



Harvard Law Record

America's Oldest Law School Newspaper

VOL. 81, NO. 7

NOVEMBER 15, 1985

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Rusher Decries Press Excesses

By David A. Price

William A. Rusher, syndicated columnist and publisher of the conservative *National Review*, spoke before the HLS Forum in Pound Hall on Nov. 7. Rusher argued that the First Amendment should not be used to confer protections on the media beyond the protections available to ordinary citizens. He recalled that *New York Times* columnist Tom Wicker had jokingly called him "a traitor to his class" for his position on media privileges.

Rusher, a 1948 graduate of HLS and formerly an associate at Shearman & Sterling, said that proponents of special constitutional protections for the media had misrepresented history. Many Americans, Rusher suggested, had been led to believe that denial of such protections was a result of President Nixon's anti-media animus, which moved him to appoint Supreme Court justices who would curtail press freedoms. Rusher argued that a limited view of media protections is actually shared by many prominent journalists and legal scholars.

Two protections Rusher questioned were the qualified libel immunity announced in the 1964 case of *New York Times v. Sullivan* and the qualified testimonial privilege announced in a concurring opinion in the 1972 case of *Branzburg v. Hayes*. He said both cases had brought about intolerable results and predicted that both would soon be modified by the Court. Disputing the need for reporters to keep the

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Adele-Marie Hendrix

National Review publisher, William A. Rusher

Ad Board Ends Lowell Probe

By David Snouffer

As the HLS Administrative Board concluded its investigation of a disorderly demonstration at Harvard College last spring against a visiting South African diplomat, the Law School Council (LSC) began a study of how HLS should discipline political protesters.

The Ad Board met informally with Doug Hagerman, 3L, for three hours on Nov. 6 and decided shortly afterward not to charge him with any wrongdoing for his participation in a rally at which a crowd of about 200 persons prevented Abe S. Hoppenstein, South Africa's consul-general in New York, from leaving an undergraduate dormitory complex for over an hour after he spoke to members of a student club. An LSC representative attended the

meeting to support Hagerman.

The Board last month reprimanded two HLS students, Michael Anderson and Jennifer Granholm, 2Ls, for blocking a police car during the protest.

"It was clear to us that [Hagerman] had done nothing that warranted charging him," Board Chairman Frank Sander (LL.B., '52) said last week after the meeting. He declined to release Hagerman's name.

Hagerman said he and two other witnesses recounted during the Board's closed meeting how he attended the demonstration for about an hour but "took no affirmative steps to help the blockade."

When demonstrators discussed during the rally May 2 whether to hold Hoppenstein in Lowell House, Hagerman said he advised them

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Clinical Education Provides Experience

By Marla Becker

The Clinical Legal Education program allows students to gain valuable hands-on experience in all aspects of the lawyering process. As an alternative to typical courses, taught by the celebrated "case method," the clinical courses focus on the actual skills used by a lawyer, including: interviewing, counselling, negotiation, legal research, document preparation, witness examination, and oral argument. Students actively assume the roles of practicing attorneys in real or simulated situations.

This year's courses cover fields as diverse as family law, government law enforcement, housing, criminal, immigration, employment discrimination, environmental, insurance, business, labor, prison law, consumer law, mediation, poverty, constitutional law, and trial advocacy. In the past, according to Assistant Director Suzanne Richardson, the most popular courses offered have been Family Law, Introduction to Advocacy: Civil, Lawyering Process and Professional Responsibility, and Public Interest Litigation: Race and Poverty.

Clinical education as a distinct methodology began in earnest at HLS in 1966 with the establishment of the Community Legal Assistance Office. In 1971, HLS Professor Gary Bellow, who teaches several of the clinical courses, added courses and workshops entitled Criminal Trial Advocacy, Civil Trial Advocacy, and the Lawyering Process. These *Introduction to Advocacy* sequences have since become the largest and most popular fieldwork courses in the program.

In the 1970s the program was expanded to include fieldwork offerings in a variety of fields, and courses in simulation were added. These classes, based on simulated practice, were offered in the areas of federal litigation, constitutional, environmental, tax, tort litigation and international laws.

In 1977, the organization now known as the Legal Services Center

was established. The cooperative project of Harvard and Greater Boston Legal Services is HLS's largest placement center, accommodating approximately 75 students each semester.

The most recent developments in the program include the establishment of the highly popular PIL-RAP (Public Interest Law: Race and Poverty) in 1982, and the introduction of Employment Discrimination Law. Students in these classes work on actual cases with civil rights and public interest organizations throughout the country.

Last year, a new Cambridge student practice clinic was opened to provide up to 16 students per semester with fieldwork opportunities, mostly in immigration and housing law. Project PERICLES was launched last year as well, providing opportunities for students to develop computer technology in providing better legal services to the poor.

Balancing Curriculum

The clinical programs provide a "balancing contrast to the pursuits characterizing the bulk of the law school curriculum," (according to the pamphlet "Clinical Legal Education at Harvard Law School 1985-1986"). Clinical students fill the compelling need for legal services by low income people and nonprofit organizations. At the same time, students are exposed to the problems of housing, poverty and discrimination, problems which must be experienced to be really understood.

One student, in completing the evaluation of Family Law, commented that the program "was great. It made real both the human dimension of the family law and

the bureaucratic aspects of the "system." I really felt like I was helping people and I grew to feel competent."

In a statement to the faculty in September 1983, Dean Vorenberg expressed his desire to see "every graduate of this school [have] a working experience representing those who need and cannot afford a lawyer. I regard such experience as important both in choice of careers, and as part of a complete legal education."

Students are obviously taking Vorenberg's advice. Currently, about 47 percent of students take a clinical course involving fieldwork, and a whopping 97 percent of all Law School students take at least one simulation course — the vast majority in trial advocacy workshops.

One critical benefit the clinical program provides is assistance in the labored process of career choice. The programs expose students to practice settings that resemble potential sites of later professional association.

According to a student who had taken the Introduction to Trial Advocacy: Criminal course, "There is no better way to get trial experience here at HLS than through this course. It was a pleasure to have Government Law Enforcement because it is the only course here at HLS which has a pro-government perspective. All other criminal law courses are rights-based. Not that rights aren't important, but there are such things as victims in this world."

A student considering public interest law who is not sure what that entails can do fieldwork in poverty law or public interest litigation. One

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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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Tribe Urges Senate to Study Court Nominees

By David Snouffer

If any Supreme Court vacancies occur during President Reagan's second term, the U.S. Senate should consider the "substantive views" of Mr. Reagan's nominees before it votes to confirm them, in order to prevent a "fundamental change in the meaning and interpretation of the Constitution," HLS Professor Laurence Tribe, '66, said on Oct. 31 in a speech sponsored by the Board of Student Advisers. The talk was entitled "Trick or Treat: Constitutional Amendments Masquerading as Judicial Appointments."

Tribe, who holds the HLS Ralph S. Tyler chair in constitutional law, told a standing-room-only crowd of over 200 persons in Pound Hall that every senator has the responsibility to question whether a particular judicial nominee will "move the court in a . . . dangerous direction."

Senators should investigate more than the nominees' experience and integrity, Tribe said, because Reagan administration officials including Attorney-General Edwin Meese want to achieve constitutional change through judicial appointments.

Tribe's remarks largely echoed ideas presented in a book he published this year, *God Save This Honorable Court*.

Officials of the White House and Justice Department have singled out four issues — abortion, school prayer, affirmative action and gun control — on which they expect Supreme Court nominees to agree with the Reagan administration's position, Tribe said.

"The Reagan filter filters out a number of very conservative people who aren't conservative on all the right issues," he said.

"The filter through which these people are being pushed is very, very narrow," he continued.

