



Harvard Law Record

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25 CENTS

Protestors Warned

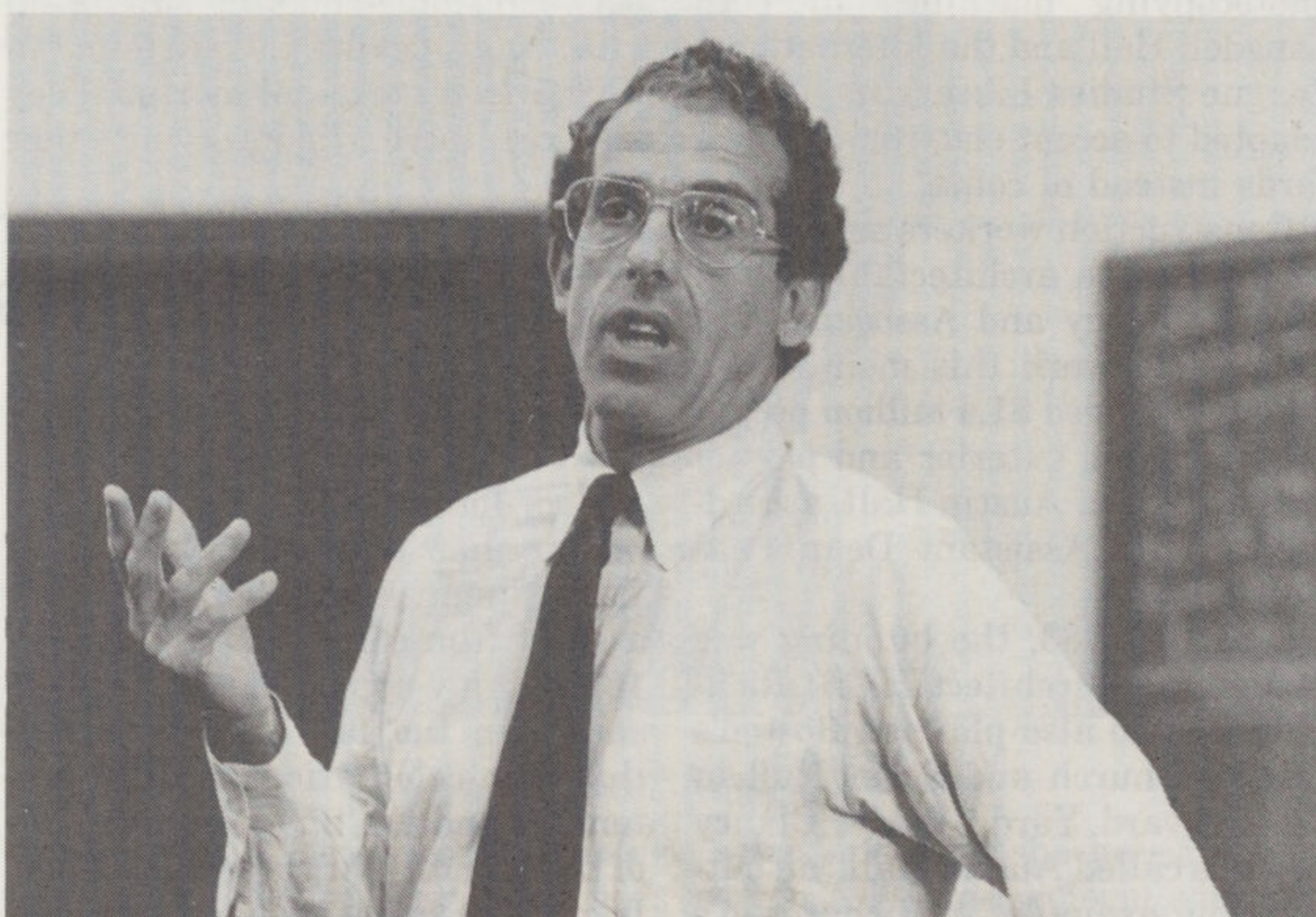
By George M. Borkowski

The Law School Administrative Board took action this summer in a continuing response to last spring's protests against apartheid. Those protests voiced opposition to the South African government's policies of racial segregation, and to Harvard's \$400 million investment in companies which do business in that country.

In the first of two major moves, the Ad Board voted on May 16th to issue warnings to ten HLS students identified as participating in the sit-in at the 17 Quincy Street offices of the Harvard Corporation on April 24th. [Record, May 10, 1985, p. 3] Dean of Students Mary Upton also mailed letters dated June 10th to those students who had signed a petition of May 6th, and requested the students to send her "a letter detailing the nature of [their] participation." The May 6th statement was signed by 119 law students after the Quincy Street sit-in, and stated that each signatory had been "involved in the sit-in and wish[es] to be included in any disciplinary action which the Law School and the University choose to take."

The warning letter stated that the ten students "had gained entry into the building by use of deception, participated in the disruption of the normal function of the office, and refused to leave the building." The letter went on to say that "such behavior is clearly an unacceptable form of protest" and warned that "should another instance of this kind of activity occur, the Board

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Professor Paul Bator

Bator To Take Chicago Post

By Michael Sturm

Bruce Bromley Professor of Law Paul Bator has decided to leave the faculty after the fall semester to accept a professorship at the University of Chicago School of Law. He will also be affiliated with the Chicago law firm of Mayer, Brown & Platt, where he will do appellate litigation.

Bator's departure is significant not only because he is one of the most senior members of the faculty, but also because he is one of the relatively few conservatives on a faculty that is generally perceived as liberal.

Professor Bator received his LL.B degree at Harvard in 1956, the same year he was elected president of the Law Review. Subsequently, he clerked for Justice Harlan and spent

two years in private practice before returning to HLS as an assistant professor in 1959. He became a full professor in 1962, generally teaching courses in Civil Procedure and Federal Courts, and served as Associate Dean from 1971 to 1973.

Bator recently spent two years in Washington as Deputy Solicitor General and Counselor to the Solicitor General and argued numerous cases before the Supreme Court. He turned down an appointment to the Circuit Court of Appeals in order to resume teaching at HLS in January of 1985.

Bator stated in a letter to the faculty that he decided to leave HLS "because I want to take advantage of new opportunities and meet new challenges in teaching,

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Returning Students Face HLS Changes

By David Snouffer

Returning students confronted three obvious changes around HLS this fall. The school's oldest building, Austin Hall, received a facelift over the summer; library officials have rearranged the books in the Langdell Reading Room; and many photocopying machines in both Langdell Hall and the International League Studies Library have been adapted to accept electronic charge cards instead of coins.

Construction workers supervised by the Boston architectural firm of Goody, Clancy and Associates are completing work this month on a privately funded \$1.4 million project to restore the exterior and part of the interior of Austin Hall, according to HLS Assistant Dean Paul Upson.

Built in 1883, the building was designed by architect H. H. Richardson, who also planned Boston's Trinity Church and Sever Hall in the Harvard Yard. Goody, Clancy officials called Austin Hall "an outstanding example" of Richardson's work.

