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25 CENTS

Zappa Opposes "Video-Fundamentalist"

By Maurice Kane

On Tuesday, Nov. 5, the ARCO Forum of Public Affairs at the John F. Kennedy School of Government played host to a panel discussion entitled "Caution: Rock 'n' Roll May Be Hazardous to Your Health."

The speakers were Frank Zappa, longtime composer and performer, as well as the president of Barking Pumpkins Record Co., Sally Nevius, a co-founder and treasurer of the Parents Music Resource Center (PMRC), and Arnie "Woo Woo" Ginsberg, the general manager of the all-music video television station, V-66, and former program manager of WBCN-FM radio in Boston.

Ginsberg chronicled the historical opposition of parents to sundry aspects of rock and roll music.

Ginsberg said that parents were "involved in the rock scene from its beginning in 1956." He said that parental furor against the swiveling gyrations of Elvis Presley's hips resulted in an Ed Sullivan Show which only "showed Presley above the waist."

Ginsberg also noted that "while radio stations didn't play Fats Domino or Chuck Berry, they did play Nat King Cole." Furthermore, performers like the Beatles and the Rolling Stones were denounced at times in the early 1960s, according to Ginsberg.

He concluded by saying the programmers at V-66 "are sensitive to public reaction," although "there are few songs the broadcasters are unwilling to play because of content. Usually when a song isn't played, it's because it's a lousy song."

Everyone should realize, Ginsberg added, "rock music is a mirror of whatever is happening."

Sally Nevius, the PMRC treasurer, spoke next, saying the PMRC was concerned about "what rock music will do to young children" who are exposed to "four to six hours of it every day" or "11,000 hours between the first and seventh grades." She said the "messages advocated in the songs" became the "principal lessons" for child listeners.

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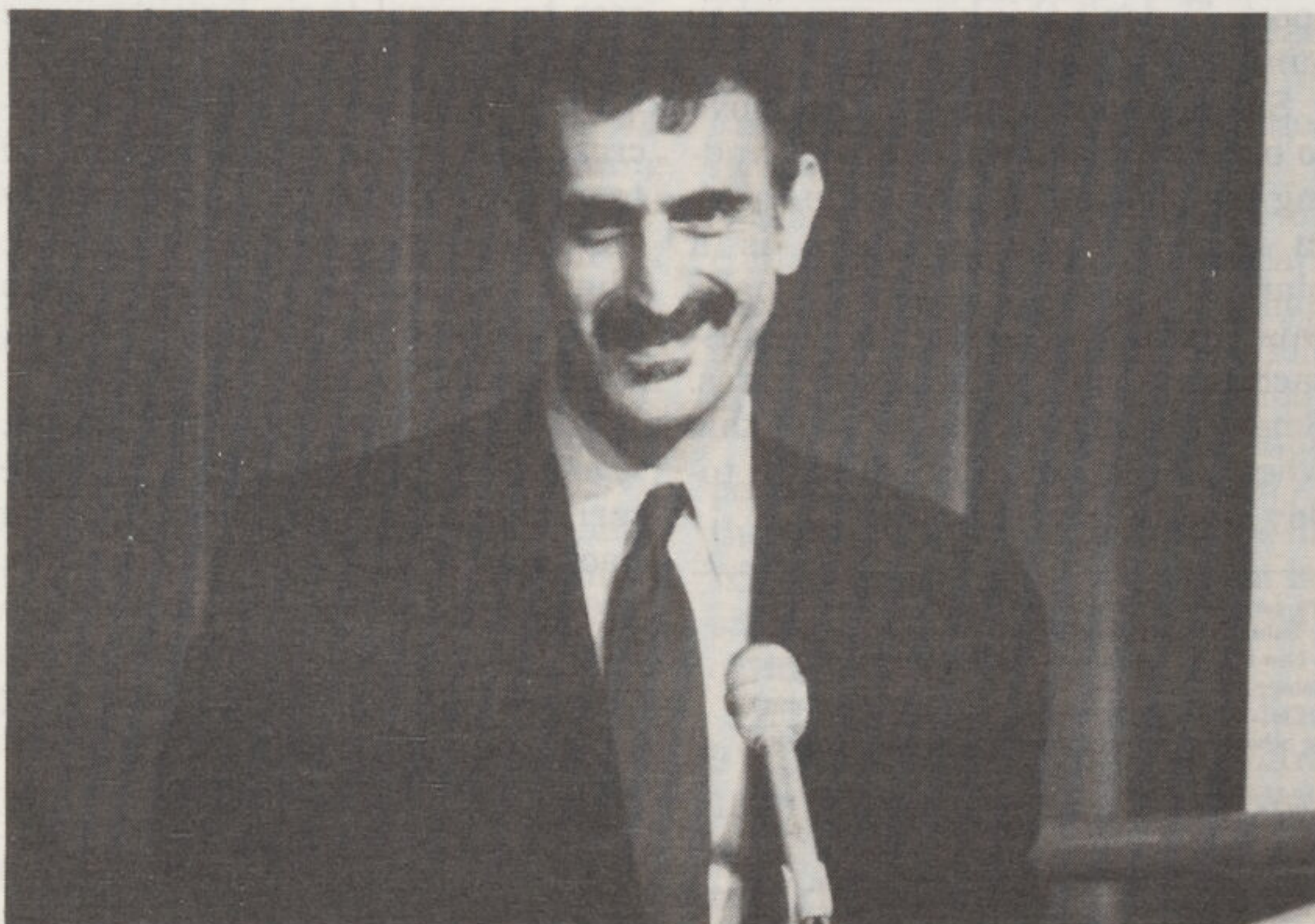
Changes Planned

By David Snouffer

HLS administrators say they will unveil a proposal possibly as early as next week to address criticisms by a number of 2Ls of a new class scheduling formula that is slated to take effect next year.

Three second year students last month presented a petition signed in May by about 400 of their fellow 2Ls to the HLS Committee on Legal Education and to Vice Dean David Smith (LL.B., '61). The petition asked administrators to revise the new scheduling formula, which would give priority for taking five basic courses next year to students who will then be 2Ls. Until this year, third year students have enjoyed priority for getting into all courses, and they will retain the preference for all classes except accounting, constitutional law, corporations, evidence and tax.

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Frank Zappa

Harvard Crimson

NOW President Launches Campus Campaign

By Tegan M. Flynn

Elenor Smeal, National Organization For Women (NOW) National President, spoke last Sunday afternoon at Harvard's Science Center B. Sponsored by the Radcliffe Union of Students, Smeal helped initiate the Boston NOW Campus Campaign with her appearance.

Smeal discussed many issues pertinent to women today including equal pay for equal work, reproductive rights, and the Civil Rights Restoration Act of 1985.

Smeal stressed that many women do not have choices in the careers that they pursue. "Who cleans the institutions, hospitals, and office buildings?" she asked. She furthered her point by asking if anyone thought that women dreamed of these careers as children. "Do you think they chose to do this or they must?" she queried.

In today's economy most women work more than one low paying job, Smeal noted. "They make a token portion of what a man is paid," she said.

Smeal stressed that most people work for one reason, "We must, for pay, to survive."

She continued by pointing out "the reality" that "there is a movement to outlaw [birth control]" in the country.

"Birth control is an absolute necessity for the survival of the human race with any kind of dignity," Smeal said.

But, she claimed, "All kinds of imagery and mythology . . . cast it in a questionable light."

Abortion, she said, has been safe since the 1960's. The abortion laws were passed to protect women. Before the existence of these laws, Smeal stated, "abortion killed and



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NOW President, Eleanor Smeal

maimed women." Women risked death and maiming because it was better to do something than nothing. Smeal said that in many hospitals across the country one or two women died each night as a result of infection from illegal abortions.

Smeal cited *Roe v. Wade* as having "legalized abortion." She said "We forget what [*Roe v. Wade*] was about — it was about doctor's rights" to perform abortions.

She said that she sees women's rights going backwards in this respect. "I don't think we remember our history well," she stated.