A change in the Supreme Court's ideological makeup could have a broader impact than a single constitutional amendment because justices have an opportunity to rule on case after case, Tribe said. Therefore, the Reagan administra-



David Rabinowitz

Prof. Laurence Tribe

tion, which failed to persuade Congress to approve proposed constitutional amendments that would prohibit abortion or permit school prayer, could in effect achieve these and other goals, possibly with as few as one or two appointments to the high court, he added.

"What can be done by judicial activism of one viewpoint can be undone by judicial activism of another viewpoint," Tribe said.

Tribe especially disputed recent comments by Meese, who told an American Bar Association convention last summer that judges should adhere to a "jurisprudence of orig-

inal intention" by carefully interpreting the Constitution according to what they believe its framers intended. Instead, Tribe said the Constitution must have "transformative life" in a changing society, as Supreme Court Justice William Brennan said in an address last month.

"Unlike Mr. Meese, I do not purport to have a pipeline to James Madison or Thomas Jefferson," he said.

Tribe also contested Meese's statement that the Supreme Court undertook a "radical" innovation when it ruled that the Bill of Rights applies to the states, despite an opinion to the contrary that then Chief Justice John Marshall wrote in 1833. Meese has proposed to let states decide matters of "privacy, personhood, health and morals," Tribe said, and Meese has attacked such Supreme Court decisions as *Miranda v. Arizona*, which requires police to advise suspects of their constitutional rights, and *Mapp v. Ohio*, which bars prosecutors in state cases from using evidence that police gathered in illegal searches and seizures, because he said these rulings protected criminals.

Quoting Justice John Paul Stevens, Tribe said Meese "leaves out the Civil War amendments," which brought a "fundamental change" to the relationship between the federal government and the states.

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Critical Legal Scholar Outlines CLS Movement

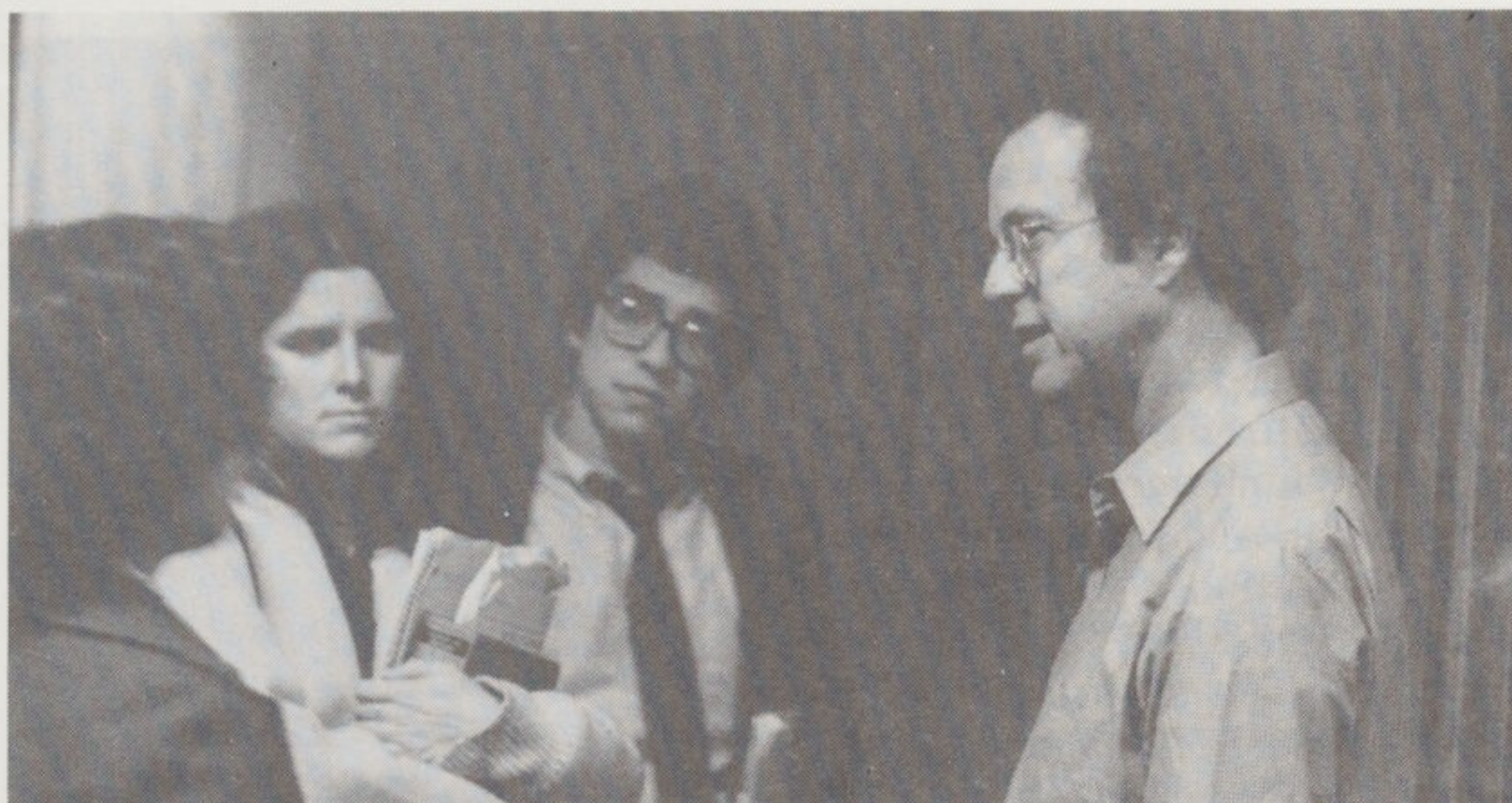
By Eric Sullivan

HLS Professor Gerald Frug (LL.B., '63) discussed Critical Legal Studies in the John Chipman Gray Room on Nov. 7.

Frug began the discussion by emphasizing that instead of focusing on what Critical Legal Studies (CLS) *is* he preferred to discuss what Critical Legal Studies *are*. Focusing on what CLS is usually leads to an inaccurate portrayal of CLS as a cohesive group embodying the "spectre of international communism and the Creature from the Black Lagoon."

Noting that participation at CLS conferences has been extremely fluid, Frug stressed that thinking of CLS as a distinct, definable entity was misleading. Rather, Critical Legal Studies should be viewed as a number of analytical tools used by a diverse group of individuals to perform legal analyses.

He provided an example by explaining how a legal scholar en-



Adele-Marie Hendrix

Prof. Gerald Frug speaks with students after his talk on Critical Legal Studies.

gaged in a critical legal analysis of a piece of legal writing might use a structuralist approach to "open up" a text. Rather than use an economic, Freudian or other type of "exterior" analysis, a structuralist would try to "deconstruct" the text. By taking it apart in this fashion the scholar would hope to gain better understanding of the ideas and

conflicts contained in the piece of legal writing.

According to Frug, if CLS was to embody a movement of any sort it would be academic, not political. A "CLS position" on any given political issue can't exist because scholars who perform critical analyses have a wide range of views. Frug sees no necessary connection between the use of intellectual methodologies such as structuralism and any particular political stance. Although he acknowledged that those currently performing critical legal analyses tend to be somewhere "on the left," he believes this will change. He analogized CLS to the Legal Realist Movement. In the past, Legal Realists have been New Deal liberals, whereas today the "biggest" Legal Realists are in the conservative Reagan Justice Department.

The problem, as Frug sees it, is not that opponents question the methodologies used by those engaged in critical analyses. These analyses often lead to specific proposals for change to institutions such as HLS. This creates problems. Frug says he is interested in improving HLS as well as producing scholarly writings, whereas many Law and Economics professors are not involved in the former.

