquaintance", but added, "I reckon that I'll just have to learn to live with it."

I. Nelson Rose, 3L
Cambridge, Massachusetts

The Envelope Please

To the Editor:

I was astonished to read of the speculation by some that Prof. Clark Byse was the model for *Paper Chase's* Prof. Kingsfield (RECORD, Sept. 29). I recall Prof. Byse to have been a warm, humble, and empathetic human being.

I have also heard it suggested that the Kingsfield role was based upon A. James Casner, but no one who saw Prof. Casner repeatedly wilt under the withering cross-examination of first year Property students could maintain that contention.

My candidate is former Dean Erwin Griswold.

Clifford John Meyer '60
Los Angeles, California

SPORTS QUIZ

1. The running of the Aug. 13, 1919 Sanford Memorial Stakes has made the history books. The important feature of that race is not the winner. What made that race special?
2. Regret holds a very special place in the annals of racing history. For what is Regret known?
3. The Harvard football team of 1919-1920 achieved an honor that no other Harvard football team will be able to match. What was that honor?
4. 1934 was a very good year for Lou Gehrig. What made that year one to remember for him?
5. Virginia Wade did something in 1977 that she had never been able to do before. What was that thing?

(Answers on Page 14)

Letters to the Editor of the RECORD

Questioning the Findings

To the Editor:

We were very much interested in the RECORD's article of October 6, 1978 entitled "Are Women Underachieving at HLS?", and would like to offer a few perspectives of our own, as recent graduates of the Law School.

Although we are members of the last two graduating classes, we can each remember instances of the apparent unwillingness of professors at the School to call on women students who wished to offer their comments during class discussions, or who made derogatory remarks about women both inside the classroom and out. The fact of the matter is that there remain professors at the Law School who are unready to accept women as full-fledged members of the profession. This undoubtedly has some impact on the performance of women students.

It disturbs us even more, however, that the RECORD has given such prominence to an article on female "underachievement." Under the circumstances, it is perhaps more significant that there are as many women on the *Review* as there are, rather than that there are too few.

For years, the continuing problem of sex discrimination in the law firm interviewing process at the School has been noted in various *fori* on campus. The RECORD is received by many *alumni* all over the country, some of whom are responsible for or have input into hiring decisions for their respective places of work. They will undoubtedly make note of the view, prominently expressed in a student publication, that "Women clearly have drive, but that drive is not always oriented in the direction of making high grades."

Perhaps most disturbing of all is the impact which this article might well have on some of the female members of this year's first-year class, who are suffering along with their male counterparts from the inevitable tendency of the first-year experience to undermine the self-confidence of even the most stout-hearted.

The RECORD undoubtedly has as much First Amendment freedom as any other publication, but since it is the School's major official student newspaper, it should observe some responsibility in choosing material for publication. Given the implications of the article on female "underachievement," alluded to above, and the entirely casual empirical basis of the conclusions reached in the article, we feel that the RECORD has failed to fully and accurately report on the status of women at the Law School.

Abigail A. Jones, '77
New York, New York

Nancy A. Kilson, '78
Brooklyn, New York

A Continuing Protest

To the Editor:

It was with a familiar, sinking feeling that I read your editorial in the Sept. 22 edition of the RECORD. Once again, a faculty committee, in this case, the Legal Education Committee, had strangled a proposal students had spent the better part of a semester readying for their perusal, the pass-fail plan for the first year. And they had, most familiarly, voted on the proposal even before two of the three student members had been appointed to the committee.

Those of you who read my swan-song at the end of last year know my impatience with the complete lack of procedural fairness at HLS where decision-making affecting students is concerned. The concept of due process? An academic discussion, for the classroom only.

Then, to make complete my feeling that I had stumbled into Wonderland via some mirror or other, I read the letter from one of our 1975 grads affirming his loyalty to HLS and shaking his head over those naughty classes of '76, '77 and, now, '78, who are withholding or limiting unrestricted giving to the school. Put them all together and perhaps our reluctance to support the school without qualms is more understandable.