Upson stated that when the efforts began in May to clean and restore Austin Hall's stone walls, workers faced "most of a century of grime." Coal dust and other pollutants had left the building almost black, and water that had seeped into the walls had caused its sandstone and other varieties of rock to flake.

Researchers from Ann Beha Associates of Boston tested samples of the walls, then harnessed special chemicals to treat each type of stone on them to achieve "maximum cleaning with a minimum damage to the stone," Upson said. In doing so, they took advantage of tech-

nology developed in Europe during the last 20 years to restore medieval churches. Upson said the building's auburn color now resembles its original hue when it was built over 100 years ago.

Not restricting their efforts to outer appearance alone, workers also replaced much of the mortar between stones, making sure to retain the grapevine pattern found in Richardson's original mortar. They also repainted windows and other

trimming. Ann Beha employees peeled through layers of paint to uncover what they believe was the windows' original color scheme: pink trim and brownish red sash.

"We were afraid people were going to be shocked by how bright Austin Hall's appearance became after the windows were painted," Upson said, but response he has received has been generally positive.

(Continued on Page 11)

Local Artist Films HLS

By Risé J. Peters

Ned Johnston, Cambridge filmmaker, has been selected by the HLS Alumni Association to produce a short film commemorating HLS' 100th anniversary. The film will be shown in the fall of 1986 during the joint celebration of HLS' centennial and the 350th anniversary of the founding of Harvard College. It may also be shown to alumni groups across the country and around the world.

Johnston says that his fifteen-minute film will focus on change and continuity at HLS. He plans to blend depictions of professors, events and occurrences likely to be familiar to the alumni audience with many newer and less well-known.

While recognizing that alumni may vary in their enthusiasm for recent changes at HLS, Johnston says that "it is not [his] purpose to coddle the alumni by giving the impression that there has been no changes at HLS." He says that his film will not avoid controversial topics, and explains that he sees

his function as "showing the ways in which the school looks different, and thinks differently, about itself."

Johnston is an experienced filmmaker whose work is not unknown in the Harvard University community. Four years ago, he made a five-minute unnarrated film for Harvard College which the College used in its 350 million dollar fundraising drive.

He describes that film as one in which he succeeded in doing "more than the client imagined." Instead of a traditional fundraising pitch, the film was a montage of voices and images intended to remind alumni of what it was like to be at Harvard. The College has since been able to use it outside of the fundraising context, showing it to parents' groups and to incoming students.

The majority of Johnston's work consists of documentary films. During the past few years he has made films in China and in Benares, India. His most recent film focused on a National Geographic expedition which searched for traces of an ancient Persian army believed lost in a sandstorm in the western desert of Egypt. Although the expedition found traces of a large number of burials, they did not find the artifacts that they were seeking. Johnston's film thus concerned the evolution of hopes and expectations in an expedition in which there was no great discovery. It may be shown eventually on PBS.



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Computers Taught To Think Like Lawyers

By David A. Price

Visiting Lecturer Edwina Rissland, who teaches a seminar on artificial intelligence at HLS, hopes to obtain insights into legal reasoning by duplicating it in computer programs.

In addition to her post at Harvard, Rissland is an associate professor of computer science at the University of Massachusetts, Amherst. She holds a doctorate in mathematics from MIT.

Together with Kevin Ashley '76, who is now a doctoral student at the University of Massachusetts, she has developed an experimental program named HYPO that analyzes the facts of trade secrets liability cases and suggests which facts are most important.

Rissland, Ashley, and others are writing a more complete program that will analyze fact patterns in ordinary English. Their work is funded in part by the National Science Foundation.

Rissland became interested in the role of hypotheticals in legal reasoning while attending Prof. Gerald Frug's Contracts course in the 1981-82 academic year.

She returned to HLS the following Fellows program, which enables teachers in other disciplines to study here for one year. She took most of the 1L curriculum, as well as Prof.

Laurence Tribe's course in Constitutional Law and Prof. Charles Fried's course in Jurisprudence. She also participated in the 1L round of Ames moot court.

Rissland became increasingly

useful program for legal reasoning would need great breadth to make those connections. The program would also need a large store of "common sense" knowledge about everyday situations.



David Rabinowitz

Visiting Lecturer Edwina Rissland

curious about how people create hypothetical fact patterns and use them to form analogies and distinctions. Although artificial intelligence programs have been developed for narrowly defined areas such as mathematics and medicine, she considers legal reasoning to present a far more difficult challenge.

Because different areas of the law often draw upon one another, a

Rissland says she hopes her research will improve legal education by showing how people acquire reasoning skills. She suggests that artificial intelligence might also lead to more sophisticated successors to the Lexis and Westlaw legal databases.

The new database programs might, for instance, allow a lawyer to enter the facts of a case in English without having to learn special query rules.

Beyond those suggestions, however, Rissland is cautious. She states that a program to duplicate all of a lawyer's skills will come only in the distant future, if ever. "I'm not interested in replacing people," she emphasizes, "I'm interested in understanding the process."

She firmly rejects the notion of computers replacing human judges. Even if this were possible, she argues it should not be done.

"There's something socially useful about having people decide cases," she says. "Judges, unlike mathematicians, should serve other goals in addition to providing the correct answers."

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FINISH

Law Review Comp: Participation Light

By Vincent Chang

Implementing its revised selection procedures, the *Harvard Law Review* this summer chose 40 new members from the class of 1987. The 40 members were chosen from a pool of 130 candidates who completed a week-long writing competition.

The figure of 130 represents fewer than half of the 285 people who initially picked up the competition packet at the beginning of the com-

petition. Despite this relatively small number of completed packets, *Review* treasurer Carlton Montgomery '86 maintains that the *Review* is not "at the moment contemplating any changes in basic principles" in its application procedure.

The number of completed packets is especially striking given that, unlike in past years, no *Review* members were chosen on the basis of grades. This year, all *Review* candidates had to participate in the

writing competition. Half of the members were chosen by a formula which weighted grades 70% and writing competition results 30%. The other half were chosen exclusively on the basis of the competition.

Last year, only half of the *Review's* members were chosen through the writing competition, with the other half chosen on the basis of grades alone. Nonetheless, last year the number of people completing the *Review's* competition was roughly the same as this year's figure.

Others voiced similar criticisms about other aspects of the competition, most notably the timing. 2L Jason Abrams said that he had planned on "doing it, but I couldn't sit still long enough after the Property exam to do the comp. I actually picked it up and took it home. The thing was about eight inches thick so I didn't even open it." 2L Kevin Chauers noted that the timing was "the biggest thing." It was "right after exams and I didn't have the fortitude to put in," he claimed. Moreover, Chauers cited the "financial loss" the law review competition would entail. Chauers explained "you're burned out after exams, there are no guarantees of getting on, and you're talking of losing almost \$1000."

