

HARVARD LAW RECORD

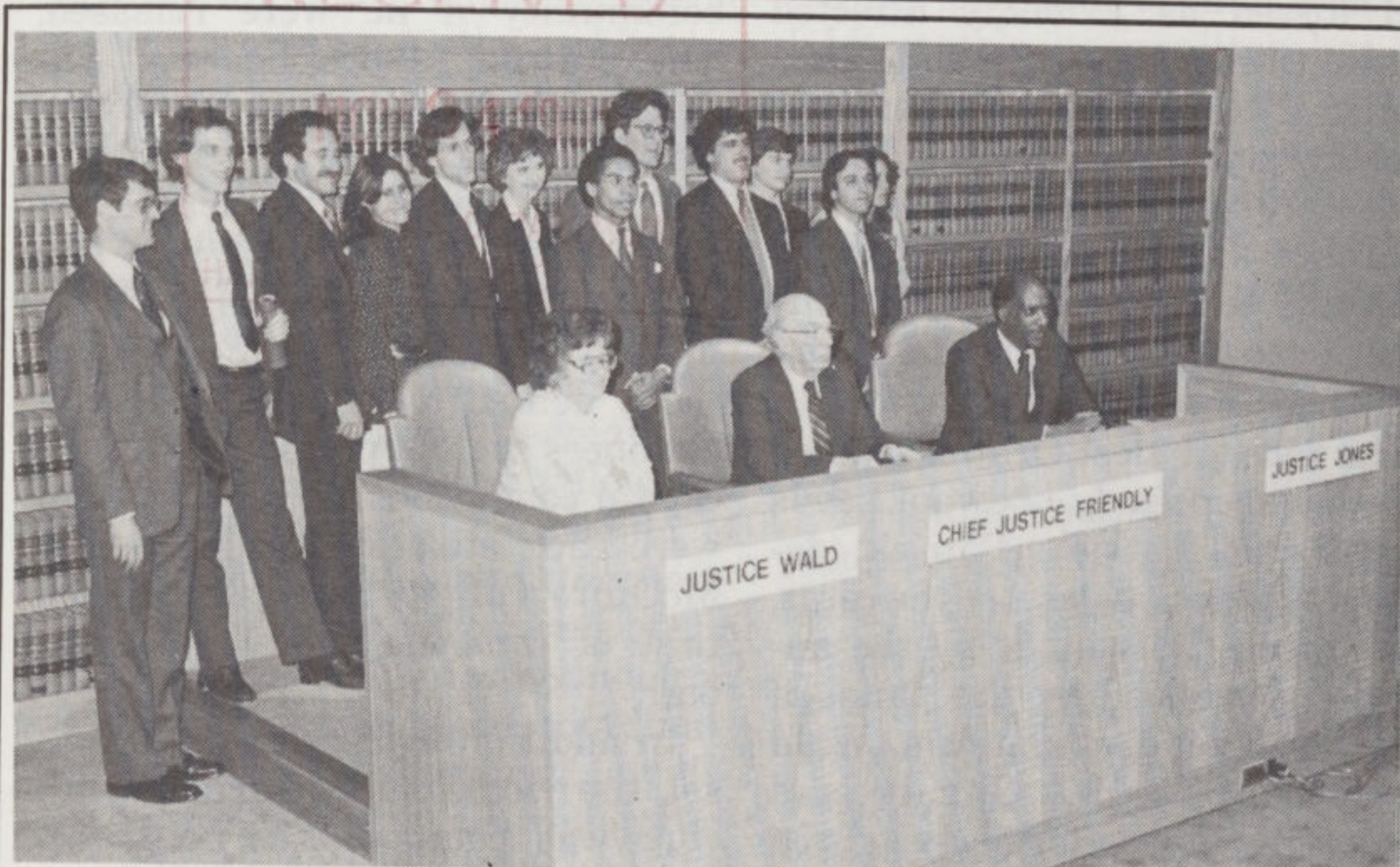
America's Oldest Law School Newspaper

VOL. 73, NO. 8

© 1981 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

NOVEMBER 24, 1981

TWENTY-FIVE CENTS



John Morris

The Sojourner Truth and Lewis Carroll teams, finalists in the Ames Moot Court Competition, pose for a photo along with Judges Wald, Friendly and Jones after the arguments on Thursday night. Story on p. 2.

Law Review Reaffirms Minority Goal

The *Law Review* voted 42-39 Wednesday to reaffirm its intention to implement some form of affirmative action in its selection process. The resolution says the *Review* "remains prepared to include, as an element in selection of some editors, an individual's membership in a racial or ethnic group which has been historically disadvantaged in our society and underrepresented on the *Review*." The resolution leaves open the question of what form a plan will take. That issue will be taken up at another meeting on Dec. 2.

The resolution was passed during a four-hour meeting called to discuss various proposals put forward within the *Review* for dealing with the underrepresentation of minorities. "We [wanted] to have a motion to test the waters before we proceeded to consider all the details of particular plans," said *Review* President Mark Helm, 3L. "The composition of our board has changed by more than 50% and it was not entirely clear that we were still prepared to go ahead with the race-conscious plan. The closeness of the vote shows that we were at least warranted in thinking that things might have changed."

Review members contacted by the RECORD said that the membership was very tired after several hours of discussion and that it was agreed that it would be better to debate details at a later date. They

(Continued on Page 13)

Faculty Okays Change in Placement Procedures

By Erich Merrill

By a vote of 28 to 6, the faculty approved major placement process changes suggested by the Placement Committee on Wednesday, Nov. 18. According to Placement Committee Chairman Abram Chayes, the faculty's approval of the suggestions clears the way for their implementation next year.

The main effect of the changes will be to compress the interviewing season into four weeks, and to push its beginning back to mid-October. Interviews will be scheduled only from 1 P.M. to 9 P.M. during the week, and three Saturdays

will be used for interviewing. Many, if not most, fly-outs will occur during Christmas break.

In addition to the major changes, the proposals approved Wednesday included suggestions for new policies on grades, dress and timing of offers. The Committee did not commit itself to a clear course for grades, but indicated that one of two alternatives should be chosen. The first alternative is that all restrictions on questions by employers about grades be removed; and the second is that disclosure of grades by all students be prohibited.

To relieve any pressures stu-

(Continued on Page 4)

Teams Split Honors in Ames Final

By Dave Quinto

In a bench opinion delivered by Chief Justice Henry Friendly (formerly of the Second Circuit), the United States Supreme Court held that Truth and State had prevailed in the Ames Moot Court final on Nov. 19. The Court gave the Best Team award to the Sojourner Truth Club representing appellee State of Ames and the George Leisure award as Best Oralist to Deval Patrick of the Truth squad. The Court also held that appellant Lou McGuire's counsel, the Lewis Carroll club, had produced superior



Deval Patrick, 3L, shakes hands with Dean Vorenberg after being named best oralist.

briefs, naming its reply brief as best.

Friendly, himself an Ames winner in 1927, stated that he found the quality of the briefs and oral arguments equal to that of moot competitions elsewhere and superior

to that of the typical performance in his court. "We would very much enjoy asking counsel for both sides questions until tomorrow morning," Friendly added.

Friendly's questioning proved controversial among the standing-room-only crowd in Science Center C watching the closed-circuit transmission. Students there booed and hissed as Friendly directed hostile fire at Lewis Carroll's lead oralist, Michael Poindexter, and offered "cryptic" or "smug" questions to oralists Andy Loewi and Laurence Shtasel. Poindexter, a Vietnam veteran, later said of his experience that "you didn't see any blood — it was all fun and games."

The race for Best Oralist seemed to be between Andy Loewi of Lewis Carroll and Patrick. Patrick, despite a tendency to lecture the court, was judged the winner by the audience as well as by the panel of Justices Friendly, Patricia Wald (formerly of the D.C. Circuit), and Nathaniel Jones (formerly of the Sixth Circuit). Patrick's engaging personality was credited by the crowd with placating Friendly late in the argument.

When asked later what he wished he had done differently, Loewi replied that he "could not have done a better job in a million years — Deval's just a great oralist. Deval has incredible presence — a wonderful manner when he communicates." Although the boobirds in Science C pelted the screen with popcorn when Friendly reappeared following the deliberation, vociferous applause in both Science C and the Ames Courtroom followed his announcement of Patrick's victory. Patrick will clerk for the Ninth Circuit next year and then will "absolutely" become a litigator.

At issue in *McGuire v. Ames* was the constitutionality of an Ames statute which provides for pretrial detention for up to 90 days of persons charged with a "crime of violence" (including burglary) if there is a "substantial probability" that the accused committed the offense and if there is nothing which would reasonably assure the safety of the community if he were released. The statute allows hearsay evidence to be relied on at the detention hearing.

Justice Wald, in particular, focused on the history of bail and noted that bail historically was denied in many areas and continues to be denied to certain classes of detainees such as persons with prior capital convictions. Jones and Wald were each interested to know how McGuire's plight had differed from that of someone unable to raise bail.

In addition to Patrick and Shtasel, the victorious Sojourner Truth club was composed of Louis Billionis, Nicolas Grabar, Leslie Ann Jones and Steven Levitas. The Carrollers included Sarah Fox, Howell Jackson, Mary Higgins and Hugh Winokur, in addition to Loewi and Poindexter. Tammy Lothan, who helped Lewis Carroll through the semi-finals before taking this year off to do "nothing at all," found it "much more pleasant" to observe from her front row seat than to participate.