On every issue affecting what used to be called the "quality of life" at the school, the faculty and administration show an obviously fear-induced propensity to thwart student-initiated improvement by procedural foul-balling. Until we are convinced that there will be any sincere effort to give a fair hearing to student ideas, the Class Committee of the Class of '78 will continue to encourage our classmates to refuse unrestricted gifts and donate, if they must, only money earmarked for SFF or contributions through the Class Committee, itself. These are not the thoughts of a few "vocal, disaffected" alums. If the faculty continues to operate as a blind oligarchy, it is the voice of the future.

Sheila Kuehl
Marshal, Class of '78
Los Angeles, California

Professional Dry Cleaning
and Shirt Laundry

at

Rite-Way
DRY CLEANERS, INC.

KI 7-8008
4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

Marshall Bust Purchased For Library Display

This fall the Executive Committee of the Harvard Law School Association voted to purchase the bronze bust of Supreme Court Justice Thurgood Marshall by sculptor Reuben Kramer, which is on display in Langdell Reading Room.

Last July at the Fourth Circuit Judicial Conference in West Virginia, Prof. Louis Loss and his wife Bernice met Judge Frank Kaufman of the U.S. District Court in Baltimore. Upon learning that Bernice Loss was Director of the Art Collection at HLS Kaufman mentioned his involvement as a member of the committee on the bronze figure of Marshall to go in front of Baltimore's new courthouse.

Bernice Loss asked if the Justice had posed for a portrait bust first. Kaufman did not know, but put her in touch with the sculptor. The Justice had posed for one and now HLS owns it.

The bust will join the bronze busts of Justices Holmes, Brandeis, Cardozo, and Frankfurter in the library.



Baxter Picked As UN Judge

(Continued from Page 1)

employment, Baxter will resign his HLS professorship before his nine-year term begins on Feb. 6, 1979. Judges are not required to live in the Hague, however, and Baxter intends to continue to live in Cambridge. "But you are to be available to drop everything and come to The Hague when occasion demands," he explained.

Baxter will be the only American judge on the Court. There is no requirement that there be an American on the court, and although, officially, Baxter will not serve as a representative of the United States, it is traditional that there

(Continued on Page 16)

Student Privilege Trampled Again

by Brian Holman

In a curt memorandum citing Walt Whitman for authority, the HLS Administration has trampled one more student privilege.

Only reproduction of the original can fully evidence the crispness of Dean Young's pronouncement:

TO: Residents of Law School Dormitories
FROM: Steve Young, Assistant Dean
RE: The playing of soccer and volleyball on the grass before the Hark.

May I remind you of the law school rule that no ball games are to be played on the grass before the Harkness Commons. RA's, Dorm Council Reps and Law School staff will be authorized to ask ball players to move their games elsewhere.

remark, and say Whose?"

"The reason for this rule is that grass is special." Arguments of this sort are hard to refute. So instead, I offer my own arguments in support of allowing ball playing on the Harkness green.

Most importantly, the pick-up games of volleyball, football, and what-not provide a rare opportunity for law students to meet with each other in a completely informal, non-academic setting. A game may strengthen friendships among residents of a dorm floor. It may bring together 1Ls from the same section who know each other only slightly. Or it may bring together the off-campus 3L and the dorm resident 1L who would otherwise never meet. The games are generally open to bystanders and new-

to join in. Soldier's Field, across the river, is simply no substitute.

The Harkness green is also the most convenient site for a game of Frisbee between classes or a quick football practice before dinner. Without access to the field for such sport many students might forego their recreational opportunities. Physical exercise benefits both the body and the mind. Students should be encouraged to make exercise a part of their study habits, not told to look elsewhere for a place to play ball.

Despite frequent use, the Harkness green remains in good condition. Only two patches of sparse grass mar the otherwise well-kept lawn. The patch attributable to volleyball is filling in, as autumnal weather ended the outdoor games some time ago. Colder days, earlier darkness, and impending finals soon will discourage present users of the green.