Montgomery, however, defended the new format, contending that only those who truly show a commitment to the *Review* should be allowed to join it.

Montgomery concedes that the *Review* is contemplating changes in the timing of the competition and is considering moving to a two-part format.

But even the *Review's* detractors admit that finding an alternate time for the competition would not be easy. Chauers, for example, noted that he "wasn't sure which times would be better." For their part, the *Review* plans to stay with the status quo. Montgomery explained that the *Review* intended to "play it [the current format] out and see how it works."

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Anti-Apartheid Committee Sponsors Boycott

By Maurice S. Kane

The HLS Anti-Apartheid Committee, in a move to broaden the attack on racist policies in South Africa, will sponsor a recruitment boycott against law firms representing the South African government. A flier promoting the boycott stated that such firms "bolster the apartheid regime." Rebecca Tillet, 2L, an organizer of the boycott, said that similar plans are underway at 17 other law schools, including Berkley, Yale, and Michigan. Of the firms on the list, only one — Washington D.C.'s Covington & Burling — will conduct interviews at Harvard this year.

Tillet explained that Covington & Burling is on the list for its representation of government-owned South African Airways. The other firms on the list are Saxe, Bacon & Bolan, for defending the government in a personal injury suit; Shipley, Smoke & Henry, for representing the administrator general of Namibia; and Smathers, Symington & Herlong, for providing lobbying services to the government.

Representation Not Endorsement

Covington & Burling partner Ed Dunkelberger confirmed that the firm had represented the airline before regulatory agencies. He argued that this representation did not amount to an endorsement of the government. "No one in this firm approves of apartheid," he said. "Some partners and associates have taken part in anti-apartheid demonstrations. The firm has long been active in civil rights issues on a *pro bono* basis."

Dunkelberger said that no Covington & Burling lawyer was required to work on a case that "troubled his conscience"; if a lawyer did not want to work for South African Airways, he or she could be excused from doing so. The firm would not, however, exclude a morally objectionable client from representation. "I hope the organizers of the boycott will reflect on the relationship of

lawyers to unpopular clients," he said. "A lawyer doesn't adopt the client's cause. When we represent convicted murderers on death penalty appeals, as we have done, no one would say that we are condoning the crimes."

HLS Placement Director June Thompson said that she was unaware of any boycott plans. She noted that until the school's Placement Committee acted on the matter, the Placement Office would not take a position favoring or opposing the boycott. The Placement Committee is chaired by Prof. Abram Chayes.

Counter-Attack

At least one HLS alumnus has launched a counter-boycott of his

own. An attorney at a large Dallas firm wrote the school that he would stop contributing because he disagreed with Harvard's divestiture moves. "I do not understand the reason for taking action against only one country," he wrote, "when other countries (e.g. the USSR, Cuba, Libya, and Nicaragua) engage in far more serious violations of human rights on a regular basis. More importantly, to the extent that the university's policy impairs the economy of South Africa, it will hurt principally those persons about whom the policy purports to be concerned."

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Lord's Justice Blasts Robins Company

by Bob Stauffer

Lord's Justice by Sheldon Engelmayer & Robert Wagman. Published in 1985 by Anchor Press/Doubleday, New York, at \$17.95.

The A.H. Robins Co. sold its Dalkon Shield IUD to 4.5 million women, allegedly resulting in over 20 deaths and many thousands of other injuries. The Shield may end up costing the company \$1 billion in damages in over 20,000 lawsuits.

Chief Judge Miles Lord, District of Minnesota was outraged by the company's litigation tactics. After seeing Robins do everything it could to keep the facts surrounding the Dalkon Shield from becoming public, Lord blasted three of Robins' top officers in open court and pleaded with them to recall the Dalkon Shield. His remarks had no effect on Robins, other than to provoke a judicial misconduct complaint against him. The complaint was ultimately dismissed by the Judicial Council of the Eighth Circuit.

Judge Lord stepped out of the traditional judicial role to make his remarks because he felt the need to expose Robins' conduct. Journalists Sheldon Engelmayer and Robert Wagman, unhampered by the restraints which attend the judiciary, have gone a step further. In their new book, *Lord's Justice*, they expose in detail the story of the Dalkon Shield.

A History of Misconduct

The book tells three basic stories: the story of the development and marketing of the Dalkon Shield, the story of Judge Lord, and the story of the proceedings in the Dalkon Shield cases which came before Judge Lord. The authors describe how the major study used in promotion of the IUD was conducted by its inventor with patently inappropriate procedures, resulting in artificially low pregnancy rates. The authors also argue that Robins suppressed or altered later studies.

The authors expose what they claim was the Robins' strategy of doing whatever was necessary to settle cases before trial, including intimidation of plaintiffs with irrelevant questions about sexual and hygienic habits. They document instances of alleged perjury committed by Robins' witnesses with the knowledge of their attorneys. They further show how Robins has been particularly eager to settle, at any cost, whenever sensitive documents are about to be discovered. Finally, they chronicle the numerous attempts by Robins to impede discovery, including alleged illegal destruction of many important documents.

The authors make no attempt to hide their personal views. Although that makes the book honest and in-

teresting, the unquestioning adulation of Lord results in the failure to address some very important questions. For example, the authors note the importance of punitive damages in the Dalkon Shield cases, and they relate the strategies used by Robins to try to minimize these damages. However, they do not discuss the merits of supporting current legislative proposals to limit punitive damages in products liability cases.

A Question of Judicial Behavior

The authors similarly fail to address questions of appropriate judicial behavior. They simply compare "legally defined justice" (the administration of law through contests of skill between opposing counsel) with "Lord's Justice" (the administration of right), and glorify all of Lord's controversial conduct.

While nothing is wrong with praise, some balanced discussion is necessary. The authors describe several instances of Lord's judicial activism, but never consider arguments for judicial restraint, and they approve, without substantive examination, open discussion of practical politics by Lord.

Finally, they only superficially raise the issue of prejudice or advocacy by a judge.

In spite of these omissions, *Lord's Justice* does perform a valuable service in presenting the Dalkon Shield story. The narrative is smooth, engaging, and fairly accessible to those without legal or medical training.

The authors fail to examine sanctions which might deter corporate irresponsibility. But merely by telling this story, and trying to make the public aware of the incredibly dangerous and insensitive acts which may occur in the search for profit, they may be doing their own part in deterring future repetition of this conduct.

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More Unsolicited Advice

Harvard Law School welcomed 583 new students to its first year class this fall. And everyone they know is giving them all the advice they need, and then some. "Don't worry about it, you'll make it through," they say. Or, "It's not as bad as everyone is making it out to be." Or "Buy this outline," "Read this hornbook," "Study this way," or to summarize, "Do it the way that I did it." All of this sagacious advice might be well-intentioned, but its effect is far from beneficial. When everyone is telling you not to worry about the stress and tension and competition and yet is telling you how important it is to do things in a specific manner if you want to succeed, you cannot help but feel tense and competitive and under a great deal of stress.