Responding to a student who asked how he would propose improving the quality of first year education at HLS, Professor Frug had

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Crowd Turns Out To Honor Griswold

By Julia A. Loewy

Over 200 people turned out to honor former HLS Dean Erwin N. Griswold at a black tie affair at the Boston Park Plaza Hotel last Saturday evening. Griswold was presented with the "Distinguished Leadership Award for 1985" by the Lawyers Alliance for Nuclear Arms Control, Inc. (LANAC). The award was given "in recognition of his embodiment of the highest ideals of the Bar."

Griswold has distinguished himself in many areas of law. He taught at HLS and served as dean from 1946 to 1967. He was the U.S. solicitor general from 1967 to 1973 under Presidents Johnson and Nixon. On leaving the Solicitor General's Office, Griswold served on the U.S. Civil Rights Commission and on a commission on the CIA's domestic activities.

Only one other person, Daniel Webster, has argued as many cases before the U.S. Supreme Court. Griswold continues to practice before the Supreme Court and is a partner in Jones, Day, Reavis and Pogue in Washington, D.C.

According to HLS Dean James Vorenberg, "It is hard to think of anyone who has made contributions of more different kinds than Erwin Griswold has; he has played critical roles in legal education, government, law practice and international affairs."

A number of people spoke at the dinner about Griswold's achievements. They were: Archibald Cox, Loeb Professor, HLS; Hon. Robert H. Drinan, S.J., professor, Georgetown University Law Center; John B. Jones, an attorney with Covington and Burling; Robert Meserve, American Bar Association president, 1972-1973; and Alan B. Sherr, president of LANAC.

Cox said Griswold taught students that they should face the hard questions and that nothing better than an unobtainable best was good enough, teaching those lessons "with vision and underlying passion."

The years of Griswold's deanship at HLS were marked by "a burst of creativity." The most notable innovation was the International Legal Studies Program. He was also responsible for bringing the first Soviet student to HLS.

Cox said while Griswold was dean, "the Law School came first, and especially the students." Evidence of his desire to improve the quality of students' lives is Harkness Commons. In addition, financial aid was increased tenfold between 1950 and 1967.

Drinan praised Griswold's ethics saying, "He was uncorrupted by the

Watergate investigation because Erwin Griswold is uncorruptable."

A keynote address was given at the event by McGeorge Bundy. Bundy was dean of the Faculty of Arts and Sciences at Harvard from 1953 to 1961, Special Assistant to the President for National Security Affairs from 1960 to 1966 and is currently a professor of history at New York University.

Speaking on "Nuclear Reality and Human Hope: a Lesson from Their Uneasy Coexistence," Bundy expressed his pessimism about the possibilities for progress at the up-

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Clinical Studies Complement Curriculum

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student who took Civil Introduction to Advocacy discovered that, "It provided a window into a part of society — the poor and underprivileged — which I had unfortunately been insulated against for too long. It was a political and personal eyeopener. The course was also a legal eyeopener. I gained new legal skills, practical skills and confidence. I learned how to deal with various people in various roles. I think that this type of course should be a *required* part of law school education."

The clinical program provides unique opportunities to counsel clients in one-on-one situations, to represent them in some cases, and to take on more responsibilities for the clients' interests than is usually possible as an associate at a firm. In sum, according to Richardson, the clinical programs provide "more exposure to the variety of the lawyering experience."

Clinical Requirement?

Although several students stressed that "the course reminded me why I came to law school. It should be *mandatory*," it will be at least a few years before the program becomes a required part of the law school's curriculum. Vorenberg explained that he "strongly encourages students to take a clinical course, but we are . . . far from [able] to provide a really good fieldwork experience for *everyone* — it would be jumping the gun to make it mandatory."

Students enrolled in clinical courses receive credit for both their work in the classroom and their field experience. Every simulation course carries at least two classroom credits, and some are three credit or optional third credit courses. The fieldwork courses are more varied — several offer the opportunity to tailor the number of credits to your particular desired time commitment. Some courses required half or more of a student's time per semester (e.g., the Introduction to Advocacy courses), while others in-

volve only eight hours per week of field work activity.

The programs are flexible enough to satisfy a casual student's curiosity about a field or a serious student's complete commitment to the same field. There is even an Independent Fieldwork Program in which second and third year students can obtain credit for work in special areas of interest that the program does not currently offer.

Fieldwork projects may be undertaken either in connection with or entirely independent of classroom work. Students can receive up to 2 clinical credits for independent work, over one or two semesters. Faculty supervision of proposals and independent fieldwork is required.

Clinical credit is awarded at the rate of one credit for four to five hours per week of fieldwork. According to HLS rules, no more than 12 credits may be counted toward the 52 credit minimum in the second and third years for clinical work, cross-registration courses, and written work.

Most fieldwork courses involve an evaluation of student's practice work by the student's supervisor near the end of the semester. Suggested grades from field supervisors are taken into account by the course instructor in figuring a final grade. Students in turn evaluate their supervisors, placements, and courses.

Several student organizations offer fieldwork experience for which a student may obtain credit through the program. For example, members of the Legal Aid Bureau can receive credit for their casework in a half dozen or so courses, and the Harvard Defenders act as a placement for students in Criminal Introduction to Advocacy. This spring, many students doing fieldwork in Prison Law will be placed by the Prison Legal Assistance Project, better known as PLAP. Thus, a student may join a group that provides the kind of work a student would enjoy doing both on an extracurricular and for-credit basis. Placements are available as well through the Harvard Government Attorneys Project, Students for Public Interest Law

(who represent tenants before the Cambridge Rent Control Board) and the Harvard Mediation Program (in which small claims disputes in local district courts are mediated).

Hundreds of students each year enroll in the clinical programs at HLS, seeking and finding worthwhile experience outside the casebooks. Students evaluating the courses echoed the sentiments of this student, who was enrolled in Civil Introduction to Advocacy: "The opportunity to practice and to help people was fantastic. The practical, hands-on training seems to me to be far more valuable than hours of law school classes. Beyond the substantive law I learned, I learned immeasurable amounts about just how to speak as a lawyer. I learned about courts, about clients, and about opposing counsel. In the end, I learned that while I may not be a very good law student, I can be a very good lawyer."

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The Result Of Good Deeds At HLS

Sometimes just when I start to think that Harvard Law School really is a decent, humane place to go to school, something happens that makes me realize instead it is a pretty cold place indeed.

This time around, the action that I find intolerable is the reprimand of Jennifer Granholm, 2L, by the Administrative Board for her participation in the May 2, 1985 anti-apartheid demonstration that took place at Lowell House. Sure, she may have been "guilty" of the actions for which the Ad Board eventually reprimanded her. But in her case, that just is not the point.

Granholm came forward to testify in front of the Ad Board when it was investigating the actions of Michael Anderson, 2L, during the same demonstration. Anderson faced serious punishment when a police officer, who was driving the car carrying the visiting South African diplomat, accused him of attempting to incite vandalization of the police vehicle. This was a very serious charge indeed. If the Ad Board had found that Anderson was guilty, he probably would have been dismissed or suspended from HLS. And although no other witnesses even claimed that Anderson attempted to incite any such violence, the Ad Board continued its investigation.

At this point, Granholm was not even under investigation by the Ad Board. Even with all of its many months of questions and investigations, the Ad Board had nothing on Granholm and was not targetting her in its inquisitions. But because one police officer made one accusation, Granholm had to come forward to do the only thing that a respectable human would do. Granholm testified in Anderson's defense and in the process got into a good deal of trouble herself. In order for her testimony to carry any weight, she had to admit what she had been doing during the protest. So all of a sudden, the Ad Board had another sacrificial lamb fall into its lap. And you know that the Ad Board could not help but get at least one more "evil-doer" to hold up as an end product of its months of investigating.