(Continued on Page 16)

Cryptic Law

Future litigators should consider the following selection in light of Shaffer v. Heitner.

Sh rwwhchm ysry Mryrz srm jz zbohajbm
jeermgiza erbmhp dwrgzygvv ogmhaq rzp
bzxraarzyhp ysahrym, rsgzmy ysh xgww jv
dwrgzygvv, ysry Mryrz srm dwrehp
phwglharyh jlmyrewhm gz sgm drys rzp
srm erbmhp dwrgzygvv'm pjxvrvww.
Dwrgzygvv rwwhchm ysry lq yshmh reym
Mryrz srm phdaguhp sgo jv sgm
ejzmygybygjzrw agcsym. . . Xh ibhmygjz
xshysha dwrgzygvv orq jlyrgz dhamjzrw
tbagmpgeygjz juha ysh phvhzprzy gz ysgm
tbpgegrw pgmyagey.

(Solution on Page 14)



The reason for this rule is that grass is special. As Walt Whitman wrote:

"A child said What is the grass?
fetching it to me with full hands;
How could I answer the child? I
do not know what it is any more
than he./ I guess it must be the
flag of my disposition, out of
hopeful green stuff woven./ Or I
guess it is the handkerchief of the
Lord./ A scented gift and remem-
brancer designedly dropt./ Bear-
ing the owner's name someway in
the corners, that we may see and

comers are often encouraged to participate.

No Substitute

No other area is as likely to stimulate this interaction between students in different years of sections. Many students can look out their dorm windows to see whether a game is being played; others will notice as they walk through Harkness or the quad. In a few moments the interested student can change clothes and be out of the field ready

Symposium Discusses Effects of Brown

(Continued from Page 3)

the Harvard Graduate School of Education discussed "Families as Educators: The Forgotten People of *Brown*." For urban black education to succeed, she argued, the schools must integrate themselves into urban black culture.

"Parental involvement is more important than the number of whites in a school," Lightfoot said. Children do better when they feel a connection between home and school.

the inferior position of blacks in society. Therefore, Lawrence argued, the Supreme Court's decisions requiring affirmative action where government has discriminated should be applied to all aspects of society.

He criticized the courts for fostering the attitude among whites that they are not responsible for segregation and have no moral obligation to act affirmatively to erase it. "The messages of *Plessy* and *Bakke*

"Social scientists . . . take with them the biases, fears and ideology of their middle class backgrounds."

She criticized the methods of various social science studies which have produced conflicting findings on the effect of integration. These studies examine children in a laboratory rather than in their natural environment and look only at quantifiable variables. "Social scientists may be up in an ivory tower but they take with them the biases, fears and ideology of their middle class backgrounds," she said.

Constitutional Right

Prof. Charles Lawrence of the University of San Francisco Law School argued that blacks have a constitutional right to affirmative action. "Segregation's only purpose is to define blacks as inferior and so exclude them," he said. Segregation is self-perpetuating and can be destroyed only by affirmative action, he claimed.

Lawrence argued that the state action limitation on the reach of the Fourteenth Amendment is not a barrier to affirmative action. "Segregation in both North and South started with state action and was effectively institutionalized by the state." The effect of this past state action continues today in widespread racist attitudes and in

are basically the same: Blacks have no right to an end to segregation because the only injury is a figment of their imaginations." What is behind opposition to affirmative action, Lawrence said, is the false idea that we have already reached a color-blind society.



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.

Frustrated Journalists

Ever dreamt of winning a Pulitzer? Wearing a crumpled, faded hat with a "Press" card stuck in the brim? Screaming 'Stop the Presses' just on deadline?

Well, you can't do any of that working on the HARVARD LAW RECORD. But we want you anyway, and there's lots you *can* do. The RECORD is always on the lookout for reporters, feature editors, copy editors, photographers, would-be wits and anyone else willing to put in a few hours a week in exchange for pizza, companionship, a byline and a look at the law school you won't get from sitting in Langdell South.