And now that I have told you not to listen to everybody's advice, here is my advice. First of all, you are going to have to do things your own way. You got into this school because of your accomplishments and achievements. You have already proved that you are capable of organizing the activities in your life, capable of developing productive study habits and willing to work hard when you need to or want to. Your personal style has worked so far; why try to change it now just because you have entered a slightly different environment?

This is not to say that you should not ask for pointers from the people who have been there. Studying law is a little different from studying any other subject. Somebody's advice may make you aware of a resource that was unknown to you before or present a refinement of a method that you were already using. But the main concern is to be confident in yourself and your abilities and to rely on what you know you are capable of doing. Allow yourself to be adaptable to these new circumstances, but be your own primary resource.

Second and most important, be happy. Relax. You know what you enjoy doing, whether it be reading, running, going to movies, studying all night, talking with friends, whatever. Just because you are here is not a reason to stop. If you do not feel comfortable and content, it will just be that much more difficult to succeed and these years will just be that much more of a waste of your life. You have been presented with a fascinating situation: attending school with two thousand very intelligent, interesting and diverse people in a city filled with academic, cultural and historical riches. It would be sad to waste such an opportunity, because you will most likely never find yourself in such an exciting position again. And that is what should make you feel nervous: not starting here, but having to leave.



HARVARD LAW RECORD

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Fenno

The registrar looked up from her desk. "Fenno, you're a 3L."

Fenno gazed at her in disbelief. It had been at least 7 years since Fenno was a 1L, and he was astounded by the swift progress he had made. As he exited the registrar's office, the significance of her statement occurred to him. As a 3L, Fenno could cross-register in any one course, in any department of the University, without anyone's permission. At last, Fenno could broaden his horizons. Yes, this was Fenno's chance to get away from HLS to meet the woman of his dreams — a wild and voluptuous coed who would rather explore the pleasures of lime Jello full-body massages than the merits of anti-discrimination legislation.

Fenno rushed back to the registrar's office to review his options. For four hours, Fenno poured over course catalogs. This was more time than he spent attending and studying for Wolfman's Tax course, but this was more important. Fenno ruled out taking a class at M.I.T. — he considered himself to have more than half of a personality, and besides, he washed his hair more than once a month. The B-School was also out — Fenno loathed the idea of competing with Morgan Stanley for a woman's affections. The answer was obvious: "Introduction to Belly Dancing and Other Forms of Exotic Movement III" at Radcliffe.

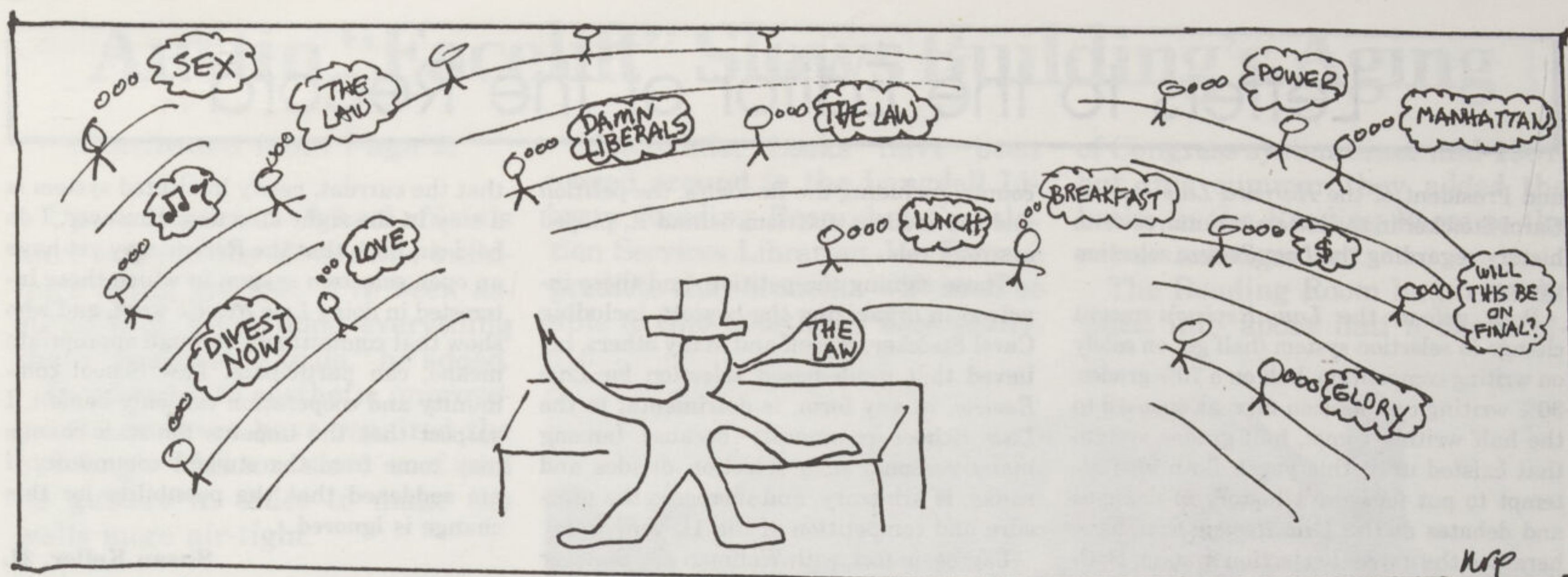
The first day of classes arrived, and Fenno promptly entered the Radcliffe classroom at 8:00 A.M. This was a historic event. Not only had Fenno arrived at a class on time, but he had risen before noon. Fenno perused his 13 fellow classmates. He noted six loving couples of the same sex. And one lone woman. As his eyes met with hers, Fenno fell in love. At once, she gave meaning to his many years of law school. Feeling bold, Fenno approached her.

After a few words of introduction, Fenno popped the question. "How would you like to go out for some fun this evening?"

"No thank you!" she snapped. "I am attending the Gloria Steinem Forum tonight, after which I must study for my 'Sex and Employment Discrimination' class. And nevertheless, as a third year law student, I don't date undergraduate men."

Fenno dropped the class that day. No problem. He had a few years as a 3L to make up the credits.





Letters to the Editor of the Record

Kudos For CLS Profs

To the Editor:

I was pleased to be present at Mr. Phillip Johnson's crowded and engaging lecture, "Do Critical Legal Studies Scholars Belong on Law School Faculties?" However, I am concerned that Mr. Johnson will return to Boalt Hall having received an inappropriately meager amount of feedback on an issue that I believe to be dispositive of this question. Mr. Johnson scarcely approached the issue of "What kind of *teachers* do Critical Legal Studies (CLS) Scholars make?" The topic remained an unbroached, but "brooding omnipresence" throughout most of the following open discussion.

The question was finally addressed to panel member, Professor Richard Parker. He briefly explained that a CLS Scholar was likely to make a superior teacher as he/she

will tend to treat the core subject matter in a more "systematic" fashion and lead the class to inquire into the "deep structure" of the concomitant doctrine; thus providing a more powerful, flexible (and skeptical) framework for the student-lawyer.