So is that what we are supposed to learn here at HLS? Are we supposed to just watch our friends and associates get taken down because there is a threat to our own safety? Where is the justice we are supposed to be learning about? I really believe that it would have been a lot different if Granholm was under investigation to begin with. But even with all the commotion that the Ad Board has been making about this protest, the Ad Board was not concerned with her. But when she tried to do what she knew was right, the Ad Board turned around and slapped her.

This probably will not be the end of Granholm's legal career, as long as she does not get into any more trouble while she is at HLS. The threat that another Ad Board act against her will cause the Ad Board not to issue its recommendation letter to the bar she perspectivevly plans to join will undoubtedly have a chilling effect on her political activities. Where is the fairness in that?

I congratulate Granholm for acting with decency and sympathy. And the Ad Board? Shame, shame, shame.



G.K.K.

HARVARD LAW RECORD

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Fenno

Fenno looked at his watch. 2:30 p.m. It was time to get moving. He had to be at Logan in an hour to pick up a female friend of his.

Fenno figured he would allow that much time for the drive to the airport even though it was Sunday afternoon and traffic should be light. He couldn't be late. Fenno had few women friends as it was. He didn't want to alienate another one.

In front of the Coop, Fenno nearly ran over three pedestrians before skidding to a stop at the green light. Then he himself was nearly run over by an angry mob of shoppers crossing Mass. Ave.

At Eliot Street, Fenno stopped at the stop sign and looked to his right as he prepared for a left turn. Nothing there but a car with its right-turn-signal flashing. Fenno pulled out. Suddenly his head bounced against the steering wheel as he stomped the brakes and watched the car from the right lane complete its left turn.

Fenno paused to catch his breath and let the traffic in the cross street go. He pulled out a second time. Again his head bounced against the wheel. While Fenno wasn't looking, a truck had come up from behind in the lane for oncoming traffic and beaten him to the turn. This time Fenno didn't wait for the other traffic.

"Oh well," he thought, crossing the Charles, "it took me longer to get through the Square than I thought, but I can make up the time." It was 2:50.

At about Beacon Hill the traffic jam began. It was 3:00. Fenno couldn't drive more than five feet without stopping.

Fenno disagreed with most people about the Boston highway system. His belief was that there *was* a reason (besides malice) for its design. Fenno thought it was all a complex civil defense measure — a device to bog down, confuse and thereby thwart any potential invasion.

In the tunnel at 3:30 Fenno got claustrophobic. He took a deep breath to calm down. Coughing, he wondered what Sumner and Callahan did that made Boston hate them enough to name the tunnels after them.

When Fenno arrived at Logan, it was 3:45. He pulled up to the parking lot for Terminal B. "LOT FULL" said the sign. "GO TO CENTRAL PARKING." Fenno sighed, resigned to his fate.

At 4:00, Fenno walked into the terminal. A voice came over the loud speaker: "Mr. Fenno to the Republic ticket counter please." Fenno dutifully followed the direction.

"I'm sorry, Mr. Fenno," a woman at the ticket counter said. "The person you were to meet took the 'T.' She said she had to hurry."

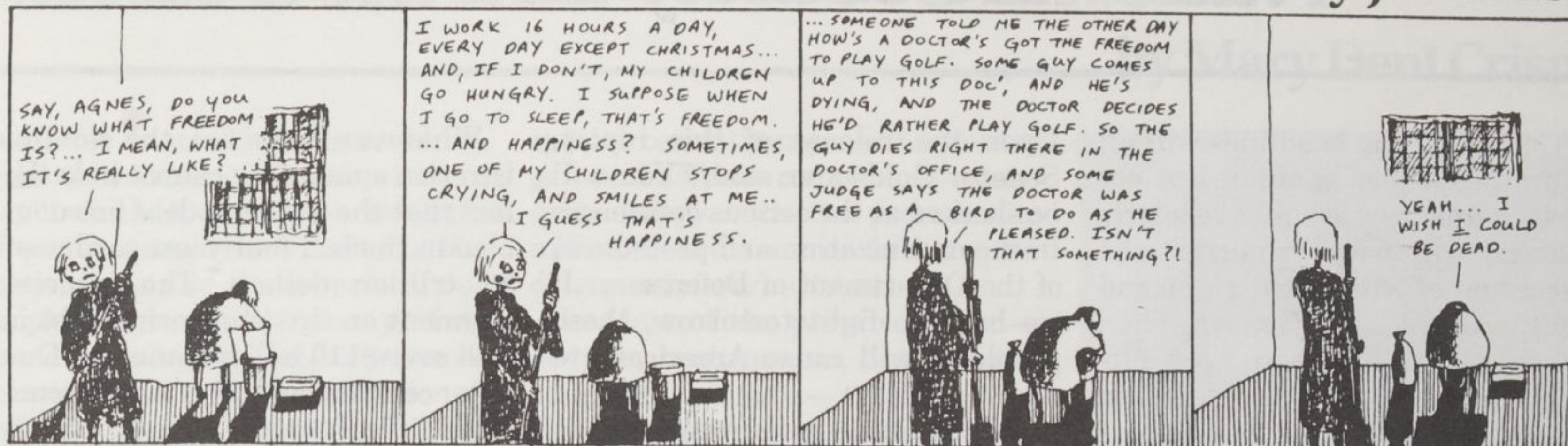
"Took the 'T' to *hurry*?" Fenno laughed to himself as he walked back to the car. "At least I have a seat for the long wait home."



HARVARD LAW RECORD

"The In-Law"

by Jinku Lee



Letters to the Editor of the Record

Puerile Notions

To the Editor:

If the puerile and blockheaded notions expressed by Duncan Kennedy in the guise of professional wisdom ("HLS Panel: Kill All The Corporate Lawyers," [RECORD, Vol. 81, No. 4, Oct. 18, 1985, at 3]) were accurately reported by you and sincerely held by him, then he is a fool. If such notions were not sincerely held by him, then he is more of a charlatan than all but a few of the corporate lawyers I know.

Most practioners reading Professor Kennedy's remarks will have no trouble discounting to zero his views as to the worth of corporate practice and his adolescent superciliousness toward those with whose values he disagrees. As a public service to those less familiar with the world of creative arts, I am pleased to advise that Kennedy doesn't know what he's talking about there, either.

I am a corporate lawyer and a composer of chamber and other "art" music, and I do a fair amount of "pro bono" representation of artists of all types. I get every bit as much satisfaction at making an elegant argument or skillfully crafting an agreement as I do at crafting an elegant and expressive musical passage. I don't kid myself that anyone will give me a Pulitzer Prize for my legal efforts or that there is great social utility in my music.

Most artists I know do what they do not out of romantic notions about making the world better (there's plenty of opportunity for post hoc self-justification in any realm of endeavor) but because of an inner compulsion they cannot avoid. The primary topic of conversation at social and other gatherings of artists is money: how to get it, how to keep it, how to increase it, how to beat others to it. If composers were paid as well as lawyers usually are, they'd be just as worried about tax shelters.

I have no quarrel with lawyers who represent the disadvantaged as a primary or secondary professional activity, whether their reasons are altruistic or simply the result of compulsion, lack of talent for or boredom with other kinds of practice. I also have no quarrel with lawyers whose skills, for reasons of conviction or expediency, are primarily devoted to the interests of business, labor, government or any other legitimate human activity. There are many roads, you know, beside the Wabash; the mechanics of traveling them are, however, the same. If lawyers enter public interest law with the attitudes that Kennedy attributes to artists and artisans, those lawyers' clients will have good reason to feel cheated.