The fall classic was preceded by a banquet for 165 persons including the participants, their close relatives, all members of the Board of Student Advisors and their dates, and various federal judges.

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone 617-495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 25 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1981 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation. POSTMASTER: Send address changes to Harvard Law Record (ISSN 0017-8101), 23 Everett St., Cambridge, Mass. 02138-9984. ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$4.80 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 1981 and ends in March 1982 will purchase a subscription which begins in September 1981 and expires in June 1982, and so on in following years.

DICKSON BROS. HARDWARE

When you want to fix things... but good!

Pledges For Fellowship Coming In

By Marisa Manley

A group of seven Law School students has convinced more than 100 classmates to create a job in public interest law. Over 100 third-year students have promised to give one percent of their first year's salaries to allow a fellow graduate to spend a year working in the public interest.

Behind the action is a steering committee composed of first-, second- and third-year students, Merri Kane, Mark Friedman, Emily Josselson, Jon Laramore, Joe Poluka, George Riley and Joy Kahlenberg Fallon. According to Friedman, the idea for a public interest fellowship has been around for a couple of years. Some of the committee members were formerly members of the Harvard Equal Justice Foundation and had thought about coordinating with national efforts, but decided that focusing their efforts locally would be more effective. This year seemed a particularly good time for the effort because of the declining job opportunities in public interest law.

A Tangible Project

"We were interested because this is a vehicle for HLS students to do something tangible. It is something a student can do even if he or she doesn't want to practice public interest law, and it is something that can be done for a fellow student," Friedman said. Earlier this fall, announcements were put in the *Advisor*, flyers were distributed asking for ideas and inviting participation and a meeting open to the community was held.

The purpose of the fellowship is to fund a graduating third-year student to spend one year working in a public interest job. The vehicle for the fellowship is a non-profit corporation which collects funds from the student's classmates. The corporation qualifies students' pledges as tax deductible and, according to Friedman, use of the cor-

poration also establishes an institutional commitment on the part of Harvard students to public interest law.

Similar successful programs have been established at Berkeley, Stanford and N.Y.U.; Columbia and Yale are reportedly trying to establish programs of their own. The HLS steering committee has two goals for this year's program: to succeed in funding one public interest job and to lay the institutional groundwork for something that will be viable in the future.

100-Pledge Minimum Reached

Friedman estimated that 100 pledges would be needed to fund a salary of between \$12,000 and \$15,000 a year. About 160 members of the class have clerkships which generally pay no more than \$22,000, and many people working outside the New York, Boston and Washington, D.C. areas will probably not make more than \$32,000. Allowing a margin for defaults and for the cost of keeping in touch with pledgors and collecting pledges, a conservative estimate of 100 pledges was arrived at.

With just over 100 pledges received, the group is continuing its campaign. "100 pledges was the minimum," said Friedman, "otherwise no pledge would be binding; but to insure continuity and future viability, the more the better."

Pledgors Help Choose

The steering committee sees itself as helping to establish an institutional framework to make the fellowship possible, but not as the one who should choose the fellow. According to Friedman, the students who pledged will choose. Before the end of the semester, all those who pledged will nominate and elect a selection committee from among the pledgors. The selection committee will determine criteria for applicants, and a formal application will be designed

and made available before the end of the semester.

Friedman said that, even though the selection committee will be elected from among pledgers, they would like to structure the committee's choice to allow non-binding input from other pledgors. The selection process was designed to insure maximum participation by those who pledge. The steering committee felt this was essential because the program is new at Harvard and pledgors are not buying into a known quantity. At schools where the program has been established, it is sometimes organized as a membership corporation. An elected board composed of outsiders as well as students acts as the selection committee.

Selections By February

According to Friedman, this is one model the HLS project may look to, but is not necessarily the shape the Harvard Program will take. This year the Harvard corporation's primary purpose is to act as a conduit for cash and to insure that pledgors get a tax deduction. Dates for applications and plans for selection are still somewhat tentative, Friedman said, but the committee sees February as its target date. "A student can hold an offer open only until then and must know whether other options are available."

If all goes according to plan, the Harvard Fellowship in Public Interest Law will be a continuing option. Because first- and second-year students are involved in this year's efforts, there will be continuity and a commitment to the future. According to Friedman, the object is not just to keep it going, but to make it bigger and to fund more than one public interest job each year.

Next RECORD
Dec. 4

Faculty Okays Placement Changes

(Continued from Page 1)

dents may feel to dress formally for interviews, the Committee recommended that a question be added to the standard employer questionnaire asking if firms prefer that students wear suits to interviews. To encourage offers before fly-outs, the Committee recommended that employers be told that some firms make final offers solely on the basis of a Cambridge interview.

Best Judgment

Prof. Chayes presented the proposals to the faculty with the remark that "These are not advanced as the final answer, but we've exercised our judgment as best we could. My one instruction from the Committee is that I am to commit hari-kari or take any other measures to prevent remand of the proposals to the Committee."

The proposals were the result of a study undertaken last spring by the faculty committee after the faculty expressed concerns about the impact of interviewing on class preparation and participation. The faculty asked the Committee to decide whether a job fair, to be held in the week before school started, was feasible. The Committee decided a job fair would not work, primarily because students would lose a week's salary and because less than half of the 2L interviews could take place in that week.

The Committee then began to formulate alternatives to a job fair which might reduce the conflict between classes and interviews. The ideas of compressing the interview period and moving to afternoon and evening interviews stemmed directly from these objectives. By moving the interview period to mid-October, the Committee hoped to "provide a period after the students' return to concentrate on classes without the distraction of intensive placement activities," according to Chayes's memo to the faculty in which the proposals were stated.

Prof. Bator began the discussion of the proposals, stating that he felt

the compressed interview period would impose a "terrific strain" on students. For Bator, the answer lay not in compressing the interview season, but in cutting down on the time students actually spend interviewing. "The fact is, placement is going to compete with some-



John Morris

Prof. Abram Chayes

thing, either academic time or recreation time." He asked Chayes what the median number of interviews was, and was told it was 15. He continued, "So half of our students have more than 15 interviews. I think it's sort of crazy for students to have more than 15, or even more than ten interviews. I would like to suggest that we set a maximum of 15 interviews for each student."

"Black Market" Interviewing

Addressing the question of whether students would abide by a limit to the number of interviews they could have, Chayes drew an analogy to the rule against any 1L interviews before March. "There's an enormous amount of first year 'black-market' interviewing. The rule forbidding first-year students to interview is getting increasingly porous." He then said that a goal of the Placement Committee has always been to reduce the number

of interviews, and pointed out that "without a sharp ceiling, we have made very good progress in the last few years in cutting the total number of interviews by 25%, from about 20,000 to about 15,000."

Chayes felt a limit to the number of interviews would keep some students from getting offers. "There is a significant group of students who don't generate offers in the early interviews. What do you tell those students? Go knock on doors in New York until you find a job?"

Bator worried that a concentrated period of afternoon interviews would make many professors refuse to teach second-year classes unless they were in the morning. Prof. Michelman echoed this concern, saying that he was worried that the afternoon interviews would make it harder for students to take courses they really wanted, since courses would probably be concentrated in the morning, and some conflicts would be inevitable.

Spring Interviewing Suggested

Prof. Estrich brought up the issue of moving the whole placement season to the spring. Noting that the Placement Committee recommended that such a move be kept in mind as a long-term goal, she wondered "why our push isn't in that direction right now." Prof. Brudney, who had been involved in an effort to make such a switch several years ago, said that firms that he had talked to said they would make a trip to Harvard in the spring even though other schools allowed interviews in the fall. The firms indicated that they wouldn't turn down qualified applicants from other schools just to save places for Harvard students, though. Brudney summed up, "Some of your marginal people are going to be losers."

Several students who were present at the meeting contributed to the discussion at various points. Will Hunter, 2L and president of the Law School Council, said that he thought the only change that

(Continued on Page 13)

Recruiters View Changes Favorably

By John Morris

Four recruiters contacted by the RECORD were generally supportive of the placement reforms, although several had reservations about fly-outs being held over the Christmas break and several thought there would be problems holding open offers to Harvard students into January.

One hiring partner contacted by the RECORD was quite supportive of the changes. Daniel Murray, '70, of Jenner & Block in Chicago, said he hoped they would help to relieve some of the pressure of the interviewing season. He saw no problem with shifting the interviews to later in the day, or with scheduling more interviews on Saturday. The University of Chicago already schedules Saturday inter-

views for local firms and he says this has worked well. He also said that Jenner & Block would have no problem holding offers open until January.

Murray did express concern about condensing the season. "I'm not sure it will decrease pressures. I think that may increase pressures, both on students and lawyers," he said.

He was also not sure that firms would be able to accommodate a large number of fly-outs over the Christmas break. "There are a number of people in law firms who take their own vacations over Christmas. . . . I think [the School is] overestimating the ability of law firms to absorb all the students in a limited time."

Murray said he didn't think there would be any problem shifting to a spring recruiting season if most

major schools joined in the change. He agreed with the Placement Committee that this would help public interest firms and government agencies compete on an equal footing with private firms. "That would be a very strong argument in favor of it," he said. "I think the firms would support it. I would."