So come by and check us out, any Tuesday or Wednesday night. We're on the third floor of 23 Everett Street, and we welcome new faces. Put in as much or as little time as you want, doing practically whatever you want. (Looks great on a resume — shows you're "balanced.") No experience necessary.

Sports Answers

1. It is the only race, of the twenty-one he ran, in which Man o' War placed second. In all of his other races, he was first.
2. Regret was a filly and in 1915 she became the only filly ever to win the Kentucky Derby.
3. They were in the 1920 Rose Bowl and were the only Harvard team to appear in that post-season classic. What's even better is that they won, 7-6, over Oregon.
4. He was the American League batting champion with an average of .363 and the American League home run leader with 49.
5. She won the women's singles title at Wimbledon — something she had been unable to do in fifteen previous attempts.

Solution to "Cryptic Law"

He alleges that Satan has on numerous occasions caused plaintiff misery and unwanted threats, against the will of plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff's downfall. Plaintiff alleges that by these acts Satan has deprived him of his constitutional rights. . . . We question whether plaintiff may obtain personal jurisdiction over the defendant in this judicial district.

U.S. ex rel. Mayo v. Satan and his Staff, 54 F.R.D. 282 (W.D.Pa 1971).

Schlesinger on RFK: Scholarly or Saccharine?

As Arthur M. Schlesinger, Jr., aptly observes, the 1960's were "a damned long time ago." Indeed, for most of us the events of that troubled decade, its issues, and its

*"Robert Kennedy and His Times" — by Arthur M. Schlesinger, Jr.
(Houghton Mifflin)*

dramatis personae are nothing more than faded, seemingly irrelevant memories. In his new book, *Robert Kennedy and His Times* (Houghton Mifflin, \$19.25), Schlesinger performs a public service by bringing back to life the stormy and controversial career of one of the major figures of that era.

The first thing that strikes the reader about *Robert Kennedy and His Times* is its sheer bulk — it is almost impossible to believe that Robert Kennedy's life, as crowded and wide-ranging as it was, merits a 1,066-page biography. However, Schlesinger argues that Robert Kennedy was not only the least known and most misunderstood political figure of his time; he was also "the most original and provocative figure in mid-century American politics."

RFK as Attorney General

Reading this biography, one is continually surprised at just how widespread and pervasive Robert Kennedy's influence and concerns actually were. The heart of the biography is a cluster of 17 chapters covering Kennedy's years as Attorney General. In large part, these chapters recapitulate the period covered by Victor Navasky in his incisive and highly critical study, *Kennedy Justice*. In addition, they serve to revise and expand Schlesinger's analysis of the Kennedy Administration presented in his memoir *A Thousand Days*. The period covered by these

chapters was not only the most active and crowded of Kennedy's life; it is also the most interesting period for the student of law and government.

Schlesinger's approach to Robert Kennedy's career as Attorney General is topical rather than chronological. This at first seems to make it easier for the reader to understand the various cases and issues with which Kennedy and his staff were concerned. However, it also unavoidably distorts these cases and issues, making them seem too well-defined. This approach also causes the careless reader to lose sight of the context of some of the more controversial actions of the Justice Department, such as the wiretapping of Martin Luther King, Jr., an example of the Department's generally tolerant attitude toward the use of wiretapping and bugging.

Revision or Whitewash?

Schlesinger discusses some activities of the American government not previously mentioned in scholarly works. His account of the CIA as a rampaging, out-of-control force in the covert area of American foreign policy, particularly in what Schlesinger terms "the Cuban Connection," is especially alarming. While interesting in themselves, these digressions occasionally are more tiring than informative, distracting the reader from the central purpose of the book.