Vance R. Koven, '71
Boston, MA

Remembers Byse

To the Editor:

I just finished reading your article on Professor Clark Byse's retirement, and I was moved to write to you for only the second time in the fifteen years since my graduation.

Professor Byse cared more deeply about teaching than any other professor I ever had at Harvard Law School. I can still remember how often in his first year Contracts class he managed to lift the darkness from my eyes and helped me see the pattern and logic of the law. And the experience was made even more memorable by Professor Byse's keen sense of humor.

I never doubted the intelligence of any of my professors at Harvard Law School, but there were few gifted teachers among them. Harvard Law School's loss is clearly the University of Iowa's and Boston University's gain.

J. Gordon Arkin, '70
Orlando, Florida

Sports Quiz

By Russ Marsh

This season seems to be marking a resurgence of Big Ten football. At one point, the conference had five teams in the Top 20, and the Iowa-Michigan game matched the No. 1 and No. 2 teams in the country. But die-hard Big Ten fans know that come January 1 in Pasadena, their champions have a tendency to, uh . . . let them down. This week's quiz features Rose Bowl losers.

1. Undefeated at the time of the 1976 Rose Bowl, this team lost its shot at the national crown to the UCLA Bruins, coached by Dick Vermeil, 23-10. Name this team whose mascot is a type of nut.
2. This team lost its bid for the national title in the 1972 Rose Bowl in a heart-breaking 13-12 loss to Jim Plunkett and Stanford. Name this perennial Rose Bowl

loser.

3. The 1981 Big Ten champ was the first team in fourteen years other than Ohio State or Michigan to represent the league in the Rose Bowl. Name the team that was subsequently shutout by Washington 28-0.
4. Coached by Mike White, this team helped bring passing back to the Big Ten. It didn't help when they travelled west, though. Name the team that was crushed 45-9 by UCLA in the 1984 Rose Bowl.
5. This team was chosen as national champion by the UPI even though it lost to UCLA in the 1966 Rose Bowl. Name the team that is probably more famous for its 10-10 tie with Notre Dame the following season.

(Answers on Page 16)

National Security and the Deficit:

This week, the headlines will all be on the Geneva summit. But not too long from now even the scholarly journals will have exhausted the discussion of what went right and what went wrong at Geneva. Then we will return to a more even outlook of our country's problems: to the fact that one out of four Americans believes, quite rightly, that the spiraling budget deficit is our nation's number one problem and to the knowledge that the deficit is inextricably linked to the bellicose defense policies of this administration.

The Presidential campaign of 1980 was perhaps the first time we heard, from a major candidate, the terrifying statement that a limited nuclear war was winnable. We also heard the usual siren's calls of Presidential campaigns: promises of a balanced budget, a tax cut and a military buildup. In the last five years we have gotten the tax cut. We have also seen a massive increase in military spending.

That increase has led to things that President Reagan did not promise us: an escalation of the arms race and increased tension between the United States and the Soviet Union. As for the balanced budget we were promised, we now face a \$200 billion dollar deficit. It is hard to deny the fact that the culprit is excessive military spending. The military budget has risen 60% in the last four years. The United States military spending is now greater in terms of constant dollars than at any time since the Korean War.

The question is, what has the nearly \$1 trillion spent on defense in the past four years bought? Just how well are the defense dollars being spent? In a recent report, the Senate Armed Services Committee recommends sweeping reforms for the Department of Defense. This committee is chaired by Senator Barry Goldwater, hardly a left-wing critic of the administration.

Upon the release of this report, Senator Goldwater said, "You will be shocked at the serious deficiencies in the organization and procedures of the Department of Defense . . . If we have to fight tomorrow, these problems will cause Americans to die."

It does not take much memory to realize how right Senator Goldwater must be. The 1980 debacle at "Desert 1," where the Iranian hostage rescue attempt ended, and the death of our Marines in Beirut stand in tragic testimony to our military establishment's inability to competently use the resources we give them. More recently, when Palestinian guerillas seized an Italian cruise ship, Israeli intelligence found the vessel long before we did. In fact, some press reports indicated our elaborate intelligence gathering network simply couldn't find the ship — and a cruise liner is not an easy thing to hide.

But this mismanagement would not be acceptable even if it did not jeopardize American lives and cause national embarrassment. There is simply no reason for the incredible

"The 1980 campaign was the first time we heard the terrifying statement that nuclear war is winnable."

inefficiencies in our military bureaucracy. The public is outraged with the horror stories of \$400 hammers and \$7000 coffee pots and expensive weapon systems that are marvelously efficient on those rare occasions when they work. To say we can sustain these kind of costs is, as one politician once dubbed it, "voodoo economics."

Whatever fantasies the administration spins, they cannot hide the fact that the national debt has doubled in the last four years to almost \$2 trillion dollars. The interest payment on this staggering debt is well over \$110 billion annually. Our balance of trade deficit has become more difficult to hide than an Italian cruise liner.

Yet Congress and the President have failed to act. Ignoring the deficit, the administration offered a tax reform as a panacea for the nation's ills. And Congress seems just as irresponsible. With admirable but misguided fervor, our legislators are grappling with the Gramm/Rudman legislation that would reduce the deficit by a specified amount each year until the budget was in balance by 1991. This is a deceitful exercise simply because the Congress already has the power to balance the budget.

Senator Robert Packwood has said, "Every one of us — we're all guilty. When it comes to voting against our favorite program, we can't do it." Senator Bradley argues convincingly that the legislation is a fraud, cleverly designed to protect the defense program from more than token cuts; to avoid a tax increase; and to lay the entire burden of cutting the deficit on monies for education, child care, environment and other nondefense programs. The *New York Times* on October 10th argued that "It appears that the ax would fall with disproportionate savagery on social programs that service people with the least political clout."

This combination of rising deficits and the administration's treatment of the defense budget as a sacred, ever-expanding cow has put us on a dangerous course. And to be fair, it is not a completely new one. In a very real sense, since World War II we have defined national security by the size of our military arsenals.

This conception of national security is not, however, the only one

The Ultimate in Pro Bono Work

by Mary Dent Crisp

available to us. There is an older, richer meaning of "national security" which includes the strength of our economy, the vitality of our institutions and the morale of our people. Said in another way, if we spend ourselves broke, are we more secure? If we raise a generation of children who believe they will be destroyed by nuclear war, are we more secure?

In our search for genuine national security, we must all look to the words of President Eisenhower who in his farewell address twenty five years ago warned us about the "military-industrial complex." His words fell on deaf ears, but it is now important to hear them again: "No matter how much we spend on arms, there is no safety in arms alone. Our security is the total product of our economic, intellectual, moral and military strength ... If I learned one thing, it is that there is no way in which a country can satisfy the craving for absolute security — but it can easily bankrupt itself, morally and economically, in attempting to reach that goal through arms alone. The military establishment, not production in itself, must necessarily feed on the energy, productivity, and brain power of the country. And if it takes too much, our total strength declines."

Our business and professional communities must take the lead in returning us to this vision because there is a great difference between most of the social problems we face and the danger posed by the combination of the deficit and defense spending. Most social problems have special constituencies who are close to the problem and who best understand it. Sometimes these constituencies are influential by themselves; sometimes these special constituencies have been historically disenfranchised — as in the case of racial or ethnic minorities.

Yet the defense budget is a different sort of problem. Here the

special constituency — the Pentagon and defense contractors — are quite happy with the present situation. Benefits accrue to them; the detriments accrue to us.

