



# Harvard Law Record

America's Oldest Law School Newspaper

VOL. 81, NO. 4

OCTOBER 18, 1985

25 CENTS

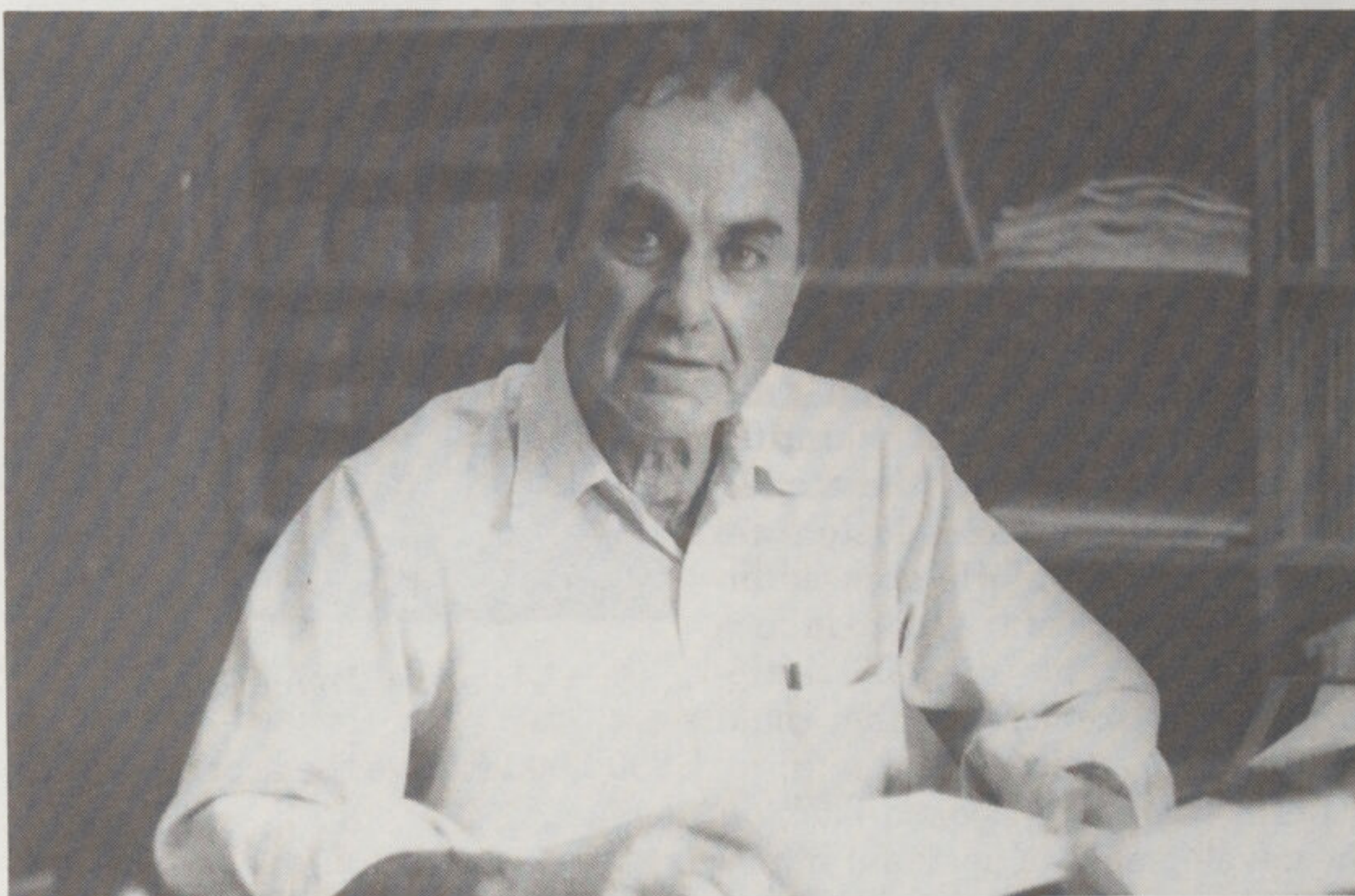
## Chayes Supports Legitimacy Of World Court

By Maurice S. Kane

HLS Professor Abram Chayes headed the legal team that is representing the Nicaraguan government before the International Court of Justice (ICJ). The legal question argued was whether U.S. support for Nicaraguan insurgents is an unlawful act of aggression under Article 2(4) of the United Nations Charter or a legitimate response in collective self-defense under Article 51.

The Reagan Administration denied the jurisdiction of the ICJ, claiming that it interfered with an "inherently political" question concerning the United States. This assertion was unanimously rejected by the ICJ.

When asked about the tension between the demands of national security and those of international law, Chayes responded, "My own view is that the International Court of Justice can never have the role



Prof. Abram Chayes

Sal Casente

that the [United States] Supreme Court has in resolving similar issues on the domestic scene." He added, "You'll never have the same kind of generalized assent" to ICJ jurisdictional and decisionmaking au-

thority that the U.S. Supreme Court has with regard to the American legal order, since the countries of the world have less homogeneous values and ideas than the states or provinces of a given nation.

## Group Proposes Pub Changes

By George M. Borkowski

Several HLS students and administrators met on Wednesday, October 9, to discuss possible changes in the function and operation of the Back Bench Pub.

Dean of Students Mary Upton, one of the participants, labeled the meeting a "working group" geared to discussing the uses and problems of the Pub. Other participants included members of the Dormitory and Student Affairs Council (DSAC), which runs the Pub, the

Law School Council, and a member of the Women's Law Association.

The purpose behind the meeting was to have "a general discussion of potential uses of the pub," according to DSAC president Bruce McCall, 3L, who also took part in Wednesday's working group. "We want to try to get the best use of the space. The Pub is one of the few areas (at HLS) in which students can get together and interact socially," he said.

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### Historical Legitimacy

Most of the older nations have developed their judicial systems over time. From the American perspective, for example, Chayes noted that the historical legitimacy granted the Supreme Court is not accorded the much younger ICJ. Established in 1945 under the United Nations Charter, the ICJ is the main judicial organ of the UN. It decides, in accordance with international law, legal disputes brought before it by sovereign countries. The United States sub-

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# Belli Defends Plaintiffs' Lawyers

By David A. Price

Melvin Belli, speaking before the Harvard Law School Forum Wednesday, Oct. 9, argued that the press has unfairly depicted him and other plaintiffs' lawyers as unprincipled "ambulance chasers." Belli currently represents victims of the Union Carbide gas leak in India, the KAL flight 007 crash, and the MGM hotel fire in Las Vegas.

By focusing on the alleged greed of the plaintiffs' lawyers, Belli said, the press downplays the culpability of the defendants. When the MGM hotel burned down, the hotel's liability was clear, "yet all the newspapers attacked the rotund Mr. Belli," he complained.

"Don't believe what you read in the newspaper about plaintiffs' lawyers being first on the scene," he warned. "Insurance adjusters are always there first." He accused insurance lawyers of trying to induce victims to accept "dismal" settlements on the scene before they could obtain legal advice.

Belli, who is 78, looked back on the development of personal injury law and concluded that "The law has never been better for the little guy."

Looking to the future, however, he was more pessimistic. He predicted that legislatures would put caps on personal injury awards. He also predicted curbs on contingent fee arrangements, which he repeatedly referred to as "the poor man's ticket to the courtroom." Without contingent fees, Belli argued, plaintiffs would be unable to afford legal counsel.

Contingent fees of 50 percent were once common, Belli said. He conceded that 50 percent was excessive but argued that the current rates of 25 to 33 percent were equitable. In large multidistrict cases, he said, rates are as low as 10 percent.

Moving to the area of criminal law, Belli lamented the high costs that deter private lawyers from representing criminal defendants. Because politically-minded district attorneys want to stretch out a case

and milk publicity from it, Belli said, criminal trials can take many months to complete. He gave the example of the "Night Stalker" murderer who had asked for Belli's representation. Belli wanted to take the case but declined, he said, because it would take \$200,000 to



Hillary Richard

Attorney Melvin Belli

\$300,000 to give the accused a "fair shake."

When asked to list the most important traits of a good trial lawyer, Belli listed integrity first, imagination second, and acknowledge of the law a distant third. "Before you start your legal research," he suggested, "make up your own mind about what the result should be. Don't abdicate your judgment to the law books right away."

## Miller Receives National Emmy

By George M. Borkowski

HLS Prof. Arthur Miller has been awarded an Emmy in the National News and Documentary Emmy Competition by the National Academy of Television Arts and Sciences.

Miller was recognized for his role as moderator in the 1984 PBS series "The Constitution: That Delicate Balance." The award was specifically given for the program entitled "The Sovereign Self: Right to Live, Right to Die." Miller had also been nominated for his role in another program independent of the series: "Anatomy of a Libel Case: Business v. Media."

While Miller has won several regional Emmys in the past for "Miller's Court," this was his first national Emmy award.

## Record Reminders

Interview season can make you crazy. Don't forget to:

1. Call your mother.
2. Change your socks.
3. Hug your friends and animals.
4. Mail early for Christmas.
5. Love an editor — they not only know how; they know with whom.

## LSC Condemns Sale Of Coors

By Hillary Richard

On Tuesday, Sept. 8 the Law School Council passed a resolution in response to the DSAC decision to continue selling Coors in the Back Bench Pub. The resolution reads as follows: "The Law School Council condemns the sale of Coors beer in the Law School Pub and endorses the boycott. The Council requests that DSAC reconsider their decision to sell the beer."

This month's Council Lead Facilitator, Jay Ward, was hopeful that DSAC would respond to the Council's resolution. "In view of the fact that we [the Council] are representatives of the student body," noted Ward, "and don't often pass resolutions as strongly worded as this, we would hope that DSAC would reconsider their decision."

# HLS Panel: Kill All The Corporate Lawyers

By Hillary Richard

"Welcome to the land of Oz," said Professor Alan Dershowitz to the standing room only audience in Austin Hall on Oct. 3. Dershowitz was commenting on the panel discussion inspired by Shakespeare's wry suggestion for legal professionals.

Unreality ran rampant throughout the discussion, as all four speakers extolled the virtues of public service to a body of students who have traditionally opted for futures in corporate law.

The discussion, one in a series called "Inquiries," was moderated by Dean Vorenberg and focused on the quote from Shakespeare's *Henry VI*, "The first thing we do, let's kill all the lawyers." Professors Dershowitz, Susan Estrich, Duncan Kennedy and Lance Liebman were asked if they agreed with Dick the Butcher's solution to society's ills. Not suprisingly, the professors said no, they would not kill *all* of the lawyers.

Dershowitz, speaking first, professed his belief that there are both too few and too many lawyers. "Too many," he stated, "trying to save too much money for too many rich people, and too few trying to protect the liberty of everyone." Dershowitz urged students to reshuffle their priorities and to refrain from taking the "automatic step from Harvard Law School to the big corporate firm."