When asked about the proposal put forward by the Law School Council that the School adopt a policy discouraging the wearing of suits by students in interviews, Murray recounted a story of interviewing 1Ls one spring. He wrote letters to the students who had signed up for interviews and suggested that the interviewees come dressed casually. "Needless to say, one half came dressed up," he said, chuckling.

Douglas Roche, '63, of Dickinson, (Continued on Page 9)

How the Placement Changes Will Work

How do you reduce the interviewing season from seven to four weeks without requiring a drastic reduction in interviews? Placement Director June Thompson told the RECORD last week that the difference will be made up in several ways.

"There will be additional employers [scheduled] each day," she said, and greater use will be made of the three Saturday interview dates already used. "Saturdays will make it easier to schedule," she said, because consecutive interviewing dates can be scheduled more flexibly. Prof. Chayes, in a memo to the Placement Committee, said that many firms are not able to fill their interviewing slots in the morning because of students' class schedules. The move to afternoon and evening interviews would allow interviewers to use their time at the Law School more efficiently.

Religious Considerations

Thompson sees no problem allowing Jewish students to opt out

of Saturday interviews. Only firms with two scheduled days will be given Saturday dates so students will always have the option of interviewing on a Friday. The Placement Office will continue to use the present system which allows a student to give his or her resume and computer card to a placement staff member instead of placing it in the slot for the deadline date. The choice of a date is made by the Placement Office, not the computer, and so the student can simply request not to be slated for a Saturday appointment.

"People who just don't want to interview on Saturday will have a harder time switching," Thompson said, however, because of the need to make good use of the Saturday times.

Reaction From Firms

Thompson does not expect firms to object too loudly to the changes. When the Saturday interviews were first scheduled last year, only one firm refused to accept a Saturday,

she said, and not for religious reasons. This year there were no complaints. The requirement that offers be held open until the middle of January should not cause too much inconvenience for firms either, she said, though she thought it might not be well-received at other law schools because firms may keep a certain number of slots open for Harvard students, possibly delaying offers to students elsewhere.

Reducing Differences

Thompson thinks interviewers may welcome the new condensed recruiting season because it will reduce the difference between interviewing dates at the beginning and end of the period. "People who are coming at the end think they are getting a bad bargain," she said, although presently each firm's interviewing dates are rotated through the season over the course of several years so that, over the long haul, none will be at a disadvantage.

A Politician Attacks Bureaucracy

By Erich Merrill

"If we ate fewer pickles, maybe we would be more secure." The comment was one round of a volley of criticism Eugene McCarthy fired at government bureaucracy in a lecture sponsored by the HLS Forum on Thursday, Nov. 12.

Bureaucracy has the potential to be the ultimate tyranny, which is the tyranny of the majority over itself, McCarthy claimed. He singled out the three agencies which have come closest in his estimation to achieving that potential: the Federal Election Commission, the FCC and the IRS. He then focused on the abuses of the IRS.

Foremost among McCarthy's objections to the way the IRS comports itself was his argument that the agency consistently violates the Bill of Rights. He said that former Collector of Internal Revenue Alexander seemed to believe that "you can't really honor the Bill of Rights and collect on the income taxes," and the agency still runs on this assumption.

For example, McCarthy delineated the process the IRS often goes through when it brings criminal charges against a taxpayer. The agency begins its investigation after filing civil charges. It collects evidence of tax code violations ostensibly for a civil suit, and then converts the litigation to a criminal proceeding. The taxpayer, McCarthy said, loses the protection of the Fifth Amendment since evidence is collected while the suit is a civil proceeding.

"The danger is that if you begin to sacrifice the Bill of Rights, you have to wonder where you draw the line. Once you allow this kind of operating rule in a reasonably comprehensive area, there's a tendency to let it out, to spread it out."

McCarthy hinted that the IRS was coming close to infringing rights given under the First Amendment. "The IRS decides what is a true religion. They make distinctions the Inquisition wouldn't have touched. They must have a



Eugene McCarthy meets with students after his Forum talk. E.M.

whole room full of theologians down there."

Innocent until proven guilty? Not in the eyes of the IRS, McCarthy said. If the IRS finds a ground for claiming that a taxpayer owes more money, the citizen must pay the tax, then sue to get a refund. Recently, the IRS has taken this procedure beyond its former limits by making citizens pay taxes when the IRS has no grounds for claiming additional taxes, but only thinks the taxpayer owes more money. McCarthy told his audience that the IRS assumed that employees of the Marriot Hotels were not reporting tips on their income tax returns. Each employee was assessed taxes for the income he or she reported plus 20%, and taken to court for not paying them. McCarthy characterized the IRS's attitude as one of "We have a right to enforce our assumptions."

Amish Horses and VWs

Perhaps most irritating to McCarthy is the IRS's habit of getting people to pay taxes by intimidating them. He told a story about a newspaper account which described measures the IRS had taken against allegedly delinquent taxpayers. According to the article, the IRS had chained someone's Volkswagen to a lamppost, and on another occasion, had confiscated

the horses of an Amish farmer. McCarthy said that when IRS employees saw the story, rather than being ashamed, they were happy. "Their attitude was, 'This is great. If we keep people scared they'll pay their taxes'."

McCarthy finally disparaged the tactics the IRS uses which "come close to bounty hunting," referring to the fact that if a citizen reports that a taxpayer has not paid all the tax due the government, and the IRS collects, the citizen is paid part of what is recovered. McCarthy said that a similar system operates within the agency itself. Employees who bring in the most revenue are the ones who are promoted. The IRS denies that collections and promotion are related, "but the evidence is pretty clear that this is the way it works."

Walter and Tums

McCarthy balanced the serious side of his speech with some lighter comments on other parts of the government. Under the guise of commenting on the FCC, he made some observations about the evening news. He said that his theory was that Walter Cronkite's popularity was due to the ads the network ran with the news. "Most of the ads which would follow news of a major crisis were for products

(Continued on Next Page)

McCarthy Speaks at HLS Forum

to relieve minor physical discomfort, or to conceal the effects of old age. One particular night, after Walter told us about Three Mile Island, there was an ad for Tums. You might get radiated, but you won't have indigestion."

McCarthy wants to see how the ads change when Dan Rather is fully established. "I think they'll switch to Sominex or Nytol, because Dan leaves you a little agitated."

Bureaucracy was one of three developments the founding fathers

never anticipated when they wrote the constitution, McCarthy said. The other two were the growth of the corporation and the development of the military as we know it today. He had some observations about the military to share with the audience.

Once when he was talking with Soviet leader Aleksei Kosygin about America's defense budget, McCarthy tried to explain how the three arms of the military work. "I told him that each of the three branches must be funded enough

to defeat the Russians. And the other two branches."

Marching Tunes

The development of military bands has puzzled McCarthy, who noted that each of the bands gets more money than the National Endowment for the Arts. When McCarthy was a senator from Minnesota, he used to nominate people to the military academies. From time to time, the academies would

(Continued on Page 16)

Talking About Nuclear Arms Control

By Gabe Shawn Varges

Harvard joined other universities and organizations around the country on Veteran's Day in holding a day-long conference on peace and nuclear war. Styled after the "teach-ins" of the 1960s, the conference was aimed, in the words of one organizer, "at awakening students to the realities of nuclear war."

Some 900 students and other members of the Harvard community attended the event at which an impressive array of speakers discussed the economic, medical and human aspects of nuclear arms and war. Roger Fisher, Williston Professor of Law, was the principal Harvard sponsor of the conference, while Scott Brown, 3L, was the head student organizer.

Sending Messages

Paul Warnke, the former chief U.S. negotiator for SALT II, was one of several speakers who warned about the present trends in international relations. He said that if, by building new weapons, we in the United States are trying to send a message about our motives to the Soviet Union, we are failing, given the Soviet response so far.

"There is an easier and better way to send a message," stated

Warnke, "and that is communication, talks."

Warnke's sentiments were echoed by other speakers who also called for the immediate resumption of disarmament talks with the Soviet Union. Stephen Meyer, professor of Political Science at MIT, argued that these talks are needed because in their absence the nuclear arms race will continue indefinitely. He said that while the Soviet Union does "present a security threat to the United States," nuclear weapons "are irrelevant to this threat." He suggested that it is the combined weapons of both countries which create the major threat for each.

"For the United States the most likely security threats are energy and political and economic instability, and there is little here that U.S. nuclear arms can do," added Meyer.

Yuri Kapralov, a councillor at the Russian Embassy in Washington, represented the Soviet view at the conference. He agreed with the need for more talks, but charged that each time the Soviet Union speaks about peace, few in the United States accept it at face value. "It is dismissed," he said, adding that he wished the U.S. would speak about peace "with the same clarity."

Other speakers included George

B. Kistiakowsky, a professor emeritus of chemistry at Harvard and a former member of the atomic bomb project. He and speakers from the Union of Concerned Scientists and Physicians for the Prevention of Nuclear War touched on the tremendous loss of human life resulting from any nuclear strike, whether "limited" or not, and warned of the danger of the growing tendency among U.S. officials to consider the possibility of a "contained" nuclear war as somehow acceptable. Public opposition to this idea is developing, noted the retired scientist, primarily because the realities of nuclear weapons are now "closer to home."

Debate Over "Means"

"When we began to talk about paving over the splendor of Utah, even the Mormon Church began to wonder about the morality of nuclear war," observed Kistiakowsky.