Smeal then discussed the move to outlaw abortion. Medicaid funding for abortion is available today in only ten states. There is a planned campaign in 1986 to make this funding unavailable in Massachusetts, one of these ten states. Smeal questioned the sense of this when 22 percent of all children today live in poverty.

Terrorists Against Abortion

Terrorism, Smeal said, citing fire bombings as examples, is having its effect. "Abortion clinics across the country are closing." The result for women, Smeal claimed, is "having a right you don't have access to."

The closing of the abortion clinics and the removal of Medicaid funding, Smeal said, was particularly hard on the poor and middle class. "We are controlling the [poor's] access to control their fertility," she said.

Smeal theorized that the increased levels of reproduction lead to an increased future labor supply and thus increased unemployment. She said that this "fosters a cheap labor pool not only in the U.S. but worldwide."

Smeal said that the "first target is abortion. . . They started with late term abortion, and keep moving back and back." Now, Smeal said, the idea is to demand "no abortion from the moment of fertilization . . . because they're trying to outlaw the I.U.D." Smeal claimed that the next step would be to outlaw birth control.

Smeal said that women are forced to live in society hypocritically. She

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President Bok Describes Tenure Role

By David Snouffer

Harvard President Derek Bok, '54, recently clarified his role in the HLS tenure process, saying he plans to scrutinize the HLS faculty's tenure recommendations "quite closely."

Bok's remarks came after *The New York Times* reported on Oct. 6 that with an unusually large number of assistant law professors coming up for tenure this year, Bok "stands poised to intervene" in the HLS tenure decisions because "the institution's circuits threaten to become overloaded." As many as nine junior faculty will come up for tenure review this year and next, compared to only four who have done so since 1981.

"I will review recommendations for tenure closely," Bok said in a telephone interview on Nov. 7. "I have a fiduciary obligation."

A former dean of HLS, Bok said he will especially consider whether "the best people" are appointed to The HLS faculty, whether the faculty uses "adequate procedures" in its tenure deliberations and whether affirmative action is "appropriately and duly maintained" before he submits his findings to Harvard's two Governing Boards.

HLS administrators have declined to predict how soon they will have recommendations on promotions ready for Bok's consideration.

Bok denied *The Times's* suggestion that the large number of tenure

candidates makes him especially attentive to the HLS faculty's tenure recommendations. "I'm not concerned on that score," he said.

"I suppose I stand ready to intervene" in tenure decisions for any of Harvard's nine schools, Bok added.

Bok said he is not involved directly enough in the HLS faculty's tenure discussions to say if ideology might affect the faculty's recommendations on promotions or on hiring tenured faculty from other institutions. HLS has not made any lateral appointments since 1981.

"There always has been a problem in hiring senior professors from other universities because the University has only been interested in outstanding faculty," Bok said, and those professors tend to be well paid and "appreciated where they are."

When Bok was HLS dean 15 years ago, "we always thought we were very lucky if we got 50 percent of the [senior] faculty we were after," he said. Today, professors are even more reluctant to move, Bok added, because they are "likely to weigh the impact on the entire family" and do not want to interrupt spouses' careers or uproot children from their friends.

Smeal Discusses Women's Rights

(Continued from Page 2)

cited as an example videos that are "pounding, pounding, pounding sex and violence . . . and yet women are supposed to maintain a victorian double standard and if they don't their penalty could be their life . . ." from an illegal abortion.

Smeal discussed the stand of the right to life movement on reproductive rights. She cited as an example Jerry Falwell's fundraising in Africa where 150 million people are starving and 9 million will die this year. "Yet our Congress cut off International Family Planning Aid," she said, since a small percentage (less than one percent) of this aid goes to countries that practice abortion.

Smeal then discussed the Civil Rights Restoration Act. According to the *Boston NOW News*, "The Civil Rights Restoration Act would make federally funded discrimination illegal by fully restoring the protections of four civil rights statutes: Title IX of the Educational Amendments of 1972 which prohibits sex discrimination in federally funded education programs or activities; Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color,

or national origin in federally funded programs or activities; Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against disabled persons in federally funded programs or activities; and the Age Discrimination Act of 1975 which prohibits the delivery of services and benefits supported by federal dollars."

These programs were adversely affected by *Grove City v. Bell* which held that only specific programs receiving funding from the federal government are prevented from discriminating, and not institutions as a whole.

Smeal claimed that these four civil rights statutes had disappeared because people had said to themselves, "We're afraid that these folks are catching up with white men."

She claimed that these same people were ignoring the reality of the situation by making excuses like "Oh, there are fewer women in law school because they'd rather have children."

With the NOW marches on March 9 in Washington DC and on March 16 in Los Angeles Smeal said "We're going to drag these people into the twentieth century." Smeal concluded, "We must fight for justice."

**Next Record
Dec. 6**

Porn Bill Results

The proposed Cambridge Anti-Pornography Ordinance, conceived by Catherine McKinnon and Andrea Dworkin, was voted down on Election Day.

According to the Cambridge Election Commission, 51 percent of the 47,965 eligible voters in Cambridge turned out to vote on November 5. The voting results for the ordinance in particular were: 9,419 for, 13,031 against, and 1,931 abstentions, according to the Commission.

Nazi Hunter Speaks On Frustrated Justice



Hillary Richard

Famed Nazi hunter, Simon Wiesenthal

By Hillary Richard

Simon Wiesenthal, world renowned hunter of Nazi war criminals, spoke to a standing-room-only crowd in the Ames Moot Court room on Nov. 16.

Wiesenthal, as the founder and head of the Jewish Documentation Center in Vienna, has located almost 1,100 war criminals.

Wiesenthal's most notable capture was Adolf Eichmann, Chief of the Gestapo's Jewish Department and supervisor of the slaughter of the Jews. Eichmann was subsequently tried, found guilty of mass murder and hanged in Israel.

Wiesenthal is also an author and documentor of the Nazi genocide. He has penned a number of books, including *I Captured Eichmann*, *The Murderers Among Us* and *Sails of Hope*.

As a result of his determination and dedication to his goal of finding and convicting the people responsible for the mass murder of the Jews during World War II, Wiesenthal has received numerous commendations and awards.

Wiesenthal opened his speech by posing a question which he felt was often asked by people not fully understanding of his goal: "How, 40 years after the war, confronted with

the world's other problems, with only a small number of Nazis alive who are old and sick, with few witnesses left, can we be concerned with this and not with the current problems of our time?"

Why Do It?

He then proceeded to answer the question. First, Wiesenthal explained, when one is talking about the biggest crime in the history of humanity time is only "a mark on the calendar." He also noted that the entire forty years had not been spent searching for the criminals.

In fact, Wiesenthal said, it was only during the three years immediately following the war that all allies, both East and West, actively looked for the war criminals.

He notes that the end of active pursuit of war criminals coincides with the beginning of the Cold War.

Wiesenthal contends that while "the East and the West both lost the Cold War, losing people, money and prestige, the *only* winners of the Cold War being the Nazi criminals," this was due primarily to the secret operations of both East and West. In many cases, according to Wiesenthal, members of secret service agencies helped the Nazis emigrate.

Once emigrated, the war criminals were often used as informers. The American secret service, as well as European agencies, were guilty of aiding and protecting war criminals. Secret missions were hard to carry out, the Cold War was escalating into a "Hot War" and both sides were desperate for any information they could get. Thus, many criminals, responsible for the deaths of thousands of innocent people, now live freely in parts of Europe and North and South America.

Capture and Release

Wiesenthal spoke of the frustration of searching for these criminals for extremely long periods of time, only to have them set free once he found them. He offered an example of a man, the mayor of a town in the Ukraine, who had worked with

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Freund Expounds On Advocacy And Advocates

By Eric Sullivan

Carl M. Loeb University Professor of Law, Emeritus Paul Freund, '31, provided listeners with a colorful glimpse of the Supreme Court on November 14th.