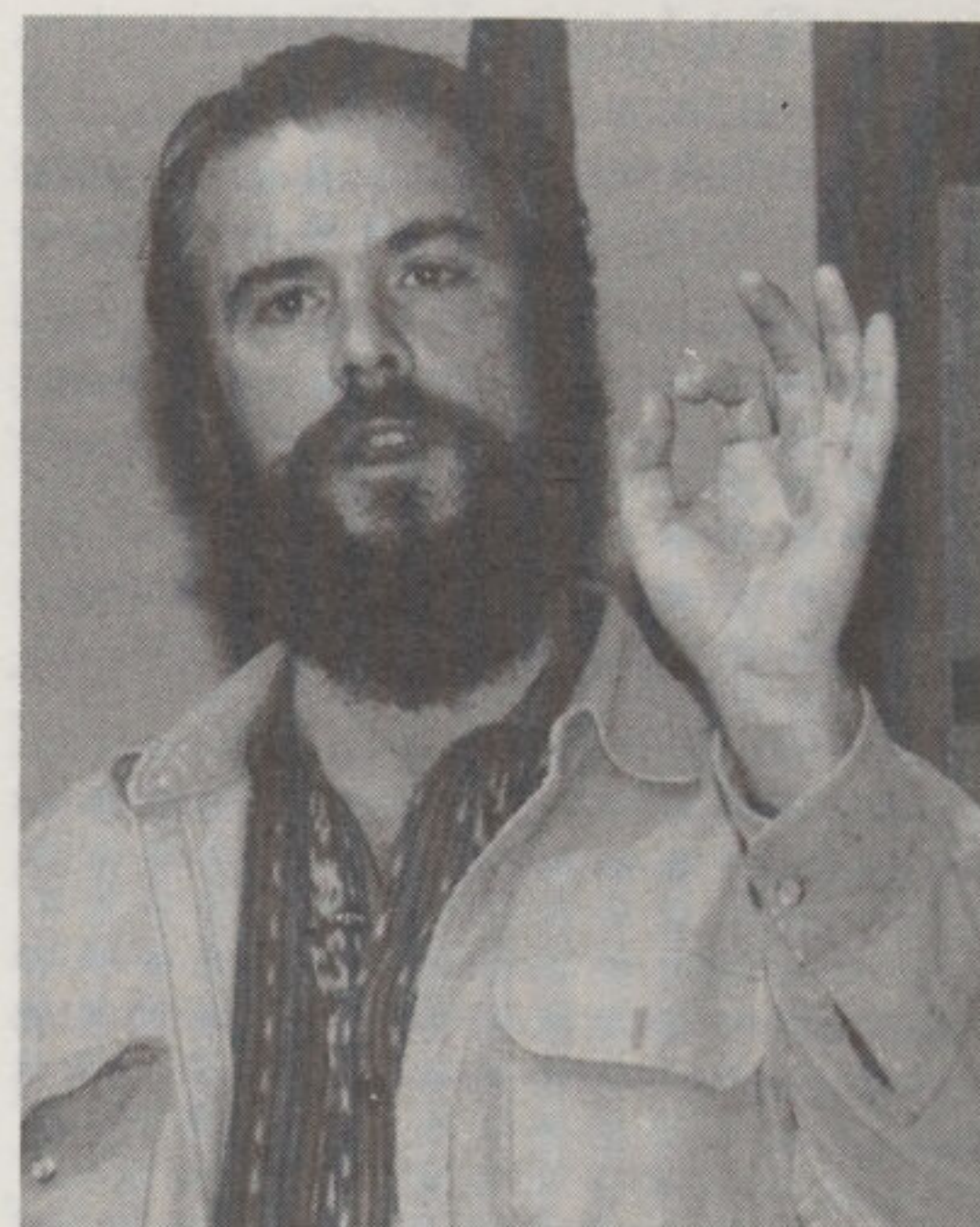
Estrich also examined the question of what to do with one's life

after law school. She implored students to use the values with which they arrived at HLS as guides for their choice of career. Estrich also advised students to shun the "cult of complexity," a set of values which determines what is the best by its level of complexity. Estrich laughingly recalled her years as an underpaid political consultant for the presidential campaigns of Senator Ted Kennedy and Vice President Mondale. She recalled that a fellow HLS alumna had commented enviously on her "great" job. "All that stands between you and my job," she responded, "is thirty thousand dollars a year."

The crusade against corporate lawyers picked up with Kennedy pursuing a by now familiar theme: the misallocation of lawyers. He advanced this theme by drawing an analogy between the corporate lawyer and a painter or carpenter in terms of craft ethics.

Kennedy emphasized the importance of satisfaction in one's craft and its resulting work product, and stated a craft was not practiced just for the money. He furthered the analogy by comparing the two trades and concluding that what the painter does is "better than what the corporate lawyers do."

"The ethics of the master craftsman," according to Kennedy, "are superior to the ethics of the corporate lawyer." This he attributes to the independence of the master craftsman, as opposed to the elite lawyers who "are identified in their hearts and their minds with main-



Joseph Gourneau

*Prof. Duncan Kennedy spoke at an "Inquiries" panel discussion concerning the legal profession.*

taining an overall system of inequality from which they benefit."

Kennedy then identified what he felt was the real issue on values: "Your values aren't your values unless they get you into trouble to some extent."

Liebman was in agreement with the preceding speakers in encouraging the students to realize that they could make a difference in the world. He recalled the most important political event of his formative years, the legally mandated school desegregation of the 1950s, as "one in which law was at the center and the lawyers were a force for change and for good and there seemed to us to be results from committing legal intelligence and long hours to professionally channeled political effort." He urged students to call on their "energy, imagination and courage of character" to effect change by influencing things that matter.

The student reaction to the discussion was enthusiastic, although skeptical. One LL.M. student noted the absence of any defenders of corporate law, which he felt made the discussion rather one-sided. Dershowitz acknowledged the inequality, but reassured the audience: "Don't worry. The rest of your life you'll hear corporate law praised to

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## TRY HOUSTON

A representative of Woodard, Hall & Primm, P.C., a 50-lawyer, Houston firm will be in town on October 25 and 26, 1985. If you are a 2L interested in a summer clerkship in Houston, please call Eddy J. Rogers, Jr. at (713) 221-3800 and an interview will be arranged for you during that weekend.

# Fellowships Available To Fund Study Abroad

By James Hoffman

For those who need another dose of academics after HLS, the Law School Fellowship Committee has information on many different fellowships that provide for study abroad. More information (and application forms) on the fellowships can be obtained from Pramila Vivek in Pound 308.

One major type of fellowships is Fulbright Grants, which are funded by annual appropriations from Congress. The grants allow students to go almost anywhere in the world for nine months to a year. Applicants must know the language of the country for which they are applying but do not have to have graduated from law school.

Each Fulbright Grant applicant has to submit a very specific research proposal or plan of study for a particular country and explain why he wishes to go to that country. The applicant must then be interviewed by the Law School Fellowship Committee, which makes rec-

ommendations to the Institute of International Education in New York. The IIE then makes the final selection with the host country.

Three different types of Fulbright Grants may be awarded. The first is a full grant that pays for travel and all expenses abroad. The second is a fixed sum grant, which gives the student a fixed payment in U.S. dollars. And finally, there is a travel grant that pays travel expenses for students who have various other fellowships which are not adequate to cover all their expenses.

During each of the last three years, between six and ten people have applied for Fulbright Grants from HLS, and one student has received a grant. The deadline for submitting an application for this year is October 21.

## Luce Scholars Program

Another fellowship available is the Luce Scholars Program. This fellowship arranges for the "scholar" to be placed in various types of

job internships in Asian countries (Taiwan, Japan, Thailand, Indonesia, etc.).

Applicants for the Luce Scholars Program should have minimal exposure to Asia, and need not know the language of the country in which they request to be placed. The "scholar" proposes a general type of work or research which he would like to do, and placements are made accordingly.

The program provides for a minimum grant of \$9,000 and runs from mid-September to late June. Applicants need a Bachelors degree and must be under 30. Only 15 Luce Scholarships are given nationwide.

An average of four to ten HLS students usually apply each year; none has been awarded to an HLS student for the past three years. The deadline for applying for a Luce Scholarship through Harvard this year is October 21.

## Kennedy, Knox and Sheldon Awards

The Kennedy, Knox and Sheldon Travelling Fellowships are administered by Harvard University and are exclusively for Harvard graduate students. The Knox Fellowship is available for study in Australia, Canada, New Zealand or the United Kingdom. The Kennedy and Sheldon Fellowships are for study anywhere in the world.

These awards are for one academic year of independent study or work toward a degree, and provide a \$9,400 grant. Applicants for these grants need to propose where they want to go and what they want to study.

## Ad Board Completes Investigation

By David Snouffer

The HLS Administrative Board has finished investigating law students' participation in the occupation of a Harvard administrative building last April and has decided not to charge any more students with misconduct, the Board's chairman, Professor Frank Sander, said.

At the same time, Sander said the Board is "gradually" concluding its investigation of an anti-apartheid rally held in May.

The Board decided not to take any action against 75 current HLS students who signed a petition in support of the protest. The Board had previously decided not to take action against another 45 signers who graduated in June.

Although the petition stated that signers had been "involved" in the sit-in on April 24 at 17 Quincy Street, Sander said the Board had

no evidence that the petitioning students had actually done any more than exercise "their right to give vocal support."

"It appears that most if not all the people who signed that petition were doing so as an act of symbolic support," Sander said. He added that some signers evidently "did not carefully read the petition" and did not realize that in doing so they were claiming that they actually took part in the sit-in.

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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: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass.

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POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

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# Inquiries

(Continued from Page 3)

the hilt, and even without hearing it you'll line up to be interviewed by them."

Another student was unhappy with the dichotomy of the lawyer as described by Dershowitz. He felt that Dershowitz was saying, either lawyers are starving and doing good things, or they have a lot of money and do horrible things. Dershowitz assured him that there is a middle ground.

Dershowitz posed an interesting question at the beginning of the question and answer session that followed the discussion: "If everybody out there took our advice, could Harvard Law School survive? Could we really continue to be the elite? Or do we really implicitly depend on you to reject our advice?"

Even if the majority of the students reject the choice of a public service career, it seems that the important message of the discussion will not necessarily be lost, for the panelists stressed that the students have a choice and that they use their values to make it, in the hope that they will make a more socially beneficial decision. The professors implored the students to be proud of their decisions. Regardless of whether the students decide to advocate, teach, litigate or paint, the professors want students to perform honestly and well.



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# Grant Deadlines Approaching

(Continued from Page 4)

Generally, between six and ten HLS students apply for these awards each year, and one or two HLS students receive one. The deadline for applying is December 6.

## Marshall Scholarships

Another fellowship HLS students can apply for is the Marshall Scholarship. This was set up by the United Kingdom in recognition of the Marshall plan for United States aid to Europe after World War II.

The scholarship is for a two-year program of study leading toward

a degree anywhere in the United Kingdom. It pays all expenses (travel included) for this two-year period. Applicants must be United States citizens and be no older than 25 on October 1, 1986. About 30 Marshall Scholarships are awarded in the U.S., and it is rare for an HLS student to receive one. Applications for this scholarship must be postmarked no later than October 26.

Besides the fellowships described above, the Placement Office has compiled a directory of other fellowships for which one can apply.



# Board Exonerates Protestors

(Continued from Page 4)

The Board sent letters to the 75 students late last month, notifying them that the case was closed, Sander said. The Board issued confidential warnings in May to another 10 students who allegedly entered the Quincy Street building and took part in the sit-in.

Meanwhile, Jamie Raskin, 2L, said last week that the Board has exonerated him in its investigation of a rally held May 2 at Lowell House, an undergraduate dormitory complex, during a speech there by Abe Hoppenstein, South Africa's

consul-general in New York. Demonstrators at the rally detained the diplomat for about an hour.

Raskin is one of three law students who told the RECORD that the Board was investigating them in connection with the rally. The others are Michael Anderson, 2L, and Doug Hagerman, 3L.

Sander has refused to specify how many HLS students the Board is investigating, saying only that the number is less than 10. He confirmed, however, that the Board has dropped its investigation of one student because "there was no evidence that he was engaged in any unlawful action."

If the Board and the other students it is investigating agree on what these students did at the rally, as well as what an "appropriate penalty" for their actions should be, then the Board may finish its Lowell House investigation without formal hearings, Sander said. Students who could face a sanction more severe than a warning are entitled to such a hearing if they want one, he added.