Warnke and other speakers emphasized that supporting disarmament and the prevention of war is not the equivalent of opposing national defense. The former Carter Administration official observed that, "We are all in favor of national security, but we are against nuclear war. The debate is not about ends but about means."

HLS Still Searching for Loan Funds

By John Morris

The Reagan Administration apparently plans to wait until June to announce the new regulations governing Federally Insured Student Loans (FISLs) for the 1982-3 school year. In the meantime, the Law School's Financial Aid Committee is trying to draw up contingency plans to deal with the likelihood of large cuts in federal aid. The problems are compounded by a slowdown in the growth rate of endowment income which will force the School to raise tuition substantially again next year.

The Administration announced new regulations in October that did not substantially tighten the tests for eligibility, but these regulations are effective only through June 30 of next year and will not govern loans for the next school year. (See RECORD, v. 73, n. 2, Sept. 25, 1981, p. 1.) Law School officials complain that this leaves schools and students without any means of planning for their financial needs.

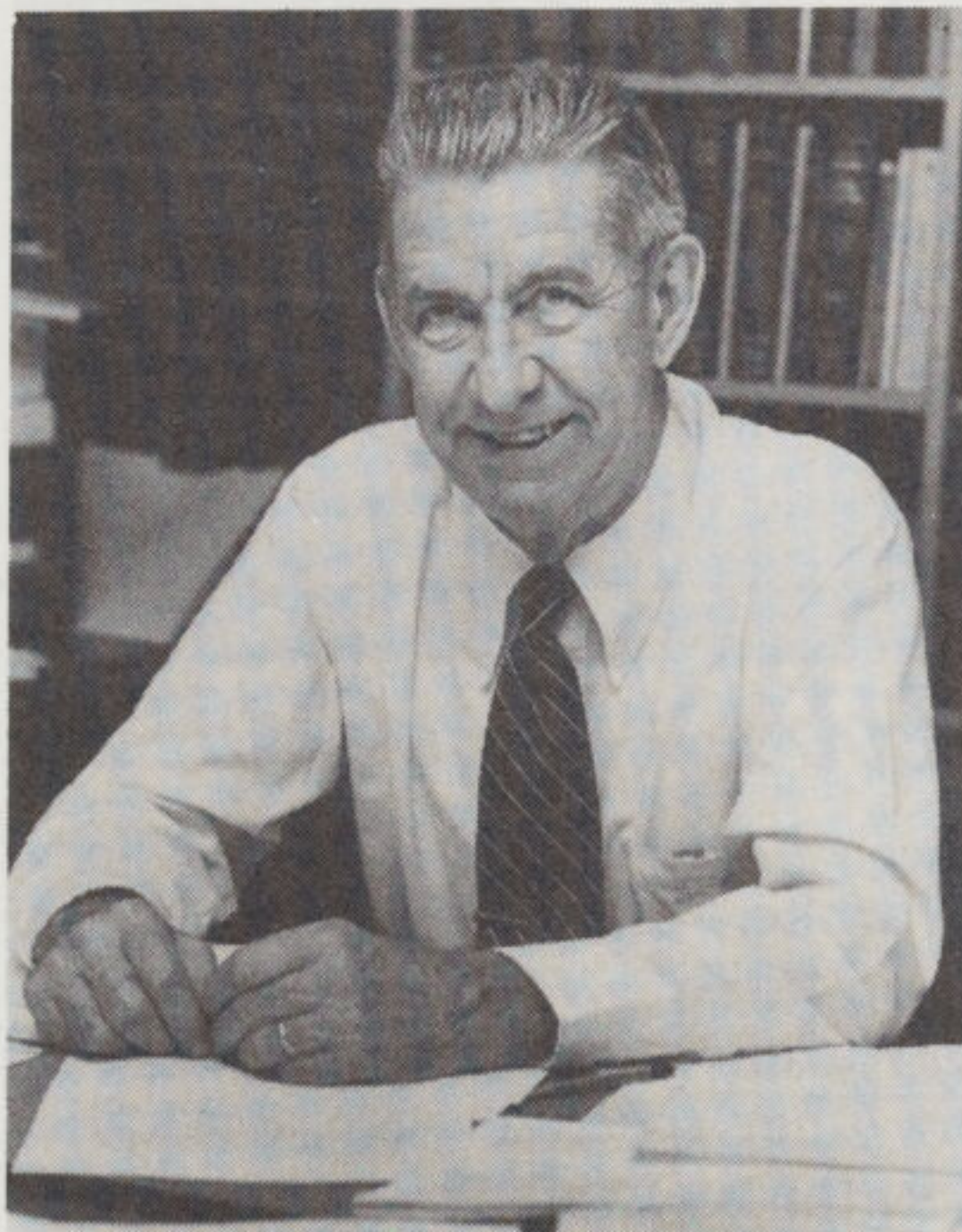
"We won't know at the time we should know," complained Financial Aid Committee Chairman, Prof. Vern Countryman. "We won't know until June. People entering next fall and people returning need to know much sooner."

"We're proceeding on the assumption that there will be a significant reduction in federal aid," Countryman said. The Committee's efforts are being devoted to developing alternative means of "filling the whole" left by the reduction.

Loans From Endowment

One additional source of loan funds was confirmed last week when the University said that it would loan money from its endowment. Assistant Dean Russell Simpson said the University would make loans of up to \$3000 at 14% provided that HLS would guarantee them. The guarantee provision would require the School to set aside some funds as a reserve for uncollectable loans.

Another possibility mentioned by Law School officials in October and now being explored by the Committee is the reduction or elimination of grants to students. The funds now used for outright support would be used to subsidize the interest on loans.



J.M.

Prof. Vern Countryman

The Committee is still considering approaching private lending institutions about the possibility of lending to law students. Both private and University loans would be made at commercial rates and would require interest rate subsidies, Countryman said.

Tuition To Increase

The reduction in available aid will come on top of an increase in tuition next year. Simpson said that, while alumni contributions to the operating budget of the Law School are approximately keeping pace with inflation, endowment income is only increasing by six percent per year. The balance must be made up by increasing tuition. Simpson would not cite a figure, but one source indicates that the increase could be as great as \$1000.

The Committee's immediate problem is to formulate the Financial Aid Guide for next year which is due to go to press in December. Normally it is sent to first-year applicants in January so they can take into account the financial aid

available to them when they choose their law school. "We need to rewrite the Financial Aid Guide, but we don't know what to put in it," Countryman said. "We'll either have to delay it or we will have to lay out the worst conceivable case."

The particular response each school makes may affect the students who choose it, though, he points out. If HLS were to choose to shift grant money to subsidize loans, other schools which continue to offer grants could draw some individuals who might otherwise come here. This sort of effect of the aid cuts on students' choice of schools is hard to predict, though. "[The schools] are all in the same boat," Countryman said, "And we're better off than most of them."

Danger of Dependence

In addition to the problems of reduced funding, two student members of the Committee expressed concern that a feature of the new regulations may pose problems for students also subject to the HLS Financial Aid Office regulations. Bud Gilbert, 2L, and Richard Brunell, 1L, point out that students are encouraged by the HLS rules to obtain money from their parents because the Law School imputes a parental contribution whether it is received or not. The new federal regulations, however, require an applicant to have been independent of his or her parents for two years. If a student receives more than \$1000 from his or her parents in a calendar year, the student is classified as dependent and his or her parents' income will be considered in calculating need.

Gilbert and Brunell are worried that students may not know this and may be receiving money now which will preclude them from qualifying as independent students until 1984 (allowing for the two years needed to qualify as independent). They said students would be wise to look into avoiding this consequence by spreading out contributions to keep them under the \$1000-per-year limit.

Recruiters View Changes Favorably

(Continued from Page 5)

Wright, McKean, Crudlip & Moon in Detroit, saw no major problems with the changes. He said that evening interviews could easily be handled. "[And] I kind of favor Saturday interviews," he said. "It would take less time away from practicing law." He also felt that interviews might be more relaxed on the weekend.

Moving back the fly-out period would not inconvenience firms either, he thought. "So long as the impact is the same on all prospective employers in a given area so that everyone is on the same footing, I don't think that would make a lot of difference."

Offers to students interviewed in the fall could be held open into January without disrupting Dickinson, Wright's planning, he said, although he thought it would be inconvenient to hold open the offers made to the summer associates from the preceding summer.

Time Needed To Plan

Aside from the need to interview at the same time as other private employers, Roche saw no particular reason for recruiting in the fall rather than in the spring. "Generally, for planning purposes, you want to fill your needs with some advance knowledge," he said, but planning for such things as office space could as easily be done simply by settling on the number of students to be hired. "That's not insurmountable," he concluded.

Michael Wyatt, '72, of Hamel, Park, McCabe & Saunders in Washington was once a member of the Placement Committee and he favors most of the changes. In particular, he said the long-term goal of moving the season to the spring was desirable. "Look at it this way," he said. "You'd have another semester of grades [to judge 2Ls by]. And in third year, [3Ls would have] another semester to assess what sort of jobs they want. Firms would have much more time to refine their judgment of their needs." Unlike his counterpart in Detroit,

Wyatt saw no need for planning purposes to settle on a number of positions far in advance. On the contrary, he said Hamel, Park has often underestimated its needs because of the lag between the interviewing season and the time when people begin work.