As this statement comes from a CLS Scholar, and went un commented upon, I would like to add some experiential flesh to the claim. All of the 1L sections have had some contact with CLS teachers and the reviews, in general, have been favorable. Professor Parker's comments have largely been borne out by my own observations and in conversations with my classmates (at least the non-normative portions of the comment).

A more "systematic" approach, whether it be historical or doctrinal/structural in character, seems to be a common denominator. Paradoxically, there is probably a *greater* emphasis on familiarity with traditional doctrinal categories in a CLS-taught class, as a departure point for manipulation of, and argumentation around these categories. There are trade-offs, however. Some CLS instructors seem to have less tolerance for the more maverick (especially Law and Economics) student approaches in favor of building greater dexterity with standard arguments and justifications. The caveat should perhaps be added that these are general observations and do not go to the style or idiosyncracies of each Professor's teaching.

I believe that I speak for many of my classmates in saying that these differences in approach constitute a net benefit to the intellectual atmosphere of the school. The presence of the CLS discourse on the campus has made for a particularly exciting first year for many of us (witness the enormous attendance at Mr. Johnson's lecture). Thus, as to the "teaching" portion of the original question "Do CLS Scholars belong on Law School faculties?", the answer is an emphatic "yes." I am confident that this part of the answer will reach Mr. Johnson as he men-

tioned in his speech that the RECORD was his "favorite law review."

Marc D. Wasserman, 2L

HLS Transforms Sponges

To the Editor:

Jeffrey Jones' letter castigating the Socratic method misses the whole point of law school (and of all true education) which should be to learn to think. In part this is due, I believe, to the fact that, by and large, colleges do not teach how to think but rather how to absorb and regurgitate information. The students who learn how to be good sponges get the best marks in college and hence are admitted to the good law schools. They expect law school to be like college, which fortunately it is not. One year of Harvard Law School did more for my mind than four years of Harvard College. Yes, law students are expected to reinvent the wheel and to "put it all together." That is precisely how one develops one's mind and comes truly to understand the law and legal issues. If this were not so, there would be no need for law schools. If all one needs to be a lawyer is a knowledge of the law, that could be acquired by reading hornbooks and attending bar review courses.

Dunbar Holmes, '38
Wayland, Mass

Setting the Record Straight

To the Editor:

In your May 10, 1985, issue, both Professor Wolfman in the "Off the RECORD" column,

(Continued on Page 10)

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which have been covered in the RECORD. Short letters are more likely to be printed. In no event will we print individual letters longer than 700 words.

Letters must be received by 2:00 P.M. on the Tuesday before the issue. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD. Organizations should identify the specific individual(s) responsible for approving the letter. All letters submitted become the property of the HARVARD LAW RECORD Corporation.

Letters to the Editor of the Record

and President of the *Harvard Law Review* Carol Steicker in the letters column, rewrite history regarding the *Law Review* selection process.

Both defend the *Law Review*'s recent change in selection system (half get on solely on writing competition, half on a 70% grades/30% writing competition mix; as opposed to the half writing comp., half grades system that existed until this year). Both also attempt to put forward a history of changes and debates at the *Law Review* that have heralded the current selection system. Both ignore the existence of a large collective student movement that focused the school's attention on the *Law Review*'s selection system just a little over a year ago. They substitute a calm image of "discussion, debate and consultation with faculty and students." Both seem satisfied with the status quo. Presumably, if we ignore those means by which the student community effected change in the past, we will insulate ourselves from change in the future.

In February 1984, in the three weeks after the 1Ls of that year had taken their first semester exams, and before they had received any grades, hundreds of members of the class committed themselves to a petition which read:

"We the undersigned 1Ls pledge to withhold our first year grades from consideration by the *Harvard Law Review* if 75% or more of the class of 1986 signs this petition;" with the stated goal of eliminating grades as a basis for *Law Review* selection.

By the time grades came out, a self-imposed deadline of the petition, 74% of the class had signed, just missing the goal and precluding an actual boycott, but showing an overwhelming commitment.

In her letter, Steicker refers to a vote taken by the *Review* last November. In fact, last November, the *Law Review* confirmed a vote it had taken the previous February (1984) to institute the current selection procedure. At that time, the *Law Review* boycott petition was topping 70% and the *Review* members came close to voting in an all-writing competition system. From all ac-

counts, including the *RECORD*'s, the petition and the student activism behind it, played a strong role.

Those signing the petition, and those involved in organizing the boycott, including Carol Steicker, myself and many others, believed that grade-based selection for *Law Review*, in any form, is detrimental to the Law School community because (among many reasons) such selection divides and ranks, is arbitrary, and increases the pressure and competition of the 1L year.

I agree, in fact, with Wolfman and Steicker

that the current, newly instituted system is a step in the right direction. However, I do hold out hope that the *Review* may yet have an open selection system in which those interested in doing *Law Review* work, and who show that commitment through appropriate means, can participate. Law School community and cooperation can only benefit. I suspect that the impetus for such change may come from the student community. I am saddened that the possibility for this change is ignored.

Susan Keller, 3L



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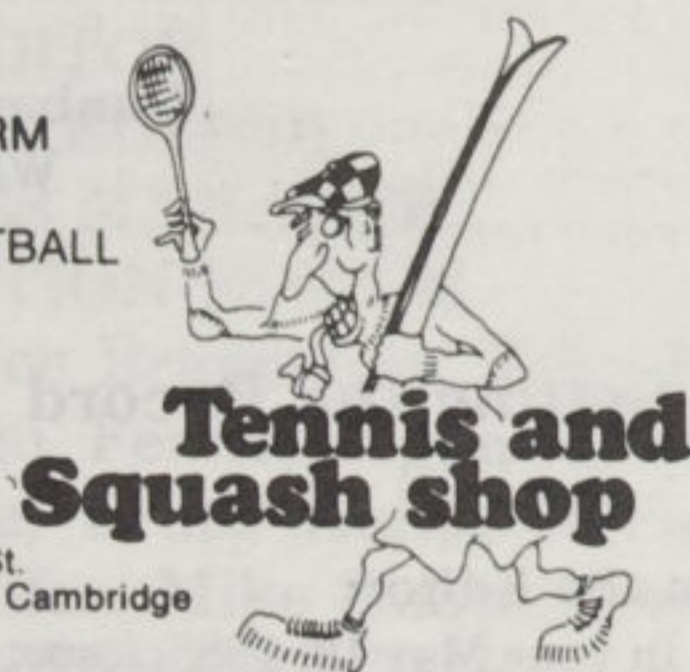
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Austin "Facelift" Slows Building's Aging

(Continued from Page 2)

Upson hopes Law School officials have successfully slowed the building's aging process. "I've been assured that we've done everything that's conceivable to do," he added.