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# Rights Advocate Addresses Reagan's Record

By Maurice S. Kane

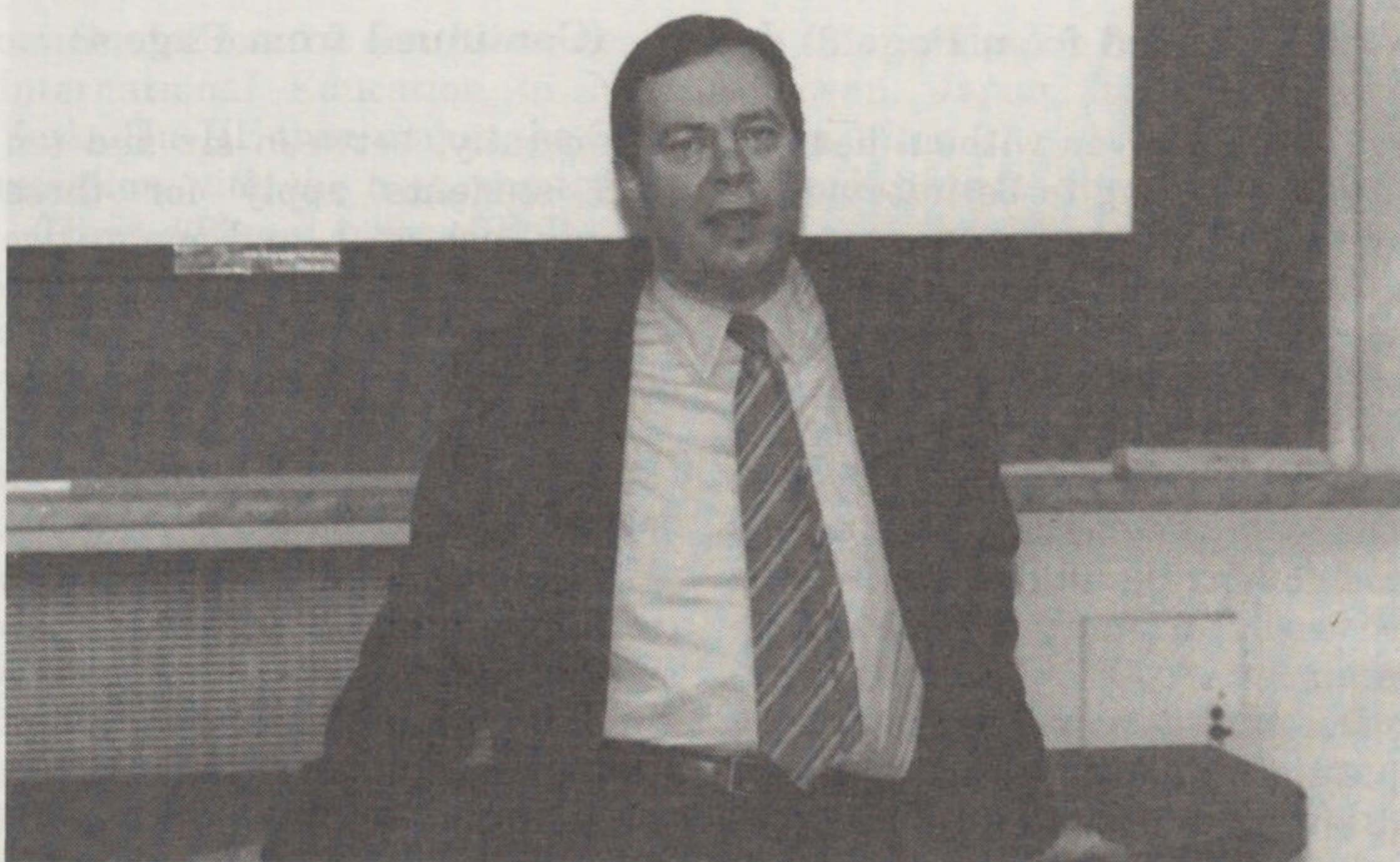
On Wednesday, October 9, Aryeh Neier, formerly executive director of the American Civil Liberties Union and currently the vice-chairman of the human rights group Americas Watch, discussed "Promoting Human Rights Internationally in the Reagan Era." The HLS Human Rights Program Speaker Series sponsored the address.

"[The] Reagan Administration," Neier began "came into power in January 1981," its inauguration coinciding with the end of the Iranian hostage crisis — which galvanized "critics of the Carter human rights policy." Those critics argued that American "criticism of the Shah led to his fall, and then onto Khomeini."

Many detractors of the Carter presidency, said Neier, pointed to the role of Patricia Derian, Assistant Secretary of State for Human Rights, who opposed the sale of tear gas to the Shah's police on human rights grounds. They asserted that the gas would have been effective in preserving the rule of the since-ousted, and now-deceased, American ally.

Neier noted that critics of the Carter Administration's policy, such as Jeane Kirkpatrick in her essay entitled "Dictatorships and Double Standards," also criticized the United States' decision to withhold military support from the Somoza government in Nicaragua. That decision, the critics say, helped bring the Sandinistas into power.

Neier said further that these influences and the ideological perspectives of the Reagan Administration led to then-Secretary of State Alexander Haig's pronouncement that "a concern with international terrorism would replace [the focus on] human rights." However, the administration's attempt to appoint the controversial Ernest Lefever to the post of Assistant Secretary of State for Human Rights demonstrated that the cause of human rights has a "stronger constituency than realized." The "Senate Foreign Relations Committee



Hillary Richard

*Aryeh Neier, former executive director of the ACLU, spoke on Human Rights and Reagan.*

rejected [Lefever] by the largest margin ever, a 13-4 vote, including the majority of committee republicans," said Neier.

Eventually, in what Neier considered a response to political pressures, "a policy paper emerged, saying that human rights should be at the center of foreign policy. Elliot Abrams was the author and he became the Assistant Secretary of State for Human Rights." Governments that the Administration favors "have good human rights records or records that are improving. Conversely, disfavored countries have bad human rights records or records that are deteriorating," observed Neier, terming this a "deviation from reality."

In El Salvador, said Neier, Americas Watch was concerned about the "Reagan Administration's repeated [human rights] certifications, required by Congress as a condition for continuing military aid," stated Neier. "We knew [the] administration was going to certify come what may" and that, in the view of the White House, "the Vietnam Syndrome no longer operated; . . . El Salvador was a small country, and it was necessary to show [the USSR] that countries in our backyard will stay there, and not join the other side."

Neier discussed the human rights advocates' strategy of forcing the

Reagan Administration to choose priorities. "If you oppose them [the Administration] all over the place," they'll be able to triumph on matters of central geopolitical significance [to the White House — like El Salvador], but not everywhere. They're still lives to be saved, torture to be prevented."

Neier pointed out that, several years ago, the Reagan administration had to admit defeat on the issue of military aid for the Pinochet government in Chile and the military government then ruling in Argentina because "Reagan wanted the Senate Foreign Relations Committee and the whole Senate" to support him on El Salvador.

An irony of the congressional opposition to the certification of the military government in Buenos Aires, Neier noted, appeared in the British-Argentine war over the Falklands/Malvinas islands. "Failure to provide military aid probably saved the United States some embarrassment because the British would have faced an Argentine enemy armed with U.S. weapons," he pointed out, and one NATO ally would have been "assisting" the adversary of another NATO nation.

"The human rights community is best off in not debating about where human rights abuses are

(Continued on Page 14)

# Coffee House Proposed For Pub Area

(Continued from Page 1)

The group met in the wake of rumours that Upton planned to prevent the Pub from dispensing alcohol. Several individuals had also indicated to the RECORD that they had overheard Upton state: "Maybe we can turn [the Pub] into an ice cream parlor."

Upton admitted to making the ice cream parlor statement, but said she meant it "tongue-in-cheek." Brian Runkel, 2L, a bartender at the Pub and one of the individuals who overheard the statement agreed that Upton was probably kidding. "[The statement] was not entirely serious," he said.

Nevertheless, Upton did admit that the pub going dry is "a possibility." She said that she would prefer it if the pub no longer would dispense alcohol. Upton noted that she disliked "beer nights" and was "not happy to see the school plastered with posters for beer."

However, Upton strongly denied that she would advocate such measures before the working group. "I have no intention of doing so," she said. Upton added that her dislike of alcohol at the Pub was "a personal thing."

McCall commented that this topic was not brought up at the meeting.

A much more probable change, which was discussed during Wednesday's meeting, was "setting up some type of coffee house in the afternoons and early evenings," according to McCall. The pub does not operate at all during those hours at the present time, except for TGIF's on Fridays. The idea behind this proposal, McCall said, was to make the Back Bench more appealing "to students who generally don't go to the Pub."

Many problems must be resolved, however, before the coffee house idea is implemented. Upton listed some of these as determining the

amount of money needed, getting more furniture, keeping track of different inventories, and hiring more supervisors.

Two other problems regarding the Pub seem to have subsided. Many students complained of the Pub's use of St. Pauli Girl beer posters, which declare "You never forget your first girl." McCall said this is no longer a problem, since "we don't use the posters any more." The Pub will continue to serve St. Pauli Girl beer, he said.

Upton also mentioned that several women had complained about the presence of women from neighboring Lesley College in the Pub. "They said it made them very uncomfortable," Upton said. McCall mentioned that while this was brought up for a short time at the meeting, "it was not a major point of discussion." Neither McCall nor Upton feel this point will be pursued any further.

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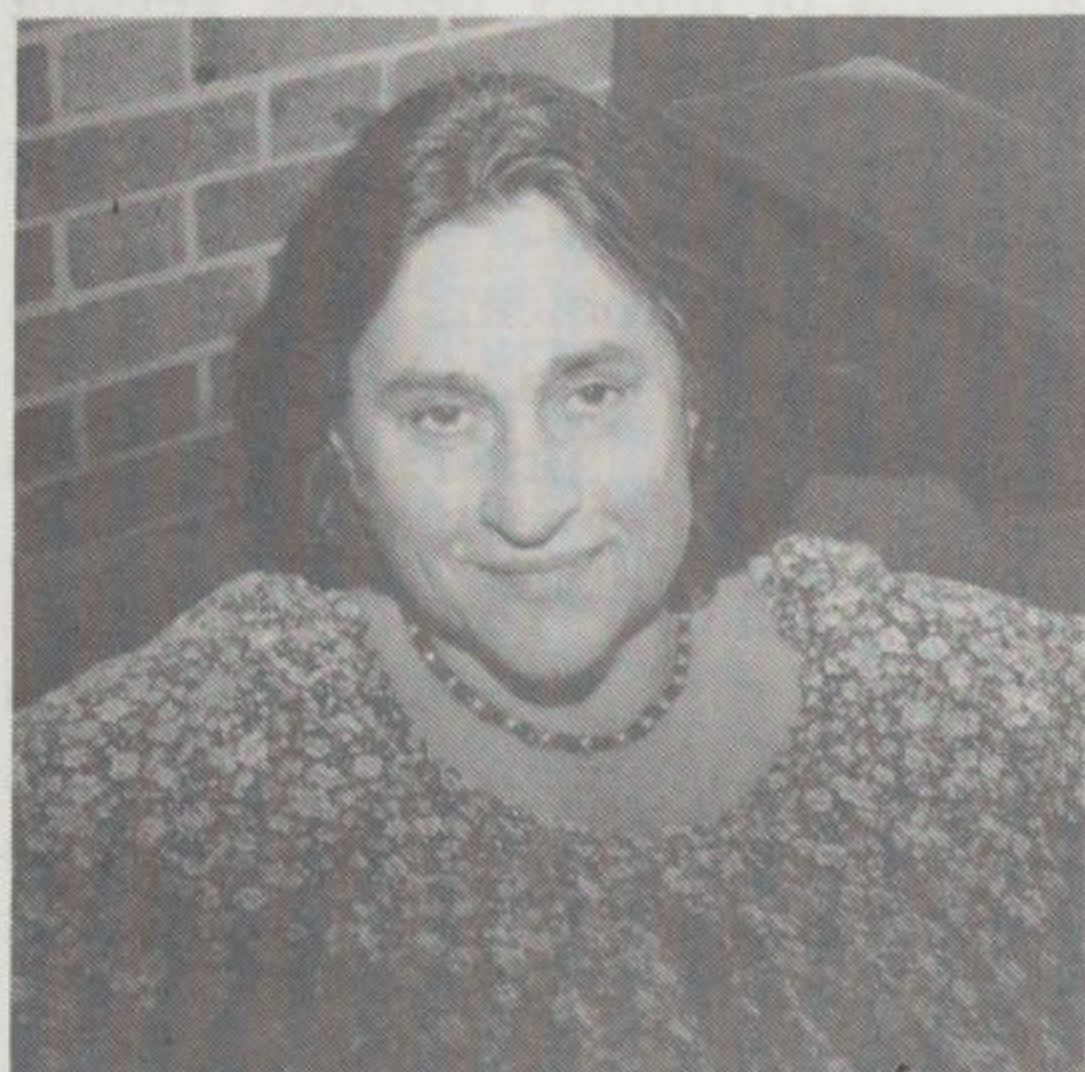
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# Faculty Begins Tenure Considerations:



HLS Yearbook

Visiting Prof. Zipporah Wiseman

By David Snouffer

HLS administrators say they expect the faculty to consider as many as nine assistant professors for tenured full professorships in the next two years. By contrast, only four junior faculty have come up for tenure since 1981.