Afternoon and evening interviews pose no terrible obstacles, Wyatt said. Although he is very concerned about what he sees as the excesses of the current process — "too much dinnering and parties and fancy lunches" — he was concerned that the evening interviews might preclude firms from holding their cocktail parties. "It's not as frivolous as it may sound," he said. "That evening gives me the opportunity to see people [the other interviewer] has picked out. If you go to afternoon and evening [scheduling] you knock out most of that. . . . From a recruiter's standpoint, I find it very helpful. . . . It's not all a dog and pony show by the firms." He noted that get-togethers might be held after Saturday interviews.

Hamel, Park has been quite happy with Saturday interviews it has held at Duke in past years. "We found that to be quite successful and efficient, both for them and us. It's a non-working day for us. . . . Technically you're saving a [billing] day and I think that's a great idea," he said.

Wyatt said that the requirement that offers be held open until January could pose problems. Holding open offers or slots for Harvard people while students at other schools are ready to make decisions could "throw a monkey wrench into [the firms'] calculation," he said. "If Harvard is out of whack, it makes it extremely difficult." He thinks firms may lose students from other schools who have had to wait too long for an offer. It could also disadvantage Harvard students if firms decide to go ahead and ensure themselves of students by making more offers at other schools.

In addition, he said, "What you're going to do is to end up lengthening [the season] until January. . . . That

will lengthen things without helping."

On the whole, Wyatt favors major changes in the process. "There has to be some discipline and rationality brought into it." He thinks that the move to the spring would be the best solution ultimately. "My own personal view of this is that doing this all in the fall is inappropriate." He thought it might help curb the tendency of 1Ls to skirt the Placement Office's policy of making them wait until the spring to interview on campus. "There's massive dishonoring of the rules at this point with 1Ls," he said. Wyatt's view of a move to the spring: "I think that's absolutely appropriate. . . . I think [it] ought to be the focus."

Wyatt supports the Law School Council move to discourage the use of suits. "I thought the suggestion that students not go through this charade of dressing up was a good one," he said.

Shorter Season Preferred

John Quale, '71, of Kirkland & Ellis's D.C. office welcomed the shortened season. He thought it would reduce the disparities between interviewing dates at the beginning and end of the season. "It's rough at the end," he said. "There are many fewer interviewees. Many students are already on fly-outs."

Shifting the schedule back in each day makes no difference, Quale said, though he would be concerned to the extent it inconvenienced students and reduced the number of people the firm would see.

Like Jenner & Block's Murray, Quale said that fly-outs over Christmas could be inconvenient. "There would be a lot fewer people around our office," he said. "That would be a problem." And the new rules for offers could adversely affect HLS students who could find fewer offers were being made to them because of the risk to firms of having to hold them open to a later date. Firms might prefer to

(Continued on Page 16)

Reflections on Placement

The faculty has moved to change the placement process in a big way. On the whole, we think this is probably good, although there is likely to be disruption during the period in which it is implemented. Several aspects of the new plan deserve comment.

First, it may not be possible to accommodate fly-outs during Christmas break. Not only are students eager to spend that time with family, but law firms are short-handed and may not be able to deal with a steady stream of Harvard students. These difficulties could work to defeat part of the purpose of the changes. The condensed, delayed season will cause fly-out offers to be made later in the season. The assumption underlying the proposal is that students, faced with a fly-out offer made in late November or the first week of December, will choose to stay in Cambridge preparing for exams rather than dart around the country in search of the perfect lunch. This assumption is, if not implausible, at least questionable. If it proves not to be true, the disruption of academic work may simply have been shifted to a later, and potentially more disruptive, point in the term. Perhaps this will not be the outcome, but the possibility should be considered in fine-tuning the procedures.

There is a second problem with the proposals. By condensing the season, the pressure may simply be increased and students may be more distracted, albeit for a shorter time. There appeared to be a strong consensus among the faculty last week that some greater effort must be made to reduce the number of interviews held. In fact, the Placement Committee was charged with working to bring the number down. That is clearly the way to reduce the pressure during a compressed season. But there are better and worse ways of bringing this about.

There was some suggestion at the faculty meeting that a ceiling be placed on the allowable number of interviews. We oppose this. Despite the statements made to students, many students are without offers, or even fly-out offers, after more than a dozen interviews. No cap could be instituted without jeopardizing their employment chances. Likewise, we oppose allowing firms to select who they will interview on the basis of grades or a resume alone. That would put too much emphasis on grades, which in the case of 2Ls, means first-year grades alone. Instead, students should have more information about how many offers firms make and how many people they interview. Firms interested in reducing the number of unprofitable interviews would have a real incentive to provide such information. With such figures in hand, students would better choose which firms to target. That sort of self-selection leaves the discretion with students, where it should be, and would be preferable to either a lid on the number of interviews or a pre-selection procedure.



HARVARD LAW RECORD

EDITOR-IN-CHIEF John Morris
MANAGING EDITOR Erich Merrill
BUSINESS MANAGER Eileen Brownell
EDITOR EMERITUS Mary Tarduno
SENIOR EDITORS Tom Heywood, Bennett Murphy,
Dave Quinto, Gretchen Rule, Laura Taylor
SPORTS EDITOR Benne Hutson
EDITORIAL STAFF: Fenno, Mark Graham, Tom Heywood, Louis
Hoffman, Brad Hudson, Will Hunter, Tom Isenberg, Marisa
Manley, Mike Medina, Mark Pogue, Joyce Tichy, Gabe Varges,
Rob Woolmington
PHOTOGRAPHY STAFF: Adam Eisgrau, Erich Merrill, John Morris

Fenno

"Fenno, wake up! I've got to talk to you!"

Fenno greeted consciousness with great reluctance. Somehow he had ended up in Langdell, sprawled across the mighty lap of one Joseph Story, his head crooked in a marble arm. A dripping paper cup rested bottom-up on Story's uplifted digit. Fenno's head felt like a can of tainted vichyssoise: mushy, bloated and ready to pop. It had been a rough night in the library.

"You'd better get down, Fenno. If Marion finds you up there again, who knows what she'll do. She might take away one of your lockers."

"Okay, Linda, I'll give you a hand. But don't forget you're the only 1L I'd do this for."

Moments later Fenno found himself at a bleak Grad Center lounge. "I found him there last night," said Fenno's friend, pointing to a pale, trembling 1L who lay flat on the flimsy indoor-outdoor carpeting. "When he was still there this morning, I knew only you could help."

"Diagnosis?"

"*Catatonia squidiis*, Fenno. He's the worst stiff in the section. He fraternizes with footnotes. He's read everything each prof has written, though in Dunko's case that was easy."

"Symptoms?"

"*Harknessosis*. It's that non-dairy chocolate milk."

"Therapy?"

"Nothing seems to work. He almost went to SBR once until he asked me if they covered multistate. And now look at him . . . he's a basket case."

"All right, doctor, let's get cracking. Boil some water, mix some Bloody Marys and for God's sake get that Phi Beta Kappa key out of his mouth."

* * *

"Honest, Fenno, I just don't know how you do it. Tony hasn't been to a class in weeks and I've never seen anyone so happy. You should have seen him with his new band at Cantone's last night."

"New wave?"

"Yup—they're called 'The Quash'. What did you tell him, Fenno?"

"Nothing, really, just the usual stories about the miseries of recruiting, third-year papers and life as a junior associate. I made him glad to be a 1L."

"Oh, cut the crap, Fenno. They say you know the secret of first-year grading. Do you?"

"I can't tell you, Linda. Just keep on being oblivious and you'll be fine."

"Please?"

"Sorry, pal." Fenno leaned forward and whispered: "Maggie would never forgive me."



Letters to the Editor of the RECORD

There They Go

A copy of the following letter was received by the RECORD — Ed.

To the Editors of the Harvard Law Review:

There you go again!

Last year your predecessors proposed to introduce into the process by which *Law Review* editors are selected an undisguised quota system. The current proposal of your affirmative action committee is designed to reach pretty much the same result but under a somewhat different guise.

The committee, however, eliminated the one feature of the first plan which took merit into account to a limited extent. Under last year's initial plan you would at least have selected the minority student in each section who received the highest grades. Now instead a committee appointed by the President (presumably from among those editors who favor minority quotas) will determine which students have been most "disadvantaged" (with race heavily weighted over all other forms of disadvantage). So those chosen will not be the minority students who are most qualified, but merely some who are "capable" of doing law review work (in the unbridled judgment of the committee).

While the present plan is, therefore, worse in one important respect than the original proposal, I must congratulate the affirmative action committee on the shrewd manner in which the plan is packaged. Coupling the affirmative action plan with the proposal that eight second year students be selected for the *Review* by the "Yale" method is a stroke of public relations genius. It diverts the attention of first year students from the fact that their chances of earning a place on the *Review* by the traditional routes of grades and writing competition have been reduced by 30%. Whatever objection the 1Ls may have to this may be outweighed by support of the plan by 2Ls, who will now get a third shot at the *Review*. Of course, the second year students get only 20% back of the 30% taken from the first year students, but the whole plan is so complex perhaps no one will notice that a quota system may have been slipped in. Brilliant!

The truth is that adopting the Yale method, or not doing so, has nothing to do

with affirmative action. If the *Harvard Law Review* is no longer to be considered an honor society but only a student magazine and if the Yale method is a better way of selecting editors than grades or the writing competition, that method should be adopted without reference to whether it will increase minority representation.