Freund, whose distinguished career includes more than thirty arguments before the Supreme Court, began by discussing the ethical ramifications of oral advocacy in general. He told a story of former Undergraduate Dean Brigg's reaction to the explanation given him for the football team's success. When informed that the team had developed a deceptive offense, the Dean queried, "You mean our boys are being taught deception?" Freund wondered what Briggs would have thought of advocacy.

According to Freund, advocacy, which he defines as "the presentation of two equally biased and often insincere views," can be a reliable means of arriving at the truth. Scientists, too, frequently carry out their search for the truth by weighing competing viewpoints and theories. The lawyer's role, however, is unique because, for our system of justice to function properly, the advocate must often suppress his own beliefs and opinions.

Freund read excerpts from a book on Supreme Court history. In the Court's early days, when men like

Daniel Webster and Henry Clay argued before it, oral advocacy involved dramatic contests of eloquence. For the "ladies of fashion" who filled the Supreme Court's chambers, the Court was an opera. The lawyers were the stars. Advocates' discourses were described with such words as "grand, tender, and picturesque." Supreme Court advocacy in the past apparently involved the kind of performances 11s dream of giving: dazzling dramatic displays of eloquence and genius.

Nonetheless, according to Freund, oral advocacy is not just "frosting." It can be used to affect the outcome of a case in several specific ways: to emphasize the most important points in the brief, to explain any areas of confusion, and to affect the scope of the decision.

Those who argued school desegregation cases before the Supreme Court, for example, presented their cases in a manner aimed at achieving a broad, sweeping decision. Freund noted that advocates often provide the justices with "happy phrases," which capture the essence of an argument. The phrase "the constitution is colorblind" is an example.

Freund concluded his speech by describing his preparations for his first appearance before the Supreme Court. It was a "silly" case involving the taxation of jigsaw puzzles. He conducted fieldwork in toy stores. On one visit, when the salesclerk asked the age of the child for whom he was shopping, Freund repressed the urge to reply: "Average age: 75."



Nazis Often Released Too Soon

(Continued from Page 4)

the Gestapo. This man's dream was to have "a city without Jews."

He very nearly realized his dream, for after the war there were only two Jews still alive out of 2,000 from his city. Wieselthal located and arrested him in 1948, only to have him set free the next day. As an informer he had been freed under orders of Military Intelligence. Once Wieselthal approached the Office of Direct Intelligence, a higher agency than the one which had issued the order to free the criminal, he was assured that they would

rearrest the criminal. The criminal was, of course, long gone.

Wieselthal mentioned many other frustrations as well. In some East German towns criminals were acquitted because there were no witnesses, as there were no living survivors. Some criminals have been tried and received only minimal sentences. In many countries the penal codes are old and were not written to encompass the type of murderer that Wieselthal seeks. The new type of mass murderer, as defined by Wieselthal, "sits behind the desk and with a telephone call or a signature kills at a distance of 500 miles 50,000 people."

Wieselthal states that today, 40 years later, there are about 3 million former Nazis alive. While it is not known exactly how many of them committed crimes, Wieselthal points out that so many millions could not have been murdered by a small number of people.

When people ask why he doesn't quit now and let these old and infirm people die in peace, he says, "People who were engaged in genocide do not have the right to die peacefully."



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Video Legal Lessons Become Available

By Maurice S. Kane

According to Tim Hallahan, '76, director of the Harvard Computer Legal Instruction Project (HCLIP) and the Interactive Video Lessons Project (IVLP) at HLS, "Eighty law schools around the country are involved in a consortium begun by Harvard and Minnesota" to develop the instructive and training opportunities that computer-aided legal instruction provides.

Hallahan has worked as a public defender for five years, and has administered workshops for attorneys in negotiation techniques, evidence and motions. He has also written lessons for the Trial Advocacy Workshop.

Hallahan's work as an attorney and his expertise in computer systems programming and design work furnish the IVLP with its orientation toward teaching process rather than principle. "Video teaches process, cross-examination rather than property," said Hallahan. "You can do it [the computer video lesson] by yourself," according to Hallahan. The lessons are suitable either for individual use or for group participation and discussion in which "two, three or four" people collaborate on the answers that they would give to the computer.

The 30 lessons already developed by Hallahan and his associates include *Commissioner v. Gilbert* (general evidence, drunk driving); *Customer Car Co.* (basic evidence, consumer law); *Pinta v. Brew I, II, III* (basic evidence, exhibits, landlord/tenant, direct and cross examination); *Mrs. Stevens* (legal research); *Martha Miller* (interviewing, Social Security); *Rutherford* (hearsay, personal injury); and *Cultural Differences* (interviewing); among others. There are four lessons per video-disc, each lesson running approximately 30 minutes of video time. The disc player itself may cost between \$600 and \$1500.

The persons who have been instrumental in the projects thus far are John DeGolyer (programming), David Williams and Ellen Miller (video), Don Trautman, Gary Bel-

low, and Charles Nesson (faculty), as well as several law students, including Mike Schmidt, 3L, who sees a definite future for video lessons in other non-law-related spheres.

Hallahan said that anything which is process-oriented, including repair work and cooking, and which can be apprehended visually, is amenable to instructive communication via computer video.

According to Hallahan, video imbues an individual with confidence, in effect, by having the person do, in a non-threatening, non-supervisory atmosphere, what he or she will eventually do elsewhere.

Avoiding Insensitivity

The lessons inculcate thorough issue-spotting and multiple choice paradigms. For example, to avoid insulting "women, old people, Asians, Latinos, gays," and other persons misunderstood by the dominant WASP culture, the lawyer or law student can learn about perceptual differences between people, stemming from different backgrounds, by watching the reactions of the video "performers" to insensitive treatment by the lawyer. These insensitivities may include "calling a woman by her first name while referring to her husband as 'Mister'" or "looking only at the woman and ignoring the man," the latter being particularly nettlesome to persons from traditional cultures.

Lessons will be available in Langdell Library and at Legal Aid when the disc player begins running. Hallahan also teaches students how to program the lessons. He encourages students to become involved with IVLP. Options include work study, third-year paper credit, and volunteer work.

The student who wrote *The Incident* (a video lesson involving hearsay and eyewitness identification) received third-year paper credit from Professor Nesson. Students often write scripts and text, either alone or in teams.

IVLP has ties with the Audio-Visual Department at HLS, Video Services for Harvard University,

and projects at other institutions, such as Wake Forest Law School in North Carolina. Furthermore, IVLP plans to expand, providing lessons to the U.S. Justice Department, and hopefully, one day, to every federal and state courthouse, and law library around the country for a minuscule cost (\$600, the price of the disc player, is in Hallahan's words, "3 hours out of a partner's time.") However, as Hallahan noted, "we're not salespeople so that is a hurdle" in terms of providing the lessons to these different groups and institutions.

Despite the dearth of sales experience, financial backing from such companies as Digital has brought Hallahan and his friends and colleagues closer to realizing their dreams to advance and facilitate legal education.

Computer-aided video programs, in Hallahan's view, will vastly improve education, training, form processing, office management and data retrieval, and networking (exchanging data and facilitating communications between legal clinics and other entities). According to Hallahan, improvements in artificial intelligence may make it possible for a computer to "take the expertise of a Gary Bellow" and ask the lawyer questions or make suggestions about legal strategy.