HLS Dean James Vorenberg said last week that the Law School Appointments Committee has not decided how many of the tenure candidates it will evaluate this year or next.

The committee faces many tenure decisions because the Law School hired an unusually large number of assistant professors in 1980 and 1981, said the group's chairman, Professor Alvin Warren.

No assistant professor has been denied tenure since at least the late 1960s, Vorenberg said. Vorenberg and Warren declined to name the assistant professors who will be considered for tenure this year and next.

But Assistant Professors Christopher Edley, Susan Estrich, David Kennedy, Martha Minow and Daniel Tarullo all joined the faculty in 1981. Vorenberg said junior faculty usually are considered for tenure during their fifth year teaching at HLS.

Sources said Visiting Professor Zipporah Wiseman may also be considered for tenure this year.

The tenure decisions come at a time when HLS alumni have taken

a heightened interest in the appointments process. Press accounts about hiring and faculty divisions in *The New York Times*, *The Wall Street Journal*, and *The New Yorker* "have raised concerns among the alumni" across the country, said James Murray Howe, '50, president of the HLS alumni organization, the Harvard Law School Association.

Howe, a partner in the Boston law firm of Sullivan and Worcester, said some alumni discussed how they might influence the HLS appointments process but decided it wouldn't be practical to do so.

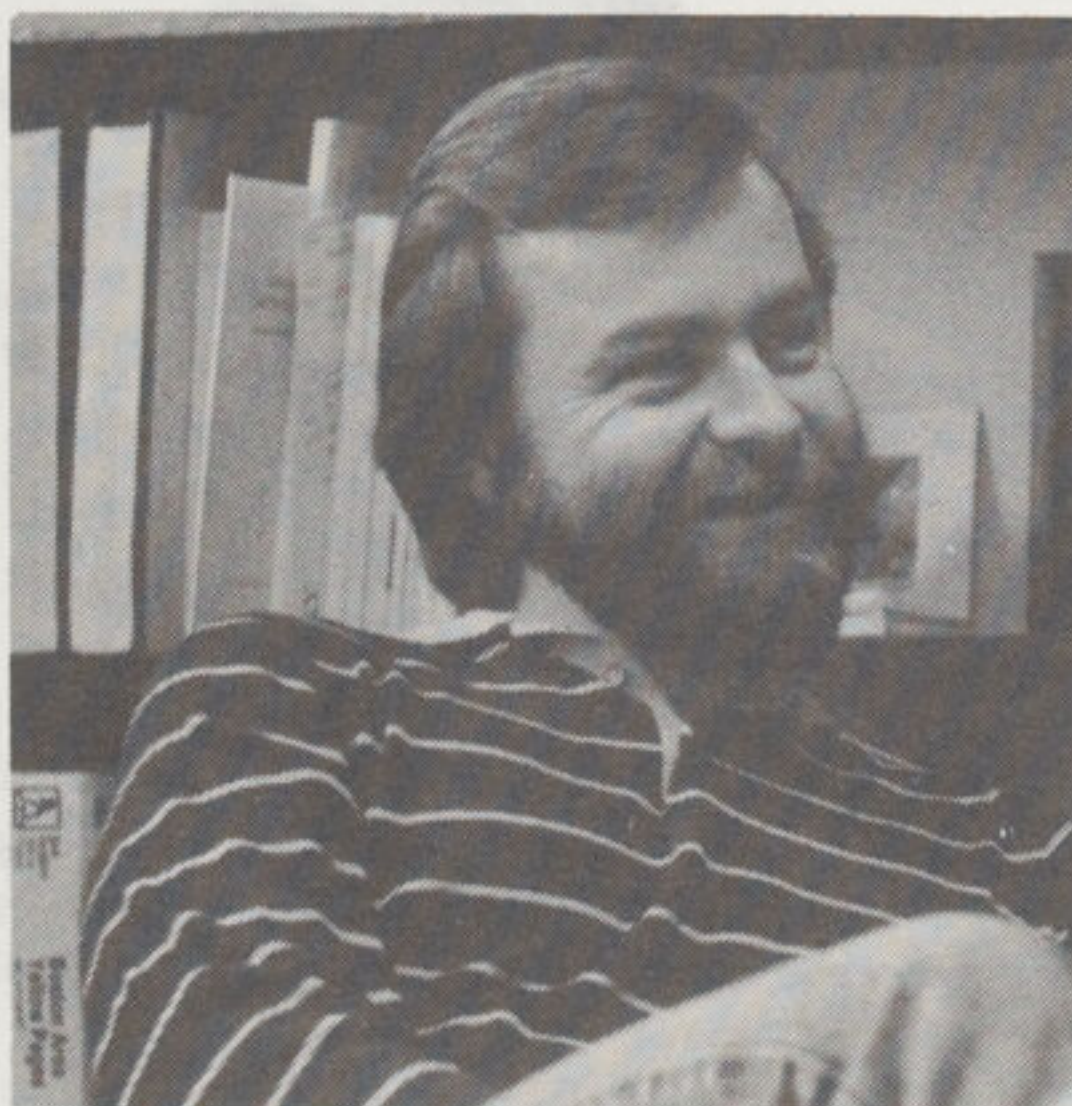
Alumni have "no real mechanism" for participating in tenure decisions, he explained, and since few of them are legal scholars, they often lack the "body of knowledge" they would need to make "responsible judgments" about hiring.

Vorenberg and Warren said the alumni have no role in tenure decisions.

At the same time, Howe said Vorenberg has successfully reassured most — though not all — alumni on their "most fundamental" concerns: the caliber of the faculty, the quality of the student body and Harvard's "preeminent" position as a center of legal education and scholarship.

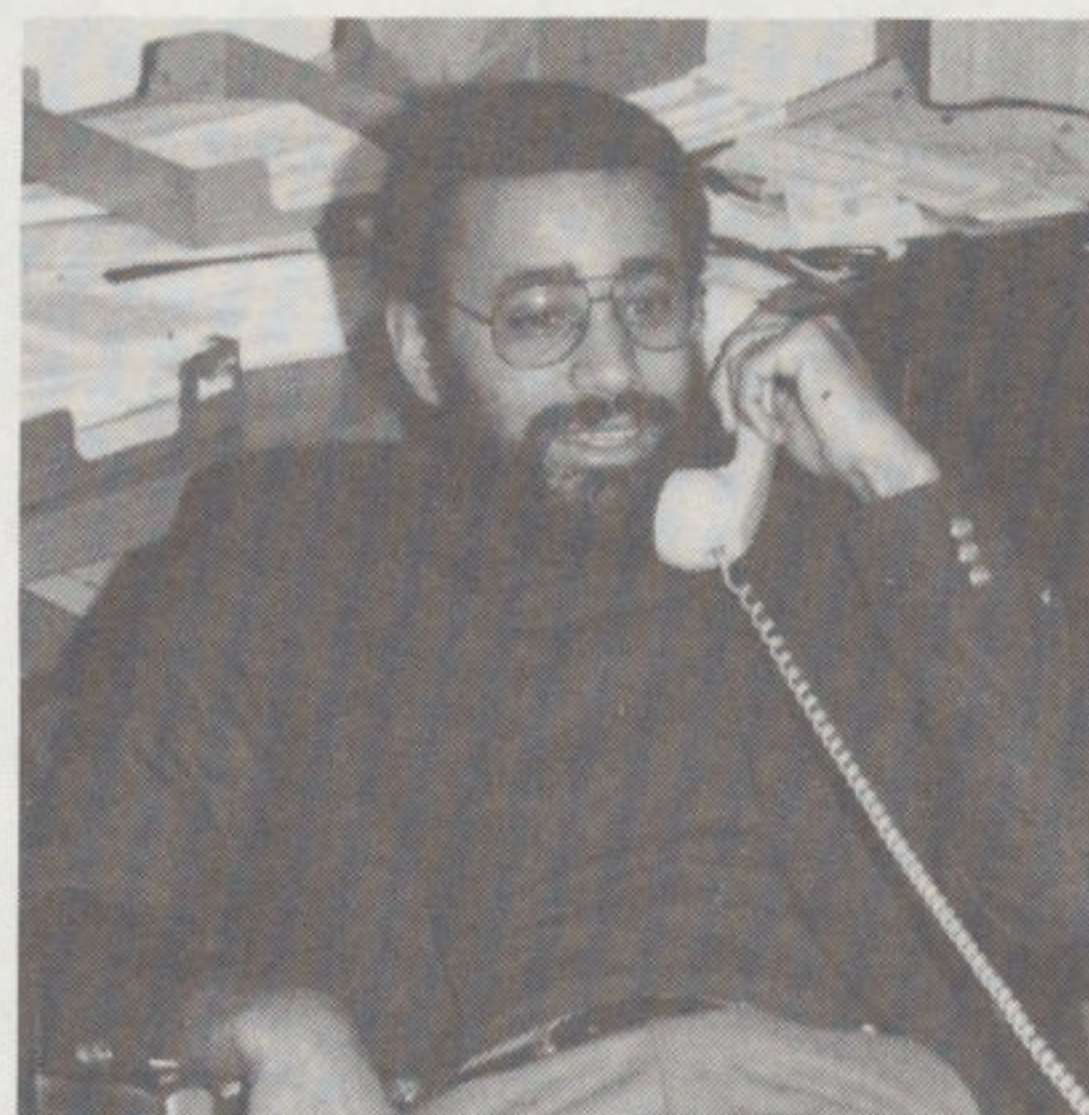
"I think the dean has done a very good job in addressing these questions very forthrightly, giving candid answers," Howe said.

Vorenberg, who sits on the Appointments Committee, and Warren



HLS Yearbook

Asst. Prof. David Kennedy



HLS Yearbook

Asst. Prof. Christopher Edley

both said the committee considers tenure candidates' teaching and scholarship before they make recommendations to the rest of the faculty. To evaluate teaching, committee members visit classes, interview students, and read student course evaluations tabulated by the Board of Student Advisers.

## Criteria For Appointment

Candidates for tenure also are expected to have done a major piece of written work, such as a law review article or a chapter of a book. The committee selects scholars in the candidates' legal fields from within the Law School and around the country to evaluate their work.

In addition, Vorenberg said he plans to institute a new procedure, inviting academics from other institutions to come to HLS and talk with Appointments Committee members about tenure deliberations.

Vorenberg said a good tenure candidate would be "someone whom we would expect to be one of the leaders in his or her field in the years ahead or already."

To get tenure, an assistant professor must be approved by a two-thirds vote of the Law School's full professors, and then must be approved by Harvard's president and Governing Boards. Warren said the Governing Boards have accepted all of the Law School faculty's recommendations for appointments during his five years on the Appointments Committee.

# Who Will Continue Teaching at HLS?

But *The New York Times* reported on Oct. 6 that Harvard President Derek Bok "stands poised to intervene" in the tenure process. Vorenberg and Warren declined to comment on the report, and Bok was unavailable for comment.

With only two women and no Blacks among the Law School's senior faculty, Warren said many professors hope to give tenure to more women and minorities in coming years. Four of HLS's 14 assistant professors are women and two are Black.

## No Role For Ideology

Warren said he does not think ideology will play a role in the committee's tenure deliberations, but he declined to comment on the rest of the faculty. "My strong hope and expectation is that the faculty will vote on the merits," Vorenberg said.

On the other hand, Professor Robert Clark said professors' "political differences" have made it hard for them to agree on which professors at other law schools should be offered senior posts at Harvard.

Clark, who chairs the Committee on Lateral Appointments, which Vorenberg carved out of the Appointments Committee last year, said HLS has not hired any senior faculty from other institutions since 1981, largely because HLS professors "fight a lot and can't agree."