But the superiority or inferiority of the Yale approach is a matter which certainly requires more than one week of study. At the very least, you should confer with the *Yale Law Journal* editors to learn how the system is working there. Of course, this assumes that the Committee is really interested in a better method of selection and not merely in throwing up a smoke screen.

In short, if at first you don't succeed, maybe you should consider whether it was not such a good idea in the first place.

Leon C. Baker, '49
New York, N.Y.

Missing Student Found in Billings

To the Editor:

Your story on class non-attendance [RECORD, v.73, n.5, October 30, 1981, p. 5] has caused me to ruminate on several events from my own experience which are not phenomenal, but neither are they apocryphal.

The fall of 1967 was the best of times to be a 1L because the World Series was in Boston and the worst of times because the abolition of student draft deferments was imminent. One autumn afternoon in contracts class, Professor Byse was forced to refer back to his seating chart several times when he found the seats empty in front of me, to the left of me, to the right of me, and behind me. At last he focused on me and said, "Aha, Mr. English, you are here!"

"Yes, sir, I couldn't get a ticket to the World Series," I told him.

Several months later, after making a Christmas pact with a dorm mate that we would volunteer to speak in class, I raised my hand for the first time in contracts. Mr. Byse caught my signal, checked the seating chart for my name, and said, "Mr. English, you haven't participated in our class before."

"Yes, sir, I have. If you will recall, I couldn't get tickets to the World Series," I replied.

Sometime in the depths of February, after the graduate student deferments were abolished, I fell into that depth of depression during which one retreats into a shell of non-attendance as described in your article. Even during a three-week period when I was available at any time of the day or night to go to a movie, play cards, or watch

TV with anyone who wanted to kill some time, I found I could not stay away from Byse's class. In retrospect, that obsession sounds almost more emotionally warped than my inability to attend my other classes. The three-week break, however, did me a world of good.

My unauthorized sabbatical began after I had attended only six sessions of a second-semester course entitled Development of Law and Legal Institutions. There was something about the arcane and archaic language in the reading materials in that course that seemed to make it impossible for me to read the material or to go back to the class when I resumed attendance at my other classes. The corner into which I was painting myself did not become frightening to me until I finished the last exam before the DLI examination at the end of the year.

In order to cram the absent knowledge into my head, I borrowed a 40-page outline from a friend. The night before the exam I stayed up until 3:30 trying to understand what the outline said. At 3:30 A.M. I gave up, prepared for bed, and turned on my clock radio to make sure it was loud enough to wake me up for the exam only 4½ hours away. The first words I heard on the radio were: "He has been shot! Senator Kennedy has been shot!" Although I am an avid Republican, the news was shocking to me as it was to all Americans. I immediately waked up my equally Republican neighbor.

After listening to the radio for a few minutes and determining that the shooting had just occurred in Los Angeles, we decided to wake up a third dorm mate who had a television set. We spent the night watching the events unfold, and carried out the extremely unpleasant duty of breaking the sad news to an avid Kennedy supporter on his way to the shower. His reaction impressed Dave, Allen and myself with the tremendous shock people of all political persuasions were going to go through as they woke up to the news. We decided they would be no more ready to take a major Law School exam than we who had stayed up all night were, prepared or not. We quickly assembled a committee from our dorm floor and went to the Dean's office to propose cancellation of the exam.

As I recall, other delegations gathered in the Dean's waiting room for the same purpose. Some time after the announced starting time of the exam, the Dean and the two professors involved announced from the steps of Langdell Hall that the exam had been cancelled and all students would receive "P" for "pass." Because of my sustained absence, I am convinced that may be a higher grade than I could have earned.

To even the score, however, the property exam two days later was cancelled under the same circumstances even though I was

(Continued on Next Page)

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.

Letters must be typed and received by 6:00 P.M. the Tuesday before each issue. We prefer letters of no more than 700 words.

Letters to the Editor of the RECORD

(Continued from Previous Page)

convinced that is where I would earn my highest first-year grade. The next year, along with many other members of the original class of 1970, I was away in uniform when the student strikes interfered with exams. By the time I returned from the Navy in 1971, I found I was able to apply the absence option much more judiciously. Whether that was the result of a more relaxed atmosphere at the Law School (no more Saturday classes!) or the greater maturity of a military veteran, I will never know.

H. Elwood English, '73
Billings, Mont.

Emotional Swipe at Paper Tiger?

To the Editor:

Although there is nothing I nor any other student can do now that the decision to revamp the placement process has been made, I feel compelled to speak out on the subject not only as a Harvard Law student, but as a human being concerned about others. I am afraid that the faculty has reacted to the perceived problem of the preoccupation with the placement process during the second and third years by cutting off the nose of the placement process in order to spite its face.

The faculty began with the simple notion that the purpose of the Harvard Law School is to educate its students to become lawyers. There is a common perception among the faculty that the placement process interferes with that simple notion. The solution was to amend the placement process. Unfortunately, it is clear from examining the amendments that they will not only not solve the placement dilemma, but will have a significant negative impact on both the placement and the educational processes.

The least offensive of the recent amendments is the mandate to hold on-campus interviews between the hours of 1:00 and 9:00 P.M., rather than the current 8:00 A.M. to 5:00 P.M. This change seeks to address the problem of students missing classes in order to attend on-campus interviews. The chimerical feature of this change is that very few, if any, students have ever missed a class in order to attend an on-campus interview. In fact, the current process has been quite successful in scheduling the students' interviews during non-class time. This simply has not been a factor in the decline in class attendance. Furthermore, it is likely that evening interviews will have a greater impact on the educational process by cutting into the time periods which have traditionally been the most productive for students intent on studying.

A second amendment is to condense the placement process from the current Oct. 1 through Nov. 20 season, to Nov. 1 through Thanksgiving. The purpose of this amendment is to cut down on the span of time during which second and third year students are totally preoccupied with and consumed by the interviewing process. Unfortunately, the change is likely to have the opposite effect while reducing the success of the interviewing process.

Under the current system, many more interviews are done at the beginning of the interview season than at the end. Students who have high grades or other desirable attributes naturally receive the bulk of the "fly-outs" in the early stages. As they do their fly-out interviews and receive offers they tend to drop out of the process. As time goes on the firms see fewer people. Those students who were having a difficult time in the early stages begin to have more success as the process continues. One goal of the recently adopted program is to postpone all fly-out interviews until the winter break. The result, if the students comply with the guidelines, will be fewer students dropping out of the process as it progresses. Not yet having any offers, and having no way to distinguish one firm from another even if one were to receive many fly-outs, many more students will continue interviewing during the entire season.

I fear that the result will be that many students who are currently receiving offers during the latter stages of the process due to the reduction in competition will be left without fly-outs, or jobs. This would be a total perversion of the purpose of the placement process. The new system will not be as successful as the current process because all second and third year students are not as highly prized and actively sought after commodities as the faculty seems to believe. A fair number of students are not successful in finding the job of their choice even under the current system.

We have been assuming thus far that the firms and students will comply with the recently enacted changes. Such an assumption is probably ill-founded. If the convention of the current process is any indication, the placement process will be even more of a zoo next year. Students interested in working in the city in which they are living during the summer will undoubtedly make an effort to meet with the firms in which they are interested during the final weeks of the summer. The effect will be to handicap those students interested in exploring opportunities in cities other than the one in which they are living. Upon returning to campus students will no doubt begin a massive letter-writing campaign (similar to that undertaken by first-year students under the current system) to firms in which they are interested in order to get a jump on their fellow students and to com-

pete with students from other schools using the traditional fall interviewing season.

The amount of time spent on such a letter-writing campaign could certainly be put to better use. I would not be surprised, in fact, if the time and energy expended on such efforts exceeds the time currently expended on fly-outs, especially when one realizes that the result of such a campaign will be that firms will choose to fly out certain students before the on-campus interview date for the firm. Once again the students chosen will be those with the most impressive grades or other attributes. That will be even more true in this case since all the firm has to go by at that point will be a resume. The increased emphasis on grades may be acceptable to a faculty which works within such a framework and may believe that grades have some significance. However, such emphasis would be abhorrent to most students and is contrary to the recent proposals of the Law School Council.

Finally, this faculty proposes that fly-outs should be done over the winter break. The impact of that decision on the students is tremendous. Adopting such a position shows a total lack of sensitivity to the students. For many of us, especially those who plan to spend our summers in other than our home towns, the winter break is the only opportunity we have for seeing our family. It is traditionally a period of time which is spent with immediate family and close friends. One need only remember that the faculty recently abolished the four-day fly-out period in order that they could be with their families on Columbus and Veterans Days to realize how ludicrous their position is.

If there is truly a problem with class attendance I suggest that the faculty look elsewhere to find the causes and the solutions. Since the placement process is a reality at this institution it would seem that it should be dealt with in the most rational way possible. Do the number of classes missed truly outweigh the negative aspects of the changes in the placement process, or was the recent faculty response an emotional swipe at a paper tiger?

Richard Silver, 2L



CAMBRIDGE CONDOMINIUM:

Low down payment; immediate occupancy; ideal location (Harvard St. at Remington St.); 2 bdrm., 1½ baths; fully furnished; all appliances; custom draperies; rugs; parking. Please call owner, Mr. Bane, at 595-5347 or 595-5500.