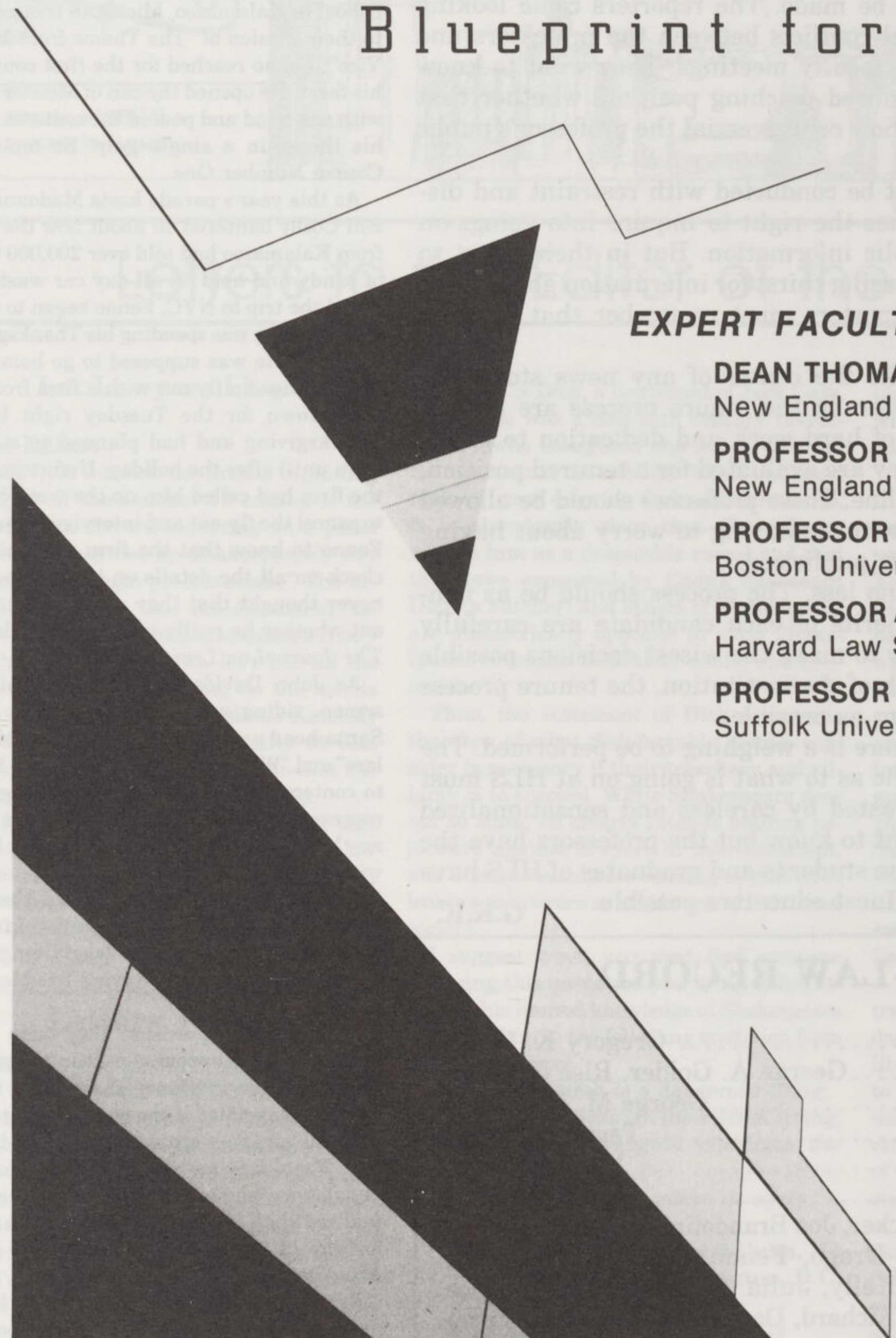
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Inquiring Minds Want To Know

Fenno

Once again Harvard Law School is in the news. Usually, media coverage is a blessing that any school desires. Each inch of space devoted to a school is that much more free publicity getting the name out to a nation of readers and viewers. However, the recent attention of the media is not a resource to be cherished.

I am talking about the recent interest of the national media in the upcoming tenure decisions here at HLS. Both major news services and several major national newspapers have sent reporters to the HLS campus to uncover the story of how members of the Critical Legal Studies movement may affect the decisions to be made. The reporters come looking for gossip tidbits about personal conflicts between the professors and stories of outrageous behavior in faculty meetings. They want to know who may be considered for a tenured teaching position, whether that professor uses CLS methods and how controversial the professor's public image is on campus.

This investigative process must be conducted with restraint and discretion. I grant that the media has the right to inquire into goings-on which are for the most part public information. But in their quest to quench America's seemingly unceasing thirst for information about what life is *really* like at HLS, the reporters must remember that there is more than just a story here.

At the center of this story, like the center of any news story, are human lives. The subjects of review in the tenure process are human beings who have invested years of hard work and dedication to get to where they are at. And now as they are evaluated for a tenured position, their professional lives are on the line. These professors should be allowed the opportunity to be evaluated without having to worry about having their names and professional lives publicized.

A fair tenure process requires no less. The process should be as non-political as possible while the merits of each candidate are carefully examined. In order for the faculty to make the wisest decisions possible for the sake of the on-going health of the institution, the tenure process must be kept in as pristine a form as possible.

As with most delicate issues, there is a weighing to be performed. The advantages of informing the public as to what is going on at HLS must be weighed against the harm created by careless and sensationalized reporting. The public has the right to know but the professors have the right to be fairly evaluated and the students and graduates of HLS have the right to the selection of the finest educators possible.

G.K.K.

HARVARD LAW RECORD

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Fenno pulled the knob on his television set and plopped down heavily into his chair. Slowly, the image on the TV came into focus. Fenno was greeted with the sight of a huge Kermit the Frog floating over the streets of New York City. Yes, it was Thanksgiving Day and Fenno decided to watch the parades as he consumed his Thanksgiving Day feast. As the marching band from Central High School in Kalamazoo, Michigan treated him to their version of "The Theme from Miami Vice", Fenno reached for the first course of his feast. He opened the can of Meister Brau with one hand and poured the contents down his throat in a single gulp. So much for Course Number One.

As this year's parade hosts Madonna and Bill Cosby bantered on about how the band from Kalamazoo had sold over 200,000 boxes of candy and held 35 all-day car washes to afford the trip to NYC, Fenno began to think about why he was spending his Thanksgiving like this. He was supposed to go home. He had arranged a fly-out with a firm from his home town for the Tuesday right before Thanksgiving and had planned to stay in town until after the holiday. Unfortunately, the firm had called him up the week before to cancel the fly-out and interview. How was Fenno to know that the firm was going to check on all the details on his resume? He never thought that they would call to find out whether he really was editor-in-chief of *The Journal on Legislation*.

As John Davidson appeared on his TV screen, riding a float shaped like a giant Santa head and singing his versions of "Volare" and "Winter Wonderland", Fenno began to contemplate exactly what Thanksgiving represented to him. He really did not have any loved ones, so it was not a time for being with them. He thought that it was a time to be thankful. Then he realized that the only things that he had to be thankful for were the facts that he was living and breathing, and he was having trouble with those lately, too.

Finally, as a precision flag team from Butte, Montana appeared next in the parade and made fun and fancy shapes that could only be appreciated if one were viewing them from the air, Fenno struck upon what it was that Thanksgiving was all about. Thanksgiving was the point in time after which he realized that he had not done any reading for any of his classes and only had a few weeks left to try to catch up.

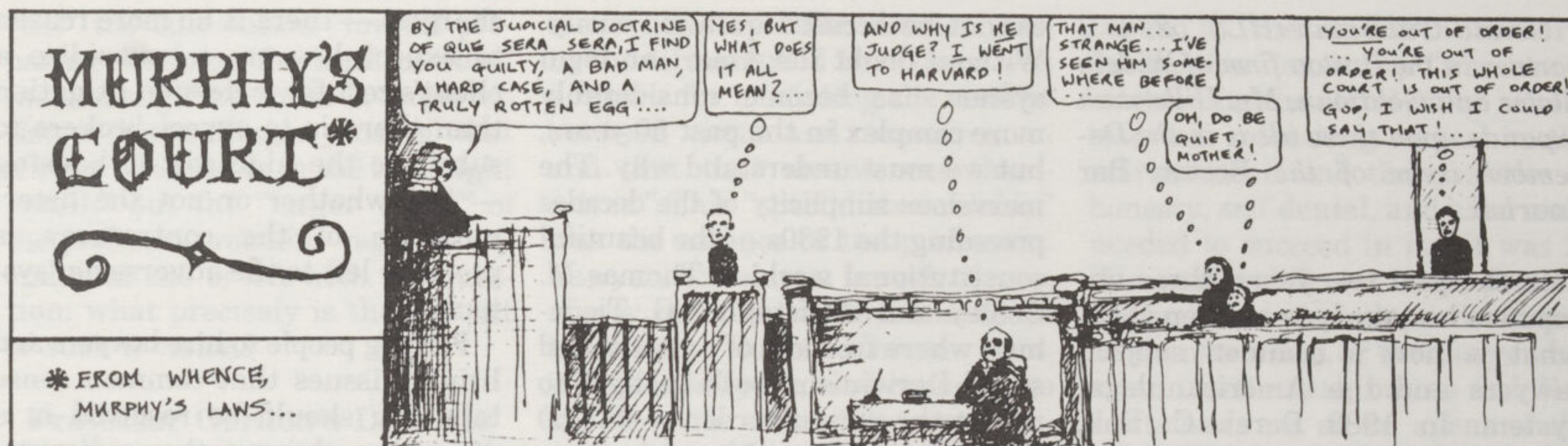
Fenno stared over at his stack of books that he had not touched since he bought them back in September, and suddenly he did not like the idea of Thanksgiving one bit.