Some critics have attacked *Robert Kennedy and His Times* as a sentimental whitewash of Kennedy's career in the guise of a scholarly, definitive biography. Certainly the scholarly apparatus is present; the book is extensively documented, drawing heavily both on Kennedy's private papers and on an extraordinarily diverse range of secondary sources. (The footnotes by themselves are a tribute to the fascination inherent in the history of the Kennedy family.)

by Richard B. Bernstein

Schlesinger, however, is blunt about his feelings and motives in writing the book: "I was a great admirer and devoted friend of Robert Kennedy. * * * (T)o adapt a phrase A. J. P. Taylor used in his life of Lord Beaverbrook, if it is necessary for a biographer of Robert Kennedy to regard him as evil, then I am not qualified to be his biographer."

"Schlesinger performs a public service by bringing back to life [Kennedy's] stormy and controversial career."

Good Starting Point

In a recent interview with the *Christian Science Monitor*, Schlesinger disclaimed any hope that he had written the authoritative biography of Robert Kennedy. Recognizing, in the words of Oscar Wilde, that "the one duty we owe to history is to rewrite it," he expressed the hope that historians would find his work to be "a useful book," but that in the future someone else would try again, perhaps with access to more information than is now available. Even now, Schlesinger's biography should not be the only book one reads about Robert Kennedy. However, *Robert Kennedy and His Times* is perhaps the best place to start for those who wish to recapture the dashed hopes and turbulence of the 1960's and to understand as a human being a man who has all too soon been caricatured in our memories, either as a saint or as a ruthless opportunist.



Law School: Pro-Grass, Anti-Student

(Continued from Page 13)

In light of these arguments, one wonders from whom comes the impetus for the Young memorandum. Have complaints been filed with the Administration? Did a visiting dignitary comment on the brown patches while eating in the Hark? Has Building and Grounds indicated that this is a crucial time of year to protect the grass if it is to survive the winter?

Play Ball!

Once again, students are left holding the bag. Dean Young's statement and Walt Whitman's poetry offer no assurance that competing considerations were weighed carefully before the decision was made to ban playing ball on the green. No rationale is offered other than that "grass is special."

I believe that the students who play on the green deserve better. As the principal beneficiaries of the Harkness green as either a playing field or source of aesthetic pleasure, students should participate in decisions regarding its use. At the very least, the Administration should disclose its reasons for what now seems arbitrary action and should provide assurance that student desires have been weighed.

In the meantime, students, play ball.



Prof. To Be World Judge

(Continued from Page 12)