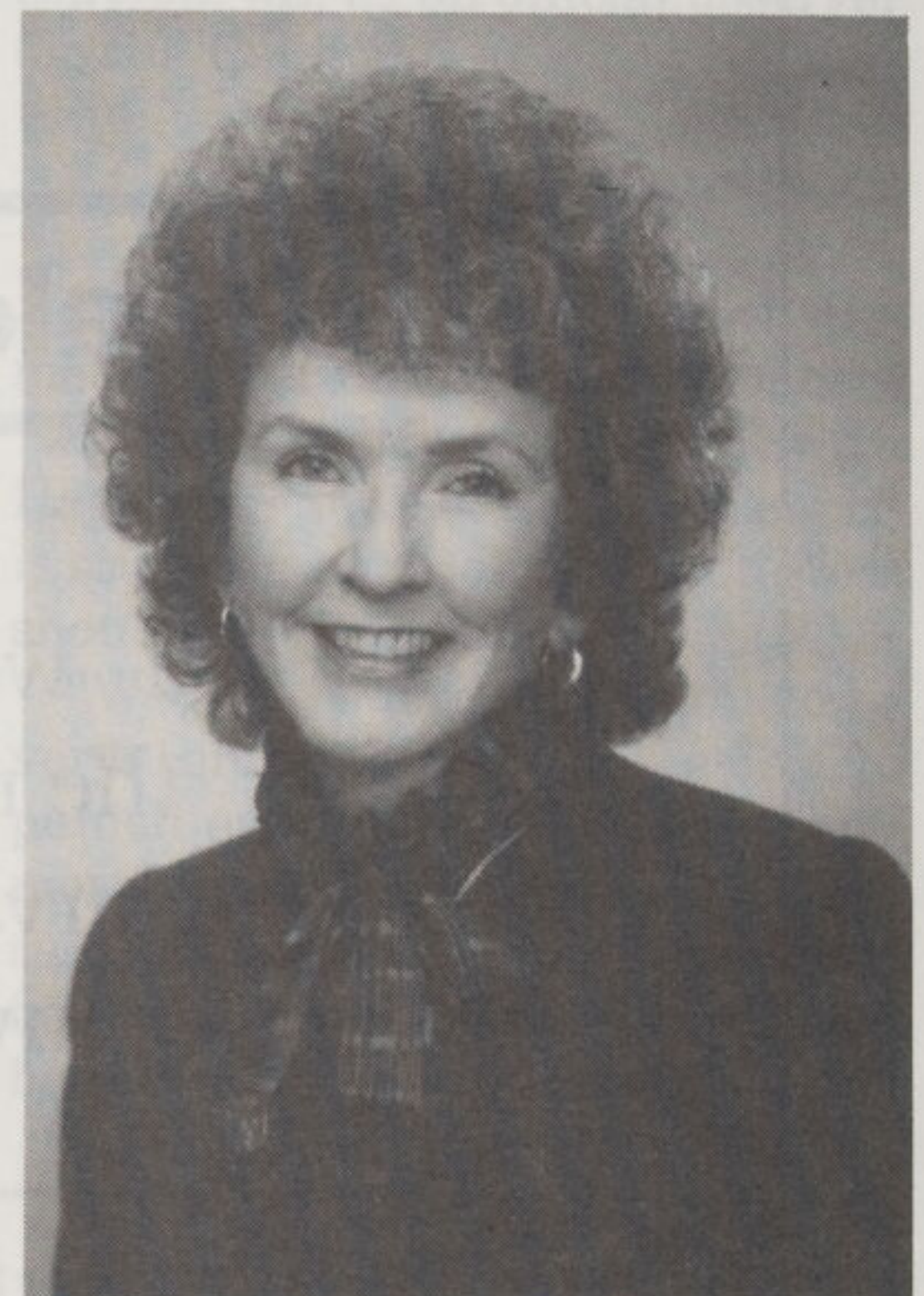
Leaders of the private sector — lawyers, businessmen, bankers and other professionals — are the people who can best understand the risks involved in our deficit spending. They are also the ones who should most keenly see how "business as usual" at the Pentagon is a far cry from anything approaching "good business practice" or "sound business judgment." Equally important, lawyers and businessmen are people who are "extra-enfranchised." They have historically wielded political clout. In short, if any segment of society is going to cure our defense and deficit woes, it must be professionals.

One group of people working toward this goal is Business Executives for National Security (BENS). BENS is a national, bipartisan trade association of almost 4,000 executives and professionals who are concerned with genuine national security. Our goal is to reduce the risk of nuclear war and promote an effective yet

"'Business as usual' at the Pentagon is a far cry from 'good business practices' "

affordable defense. Part of our work is analyzing Department of Defense programs on the basis of sound business principles. Ultimately, our objective is to refocus our vision of national security.

Other organizations have taken different approaches to improving our defense policy. For example, the Lawyers Alliance for Nuclear Arms



Mary Dent Crisp is former co-chairperson of the Republican National Committee and headed John Anderson's 1980 presidential campaign. She is presently a political consultant in Washington, D.C.

Control is seeking to defuse some of the present tension between the superpowers. Both organizations engage in nothing less than pro bono work for our national well-being.

We all have a responsibility to be involved in the debate on national security. Professionals cannot afford the luxury of lethargy while our society stands on the brink of annihilation. In this great democracy, we, as individuals, have the power to make a difference.

Long ago, de Toqueville recognized that lawyers form the aristocratic class in America. As such "citizen-statesmen," lawyers have a special power to make that difference. Collectively, we must translate our fears into political action. As Oliver Wendell Holmes once said, "You must involve yourself in the great issues of the day; lest you be judged not to have lived."

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Student And Ad Board Discuss Board's Role

(Continued from Page 1)

against "stooping to violate civil liberties." Unable to convince other protesters to let the diplomat return to New York, Hagerman left the demonstration.

HLS Professor Andrew Kaufman (LL.B., '54) represented Hagerman before the Ad Board.

Hagerman called the Board's decision not to discipline him "certainly satisfactory," but he criticized Board members for asking him to meet with them when he said they didn't have "any extrinsic evidence" against him.

"I think if they start an investigation, they should attempt to find more evidence against a person [under investigation] than the person's own statements," Hagerman said. Otherwise, when Board members ask a protester to appear before them, "it starts to look like a fishing expedition against a political actor," he said.

Hagerman said he and Board members discussed how the Board could balance its role as an investigatory fact-finding panel with its function as an adversarial disciplinary body, so that its handling of political cases would not be "antagonistic to free speech."

"I'm not sure I persuaded [Ad Board members] on a lot of issues," Hagerman said, "but they were receptive" and replied candidly to his ideas.

If Hagerman had refused to meet informally with the Board, the group would have had to have used other means to look into his involvement in the demonstration, probably by hiring an outside investigator, Sander said.

"We're not a prosecutorial agency," he said. "We're not in a position to go interview people."

But the Board had to investigate the Lowell House rally somehow because Hoppenstein's civil rights were violated and several persons were injured, Sander said. Some students "just think we should ignore the situation," he added, "but I think that most of us draw a distinction" between disapproving of

apartheid and violating University regulations.

Hagerman agreed to meet the Ad Board informally after Sander told him the group would otherwise hire an investigator and, if necessary, a prosecutor for the case. Hagerman earlier had said he might speak to the Board only if it held a formal hearing, which would have required the Board to file formal charges against him and would have allowed him to cross examine witnesses.

Formal hearings involve "heavy costs" both to students under investigation and to the Ad Board, Sander said. "There's no free lunch," he added.

Many students complained when the Ad Board hired an investigator to probe a cheating case several years ago, he recalled.

Although last week's meeting was closed, at Hagerman's request the Ad Board admitted LSC Rep. Don Carlson, 3L, as an official observer for the Council.