Unlike new assistant professors, senior faculty at other schools have already written "a good deal," Vorenberg said, so their work can be more controversial among the HLS faculty.



HLS Yearbook

Asst. Prof. Martha Minow

Clark said his committee has worked to overcome the deadlock by considering the views of many professors, so that they can fairly evaluate work done by scholars whose ideological outlooks differ from their own. The committee members, who include Vorenberg, Professor Gerald Frug, and Associate Dean Richard Stewart, have diverse ideological outlooks, he added.

"We just tried to educate each other about the merits of the work we want," Clark said. "It really is possible for people to agree about what is good work. The really good people shine through."

Last year, the HLS faculty agreed with the committee to offer visiting appointments to four professors from other law schools. Professors hired from other law schools usually receive a one-year visiting position at HLS before they are considered for a permanent appointment with tenure.

One scholar on the committee's list, David Trubek of the University of Wisconsin, has accepted a visiting position for 1986-87, Clark said. And Vorenberg said he is "optimistic" that another professor the faculty has invited, Cass Sunstein of the University of Chicago, will teach at HLS in spring 1987.

Clark said his committee plans to submit to the faculty another four

candidates for visiting appointments "in the next few weeks." He expects approval because committee members are working carefully to take professors' various opinions into account as they prepare the list.

In spite of their ideological differences, professors "are getting more cooperative all the time," Clark said. "I think people are beginning to realize that no particular group is going to dominate," he added.

The faculty includes professors who hold views ranging from the Critical Legal Studies school to the more conservative law and economics outlook, as well as many more traditional scholars, Clark said.

"I am concerned that we haven't made lateral appointments for the past four years," Vorenberg said. "I'm sure we will be making some in the next few years."

As a longtime fundraiser for the Law School, Howe said he thinks alumni contributions — which total about \$4 million a year and account for about 20 percent of the HLS budget — are going to be a worthy cause.

"I would be very unhappy if I felt the money was being poured down a rathole . . . to ferment dissension and extreme political activity that seriously impaired the ability of the school to function," Howe said. "I don't think that's so."

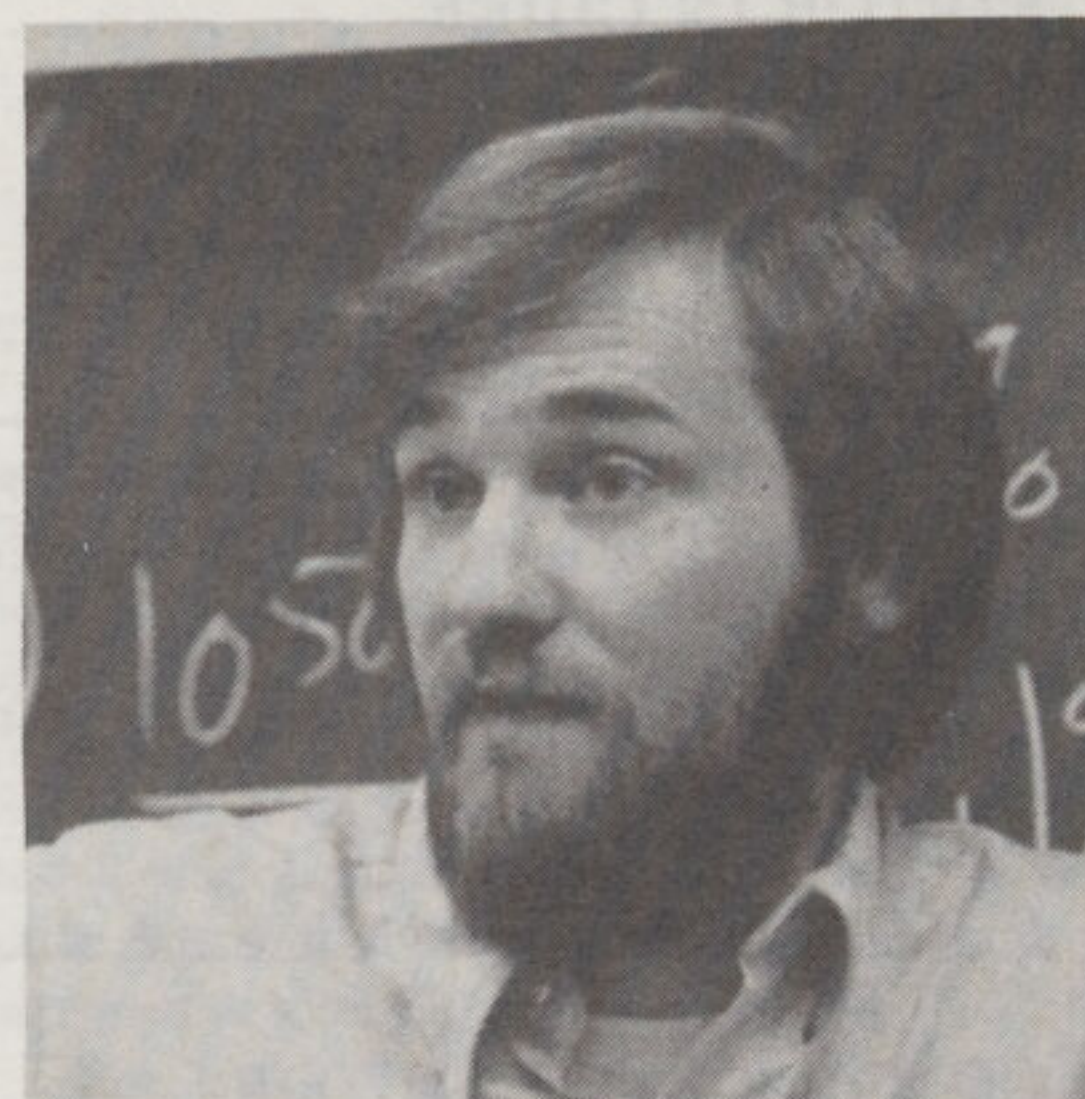
And Howe said many alumni have

(Continued on Page 17)



HLS Yearbook

Asst. Prof. Susan Estrich



HLS Yearbook

Asst. Prof. Daniel Tarullo

# Taking A Stand Against Terrorism

Fenno

The recent decision by President Reagan to capture the four Palestinians believed to have carried out the hijacking of the Italian liner *Achille Lauro* has created controversy both within and without the law school. Is this decision to be considered a "Rambo"-style raid that will enhance American self-confidence after years of devastating losses to terrorism? Or is it more representative of the mentality of a President bent upon the use of American military force around the world no matter what consequences might follow? These viewpoints have been currently advanced in the press.

However, other conclusions can and should be drawn from the President's actions. First, this decision should not be considered a violation of international law. International law is a woefully inadequate remedy to combat terrorism. Even after the six Palestinians aboard the Egyptian aircraft were delivered to the soil of a close ally, the United States was unable to prevent the ally from releasing two of the suspects in the case. If international law is to be a viable means of protecting the rights of individuals and nations, then nations must be free to punish those who commit crimes violating the standards of human decency. Furthermore, if the current state of international law prevents nations from adequately addressing the problem of terrorism, perhaps it has not developed as much as it should. The President's action can then be seen as encouraging the next phase in the development of international law, hopefully resulting in a solution to this problem.

Secondly, the President's decision to force down the Egyptian aircraft should not be equaled to the act of piracy in taking the *Achille Lauro*. The aircraft, in international airspace, was being used to convey four suspected murderers to a country where punishment for the crime which they allegedly committed was unlikely. The United States cannot abandon its duty to protect the lives of American citizens. The minimum of force used to capture the alleged murderers of Leon Klinghoffer is to be commended. The United States acted with an entirely reasonable amount of restraint. Besides protecting the lives of American citizens, the United States must take the a leading role in halting the use of violence against innocent people as a means of advancing political ends. Labelling our own actions as terrorism is sheer sophistry designed to obscure the legitimate, defensive motivation that lay behind those actions.

Finally, the United States should not gloat over its success. One would have to wonder about the effectiveness of our military if it could not locate and capture a defenseless civilian airliner over the Mediterranean. Moreover, there will undoubtedly be more acts of terrorism against the United States. The only means which could successfully reduce the threat of terrorism would be draconian measures which would be completely unacceptable to the American public. One can only be thankful that only one person aboard the *Achille Lauro* lost his life and that those who appear to be responsible for his death will be punished for their actions.

## HARVARD LAW RECORD

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"You? Ha!" the incredulous freshman said to Fenno with a laugh as they walked up from Harvard Square through the Yard. "There's no way YOU go to Harvard Law School."

Fenno scratched the four-day-old grizzle on his chin and wondered whether the "Ca-tatonic State" sweatshirt he wore or the copy of Mad Magazine he carried was the cause of her disbelief. Either way, he welcomed the challenge. "Look," he said, "Let me give you a tour of campus to prove to you that I really go there." Reluctantly, she agreed.

The first stop on their tour was Austin Hall and the classrooms inside. "What are all those paintings?" she asked. "This is where HLS honors the members of the Patron's Club. You see, if you give a lot of money to the school, they hang your portrait up here." "How much do you have to give?" she asked. "No one really knows for sure. No graduate has made a substantial gift to the school in the last two hundred years. That's why all the paintings look so old."

They walked outside and Fenno continued. "That's Griswold Hall where the professors have their offices." "Are the professors nice?" queried the freshman. "I don't know. I've never seen them," responded Fenno. "The doors to the building have special security locks on them and they don't let the students know the combination."

"What's that white house over there?" asked the student. "That," said Fenno, "is Gannett House. Some students work so hard their first year here that they withdraw from society and have to be committed to Gannett House. They spend all their time there working under close watch." "Do they ever get to leave?" asked the woman. "Not really," Fenno answered. "After two years there they get transferred to larger facilities in New York City. But even there, they are kept hard at work in complete isolation."

As they continued the tour, the woman pointed to the World Tree and asked, "Is that a TV antenna?" "No," corrected Fenno, "that is a special transmitter the school uses to send subliminal messages that brainwash students into believing that they love it here and love the law. But it only has a limited range. I live off-campus so I'm safe."

"Well I guess you really do go to Harvard Law. One thing you haven't shown me is the library. I would love to see it," said the freshman. Fenno gasped. It had been so long since his orientation tour during his first year that he couldn't remember where it was. "I, um, I'm not sure where it is. I think it's over here," stated Fenno.

"Not sure! But that's where law students spend all of their time. Hold on, you aren't a law student after all," she said and then started to run off.

"No wait!" cried Fenno. "I haven't even shown you the Pub!"

# "The In-Law"

by Jinku Lee



## Letters to the Editor of the Record

### Put Pro Bono On Record

#### To the Editor:

It isn't easy for law students to pressure powerful law firms into evidencing even a modicum of idealism. I was, therefore, heartened to read about the boycott of law firms representing South Africa or engaged in union-busting activities. But even this most modest effort to inject a little idealism into the practice of law is apparently too much for the RECORD [Boycott the Boycotts, September 27]. Your equation of the firms doing pro bono work or representing unions with those representing South Africa or engaging in union busting demonstrates the callousness of the editorial without need for elaboration. But I would like to add this

suggestion for the boycotters you scorn: Why not work for a Law School rule that any firm coming on campus has to provide the students with a memorandum showing in detail the types, amount and percentage of their public interest work and then boycott those who don't provide the information or whose showing is inadequate?

Joseph L. Rauh, Jr., LL.B. '35  
Washington, D.C.

### Students Should Raise Aspirations

#### To the Editor:

Academic faculties are odd sources of role models. I remember my elementary school. On those special nights when there were meetings, speakers, or parent and teacher reunions, the faculty members were proud and gratified. They would walk rapidly through the halls with proprietary ease. They would exchange quick glances and first-name greetings in passing.

All of the students were awe-struck and most of the teachers liked it that way. I used to wonder what virtue other than mere position made those divine creatures so confident and strong.

The Harvard law school faculty is not much different. Petty pride seems the rule among its members. No one at HLS realizes that, except for a few books and films, the world goes along without giving it a thought. Worse, although there must be thousands of ways to think about and teach law, only a few are practiced here, each of them being the *only* way.