In addition to aesthetic improvements, workers have repaired the building's Munson slate roof and its gutters in order to make the walls more air-tight.

Interior Also Restored

Inside the building, workers have targeted their efforts to address some professors' dissatisfaction with classrooms. They redesigned Austin East, putting in a new floor and facing new desks toward the middle of one wall, to make it more like the classrooms in Pound Hall. Students had faced into a corner of the room, and the instructor's space was far below some of their seats.

"The room has a much more intimate feel, and we think it'll have a lot more appeal" to faculty and students alike, Upson said.

Workers also hooked Austin East and North into the University's central heating and air conditioning system so that the building can be used year round. And they refurbished Austin North.

Meanwhile, books have been moved around in the Langdell Library Reading Room, but Circulation Services Librarian Jon Thomas predicts that students will soon be able to find what they need easily.

of Congress system since mid-1981, but this summer they added the books in the Reading Room to the newer arrangement.

The Reading Room had been divided into about half a dozen al-



David Rabinowitz

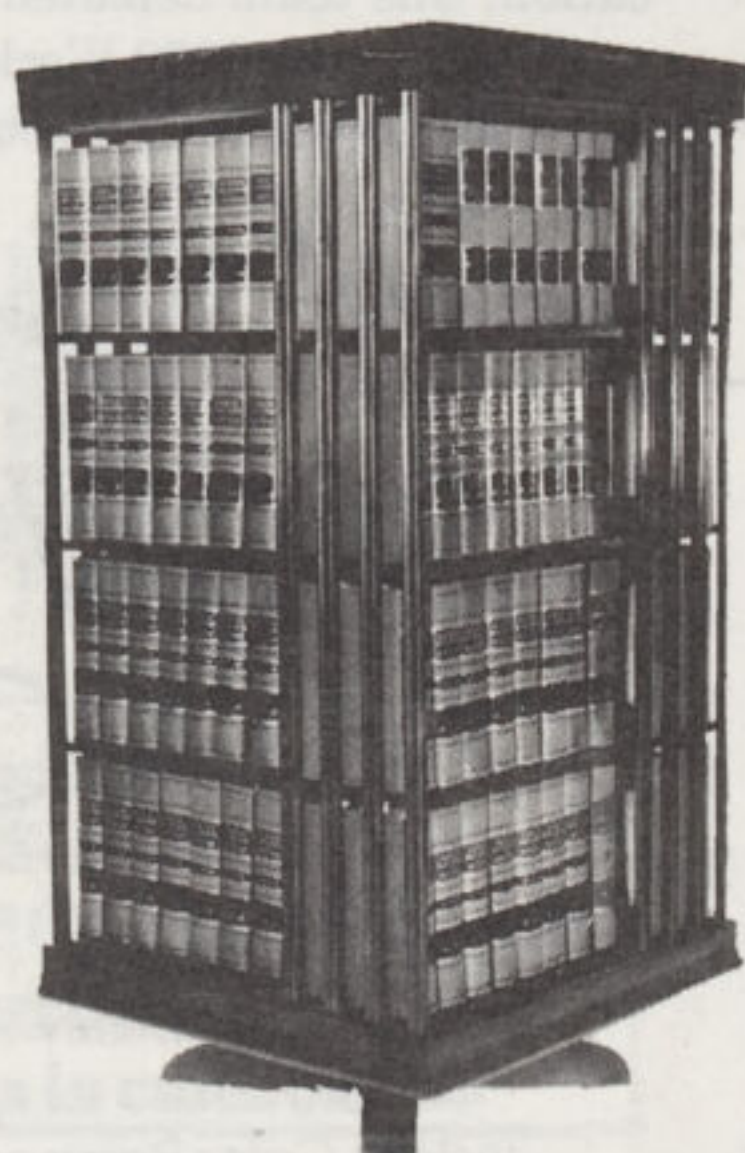
Austin Hall boasting its fresh, new facade.

The change came as part of the library catalogers' efforts to convert the collection from a local classification system to the widely used Library of Congress system. Thomas said the catalogers have been entering new books under the Library

coves, each of which contained books related to one area.

Although the books in the Reading Room are on different shelves under the Library of Congress sys-

(Continued on Page 12)



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Library Changes Bring Increased Security

(Continued from Page 11)

tem, Thomas said they should not be much harder for students to find because they are generally grouped together as they were under the old Harvard system, which was introduced in the early 1960's. For example, state code books are now located together across the room from where they were last spring.

Librarians are also recataloging periodicals and frequently used books in the stacks, but they have no plans to redo the rest of the books because the library's collection of 1.5 million volumes "is just too huge," Thomas said.

Books catalogued under the Library of Congress system are listed on catalogue cards in the library and will eventually be linked in a University-wide computer network, Thomas said. However, library officials removed catalogue cards from the older books last summer and replaced them with microfiche reproductions of the cards, he added.

Debit Cards Bring Library into Electronic Age

Thomas said library officials introduced the electronic debit cards for photocopying machines so that security guards at the entrance would not have to give out change. The plastic cards have a metallic stripe which allows users to encode the cards on a special machine for \$1 or \$5 worth of copies and then pay for copies with the cards on eight of the 10 copiers in Langdell Hall and one of the two in the International Legal Studies Library.

When the library gave out

change, the staff left as much as \$200 in change there overnight, creating a security risk, Thomas said. And the new machines will simplify the library's accounting procedures.

To introduce the new cards, Thomas said library officials spent about \$15,000 to give cards to students as they registered for the fall term. The library now sells the cards for \$1.

Thomas said the library chose Vend-a-Cards made by XCP Inc. of New York over several competitors because the firm's cards were sturdier. The company also promised to send a repairman "right away" if a machine breaks down, he added.

In case of emergency, the library has a spare encoding machine in its offices.

Austin Hall May Receive More Renovations

While the library's Reading Room may have stabilized, Upson said more work may be done on Austin Hall. Architects have proposed renovating Austin West and offices upstairs, as well, but Law School administrators first want to see how professors react to changes that have already been made.

Upson said a fundraising campaign for the improvements that have been made so far "had quite an appeal" because all of the Law School's living alumni have seen it.

In a feasibility study prepared in mid-1984, the Goody, Clancy firm estimated that it would cost over \$4 million to restore the entire building.

Sports Quiz

By Russ Marsh

Some people love him; others hate him. But you have to give Pete Rose credit for recently breaking Ty Cobb's record for most career base hits, a record long considered unbreakable. This week's sports quiz is dedicated to baseball's "Charlie Hustle."

1. How many National League batting titles has Pete Rose gathered during his career?
2. Rose scored the winning run in the 1970 All-Star Game at Cincinnati in a controversial play at home plate. This play is considered to have shortened the career of a promising young American League catcher. Name that catcher.