Council Studies Protests

Carlson said he attended the meeting because Council members "wanted to show solidarity" with Hagerman and because the Council is studying how political protesters should be disciplined.

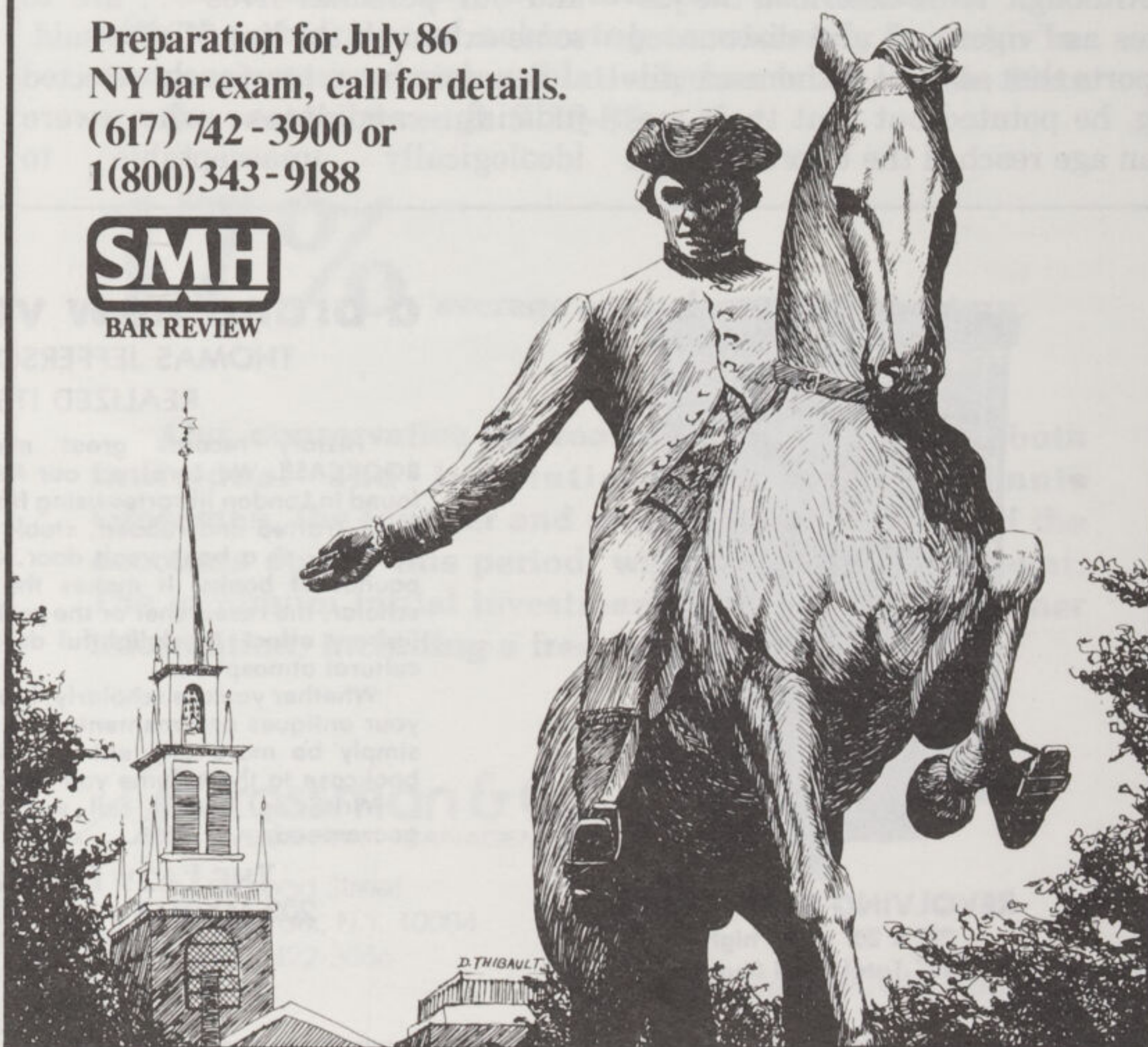
"We as a community ought to be very concerned if we're going to punish acts that we don't feel any moral basis to condemn," Carlson said. He said a "more democratic" body than the Ad Board might be better qualified to determine the

(Continued on Page 16)

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Reagan Biding His Time As High Court Ages

(Continued from Page 3)

"It is truly radical to go on a hunt for judges who believe we should roll things back 60 years," Tribe said. "There is reason to believe that most members of the [current Supreme] Court are a bit nervous that all the work they have been doing . . . could be undone."

By contrast, Justice William Rehnquist has welcomed the prospect of a spate of conservative appointments, Tribe said. Rehnquist last month recalled former President Franklin Roosevelt's ill-fated attempt to "pack" the Supreme Court in 1937.

Roosevelt backed away from his idea after a veteran congressman advised him that he could gradually change the court's makeup through the normal appointments process. "Father Time with his scythe is on your side," the congressman told Roosevelt.

Tribe said Rehnquist meant to reassure conservatives that they can achieve their constitutional agenda by biding their time and waiting for the President to appoint new justices.

Although Tribe described the justices as "vigorous" and discounted reports that several of them are ailing, he pointed out that their median age reached the unprecedented

height of 77 on Nov. 12 when Justice Harry Blackmun celebrated his 77th birthday.

Reagan reportedly is considering U.S. Circuit Judges Antonin Scalia and Robert Bork and Sen. Orrin Hatch (R-Utah) for any high court vacancies that may arise, Tribe said. Reagan may be "disappointed" with Justice Sandra Day O'Connor, who has voted "considerably to the left of Rehnquist on a number of issues," he added.

In addition to any Supreme Court appointments Reagan may make, at the current rate he is appointing lower federal judges he will have appointed over half the 760 members of the federal bench by the end of his term, although Tribe said Justice Department officials probably cannot scrutinize all judicial nominees as painstakingly as they do Supreme Court candidates.

Tribe said Reagan was the first president to undertake a "clear and systematic program for overhauling and remaking" the federal judiciary since John Adams appointed a number of "midnight judges" shortly before he left office in 1801.

"Our entire professional careers and our personal lives . . . are to some extent on the line," Tribe said.

Senators have previously rejected judicial candidates who were ideologically unacceptable to

them, he said. The Senate rejected former President George Washington's second nominee for chief justice, John Rutledge, in 1795, and in 1930 senators "balked" at then President Herbert Hoover's nomination of John Parker for an associate justiceship, he noted.