Unfortunately, many of the students, for all of our critical incisiveness have not

changed much since elementary school, except that awe of our teachers has been replaced by the desire to be like them. We work hard for status equal to that of our professors, thereby cultivating equally petty concerns.

I think that most of us have set our sights far too low. If the positions that we eventually fill form us (rather than the converse), then we, like most of our teachers and professors before us, will be fungible items replacing some similar fungible item lately taken off the shelf, exactly filling the positions of our predecessors. The alternative, to impose self-determined values on everything we do, may cost us a few indices of status, but is less arbitrary and more meaningful.

If we need role models, let us choose them, not take them as they come, because a title (*Faculty member* or *Partner*, for example) guarantees nothing.

Michael S. Christian, 2L

### DSAC Decision Panned

#### To the Editor:

If the Reagan Administration can ban the sale of Kruggerands in the United States, then surely DSAC can ban the sale of Coors beer in the pub. But just as the U.S. policy of "constructive engagement" with South Africa aided a racist regime, so too has DSAC relied on a euphemism — "free choice of beer" (and indeed exercised its own "free choice") — to support a morally-bankrupt beer company.

Philip Eure, 3L

### 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.

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# On The New 'Interpretivism'

by Congressman Bob McEwen



Ofc. of Congressman McEwen

*Elected in 1980, Congressman Robert McEwen (R-Ohio) is one of the Reagan Administration's most consistent supporters in the House.*

There has been an increasingly loud protest from some over the appointment of conservative judges to the federal judiciary. Those who attack the present Administration's selection of Federal judges do not understand — or rather, are unwilling to understand — the proper role of the Executive Branch in judicial selection.

Our Founding Fathers saw a limited participation for the judiciary; one of interpretation and clarification. Alexander Hamilton spelled out Constitutional intent in *Federalist NO. 78*. He wrote, "The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would . . . be the substitution of their pleasure to that of the legislative body."

While I am not surprised that some individuals support a broadening of judicial power at the expense of the Executive, what concerns me is that they see nothing wrong with this judicial "substitution of their pleasure" to the detriment of the responsibilities of the people, the Congress. While the judicial doctrine of legislative unconstitutionality is unquestioned, pursuing legislative remedies through judicial

edicts can be dangerous to a free society.

Perhaps there is confusion concerning exactly what the present Administration is attempting to accomplish. No, bench candidates are not being asked to express their opinions on abortion, school prayer, gun control or any issues which may come before the Federal courts. No, they are not being asked to pledge some kind of allegiance to a "conservative movement." And no, candidates are not being asked how they would have ruled on specific cases. If these questions are being asked by some Senators, they are simply failing to understand the true nature and goals of the judge-appointing power.

What Federal judicial candidates are being asked — and correctly so — is their "Constitutional philosophy." Will they interpret laws or make laws? Will they interpret the Constitution as they would any other legal document — by focusing

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*"A President intent  
on a new social  
agenda will  
understandably be  
concerned about  
judicial activism."*

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on the meaning of the text and the history of the writing — or will they bring their own policy preferences into play? It is more important that nominees share the nominator's general vision than that they agree on a checklist of positions on social issues.

That general vision is the "new interpretivism," a phrase first coined by Judge Robert Bork of the U.S. Court of Appeals for the D.C. Circuit. This "interpretivism" is a tight following of the historical meaning of the Constitution, and

it is this which the present Administration is trying to instill in the judiciary through appointments. In seeking this course adjustment, the administration is acting no different than when President Franklin D. Roosevelt struggled to return an activist judiciary of the *Lochner* era to a more traditional role.

In 1937, FDR said, "The Court has been acting not as a judicial body but as a policy-making body. The Court . . . has improperly set itself up as a third House of the Congress — a superlegislature . . . reading into the Constitution words and implications which are not there, and which were never intended to be there."

Perhaps the Court's abandoning of its *Lochner* jurisprudence should be attributed as much to the internal pressure of Chief Justice Hughes as to the external pressure of a President. The fact remains that from 1937 onward, the Federal judiciary did retreat from its *Lochner* era activist ways. That retreat was well-reasoned and continued until the appointment of Earl Warren, whose activist, policy-making philosophy persists to this day.

It persists in the present Court. In just the first 10 years with Warren Burger as its Chief Justice, the Court struck down some 230 pieces of legislation; 34 Federal laws, 182 state statutes, and 13 local ordinances — a record for one decade.

A President intent on enacting a new social agenda — be it a Roosevelt or a Reagan — will understandably be concerned about such activism. The President's power to appoint Federal judges is the mechanism given the Executive branch by the Constitution to assure that the judicial branch remains true to the Constitution.

The executive branch has the right, authority and responsibility to scrutinize the legal philosophy of Federal judicial nominees. This

(Continued on Page 18)

# Off the Record

## On Prejudicing Justice

by Senator John Kerry

In *Marbury v. Madison*, John Marshall proved himself to have an astuteness worthy of Solomon and it is on that foundation that the American judicial system has grown into one of the wonders of Western civilization. There have been many controversial decisions by the Supreme Court — from the Dred Scott case to *Brown v. Board of Education* in the 1950s, from the invalidation of New Deal legislation in the 1930s to *Miranda*, *Roe v. Wade* and the *Bakke* case. The judiciary has survived with undiminished respect.

Yet today, the fundamental integrity of our judiciary is threatened in a way we have not seen before. The present danger threatens to undermine the quality of our entire system of justice, the respect that we have always maintained for our judiciary and even the balance of powers set forth in the Constitution. This threat is that of the appointment of a judiciary which is not independent, but narrowly ideological, through the systematic targeting of any judicial nominee who does not meet the rigid requirements of the far-right.

Regrettably, this effort has been spearheaded by Senators. On September 7 of last year, two Senators sent a questionnaire to Andrew Frey, deputy solicitor general of the United States and the federal government's chief advocate on criminal matters before the Supreme Court.

Mr. Frey had been nominated by President Reagan last July to serve on the District of Columbia Court of Appeals, the "supreme court" for the District court system. At the time of his nomination, he was universally regarded as a capable lawyer who had represented the government of the United States vigorously and well.

In the questionnaire, these Senators asked Mr. Frey such questions as whether a fetus is a person, whether he supported prayer in public schools, the Equal Rights

Amendment, and the Supreme Court's decision on desegregation in *Brown v. Board of Education* and whether the granting of exclusive representation powers to unions by the National Labor Relations Act is unconstitutional. The Senators also asked Mr. Frey whether he supported the provisions of the Republican platform on firearms as adopted in Dallas in the summer of 1984. They asked him to cite what articles, books and papers he had read regarding firearms "to show your knowledge of firearms issues that would contribute to your impartiality." These last questions were asked after the Senators learned that Mr. Frey had been a member of the National Coalition to Ban Handguns.

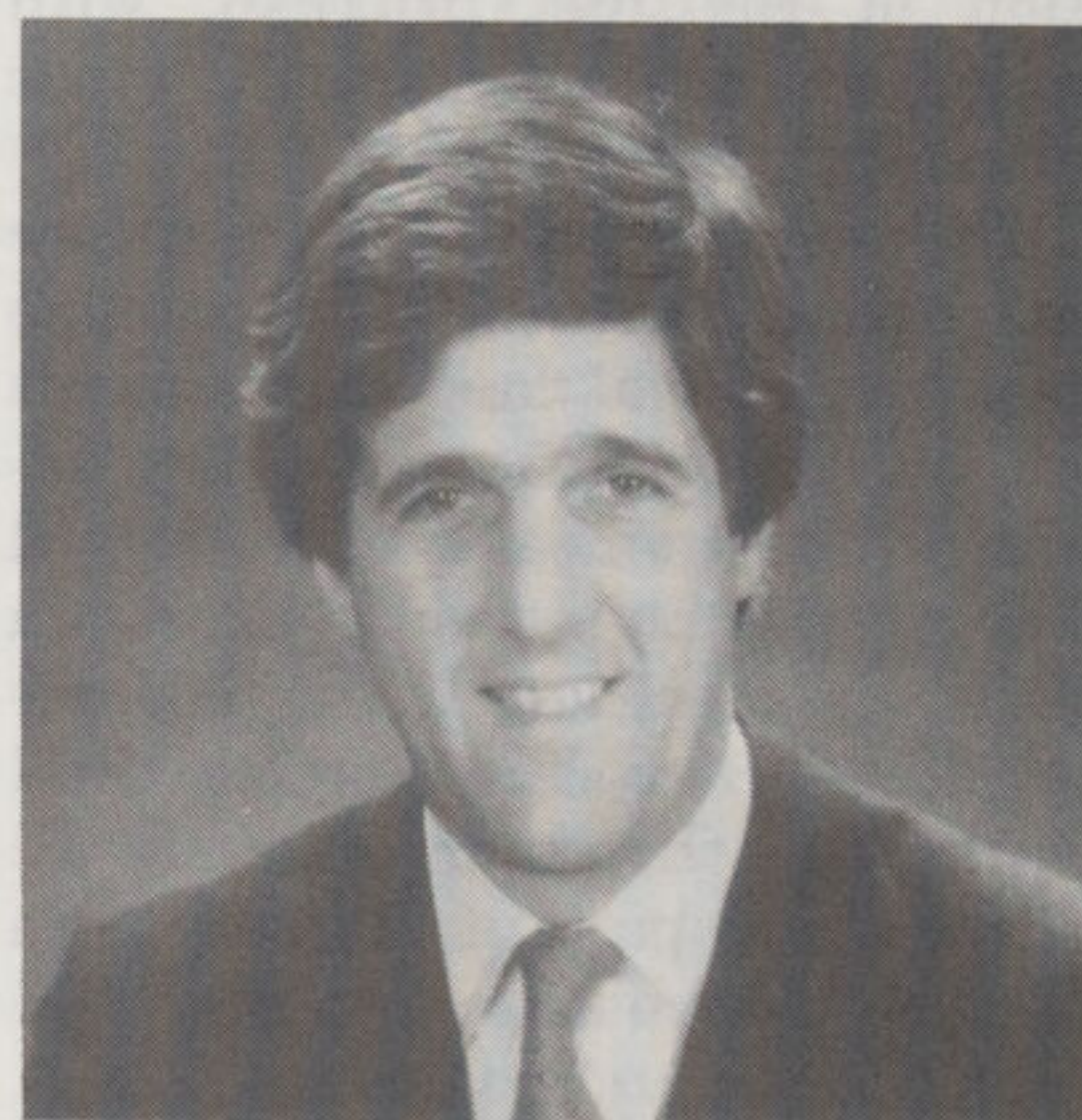
This March, these two Senators were joined by eleven other members of this body in writing the President to oppose Mr. Frey's appointment. They complained that Mr. Frey had been a "consistent

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*"Frankfurter,  
O'Connor, and  
Marshall all refused  
to answer questions.  
... Each was  
confirmed  
and properly so."*

---

supporter of organizations dedicated to the continuation of legalized abortion" and "a proponent of the judicial philosophy espoused in *Roe v. Wade*," as well as a "staunch advocate of gun control." They said that these positions disqualified him from being a judge — a judgment they made despite the fact that as a government prosecutor he would be likely to bring a strong law and order orientation with him to the bench.



Off. of Senator Kerry

*Elected in 1984, Senator John Kerry of Massachusetts has emerged as one of the Democratic Party's most articulate voices, especially on issues of law enforcement and the federal judiciary.*

Similar actions have been taken this year against four other individuals to be nominated for judgeships by the Reagan administration — Judith Whittaker, William Hellerstein, Stanley Sporkin, and Joseph Rodriguez, each of whom has outstanding credentials for a judgeship. Sporkin, for example, has served as head of the SEC's enforcement branch and as general counsel of the CIA, hardly left wing organizations.

This amounts to an attack, not only on these nominees, but on one of our core concepts of legal decisionmaking: that no judge should issue an opinion on a subject unless the subject is presented within an actual case or controversy. This doctrine reflects the idea that the judicial power can only be honestly exercised in the actual context of a case as it has developed through trial and advocacy, in the context of an actual dispute.