So he turned his attention back to his TV. While the band Air Supply played a few of their holiday favorites, Fenno sat back and reached for course number two of his Thanksgiving feast.

HARVARD LAW RECORD

"The In-Law"

by Jinku Lee



Letters to the Editor of the Record

Let Lawyers Live

To the Editor:

I read with interest the article beginning on page 3 of the October 18 edition of the *Harvard Law Record* reporting on a panel discussion "inspired by Shakespeare's wry suggestion for legal professionals." The article further notes that the discussion "focused on the quote from Shakespeare's *Henry VI*, 'The first thing we do, let's kill all the lawyers.'" Without focusing on the merits of the views expressed by Professor Kennedy and other members of the faculty at that meeting, I would like to point out that the literary premise is incorrectly based.

Contrary to popular misconception, this particular quotation does not reflect the low regard but apparently the high esteem in which Shakespeare held lawyers. The quotation is from lines 83 and 84 of Scene II, Act IV of *Henry VI*, Second Part. It is a

statement of Dick, a lieutenant of Jack Cade. Jack Cade was a mid-15th century revolutionary who instigated and led certain uprisings against the nobility. While one could make a good case for Cade and his cause, it is abundantly clear that Shakespeare viewed him as a despicable rascal and that the views expressed by Cade's lieutenant Dick (a butcher) and others of Cade's group are diametrically opposite to what Shakespeare considers desirable, noble, and honorable.

Thus, the statement of Dick represents the view of what dishonorable rascals consider is necessary if their treachery and villainy is to succeed. While Shakespeare does not so state, he clearly intends nothing pejorative against lawyers in this statement, and a more reasonable reading is that he is looking to lawyers as a bulwark of a civilized society.

I suggest when you next find someone misusing this quotation you bring to his attention his limited knowledge of Shakespeare and refer him to the following quotation from Alexander Pope:

"A little learning is a dangerous thing;
Drink deep, or taste not the Pierian spring;
There shallow draughts intoxicate the brain;
And drinking largely sobers us again."

H. Stewart Dunn, '54
Washington, D.C.

Question Harvard's Goal

To the Editor:

What is the Harvard Law School trying to accomplish? Where does it want its graduates to be working? What kind of legacy does it wish to leave for our country? These are all questions that should be asked reg-

ularly, especially as the press fights about whether Critical Legal Studies is tearing down this great institution.

If the goal of the HLS is to take many of the people with the best minds in America and "to make them into lawyers," it does a very good job; just not in the way you think. The HLS accepts about 580 bright people each year, many of whom are not bound to become lawyers beforehand and do not really want to be corporate lawyers when they leave. Many 1Ls see the J.D. as a worthwhile credential to have "no matter what field we eventually go into — government, public interest, non-profit, etc." Sure there are also many who want to work for the large firms, and the HLS gives them the necessary training to reach their potential. But the HLS restricts the freedom of choice of those who did not come here to be lawyers by setting up a system which forces many into "going corporate."

Very quickly two things happen which transforms even the most dedicated of students, who by some accident tend to be more liberal-minded than those who come to HLS to be corporate lawyers. First, there is a mountain of debt rivaling the federal government's accumulated over the four years of undergrad and three years of law school staring in the face of everyone's standard of living (except for the few who had their parents pay the artificially inflated tuition). Second, there is the problem of thinking about what one is going to do for a living, at least for the summer. Remember, many of the students come to HLS directly from college, and have never looked for a job, or even had to think about what type of career they could see themselves spending their life's energy on.

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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.

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.

The Changing American Attorney:

Gerald Gillerman (HLS '52) is a partner in the Boston firm of Widett, Slater and Goldman. Mr. Gillerman expands upon these ideas in the December issue of the Boston Bar Journal.

In the past two years, three uncommon lawyers have written about what is now a common subject: lawyers and the American legal system. In 1983 Derek C. Bok, President of Harvard University and former Dean of the HLS, presented his annual report to the Harvard Board of Overseers; in the same year Professor Archibald Cox addressed the American Bar Association on the subject and in 1985 Professor Robert Gordon, a legal historian at Stanford Law School, delivered the Oliver Wendell Holmes Lectures at HLS. All three focused on their concern for the law and the profession, and taken together they presented a point of view that is not commonly heard.

President Bok's Report

President Bok's report offered a critique of the American legal system which was derived from two root difficulties. "One half of our difficulty lies in the burdens and costs of our tangle of laws and legal procedures . . . [T]he other great problem of the legal system . . . [is] the lack of access for the poor and middle class."

For Bok, "[t]here is far too much law for those who can afford it and far too little for those who cannot." As he sees it, complexity is the chief evil, for it is our complex legal system which is the cause of the high cost of legal services which, in turn, makes those services unavailable to so many people.

While Bok's report adds significantly to our thinking about the American legal system, it has not been widely accepted by academicians much less by practicing lawyers. One reason is that complexity in the law, Bok's starting point,

cannot be accused quite so easily. Without doubt the American legal system has become considerably more complex in the past 50 years, but we must understand why. The marvelous simplicity of the decades preceding the 1930s — the beautiful constitutional world of Thomas M. Cooley and Christopher G. Tiedeman where freedom of contract and social Darwinism (both thought to reflect the natural order of things) were the moral and legal imperatives of that day — crumbled before the economic crisis of the Great Depression and the political power of Franklin Roosevelt. Out of that rubble came regulatory laws, all adding vast but vitally needed complexities to an inherently complicated system.

Without doubt the legislative agendas of the Great Society added still more complexities while the federal courts were themselves recognizing new rights and fashioning new remedies.

Today, by recognizing the complexities of our economic and social life, we confront unfairness and injustice in ways that were unthinkable a mere 30 years ago, and the added cost of doing so can hardly be challenged. Bok, with no small measure of inconsistency, recognizes this: "As society demands higher standards of fairness and decency, the rules of the game tend to multiply and the umpire's burden grows constantly heavier."

In some cases the need is real enough, but in many other cases the need to win is real only because it is perceived that way by the parties. The need to litigate, while commonly seen by the client as an entitlement to justice, is in fact a desire to prove oneself right in circumstances where the issue of who is right is not at all clear. It is in cases such as these — and they are the preponderance of hot disputes and filed cases — that the issues of cost and access are quite real. But the underlying question is not the cost (that is, the lawyer's

charges) — there is no more reason to expect lawyers to subsidize a client's zest for victory in litigation than there is to expect brokers to subsidize the high cost of housing — but whether or not the determination of the controversy is properly left to the adversarial system.

Forcing people to hire lawyers and litigate issues that common sense tells you should be resolved in a dispute-resolving rather a dispute-provoking environment is fundamental to the problems of access and cost. We should not obfuscate that problem by complaints about lawyers' fees or by charges that too many people don't have access to the machinery of litigation to resolve a problem that does not belong in the courts in the first place. Access may well be a function of cost, but the solution is not less law; it is different law.