3. In the year that Pete Rose won his only National League MVP award, the Reds lost to the New York Mets in the NL Championship Series. What year was that?
4. Rose was released after the 1983 season only three years after helping lead this team to a World Series Championship. He subsequently signed with the Montreal Expos. What team cut Pete Rose?
5. Ty Cobb played his last two seasons for this team. Following two changes of location, this team defeated Rose's Cincinnati Reds in the 1972 World Series. Name the team for which Ty Cobb had his 4191st and final hit.

(Answers on Page 14)



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Be Adventurers, Thinkers, Not Hired Guns

by James Vorenberg

The following article is excerpted from a speech given by Dean Vorenberg to the first-year class.

By James Vorenberg

As lawyers, you will be the objects of admiration and cynicism. The legal profession today offers ample justification for both. One thing is clear: It needs the best you can give it. Those to whom being a lawyer is just the means to personal wealth and power may gain both, but they will miss many of the satisfactions the profession offers.

Think about yourselves as lawyers in three different, but closely related, roles.

First, you will represent people with difficulties and fears that overwhelm them and who will turn to you for help in making their way through a maze of rules and institutions. For the poor, this means confronting the landlord who will not provide heat or remove lead paint, the local welfare office that has cut off benefits or a social service agency that threatens to remove a child from a parent who lacks the knowledge or strength to fight back. Even for those who can pay a fee, the events that call for a lawyer are often intimidating—a nasty

lawsuit, the potential loss of one's business, a marital breakup or trouble with a government agency. Whether you are in private practice, government or a legal service office, you will have the special responsibility of dealing with people when they are most vulnerable, and will enjoy the special satisfaction that comes from providing help when it is most needed.

Second, as a lawyer you can be an adventurer, or joint venturer with others, in seeking needed changes in laws, legal processes, the legal profession—and in society. Almost every major public issue involves law, and some of your predecessors have played heroic roles in such quests as those for racial equality, for arms control, for children's rights, for environmental protection and for international human rights. None of those issues is behind us.

Within the legal system, your generation must deal with courts that are increasingly overwhelmed by caseloads and with the need, as a matter of simple fairness, to provide legal assistance to the poor. And the legal profession itself is undergoing fundamental changes as large law firms get larger, the competition for legal business gets

fiercer and pressure increases to find alternatives to litigation for resolving disputes.

Third, think of yourselves as intellectuals who bring creative abilities and imagination to the solution of difficult problems. One of the great pleasures of being a lawyer is seeing hard thinking translated into the results you are seeking for your clients. Whether you are planning a complex corporate merger, writing a brief for an appellate court or seeking to persuade a judge to place a convicted defendant on probation, you should bring to the task all the intellectual power and craftsmanship of which you are capable.

I hope your life in the law will enable you to see yourselves as respected and independent professionals. During the current controversy about whether a lawyer must divulge his client's commission, or planned commission, of a crime, it is often asked whether a lawyer is just a "hired gun." That expresses the issue too narrowly.

What is really at stake is your integrity. You will have to develop your own standards of what you will and will not do, and be ready to be judged by them. Some of the issues will be agonizingly difficult. In particular cases, you may find the interests of a client conflict with your view of the public interest or your sense of justice. More broadly, you will have to decide to what you are willing to devote your talents.

Whether you are working in private practice or public service, in small or large offices, you will share responsibility for the processes of justice that are a measure of the decency of a society. It is only fair that you carry this responsibility, for if lawyers who build their livelihoods on those processes are not morally obliged to serve as their guardians, who does have that obligation?



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Bator

(Continued from Page 1)

scholarship, and practice in Chicago." In the past, however, Bator has made clear his dislike for the Critical Legal Studies (CLS) movement and the increasing politicization he charges it has brought to the faculty. In a forum held by the conservative Federalist Society in New York last spring, Bator commended early CLS scholarship but stated that "CLS has had an absolutely disastrous effect on the intellectual and institutional life of Harvard Law School."

In reporting Bator's departure from HLS, the *New York Times* quoted him as saying that "serious and productive non-left scholars do not want to be at an institution devoted to guerilla warfare." In contrast, the University of Chicago Law School, where Bator will be teaching this spring, is generally considered a center of conservative legal scholarship.

HLS Dean James Vorenberg released the following statement regarding Bator's departure: "[Bator] is a brilliant student and scholar of the law, a gifted teacher, and a successful public servant. He takes with him the best wishes of all of us that his life at Chicago will be productive and happy, and the hope and expectation that we will continue to benefit from his scholarship, advice and colleagueship."

Students were generally disappointed by Bator's decision to leave HLS. Marc Wasserman, 2L, noted that Bator had "provided an honest perspective about what the debate was all about and where he stood." John David Dyche, another of Bator's Civil Procedure students, stated, "It's a shame he's leaving, not only because he is one of the few vocal proponents of a conservative perspective, but also because he's such a nice guy."

Sports Answers

1. Three: 1968, 1968 and 1973.
2. Ray Fosse, of the Cleveland Indians.
3. 1973
4. The Philadelphia Phillies.
5. The Philadelphia Athletics.

Legal Briefs

People

Three Harvard Law students participated this summer in the annual convention of the Law Student Division of the American Bar Association held August 7-11th in Washington DC.

Jimmy Morales, 2L, **Daniel Zariski**, 2L, and **Don Gorton**, '85 successfully presented two Harvard-sponsored resolutions. One called for full access for the handicapped on law school campuses. The other proposed that clinical programs should truly emphasize serving the low-income community, and that state and local bar associations should assist in this effort.

Most of the resolutions passed at the convention concerned ABA standards for legal education, such as financial aid, deadlines for grading exams, programs on coping with stress, and the elimination of discrimination in law school. The LSD also passed a resolution calling upon the ABA to withdraw its investments from South Africa.

The University At-Large

Harvard University has begun selling stocks in two companies that do business in South Africa, and is expected to announce soon a major change in its policy on divestiture, according to a September 13th story in *The Boston Globe*. This marks only the second time Harvard has divested South Africa-related stocks this year.

Harvard's policy of "intensive dialogue" calls for it to correspond actively with those corporations in which it invests about ways that working conditions can be improved in South Africa for blacks and coloreds. The new policy, which is expected to be adopted soon by the Harvard Corporation, will also call for divestiture of any company selling equipment, such as computers and vehicles, related to the enforcement of apartheid.

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Ad Board Demands Signers' Explanation

(Continued from Page 1)

would be inclined to take more serious disciplinary action."

The letter will be placed in the students' files, but "in the absence of further infractions, will not be reported to the Bar."

Harsher Penalties Considered

A source has indicated to the RECORD that three professors on the Ad Board were originally insistent on issuing the students a full reprimand, rather than the less-severe warnings ultimately agreed upon. Prof. Charles Nesson, who defended the ten in the Ad Board proceedings, refused either to confirm or deny this report. "Let's just say it took [the Board] a long time to decide," he said.

Nesson feels that "the Law School demonstrators handled themselves extremely well. I was proud of them. It's difficult to understand something more severe than a warning — something which would damage the students' records."