In the absence of a case or controversy before him or her, it is improper for a judge to say just how an issue might be decided. To pre-

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# Chayes Claims U.S. Acted Without Reason

(Continued from Page 1)

mitted to the compulsory jurisdiction of the ICJ in 1946, with exceptions made for specific types of controversies.

Although its pronouncements are not definitive, the ICJ is a source of international law. Its decisions guide legal and foreign policy advisors, diplomats and international lawyers. In the recent Nicaragua case, the decision of the ICJ regarding US military and logistical backing of the insurgents may be the most important statement on the use of force under international law.

According to Chayes, even the critics of particular ICJ decisions recognize the general legitimacy of international law. "Reagan isn't saying that he does not respect international law," Chayes said, but rather that the US can legally continue to support anti-Sandinista rebels. Disagreeing with the Administration contention that its actions are consonant with Articles 2(4) and 51 of the UN Charter, Chayes said that there is a difference between seeking to overthrow a government and the acceptable use of military force. "No one is saying that we're rescuing U.S. nationals" endangered by the Nicar-

aguan armed forces or government. The Nicaraguan government has not threatened American citizens or done anything harmful to them, observed Chayes. He added that "it would have been better if the U.S. government let the ICJ litigate the case," since in order to strengthen the decisional authority of the ICJ, nations must be encouraged to go to the court.

Chayes said that the Reagan Administration has "produced no evidence of significant violations of human rights," and that such human rights monitoring organizations as Americas Watch and the Lawyers Group for International Human Rights "all clearly agree that although there are things (in Nicaragua) to criticize — compared to El Salvador or Guatemala," the problems are much less severe. ☛

## Letters (Continued)

### Defending Labor Lawyers

#### To the Editor:

As a practicing labor lawyer with both management and union clients, I read about the boycott of some of my colleagues with dismay and regret. Most labor lawyers act professionally to advise their clients how to maximize their own rights within the restrictions and obligations of the law. This is what securities lawyers, tax lawyers, bankruptcy lawyers, and virtually every other kind of lawyer do. The subject of labor law is, however, the human condition, and that often engenders more passion than a registration statement. Moreover, labor law is the frame for the ongoing regulation of an industrial society that is based on the resolution of conflicts between contending economic forces. Too often I have seen the *losing* side of a particular dispute resort to name-calling in order to divert attention from the merits of the case or its own economic weaknesses. Lawyers are always good targets. I have seen management, outwitted and outclassed, blame it on the union's "left wing or radical" lawyers. The current diversionary epithet used by losing unions is "union buster."

Recently we represented an international company that was in bankruptcy; it had received concessions from trade unions throughout the world. The American union refused to make concessions and went on strike. The strike has now gone on for 19 months — 60% of the work force is on the job, and the company is operating more efficiently without a dollar's loss of revenues. The excuse for the union's ineptitude was the accusation that our firm were "union busters." During the same time period our

firm helped negotiate a half dozen peaceful contracts with the same union — of course, we were not union busters there.

I know and respect as colleagues and adversaries many of the "boycotted" labor lawyers. Effective lawyers, and in particular effective labor lawyers, are people who can view the complex "life" problems we face in all their dimensions. How does a solution affect people? How does it work in the plant? What makes a work force productive and happy? These are not problems that can be answered by slogans or people who live by slogans. If the sloganeers boycott some of the best labor law firms and find their way into some more esoterically pure branch of the profession, the labor law Bar will not have lost very much.

Martin C. Seham, '57  
New York, New York

☛

## 5 Years Ago

RECORD, October 17, 1980

Ms. Zhou is the first law student from China to attend school in this country since the revolution. . . . With the thaw in relations between the U.S. and China . . . the ministry decided to send an officer for specialized training in American law. Zhao Jia volunteered, and after an interview with an HLS professor traveling in China, she was accepted by the school.

☛

## Human Rights

(Continued from Page 6)

worse. [There are] differing types of systems with differing types of abuse," said Neier, in reference to the distinction Kirkpatrick drew between "totalitarian" powers such as the USSR, Cuba and the Warsaw Pact countries, and friendly "authoritarian" rulers like the Shah, Somoza, and many right-wing military dictatorships. Alluding to Soviet refusedniks, psychiatric prisons, Salvadoran death squads and Third World torture practices, Neier said, "El Salvador is not worse or better than the Soviet Union or Poland — it's different. No government kills forever. The fact that killing has stopped doesn't mean that human rights abuses have ended."

Neier acknowledged the importance of all basic human dignities, although his group focuses on "political and civil" rather than social or economic rights, and he pledged Americas Watch to "oppose human rights abuses everywhere around the world . . . with all the strength we can muster."

☛

# New Acquisition Adds To HLS Treasures

By Joseph Gourneau

Many have passed by Langdell 165, but few have entered. Behind these walls, however, sits Mrs. Bernice Loss, the art curator of the law school and the person primarily responsible for the aesthetic atmosphere of HLS' halls, walls, and rooms. Unlike art collections throughout the rest of the university, which remain under the aegis of the Fogg art museum, the law school art collection is unique in that it is cared for solely by the law school.

Dean Pound originated the law school collection when he purchased the portrait of Sir John Holt (currently hanging outside the fourth floor entrance to Langdell library) shortly after World War I.

Many British families were financially strapped during this period and sold their art collections to generate funds. The first to go, of course, were portraits of British legal figures which were neither considered too intrinsically valuable or directly important to the family. To facilitate its acquisition of British legal portraits, the law school hired

an agent in London to scout around for possible buys.

## Four Centuries

Since the time of Dean Pound's original purchase, the law school has acquired 100 British legal portraits, spanning the last four centuries. Although the cream of the British collection (which includes a couple of paintings by the famous British portraitist Sir Joshua Reynolds) is currently in the Treasure Room of Langdell library, the curator is presently working on a proposal to have the top floor of Austin converted into a gallery for these paintings as well as paintings from the rest of the collection.

Besides the British paintings, the American paintings, a photo and print archive containing some 3,000 prints and 18,000 photographs, and a number of miscellaneous items such as cartoons, clocks, and furniture. Of the American paintings, the Royall family portrait is one of the most important. Painted by Robert Feke, this was one of the first American group portraits, and as such, the curator's office has received a number of requests for reproduction from art history texts. Other American paintings of particular interest to HLS students are the portraits in Langdell South of various Supreme Court justices.

(Continued on Page 16)



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# Loss Maintains HLS Art Collection

(Continued from Page 15)

Included in the prints and photographs of the HLS collection are famous legal figures, HLS professors, students, and a pictorial history of the buildings comprising the law school campus. Mrs. Loss notes that students, whether for academic reasons or merely out of curiosity, can view and copy items in the print and photo archive, which is located in the room adjacent to L165.

## Donations

A good deal of the material in the law school's collection finds its way to the school through donations. Thus when Oliver Wendell Holmes died, he bequeathed to Harvard his working desk, the lunch pail he carried to the Supreme Court every day (both of which can be seen in the Treasure Room), some boxes of memorabilia, and even his death mask (an item for which the curator has not quite figured out an appropriate place to display).

Another Supreme Court justice to bequeath items to the art col-

lection was Joseph Story, who donated some self-portraits and the marble sculpture now sitting in the main entrance to Langdell. The latter, incidentally, was sculpted by his son William Wetmore Story.

One thing which Justice Story refused to give to HLS, however, was money. In his will he stipulated that no money was to be given to HLS, since in all his years as a professor, his salary was never raised. As Bernice Loss has aptly perceived, even great men are human.

To be sure, Supreme Court justices are not the only people interested in promoting the arts at HLS. The sculpture in the Griswold courtyard called "Judgment" was created by John Safer, an HLS graduate (proof positive that corporate law is not the only post-HLS career option).

Also in the vicinity of Griswold is a wooden sculpture created by our very own curator herself. Called "Two Triangles and a Harp," this

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## Sports Quiz

By Russ Marsh

The World Series opens this week, marking the 82nd fall classic between the American and National League champs. It's time for some World Series trivia.

1. Who won the first World Series?
2. Since the World Series began in 1903, it has been played every year except one. Name that year.
3. Who caught Don Larsen's perfect game in 1956? What team did the Yankees defeat in the Series that year?
4. What team was the last and only AL West Division champion to win the World Series?
5. Which pitcher won three games in the Tigers' 1968 World Series victory over the Cardinals?
6. Other than Reggie Jackson, who is the only player ever to hit three home runs in one World Series game?
7. When was the last time the Cubs won the World Series? Whom did they beat that year?



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Adele-Marie Hendrix

Pam Thomas, Kathleen Duke, Dan Daniels and Joel Simkins in the HLS Drama Society's production of "The Gingham Dog" by Lanford Wilson. The play dealt with an interracial couple's turbulent divorce.

## Tenured Spots Decided Soon

(Continued from Page 9)

signalled their agreement with their pocketbooks.

Only a "handful" of longtime contributors have announced that news accounts have persuaded them to stop giving to HLS fund drives, Howe said.

The percentage of alumni contributing to the fund peaked in the mid to late 1960s, when between 60 and 65 percent of graduates who had been out of HLS 10 to 15 years gave to the fund. Participation in the fund suffered a "dramatic drop" in the 1970s, Howe said, because many students who graduated in the late 1960s had developed a "bitter feeling" about HLS.

The fund has rebounded, however, because some of the graduates from the late 1960s have "come back into the fold" and because students who graduated in the late 1970s and 1980s have shown less disenchantment with HLS, Howe said.

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# Appointing Power Used To Curb Activism

(Continued from Page 12)

is a long-term "check" in our structure of government. It is not a check in the immediate sense of a Presidential veto or Senatorial consent to a treaty, but it is perhaps the only way, short of popular elections, to make the judiciary reflect the popular will. More importantly, as administrations change over time, it ensures a variety of views — both political and jurisprudential — within the judiciary. Surely such a variety of voices is as helpful to sound judicial choices as to sound political choices. Perhaps what concerns those who oppose the present administration is that it is choosing such wise voices: people like Judge Easterbrook, Judge Scalia or Judge Bork. These appointees are a threat to judicial activism precisely because they present, not just court votes, but learned, well-reasoned positions, against it.

To say our three branches of government are "coequal" is to misconstrue the arrangement of our government. The drafters of the Constitution intentionally gave the Executive and Legislative branches predominant power. The Supreme Court and what lower courts Congress chooses to create have an essentially reactive role in the Constitutional plan. Our courts were intended to ensure that the actions of the other two branches do not betray the Constitutional scheme; they were not intended to be a self-executing government unto themselves.

The grant of predominant power to the Legislature and the Executive was motivated by two beliefs: first, that the people should govern themselves through elections; and, secondly, that this democratic scheme was the best possible to "secure the blessings of liberty." On the first point, those who support the passing Warren Court-style activism do their best to avoid the truth that the decisions of the federal courts do not reflect popular choices in the way legislation, executive acts, and referenda do.

On the second point, Madison noted that the fundamental principle of our government is "that the majority who rule . . . are the safest

guardians both of public good and private rights." Justice Holmes agreed, saying, "the legislatures are the ultimate guardians of the liberties and welfare of the people." And Justice Louis Brandeis noted that the people "must look to representative assemblies for the protection of their liberties."

What the present Administration is doing, then, is 're-securing' for the people the "protection of their liberties" by appointing Constitutional interpretivists rather than policy makers. This correction, long overdue, is a return to the clear intent of the Constitution.