Placement

(Continued from Page 4)

would solve any problems would be a switch to spring interviewing.

Incentive to Study?

Lauren Taslitz, 2L, saw another benefit to spring interviewing: "If interviews were held in the spring, employers would be looking at your grades from the first semester of the second year. Students would realize this, and would be motivated to study."

After several minutes of discussion on whether or not a resolution setting a maximum number of interviews should be voted on, the faculty decided to vote instead on the changes suggested by the Placement Committee. The vote was 28 to 6 for the proposals, with 6 members of the faculty abstaining.



Wanted: Old Stocks & Bonds

High prices paid,
any quantity.
Collector purchasing nationally
for over twenty years.

PAUL J. LONGO, BOX 490-HL,
SOUTH ORLEANS, MASSACHUSETTS
02662

Koby Antupit

PHOTOGRAPHERS

Creative Portraits
Resume & Publicity
Photographs
Instant Color Passports

Harvard Square
8 Boylston St., Cambridge
547-7552

Review Reaffirms Goal

(Continued from Page 1)

said the discussion was relatively calm, in contrast to what were reported to be heated debates in the spring over the issue.

Faculty reaction to the resolution is liable to be unfavorable. The RECORD was unable to contact Prof. Vagts, whose committee will make recommendations to the faculty concerning the proposal. With no details of a plan expected before Dec. 2, Assistant Dean Stephen Bernardi said he was unsure whether the faculty would discuss the latest move before Christmas.

The close vote could mean that no majority could be assembled behind any specific plan, Helm noted. "We know a majority are in favor of a race-conscious plan so I think that may have some persuasive power," he said, however.

"As things now stand," he continued, "the plan from last year will go into effect next year if we can't get a majority to change that. We did that purposely. . . . This guarantees that we won't just do nothing because I think a lot of people were upset with last year's plan."



SPORTS QUIZ

NOTE: This week's Sports Quiz is quite "timely" as it deals with athletes whose last names are the same as a measure of time, such as a particular day or month or some generic division of infinity.

1. One of the veterans on the Professional Golf Association tour, this man has continued to win over his younger counterparts despite the fact of his eligibility for the Senior Division of the PGA. Who is this linkster?
2. A veteran major league outfielder, this man put the Los Angeles Dodgers in the 1981 World Series with a dramatic home run off the Montreal Expos in the final game of the National League playoffs. Who is this man?
3. Teaming up with Steve Baker, this rookie goaltender for the New York Rangers hopes to be part of a netminding duo which will lead the Rangers to their first Stanley Cup in over four decades. Who is this athlete?
4. A virtual unknown most of his major league career, this utility outfielder came to the forefront as a pinch-hitter for the Montreal Expos in the early 1970s. Who is this player?
5. One of the most colorful officials in the history of hockey, this man was the first referee to defect to the now-defunct World Hockey Association when it was formed in the early 1970s. Who is this now-retired arbiter?

(Answers on Page 16)

BRINE'S SPORTING GOODS 29 BRATTLE ST. HARVARD SQ. 876-4218

SPORTS EQUIPMENT AND
APPAREL
FOR THE ENTIRE FAMILY
FOR YOUR SKATING NEEDS
HOCKEY FIGURE
CCM RIEDELL
BAUER OBERHAMER
KOHO HYDE

WARM CLOTHING
DOWN PARKAS & VESTS, WOOL
SWEATERS, RUGBY SHIRTS, LONG
UNDERWEAR, WARM-UP SUITS,
HATS, GLOVES, AND SOCKS
"BETTER BUYS AT BRINE'S"

ORIENTAL TOURS & TRAVEL

China Tour Specialists

Low cost airfares
JAPAN FAR EAST
anywhere in the world

東宝



Harvard Square

Crimson Galeria Mall Lower Level
57 Boylston Street, Cambridge, Mass.
Tel. 491-0029

A Case Study in Confused Jurisprudence

Richard B. Bernstein

Archibald Cox, *Freedom of Expression*. Harvard University Press, 89 pp., hardcover \$6.95, paperback \$2.95.

In this lucid and thoughtful book, Archibald Cox examines the record of the Supreme Court under Chief Justice Burger in dealing with cases arising under the clauses of the First Amendment protecting our freedoms of speech and press. *Freedom of Expression* is thus both an analysis of the Court's approach to the many novel First Amendment cases of the past decade and a meditation on the Court's responsibility to articulate a coherent body of law — and its all-too-frequent failure to do so.

Beginning his inquiry with a brief sketch of the philosophical underpinnings of the First Amendment, Cox argues that there are two justifications for protecting freedom of expression. First, such freedoms are essential to preserve individual human dignity, and there is "no greater affront to [one's] humanity than denial of freedom of expression." Second, liberty is essential to the pursuit of truth. Even if we believe with William James and John Stuart Mill that all we can do is to progress towards truth, still "the lessons of the search — the readiness to learn, the striving to understand the minds and hearts and needs of other men, the effort to weigh their interests with [our] own — exemplify the only foundation upon which men can live and grow together."

Cox disagrees with the absolutist view of the First Amendment freedoms advanced by Alexander Meiklejohn and Justices Black and Douglas. Contending that "some balancing is inescapable," Prof. Cox points out that judges must pay careful attention to the "structure and coherence of the surrounding body of law" in order that they may both preserve enduring constitutional values and adjust the Constitution to the needs of modern society.

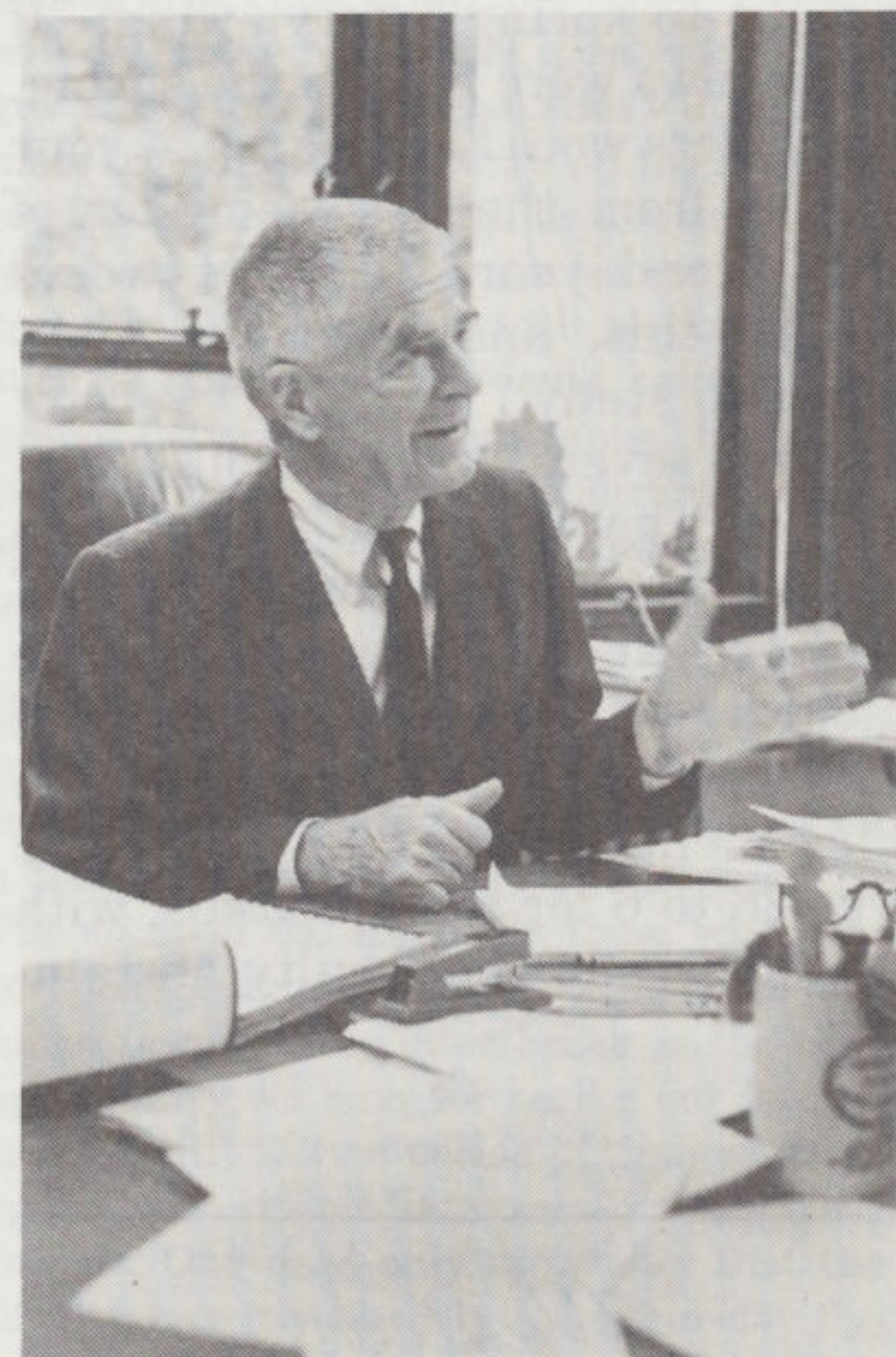
Pointing out that our experience with the "clear and present danger" test illustrates the failure of a single across-the-board standard for freedom of expression cases, Cox notes approvingly that the single-standard approach has been supplanted by "a variety of standards keyed to the character of the restriction." Two major categories of restrictions exist — those based on the content of the expression subject to regulation and those keyed to the time, place or manner of expression rather than its content. Content-based regulations require some compelling justification to fend off challenges of unconstitutionality, while regulations of time, place and manner unrelated to the content of the expression "are generally valid if they protect important interests that cannot be secured by less restrictive means." There is, of course, also a middle ground for cases where conduct and expression are so intertwined that they are not easily classifiable.