Criticism of the adversarial system has been both long standing and futile. In his famous 1906 address to the American Bar Association, "The Causes of Popular Dissatisfaction With the Administration of Justice," Roscoe Pound called it our "sporting theory of justice." And, he added, "[t]he idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point."

Pound offered no prescription for the difficulties he so accurately diagnosed. Bok, in spite of his misplaced focus on complexity and misunderstanding of costs, recognizes the need to stake out new directions including those that diverge from adversarial contests.

Bok's report in its widest sense is an important attempt to teach us that we must come to think of justice as including areas beyond Charles Sumner's enduring appeal for "equality before the law"; that justice must now include new ways to resolve disputes as well as fair access to the new system.

Bok concedes that law schools

Civic Leader Or Business Craftsman?

"tilt" the curriculum "toward preparing students for legal combat" instead of giving them "a larger vision of their calling, a sense of what a life of leadership in the bar might entail," but the "larger vision" of the profession remains vague to the end, and one is left with the question: what precisely is the content of such a vision?

Professor Gordon's Lectures

Gordon seizes on the point omitted by Bok; the purpose of Gordon's lectures was "to try to fill out the content of the vision, which is that of lawyers entrusted with a distinctive political mission in a commercial republic (or 'capitalist democracy,' to use the modern equivalent), that of being the bearers of an autonomous public-regarding civic culture, deputized to spread abroad the values of that culture, to make them real and effective not just in the occupation of public office but in every corner of social life, including most definitely the practice of advising and representing clients."

Gordon's point of departure for his inquiry into the visions of the profession is de Tocqueville's observation in 1835 that in America "... lawyers form the political upper class and the most intellectual section of society ... It is at the bar or bench that the American aristocracy is found." The "aristocracy" to which de Tocqueville refers was emphatically not one based on birth or social rank. It was precisely that fact — that early 19th century lawyers came from the ordinary folk of the country — which accounted for the common belief that lawyers "were uniquely situated and qualified to diffuse throughout society the culture of civic virtue upon which the success of capitalist democracy would essentially depend."

That civic virtue was the law itself; it was law that provided what Gordon described as the "integrative paste" of a civilized society, and lawyers were in part the embodi-

ment of the law. "The elite lawyers, in short, concluded that there was a means for mediating the conflict between virtue and commerce ... and that that means was themselves." This "special stewardship" was the essence of the profession. Lawyers were not a branch of commerce; but they worked *among* all branches. Rufus Choate said, "[W]hile lawyers, and because we are lawyers, we are statesmen."

The early 19th century, then, had fashioned the vision, never fully realized, of an ideal republican lawyer-statesman — a vision that lawyers, or at least the leaders of the bar, were committed to performing the tasks of their special stewardship.

This focus on the shape of the ideal lawyer is critical to our understanding of the problems of the profession. The ideal vision of one's calling is what forms the contours of our often unconscious drive toward achievement. Ideal forms become symbols which perform important functions in society. Professor Robert N. Bellah, Ford Professor of Sociology and Comparative Studies, University of California, Berkeley, and his colleagues have emphasized that visions of an ideal character are "a way by which we can bring together in one concentrated image the way people in a given social environment organize and give meaning and direction to their lives. ... It is ... a public image that helps define, for a given group of people, just what kinds of personality traits it is good and legitimate to develop."

Gordon probes for the roots of the profession on the assumption that the outcome of law reform depends on the *ideology of lawyering*, not on the statistics of the "litigation explosion" (if there is one). He reminds us that the ideology of lawyering has changed with time and circumstances.

The transformation of the ideal form from republican lawyer-statesman to lawyer-businessman

began in the mid-19th century. Jacksonian democracy "was busily celebrating the social value of self-interest: relocating virtue in the market itself and the qualities of honesty, self-denial, and hard work needed to succeed in it." It was in this totally different social-political environment that there developed a "countervision of the lawyer not as an intellectual, but as a skilled craftsman, not as an agent of the public interest, but as a businessman who contracts to sell technical services to clients." The lawyer-statesman versus the lawyer-craftsman/businessman — the vision and countervision of the profession — are the contrapuntal themes that are heard throughout most of the profession's history.

In this interplay, the republican lawyer-statesman re-emerged in various forms. By the late 19th century the Jacksonian model was overshadowed by an extraordinarily energetic reform movement that drafted uniform codes, formed bar association committees to push for reform, and pressed for higher standards in legal education and training.

These avowed reform lawyers were not a majority of the profession. Indeed throughout the past century, lawyer-craftsmen have always formed the vast majority of the bar. Yet the reform lawyers have always been vocal and visible.

Early in the 20th century a reform segment of the bar, of whom Louis D. Brandeis was the most important member, was dedicated to the belief that the social sciences, with legal science in the forefront, was capable of solving the new and troubling conditions of an industrialized society. Those who inherited this confidence in the social sciences formed the core of lawyers who produced the innovative programs of the New Deal. More recently public interest law firms and the Legal Services Corporation

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Deans Will Respond To Registration Problems

(Continued from Page 1)

The Law School Council formed a committee late last month to study how the new scheduling formula can be improved.

The proposed revisions, which are being drafted by Smith and HLS Assistant Dean Stephen Bernardi (LL.B., '55), will be based on information that HLS Registrar Sue Robinson has compiled about the number of students who have been denied seats in popular classes, Bernardi said early this week, but he declined to disclose further information about the proposal.

Bernardi said the changes will be announced in a memorandum that he hopes will be released as early as next week.

Administrators worked to revise the plan after four 2Ls met early this month with Dean James Vorenberg (LL.B., '51) and other administrators and told them they were unsatisfied with the plan, which leaves their class with priority for the five basic courses neither this year, when 3Ls still have it, nor next year, when the current 1Ls are to get it.

"We wanted to express to [Vorenberg] the strong dissatisfaction of second year students," said Bern Johnson, 2L, who helped lead the petition drive last spring.

The meeting occurred after Vorenberg, during a question and answer session sponsored in early October by the Board of Student Advisers, said most 2Ls had been "good natured" in accepting the priority change, which he said was "important educationally over the life of the school."

"We recognize that [2L] class has special problems going into the third year, and we'll try to deal with that," he said.

Rather than giving current first year students priority for basic courses next year, Johnson said course registration would be fairer if neither 2Ls nor 3Ls enjoyed preference in 1986-87, during the transition to the new formula.

Administrators approved the priority change in spring 1984 because some students were waiting until their third year to take basic courses so that they could take them with a particular professor, said Professor Hal Scott, who chairs the Committee on Legal Education. Second year students had complained that they were being denied seats in basic courses they needed in order to take more advanced classes later because third year students were taking spots they could have had, he added.

Professor Laurence Tribe's constitutional law class has been

"heavily oversubscribed" in recent years, and Professor Robert Clark's corporations class has also been popular, Scott said.

Students should pick courses for their content, rather than just for the professor, said Jay Ward, 2L, another committee member.

Vorenberg said students have "very exaggerated" fears if they believe their legal careers will be "blighted" if they don't get all the professors they want.