Jennifer Granholm, 2L, one of the ten HLS students who received warnings, felt that even this was too much. According to Granholm the warning letter "was unnecessary and an overreaction on the part of the Ad Board. [The sit-in] was to be a Martin Luther King/Gandhi act of civil disobedience. To issue warning letters for that kind of noble effort is something the administration should not be involved in." Granholm added that the University should be encouraging such passive action rather than discouraging it.

Granholm also feels that the warnings "will not stop people from speaking out for divestment and against apartheid." If fact, she claimed the Ad Board's actions "have spurred people on. We held a meeting [on Sept. 12] and 70 people showed up. This all started last year as a movement of three people."

Many of those involved in the pro-divestment protest also criticized the manner in which the warnings were announced to the HLS com-

munity. The Ad Board placed a notice of its action in the August 30 issue of the *HLS Advisor*.

The Free Speech Subcommittee of the Law School Anti-Apartheid Committee characterized the announcement as an "ominous invocation of the Resolution (on Rights and Responsibilities), which is extremely vague and malleable." It accused the Ad Board of "dangling severe penalties for political expression under a vague 'statute,'" with the effect of "impermissibly chill[ing] legitimate protest and orderly symbolic speech."

Notice Termed "Routine"

Administration officials denied that there were any invidious motives behind the publication of the announcement. "It is routine to anonymously publish a notice if any action is taken by the Administrative Board," said Upton, a member of the Board. "We've been doing it for years and years." When asked if the notice were an attempt at

intimidation, Upton responded, "That's entirely subjective. The intent was to state a policy."

Prof. Frank Sander, Chairman of the Ad Board, denied that the idea behind the announcement was to discourage incoming students from protesting against South Africa. "But if they want to interpret it in that way, so be it. It is important to advise the Law School community of the acceptable norms," Sander continued. "We wanted to put people on notice that we did not regard occupying a building as an appropriate form of social protest."

Granholm, however, takes issue with the claim that the purpose of the notice was to inform the community, charging that the intent behind the notice was to chill activism. "The Ad Board colored the explanation to make whatever incident occurred look bad. They did not publish a full account of what happened. They didn't even explain *why* there was a sit-in," she claims.

(Continued on Page 16)

The following letter was received by ten HLS students who participated in the anti-apartheid sit-in.

May 22, 1985

Dear [Student name withheld by request]:

This is to notify you officially that at its meeting on May 16, 1985, the Administrative Board voted to issue you a warning in connection with your sit-in at 17 Quincy Street on April 24, 1985. The Administrative Board found that you had gained entry into the building by use of deception, participated in the disruption of the normal function of the office, and refused to leave the building after you had been officially asked to do so by Robert Shenton, an officer of the University. This warning will be placed in your file, but, in the absence of further infractions, will not be reported to the Bar.

The Board considered the

matter at length and decided that since this was the first experience of this kind in several years, and since you were all first year students, it would not impose a more serious sanction. However, the Board wanted to make clear to you that such behavior is clearly an unacceptable form of protest since it interferes with the University's discharge of its necessary activities. This letter will serve as a warning that should another instance of this kind of activity occur, the Board would be inclined to take more serious disciplinary action.

If you have any questions, please don't hesitate to get in touch with me.

Sincerely,
Mary D. Upton
Dean of Students

Apartheid Protestors Complain Of Intimidation

(Continued from Page 15)

Ted Johnson, 1L, told the RECORD that the *Adviser* notice has "registered" in the dorms. The day it appeared, he heard many 1Ls commenting "Did you see that warning in the *Adviser*?" "Let's just say that people were aware of it," Johnson said.

Response to Petitioners

Perhaps even more controversial than the warnings issued was the action of the Ad Board regarding the 119 HLS students who signed a May 6 petition stating that they had been "involved" in the sit-in and asking to be included in any disciplinary action the Board might take.

Dean Upton first sent out letters on behalf of the Ad Board dated June 10, asking recipients to "send [Upton] a letter detailing the nature of [their] involvement" in the sit-in by June 26th. Also enclosed was a report prepared by Dean Epps of Harvard College about the incident, a copy of the Ad Board's Procedures for Disciplinary Cases, and a copy of the University's Resolution on Rights and Responsibilities.

Deadline Extended

This was followed by a memorandum from the Ad Board itself dated June 19th stating that it did not "envision any sort of proceedings during the summer period," and allowing responses past the original June 26th deadline. However, the memo asked the students to respond "sometime during the summer, and

in any event prior to Fall registration."

Timing Questioned

"When I got the letter, I was pretty pissed off at first," said Rich Zabel, 2L, one of the signatories of the May 6th petition. "Then I laughed at it, to tell you the truth. It was such a clear attempt to confuse and separate people, and have them turn on each other." Zabel accused the Ad Board of being irresponsible by sending out the letters at the time it did. "People wanted to talk to Upton, to Vorenberg, but they were away. There was no one to talk to."

Bennet Lasko, 2L, another recipient of the letter, also questioned its timing. "They conspicuously sent the letter at a time when all of the students were gone. It was calculated to avoid concerted action" on the part of the signatories. Lasko labeled the Ad Board's action "an outrage."

Zabel concurred in that assessment. "Of the several lawyers I spoke to over the summer — people in their 40s — all of them thought it was a scandal. Twenty years ago the Administration wouldn't have batted an eye. Now it seems that Harvard can't handle peaceful demonstrations against apartheid."

Upton denied that the timing of the letter was designed to hinder student responses. "We just wanted to assemble all the stuff so it would be ready when law school resumed," she said. Sander agreed, and also denied that requesting a response before registration was a veiled threat. "Registration was simply felt

to be the beginning of the school year," he said.

The Ad Board met September 11th to discuss further the matter of the petition signatories. Sander stated that "in the next two or three weeks we will try to get a hold of all those who did not answer or were evasive."

Fifty Percent Response

According to Sander, "over 50 per cent" responded to the Ad Board Letter. "Some said they were not at all involved. With these the Ad Board is not concerned, absent evidence to the contrary." Of those who were directly involved, Sander said it was not probable that they would receive harsher punishment than the ten who had been issued warnings.

Sander accused the students of creating the problem. "This whole controversy was brought on by the signing of the petition. We just followed up on it. It was dumped in our lap by the students. It is not harassment; it is just a following up by the Ad Board of the petition."

Students' Latest Move

The latest move in this continuing controversy was made by the students. On September 11th, the Free Speech Subcommittee met in an attempt to formulate a concerted response to the Ad Board's request for details of the petition signatories' involvement in the sit-in. Agreement was reached to send the Ad Board a letter signed by those who refuse to provide details of their involvement, stating that they will not be "[their] own prosecutors." A different letter is to be sent to the faculty and Dean Vorenberg, asking them to monitor the activity of the Ad Board.

As Lois Murphy, 2L, one of the warning recipients, put it, "There is no way that the Ad Board will have a chilling effect on dedicated students. We are not afraid to continue to work for the end of apartheid in South Africa and here."

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