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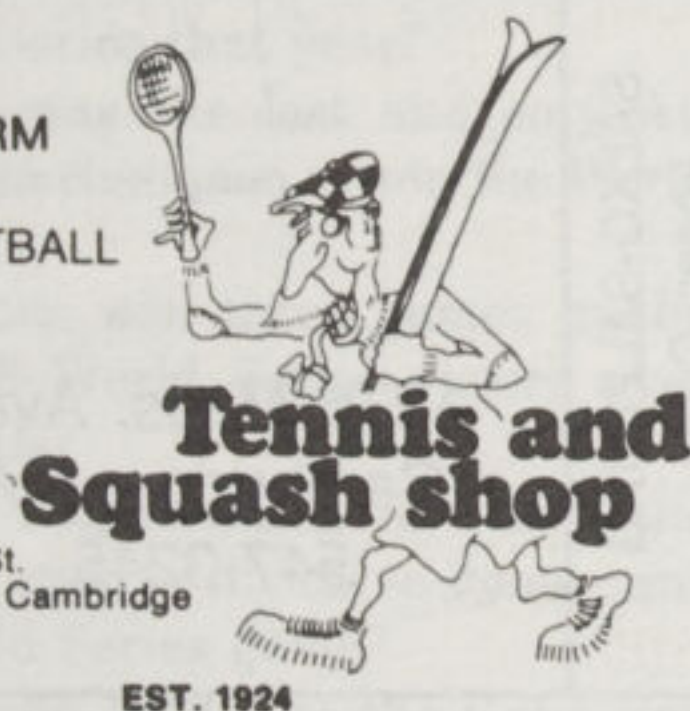
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# Appointees Face The Wrong Questions

(Continued from Page 13)

decide an issue — even hypothetically — is to demonstrate prejudice — which is exactly what the judiciary must not do. The questionnaires sent to these judicial nominees were in effect asking them to declare their prejudices before their nomination. But if all judicial nominees are forced to declare their prejudices, how can any judge maintain his or her independence?

There are proper questions to ask a nominee to the bench. What is important is the approach of a judge to the role of being a judge. How does the nominee view a judge's role in relationship to the body of cases behind him? How does a judge choose between different legal doctrines? What kinds of issues are justiciable? How does one choose, as an appellate judge, which cases should be heard? The emphasis here must be on general process, not specific substance. It is the fairness of the process of our judicial system that has helped ensure its integrity through the centuries. It is the fairness of the process that the Supreme Court has slowly and systemically sought to improve year after year.

As Judge Abner Mikva, who

served in Congress for many years, has wisely said, the test of a good appointment and confirmation process isn't ensuring the conformity of all judges to a narrow ideology, it is the concept of restraint.

According to Mikva, "there ought to be executive restraint — while the President is entitled to appoint people he likes and respects, he ought not exact or expect any pledge of fealty to the Chief."

So too, there must be Senatorial restraint. To quote Judge Mikva, "The Senators may have understandable curiosity about the candidates' views on the hot issues of the day. They can look, but they better not touch. . . . Satisfying a Senator's curiosity is not the way to enhance judicial independence."

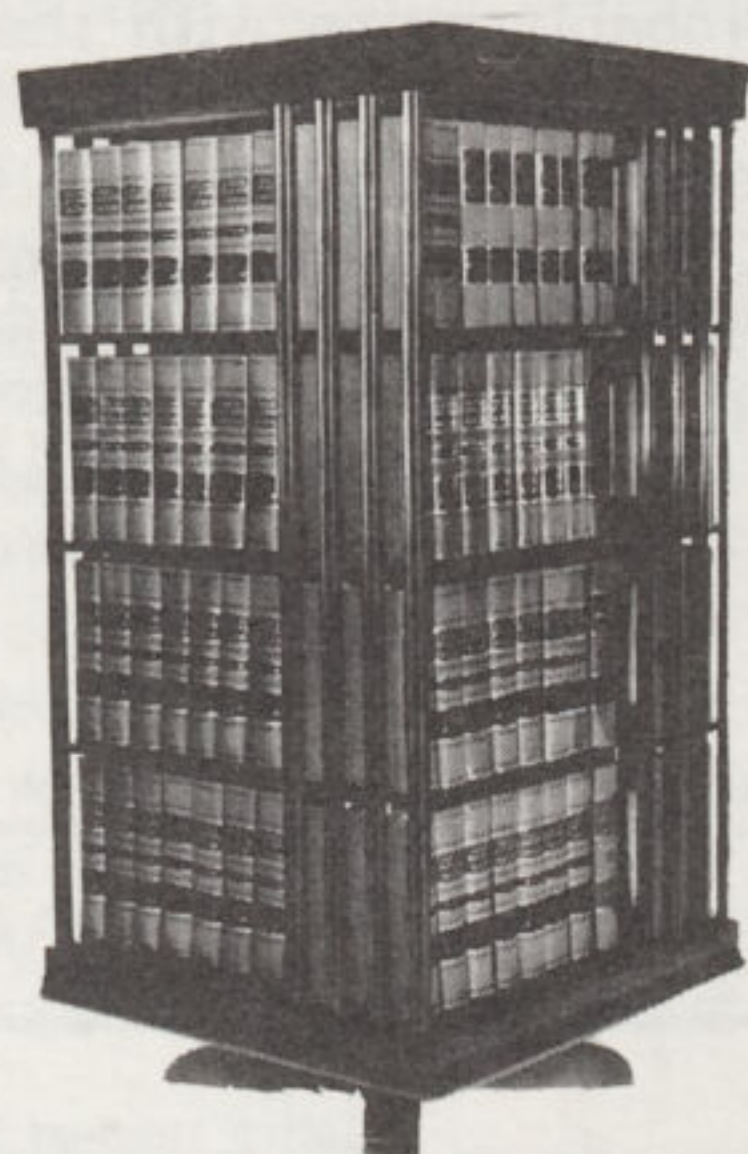
Of course, the final safeguard of that independence is the restraint of the nominees themselves. When Senators go too far in the questions they pose, the nominee must salvage our confirmation process. "Knowing which questions are properly posed to a nominee, and which are not, is perhaps the best litmus test of the qualities we want in a judge — the ability to judge and the exercise of good judgement."

Felix Frankfurter, Sandra Day O'Connor, Thurgood Marshall and Joseph Rodriguez all refused to answer questions submitted to them by Senators. Each was confirmed, and properly so.

As a prosecutor in the Massachusetts state courts and as an attorney who practiced in the federal courts, I never was in the position of knowing that a judge had predecided my case. No judge that I practiced before had ever been forced to articulate narrow and formal positions on issues in public outside of his legal practice, such as "I believe in the death penalty," or "I'm in favor of prayer in schools," or "We should eliminate our labor laws." Those are not the kind of statements a judge should put on the record in the absence of a case or controversy before him. Those are not the kind of statements members of the Senate should be soliciting from judicial nominees.

In day-to-day politics we may sometimes overstep the bounds of good judgment in matters of policy. One of the most profound safeguards on Congress is the integrity of our federal judges.

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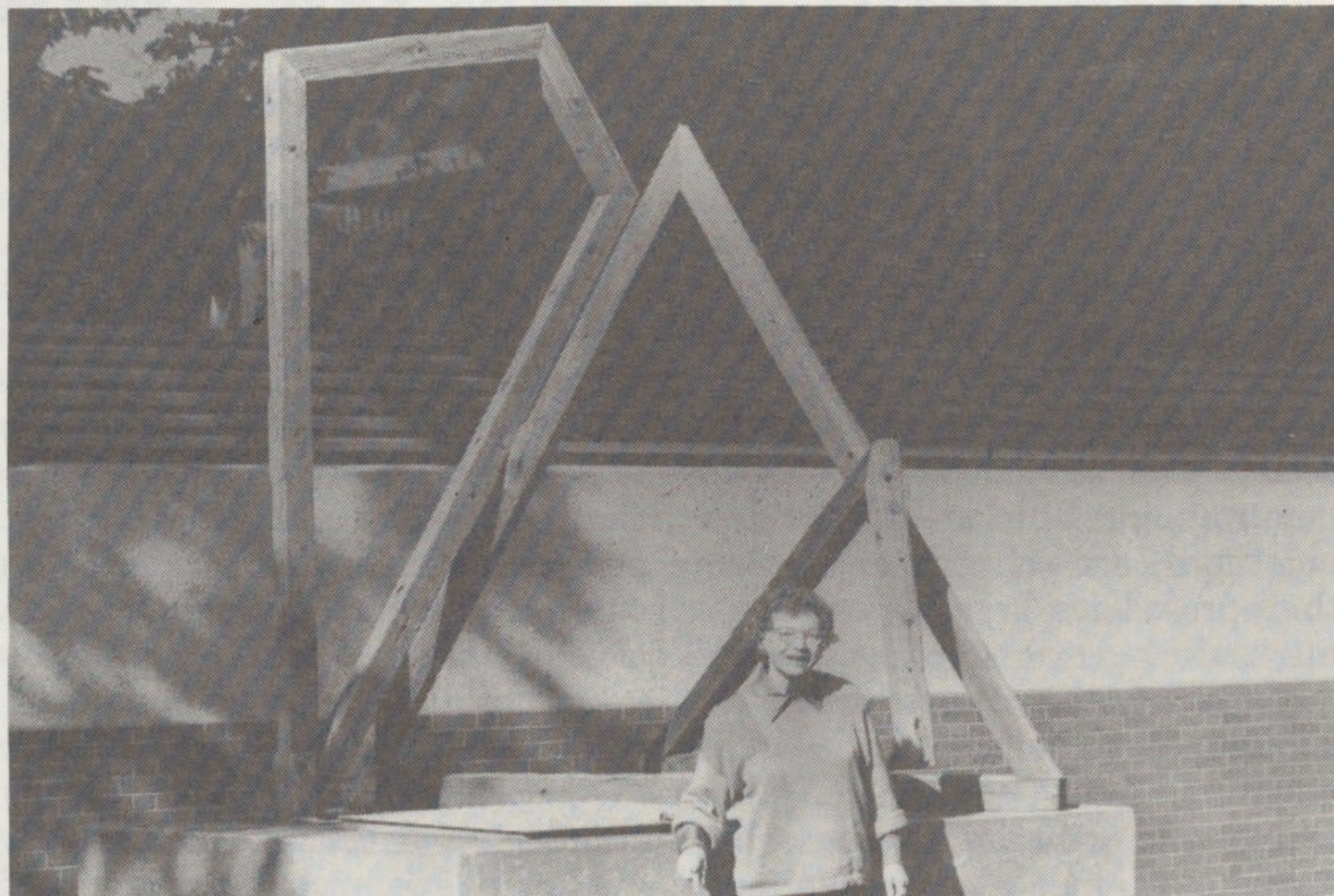
# "Night Wall I" Joins Outdoor Pieces

(Continued from Page 16)

sculpture is designed to mitigate the visual obnoxiousness caused by the concrete pump housing on which the sculpture rests. While walking by the pump house with former Vice-Dean Bruce one day, Mrs. Loss remarked, "My God that's ugly. Do we have to have it?" Like all good administrators, Vice-Dean Bruce replied, "Of course not. Why don't you do something about it." Thus, during the next summer, Mrs. Loss took direct action in her continual effort to beautify the HLS campus and created "Two Triangles and a Harp."

## "Night Wall I"

Of course some art works find their way to the HLS collection in a less direct manner. A case in point is Louise Nevelson's sculpture "Night Wall I." The owners of an art gallery which handles Mrs. Nevelson's works had a son who was among the graduating class of 1985. (Mrs. Nevelson was also at



Joseph Gourneau

*Mrs. Bernice Loss by her sculpture "Two Triangles and a Harp."*

the ceremonies to receive an honorary degree.) In appreciation to the university, the owners of the gallery donated "Night Wall I" to the college so that it could be permanently exhibited in Harvard Yard (sharing space with the college water pump and John Harvard statue). Unfor-

tunately, the college administration pointed out, Harvard Yard is a historical area, and as much as they would have liked to accommodate the owners of the art gallery, it couldn't. Thus, through this fortuitous turn of events, the sculpture was placed on Dillon Field (the area in front of Langdell) instead of in Harvard Yard, enabling HLS students to appreciate Mrs. Nevelson's sculpture on a daily basis.

Although it is conceivable that some students would never even miss the great collection of art at HLS if it did not exist, most would probably agree with the HLS curator that it really is kind of nice to look up and gaze upon Sir Edward Coke after reading one of his opinions pulled from the dusty shelves of Langdell.



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## Sports Answers

1. The Boston Red Sox.
2. 1904.
3. Yogi Berra; Brooklyn Dodgers.
4. The Oakland A's.
5. Mickey Lolich.
6. Babe Ruth.
7. 1908; Detroit Tigers.