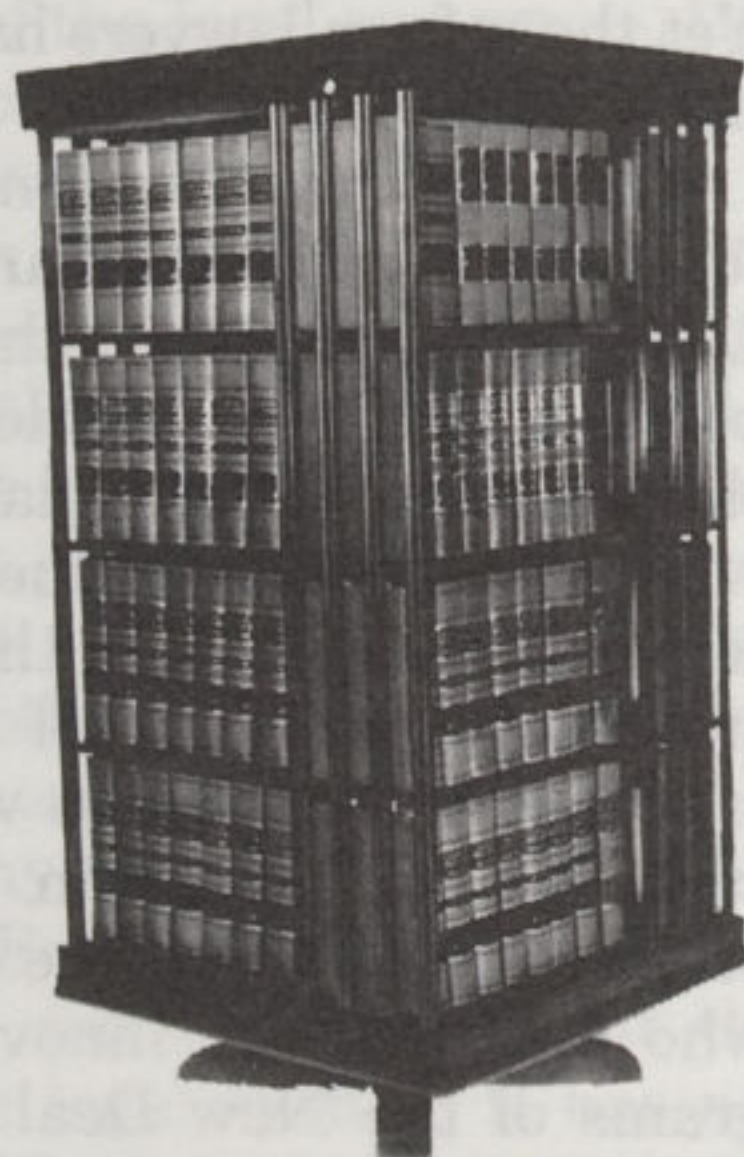
Several 2Ls expressed impatience late last week with HLS administrators' failure to respond publicly to their concerns.

"I think they just want this to go away, and it won't," said David Schwartzbaum, a Council member who chairs the new LSC committee.

The new Council committee plans to draft a priority plan for next year that will allow HLS to move to the new formula but will improve the position of 2Ls "without hurting the 1L class," Schwartzbaum said.

He said the committee will also consider a plan he submitted to Smith that would allow students to put alternative course choices on their request forms and would give students who were bumped from their highest choices a better chance of getting into other classes they try to get into.

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Zappa Points Out Conflict

(Continued from Page 1)

Despite the prevalence of the "new element of vulgarity, violence and brutality to women, consisting of rape, sadomasochism, and incest," Nevius told the JFK audience that "the PMRC is opposed to any form of legislation or censorship." A recent agreement between "the recording industry, PMRC and the 5.6 million members of the PTA, whereby 22 of 44 record companies agreed either to put a warning label on album covers or print the lyrics on the outside, is a "minimum intrusion on musical creativity," said Nevius.

Zappa, the last speaker, delved into issues of artistic integrity and freedom of expression. "When I was at the Senate hearing on the 19th of September [regarding possible federal legislation on controversial rock lyrics]," said Zappa, "I made it clear that they should print lyrics on the back cover but should also pay artists for doing it."

Zappa said that "the actual rights

to lyrics are spread all over the countryside," so it might be difficult to obtain cooperation from the various people involved in making an album.

He recalled that when members of the Senate Commerce Subcommittee began to discuss legislative curbs on music lyrics, he accused them of a "conflict of interest." This was because five of the senators, "Hollings, Tribble, Packwood, Gore and Danforth [subcommittee] the chairman" had wives "involved with the PMRC."

Zappa expressed skepticism of the PMRC's avowed opposition to censorship. "Tripper Gore, wife of Senator Gore, said that the PMRC would not define 'explicit' lyrics but would monitor the companies, exerting pressure on them and the artists to comply," according to Zappa.

Throughout his talk, Zappa criticized people in the PMRC, whom he said were "First-Amendment-threatening video-fundamentalists."

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Letters

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A solution to these two problems is present right on the campus. The large corporate firms offer to solve their problems, and to give the student everything in the world one can possibly imagine. The firms are not even asking much in return, only that one "try out law for the summer." The work is not too demanding and the benefits (fly-outs, incredible pay, fancy meals, clothing allowance, meeting with important people, etc.) are great. "How can one turn all that down, right?" For some, the corporate law summer is like selling one's soul to the devil.

Most students do the easy thing and try it out. This is exactly what the firms want, they are willing to take a loss on some students in the summer to make larger returns in the long run. Some of the students do not go corporate for the summer. That is all right for the firms also. They have what they want. What they have successfully accomplished is framing the debate over where to work after law school.

The firms show a few students what the benefits are from going corporate, and these students tell everyone else what the deal is, so everyone "knows" what they will sacrifice by not "becoming a lawyer," i.e., going corporate. All comparisons are seen in terms of a percentage of earnings of a corporate job. For instance, a public defender job paying \$15,000 is "worth" less than a third of a corporate job, and over the long-run, it is worth a much smaller fraction, especially once you have made partner and the percs are factored in.

No matter how much talk there is around the HLS about the destruction of the school caused by the Critical Legal Studies faculty, the truth is that the Law and Economics professors are winning the debate with students. The question floating around the student's mind is not likely to be, "how is the hierarchy of the law firm recreated in the law school class?" Subliminally many of the students are asking, "what are the benefits and costs of working for a corporate firm?" The benefits are characterized as a high paying, high prestige job with great interest and intellectual stimulation. The costs are assessed against the benefits of the public interest alternative, which is frequently described as a low paying, low interest, boring job that will allow me to sleep well at night in my tenement with the cockroaches. It is no wonder that the answer that many students are giving to whether they should "go corporate" is yes.

Peter Levine, 1L

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The Evolving Image of American Lawyers

(Continued from Page 11)

represent the efforts of a segment of the bar to bring the law to those for whom it had never previously been available.

Given this remarkable, if occasional, history of the "special stewardship" of lawyers, and given the present need, by all accounts, of a vigorous and thorough law reform movement, what is it that obstructs the resurgence of the lawyer-statesman in 1985 garb? Gordon describes the answer in terms of lawyers' "disabling arguments": 1.) "There's no chance in my kind of practice to realize any kind of political values," 2.) "It's inappropriate for lawyers to bring to bear an autonomous judgment," 3.) "Who are we to impose our values on the situation?" and 4.) "It's futile because we are caught in a tight web of social constraints."

These are undoubtedly valid descriptions of the feeling of many lawyers, but they are inadequate as explanations of current behavior and thinking. First of all, the political forces arrayed against any strengthening of the vision of the lawyer-statesman are profound. The Legal Services Corporation, for example, has been under constant and ferocious attack by the Reagan administration; its existence is constantly threatened by the administration's repeated requests for a zero budget for the Corporation.

The American Lawyer and Mr. Brill

But a more serious obstacle by far is the existence of a vigorous opposing ideological force — a new countervision of the American lawyer. What is emerging from within the profession is the purest and historically the most energetic form of the Jacksonian craftsman/businessman-lawyer. Symbolic of this countervision is *The American Lawyer* and Steven Brill, its Editor and Publisher.

The American Lawyer, a monthly tabloid newspaper, is unique among the numerous scholarly and com-

mercial publications by and for lawyers. It alone is devoted exclusively to lawyers; it has no interest in the law, be it substance, procedure or practice. It may be compared to the magazine *People*, but instead of peeking at the usual array of celebrities, it focuses on the doings of lawyers.

With 20,000 paid subscriptions, 90 percent of which are from lawyers, *The American Lawyer* can be found in the office of every major law firm in the United States. It is so widely discussed and quoted among lawyers that it is probably safe to say there is no publication for lawyers which is more widely or avidly read.