Analysis of Failure

This lengthy presentation of Cox's answers to the basic questions of First Amendment analysis is necessary so that we may appreciate his criticisms of the Burger Court's performance in this area. Cox believes deeply in coherence of analysis and attention to the historical context of the doctrines of constitutional law in order that judges may reduce their subjectivity and thus preserve their claim to "legitimacy and thus, to general acceptance." This is precisely the place where the Burger Court fails.

At times *Freedom of Expression* resembles a medical text more than a work of legal scholarship. This may not be entirely accidental. As Cox describes the Court's performance in case after case — whether it be *U.S. v. Snapp*, the government's suit against a former CIA agent for violating his employment contract by publishing a book on

the CIA without seeking prior clearance, or *Buckley v. Valeo*, the campaign-finance litigation, or the *Richmond Newspapers* case on access to trials — one is struck repeatedly by the Court's failure to



John Morris

Prof. Archibald Cox

take account of each case's relationship to the surrounding body of law and by the fragmentation and contentiousness that produce as many as nine opinions in a given case. *Freedom of Expression* is only the latest — and yet in some ways the most telling — exposure of the disintegration of the Supreme Court as an institution in the past decade.

On those occasions when the Court pulls itself together in some sort of consensus, and even when all one can tell from the opinions is who won, Cox manages to distill some lessons about the Burger Court. The Court has continued the work of the Warren Court in expanding First Amendment guarantees "against direct government interference with publication or with speakers in conventional public forums . . . when the attempted interference is based upon the sup-

(Continued on Next Page)

BOOK REVIEW

(Continued from Previous Page)

posedly 'harmful' tendencies of the message," including ostensible time, place or manner regulations which are actually keyed to the content of the expression. But the pace of innovation has slowed dramatically, and in some areas, such as defamation, the Court has withdrawn from the high-water marks of the Warren era.

The Court's major new efforts in First Amendment jurisprudence have been the extension of the First Amendment to protect "commercial speech" and the recognition of political expenditures by individuals and corporations as constitutionally protected modes of expression. Cox's analysis of these developments is perhaps the most rewarding section of the book, despite his disclaimer of objectivity (he was counsel for *amici curiae* supporting the spending restrictions struck down in *Buckley v. Valeo* and is now chairman of Common Cause, which strongly supports regulation of campaign expenditures and public financing of political campaigns).

Selfish Press?

While Cox's book is gracefully written, carefully argued, and thought-provoking, his comments on the press are occasionally disquieting. At times, he seems to believe that the efforts of the press to expand the privilege against defamation and to secure recognition of a testimonial privilege in order to protect its sources are merely bids for special treatment motivated by self-interest rather than efforts to protect its ability to do its job of informing the American people. The institutional press is a peculiar creature in American society; all too little consideration has been given to whether it does merit special First Amendment protection. I wish Cox had made his concerns about the press a bit more specific.

Cox's discussion of the *Snepp* case is another area where reasonable people may reasonably disagree. Frank Snepp, a former CIA

agent who had signed an employment contract containing a provision requiring him to submit anything he wrote about the CIA to it for clearance, chose to bypass the clearance procedures in publishing *Decent Interval*, his book on the fall of Vietnam. Despite the Agency's concession that Snepp's book contained no classified information, the government sued him for violating his contract and the courts ruled against him, imposing a constructive trust on the book's profits and ordering Snepp to submit all future writing he might do about the CIA to the CIA for its approval. The Supreme Court upheld these rulings summarily, without time for full briefs or oral argument.

While Cox severely and justifiably criticizes the Court's unseemly haste in deciding *Snepp*, he treats Snepp's publication as "not merely the deliberate breach of a binding contract but a shabby violation of a personal confidence voluntarily accepted." But on closer examination, there is more to this case than that.

Snepp's Story

Snepp wrote and published his book against the background of the ordeal of Victor Marchetti, another former CIA agent who signed a similar contract. Marchetti submitted his book, *The CIA and the Cult of Intelligence* (written with John Marks), to the CIA for review. The CIA deleted huge sections of the book as classified, rendering the manuscript virtually unpublishable. The author and publisher (also the publisher of Snepp's book) sued the government, and in the course of the litigation the CIA withdrew its objections to much of the deleted material. Further litigation compelled the restoration of even more of the book's original text. But the book's publication was delayed for months and the suspicion remains that the government's motivation was to impede or even to dissuade publication rather than to protect classified information. After all, the contractual requirement of prior clearance is ideally suited for the CIA to sup-

press anything that might reflect unfavorably upon it. And few will deny that our intelligence agencies have done some truly ghastly things in the name of national security.

Prof. Cox might also have considered that at the same time the government was moving against Snepp, it was unable to move against Philip Agee, yet another CIA agent whose books *did* disclose classified information, including the names of agents in the field. Agee was living abroad, so the government could only strip him of his passport; yet Snepp *was* available as a target of the government's wrath.

The government's attitude toward the publication of classified material has always been problematical, as Cox acknowledges. Perhaps we should be less censorious of Frank Snepp's breach of his contract and more critical of the government's attempt to restrict a CIA agent's freedom to publish analyses of the actions of our government.

I have dwelt on these areas where Prof. Cox and I disagree to show that there is room for disagreement on First Amendment issues, but that detracts in no way from the excellence of Cox's book. In an extraordinarily concise and clear 89 pages, Cox manages to make sense of what is a Byzantine area of our law. His elucidation of the issues of the jurisprudence of the First Amendment and his reasoned discussion of the failings and lost opportunities of the Burger Court are a model of discussion of constitutional questions and may be read with profit by general readers as well as attorneys and scholars. *Freedom of Expression* was originally published as the Supreme Court Foreword of the November 1980 *Harvard Law Review*. It is good that Harvard University Press has made it available to the general public. It deserves the widest possible readership.

Richard B. Bernstein '80, formerly book review editor of the *RECORD*, is associated with the New York law firm of Murray, Hollander, Sullivan & Bass.

McCarthy Blasts Bureaus

(Continued from Page 7)

call him up to ask that he nominate a particular person whom they really wanted to recruit. After the Navy requested that he make such a nomination, McCarthy inquired what special talents made the candidate so attractive to the Navy. "They told me they needed a French horn player, and he was a very good one. I thought we were in for a long period of peace."

McCarthy commented on military spending. He had been told at one time that unless 5% of the GNP were spent on defense, the U.S.

would be vulnerable to foreign attack. "I had just read that sales of pickles made up \$800 million of the GNP. That corresponded to \$40 million of defense spending. If we ate fewer pickles, maybe we would be more secure."

During a question and answer period at the end of his lecture, McCarthy was asked if he was thinking of running for the Senate again. He said that he was thinking about it, but hadn't yet reached a decision. Why would he want to run? "I think we may be in for a long period of time in which we elect accidental Presidents, you know, Presidents who are former governors or vice presidents." Such Presidents give the government no sense of continuity. McCarthy sees the Senate as providing this continuity and as being the body which really sets policy. As he turned to sit down he added, "Plus the fact that the incumbent's father cut me off the prep football team."



UNIVERSITY TYPEWRITER CO., INC.

Typewriters
New and Rebuilt

- Electrical
- Manual

Quality Ribbons
90 Mt. Auburn St.
Harvard Square
Cambridge

547-2720
547-1298



- Sales
- Rentals
- Repairs

Professional Dry Cleaning and Shirt Laundry

at

Rite-Way
DRY CLEANERS, INC.

547-8008

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

Recruiters' Perspective

(Continued from Page 9)

make offers to students elsewhere first, he thought.

Quale said a spring season could be easier for planning purposes. "Right now we may have more lead time than we need," he said. "It's hard to predict our needs." He would prefer that 3L and 2L recruiting take place at the same time, however. "We wouldn't be enthusiastic about splitting the season," he said. "It's a matter of expense."

"I'll say this," he went on. "I wouldn't relish seeing the recruiting season extend out through the year . . . I'd rather see it either in the fall or in the spring."

Reducing Interviews

Quale said he had found that pre-screening of students had worked well as a means of reducing the number of interviews at schools such as Virginia. "It's clear firms are interested in grades," he said. "While pre-screening may seem arbitrary," he went on, it could actually help students with middling grades. "In its absence, we have to do many, many 20 minute interviews. . . . It would give us more time to spend with each student. . . ." In that way, he suggested, students whose grades alone would not land them a job would have a better chance of impressing an interviewer.

"I'm not sure the present system benefits people in the middle," he said. While Kirkland & Ellis seriously weighs grades, he said it selects students from Harvard with a broad range of academic records and so the additional time spent with each student could make a difference to individual choices.

Alumni: Send address changes to Alumni Association.

SECOND CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS:

HARVARD LAW RECORD
(ISSN 0017-8101)

HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138-9984

SPORTS ANSWERS

5. Bill Friday
4. Boots Day
3. Steve Weeks
2. Rick Monday
1. Don January