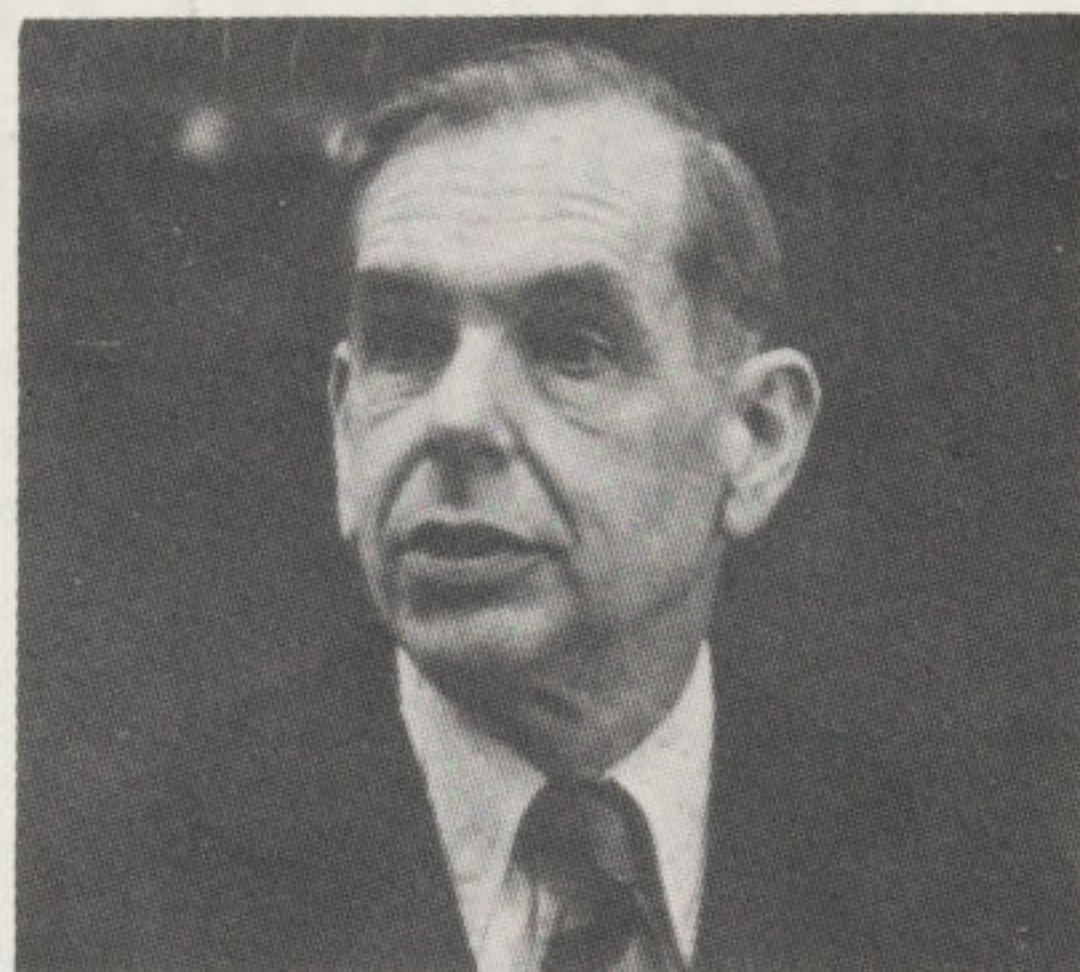
be a judge on the court from each of the permanent member nations of the Security Council. The term of the current American on the Court, Hardy C. Dillard, expires next February.

Baxter was nominated earlier this year by the United States group within the UN's Permanent Court of Arbitration. That group, which includes HLS Prof. Abram Chayes, made its nomination after consultation with a number of American professional organizations. Following that nomination, Baxter was also nominated by approximately a dozen other national groups within the Permanent Court of Arbitration.

Light Caseload

The case load of the court is not usually very burdensome. Currently, for example, only one case is before the court — a dispute between Greece and Turkey concerning control over the continental shelf in the Aegean Sea.

Despite the fact that Baxter expects to have considerable free time, he has no plans to publish any articles while he is on the Court. "One has to be awfully careful," he noted, "about what one writes while on the court, not only because of the normal restraints on judges, but also because the court's jurisdiction rests on consent, so you don't want to say anything that will scare anyone away." He may, however, work on some writing to be published after his term expires in 1988.



Prof. Richard R. Baxter

Impressive Qualifications

Baxter's list of qualifications for his new position are impressive. Besides his HLS professorship, he has served as Editor-in-Chief of the *American Journal of International Law*, President of the American Society of International Law, and a member of the Permanent Court of Arbitration of the UN. He has also been consultant to the Departments of State and Defense and to the United Nations Secretariat.

"One feels at a time like this a very strong sense of indebtedness to one's teachers," Baxter said. He mentioned three who had strongly influenced him: Prof. Louis Sohn of HLS; the late Prof. Manley Hudson, also of HLS; and the late Prof. Hersch Lauterpacht of Cambridge University, England.

Because of the upcoming holidays, and the need for timely reporting on upper round moot court, you will not find the RECORD at your local newstands for the next several Fridays. The three remaining publication dates this semester are Thursday, Nov. 16; Tuesday, Nov. 21; and Friday, Dec. 8.

SECOND CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS:
HARVARD LAW RECORD
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138

Prof. David F. Cavers
Harvard Law School
Cambridge, Mass.

02138

Gino & Mike's Barber Shop

A CUT
ABOVE THE REST

ONE BLOCK FROM THE LAW SCHOOL
OPPOSITE HOLIDAY INN

354-6878

We do razor styling