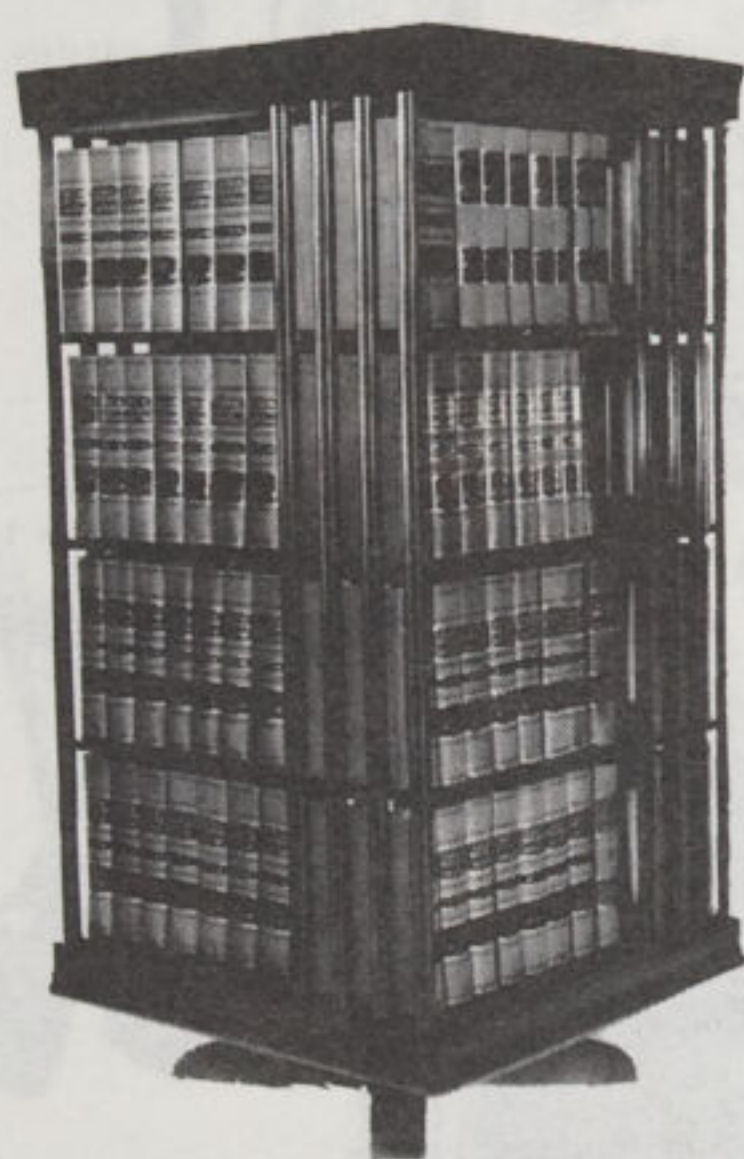
Tribe termed as "naive" suggestions by Sen. John Kerry (D-Mass.) and others that justices should be appointed and confirmed without regard to their ideological views. Kerry wrote in a column published in the RECORD Oct. 18 that senators should ask judicial nominees only about their ideas about "general process, not specific substance."

The confirmation process inevitably is political, Tribe said, and he conceded that if liberal senators try to block conservative nominees in the next few years, then conservative senators will likely oppose liberal nominees in the future.

Tribe also said voters should make Supreme Court confirmation "a major issue in Senate campaigns," although he doubted that the electorate ever would be concerned enough about the subject for it to influence elections.

"We really oughtn't give the power to wreak constitutional change to the President through the power of appointment," he said.

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Magazine Publisher Warns Of Liberal Press

(Continued from Page 1)

identities of their sources confidential, Rusher said no analogy exists between such privileged relationships as the attorney-client relationship and that between a reporter and a source.

Journalists pushing for new protections, in Rusher's view, are "seeking power not previously afforded them." Although he said a slight rightward shift in the media is occurring, he cited research finding most journalists in the "media elite" to be politically liberal. He

suggested that journalism and academics are "Alpine redoubts" to which liberals retreated after the liberal movement became defeated and demoralized. He said the *zeitgeist* — the spirit of the age — is leaving liberalism behind.

Tension in Values

He expressed concern at the power of the media to mold public attitudes toward foreign policy. If the U.S. were to send troops to Nicaragua, he said, the media would focus heavily on U.S. casualties

and would treat the Nicaraguan government sympathetically. A monolithic press, controlling the dissemination of news, could cripple the morale of the country during a period of war. He pointed to that hypothetical situation as an example of the occasional tension between a free press and the future of democratic government. He said he was unsure how the tension between the two values could be resolved. "If this is the price of a free society," he asked, "how long can it remain free?"

In an interview after his speech, Rusher said the *Sullivan* immunity had little affect on the media: at *National Review*, he noted, "I would never print something potentially libelous merely because I thought I could get away with it under *Sullivan*." He also argued that requiring reporters to disclose their sources has not curtailed investigatory journalism, as the media continues to obtain and print confidential information.

Griswold Receives Award

(Continued from Page 5)

coming arms talks in Geneva because neither side is willing to be the first to move toward compromise. "In fact," he said, "whatever may be the differences on strategic defense, they are very sharp, and have become more clearly sharp over the last month."

Bundy did see a lot of ground open for negotiation, and was hopeful about the prospects for negotiations, particularly with regard to offensive weapons, in the next two to five years.

Bundy said that in a period such as the present one when U.S. policies are in question, lawyers should devote particular attention to nuclear danger. "Decisions about nuclear warfare will be decided nationally," but lawyers can play a special role in the process.

Bundy stressed that we must recognize that we are caught in "a nuclear trap" and that we have been for 30 years. Although people understand that no one will win a war with offensive weapons, they may not understand the consequences of defensive weapons. "It's a mistake to suppose there is any escape from mutual vulnerability," Bundy said. "That, I believe, is the mistake of 'Star Wars.'"

The dinner honoring Griswold benefitted LANAC, a five-year-old national nonprofit organization

which has approximately 7,500 members. The educational group promotes sound and workable arms control proposals. Griswold is a member of the Advisory Board and has participated in talks with Soviet attorneys and arms control experts and has worked on legislation and education about nuclear arms. ❦

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No CLS Bloc Prevents Lateral Appointments

(Continued from Page 4)

several specific suggestions: clinical legal experience should be built into the first year curriculum, all 1Ls should have a course in legal theory, more women and minority faculty should be hired so that first year students will be taught by a more diverse group and first year classes should be structured as a forum for debate, emphasizing many different viewpoints including that of the students.

Frug discussed rumors nurtured by recent *New York Times* stories that Harvard Law School was having trouble getting lateral appointments from other law schools because of a "CLS position" on the faculty. Acknowledging considerable debate over what constitutes quality work, he denied the existence of any CLS bloc seeking to "take over" HLS by preventing lateral appointments of those with views differing from its own.

Frug said he wasn't sure why debate has become more heated at HLS than at other law schools with equal percentages of professors associated with CLS. He speculated that personalities (in the sense that people on all sides at Harvard may be more "off the wall" than elsewhere) as well as beliefs that more is at stake at Harvard than at

younger schools, may be important factors.

Frug said he believes that HLS Professor Duncan Kennedy's role in CLS has been misconstrued. Despite the wide range of views and opinions represented among those involved in Critical Legal Studies, many people trying to understand CLS have, incorrectly, searched for something on which they can focus, Frug said. Many people trying to understand CLS have mistakenly focused on Kennedy as an embodiment of CLS.

Frug ended the prepared portion

of his discussion by observing that HLS has never been better — that "pluralism and real debate" exist on the faculty. He is pleased that for the first time since he began teaching law there are real conservative voices present in the classroom. The overall sense of "New Deal liberalism, neither left nor right," which was dominant when he was a student at HLS has been challenged from the right and the left. Frug finds this diversity healthy, exciting and worth fostering.

☛

HLS Needs Discipline Consensus

(Continued from Page 13)

HLS community's "consensus" on what type of political protest should be allowed.

"The Law School should be deciding if [blocking a car] is a bad thing," he added.

Carlson said the Council will work with Sander as it drafts recommendations on how political protests should be disciplined.

Carlson said he thought that the meeting was fair. "I have great respect for the individual members of the [Ad Board]," he said.

Political cases can be more dif-

ficult to investigate than the allegations of cheating, plagiarism and financial aid violations the Ad Board usually deals with, Sander said, because they tend to be more controversial and complex. The Board had to distinguish what law students did at the Lowell House rally and at a sit-in in April at a Harvard administration building from the actions of other protesters.

The Ad Board "tried to deal with the [incidents] on a low key basis, and I think that resulted in fair solutions," he said.

☛

Sports Answers

1. The Ohio State Buckeyes.
2. The Michigan Wolverines.
3. The Iowa Hawkeyes.
4. The Illinois Fighting Illini.
5. The Michigan State Spartans.

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