If *The American Lawyer* has not had a profound effect on the popular vision of the American lawyer, it has at least been the most articulate spokesman of what that newspaper, and by implication its paid readership, believes that vision to be. That picture is clear if not refreshing. The profession is so competitive, said Steven Brill in April 1984, that it is now a "legal marketplace" place, lawyers must achieve "market position and market share." Two regularly featured columns called "Big Deals" and "Big Suits" are designed to give the reader a sense of direction in that marketplace, but lest one go astray in this welter of detail there is the "Corporate Scorecard" which identifies by name, and ranks numerically, "The Biggest Dealmakers" of each year beginning in 1983.

On June 28, 1985, the *Wall Street Journal* published a story summarizing the forthcoming issue of *The American Lawyer*. What *The American Lawyer* had to say about lawyers had become national news. The *Journal* article included a table derived from *The American Lawyer* story showing the names of the ten law firms in the country with the highest gross income. The *Journal's* lead sentences were these: "Every takeover battle has winners and losers. But at least one group always seems to come out ahead. Lawyers."

This focus on success in the marketplace, and the acceptance of that

measure of a lawyer by other respected newspapers, now evokes a new and special vision of an ideal American lawyer — he is the supreme "rainmaker." Mr. Brill has created a late 20th century qualitative version of the Jacksonian model: a lawyer who successfully uses all his skills to gain market-share; he is to be measured by his net income, and he will be rewarded by appearing in The Scorecard.

Brill's vision, accurate as it is for what it measures, confined as it is to the market place, has totally lost sight of the purposes of the law — the "integrative paste" of civilized society. The law, for Brill, is merely a vehicle for achieving marketshare.

What is heartening is that while Brill's vision is inspiring some lawyers, it is disaffecting many more. The times are hospitable to Mr. Brill's ideas and they may last a while, but there is much in the profession's history that is set against him. Gordon may have failed to take the full measure of the opposition, but he has restored the memory of a vision which may be the key to the future.

Professor Cox's Address

Archibald Cox starts from a different observation; the public is deeply concerned with the cost and availability of justice, and he is concerned with prospects of the loss of independence of the bar: "Both inside and outside the profession, there is greatly increased pressure to curtail its independence."

Cox would respond to this threat by giving "meaningful form to the ideal of the independent lawyer," while rejecting the Jacksonian-Brill model lawyer as one who merely devotes his "knowledge of law and legal skills to the use the client dictates." The independent lawyer is one who is both free of government controls and who sees himself "serving larger interests."

Those larger interests are the interests of the public. This requires "a profession whose members are

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Lawyer, Statesman, Tinker, Tool?

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so well guided by their personal sense of professional obligation to the public that the public chooses to leave them free from outside regulation." Independence also requires working to restore public confidence

"that the judicial system will provide the whole community with the largest measure of justice in return for the costs."

Thus Cox projects the realization of Bok's theme — delivering justice at a lower cost to more people — only through a model of a truly

independent lawyer. "Unless the profession does cultivate and its members do act upon a high sense of public obligation over and above pursuit of the client's interest, it cannot — and will not deserve to — retain its freedom from outside control."

Gordon and Cox thus arrive at the same point: it is the profession's vision of the ideal lawyer that will enhance (or diminish) its ability to maintain "a system of justice." The difficulty, Cox recognizes, is whether his vision of the independent lawyer will ever be accepted.

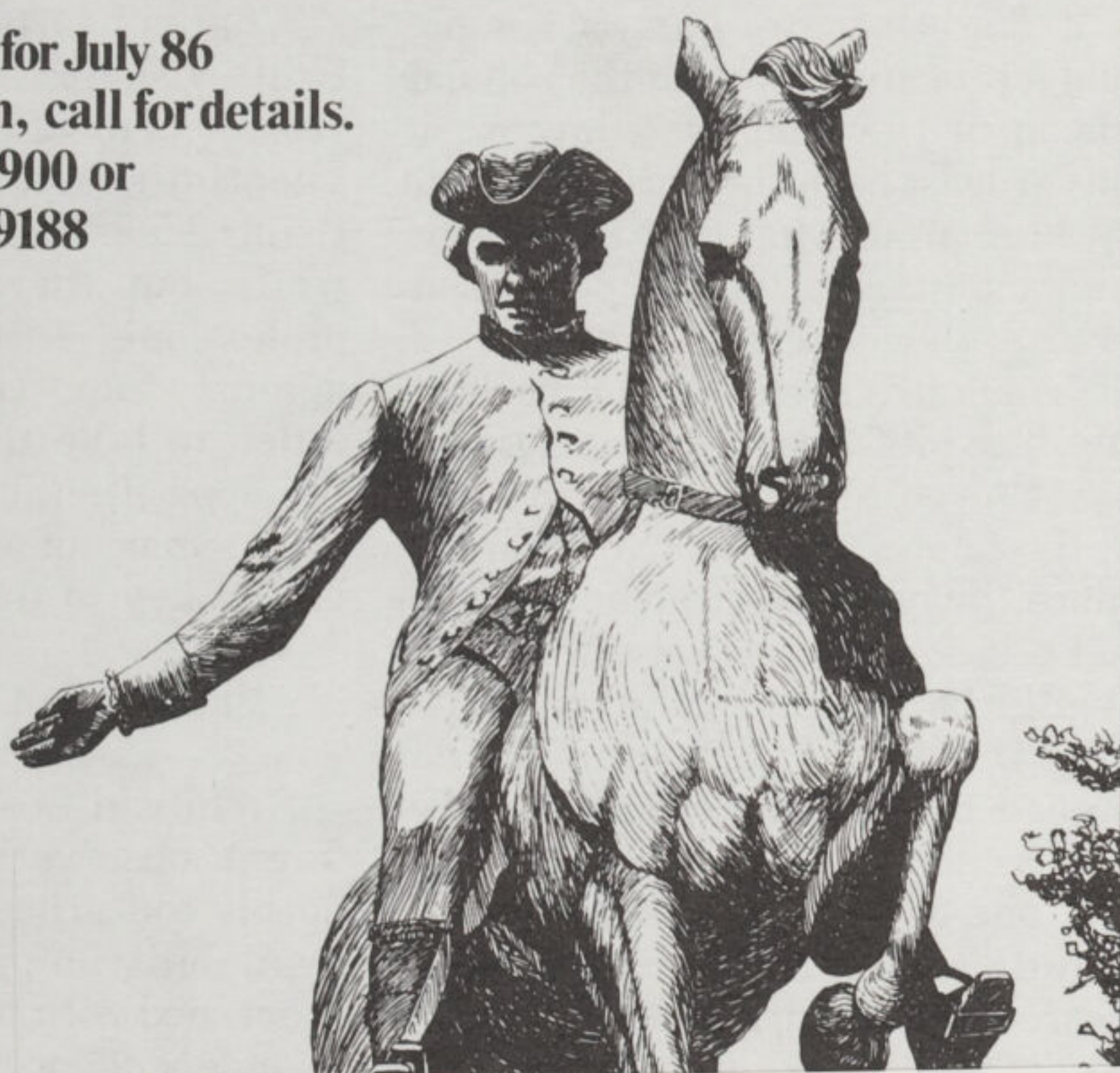
Recapturing Our Vision

It will not have a chance to be accepted if we continue to ignore the ideals of the profession in favor of unreflective criticism of day-to-day courtroom and boardroom events. Most prominent of all is the Chief Justice of the United States Supreme Court who at least annually takes up the theme of the outrages of the litigation process. But if Gordon and Cox are right, the Chief Justice and many, many others are wide of the mark; what ails the profession is not its participation in the costly and complicated process of litigation, but rather the profession's ideals as now conceived and practiced. What is unique about today is the intensity of the devotion to the belief that the profession has become a business. That belief is not wrong; but it is a grossly incomplete statement of what is true. The profession has been, and no doubt always will be involved in the production of income, but that involvement need not and should not diminish the profession's obligation of service in the public's interest. Perhaps lawyers will again see such activities not as curious but as vital, as bearing directly on the accepted ideals of the profession.

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