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25 CENTS

Rehnquist Addresses Overflow Crowd

By George M. Borkowski

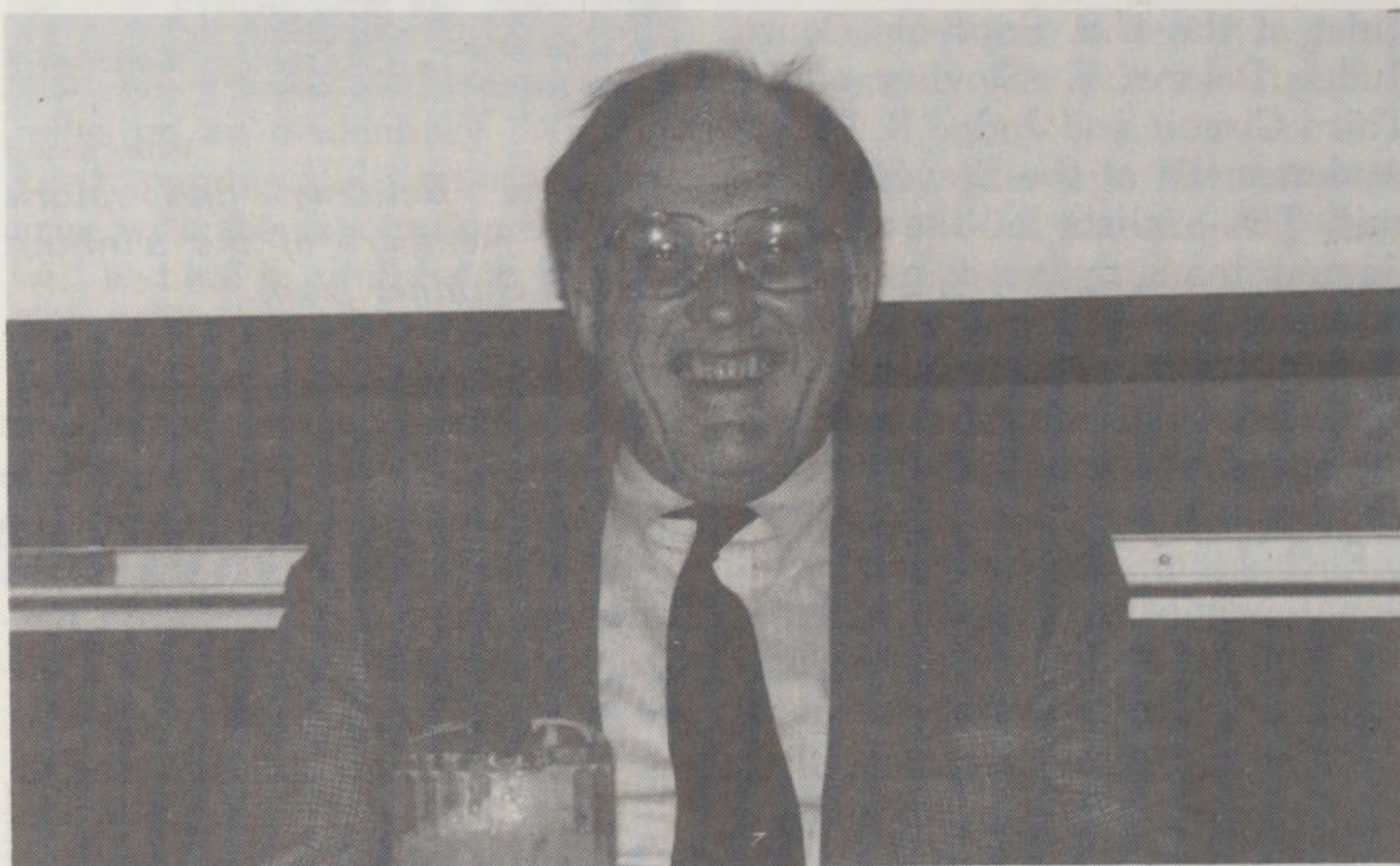
A president's ability to impose his particular ideology on the Supreme Court is not very predictable, Supreme Court Justice William H. Rehnquist said during an informal question and answer session on Nov. 21 in Langdell North Middle. Rehnquist, who was at HLS to preside over the Ames Moot Court Finals later that evening, was appointed to the Court in 1972 by then president Richard Nixon.

Rehnquist said that both presidents Abraham Lincoln and Franklin D. Roosevelt "put people on the Court to do certain things, and I think both succeeded to a certain extent." But, Rehnquist went on, "new issues come up on the Court."

Rehnquist noted that when Lincoln's appointees had to decide on issues pertaining to Reconstruction, and when Roosevelt's turned to civil rights, "they split all over the lot."

The Associate Justice refused to reveal his thoughts about the propriety of Supreme Court Justices hanging on to their seat in order to outlast particular administrations. "Five of my colleagues are over 75," he said. "Nothing I say about mandatory retirement won't sound wrong in some way."

Answering a question about the degree of importance with which the Justices view precedent, Rehnquist said that "*stare decisis* is regarded as all but inescapably binding in statutory cases," where the operative issue is the meaning of the statute. Part of the reason for this, he said, is that in cases of statutory interpretation, "Congress may change the result, so there is



Joseph Gourneau

Supreme Court Justice William H. Rehnquist

no great danger if we make a mistake."

In the area of constitutional law, however, Rehnquist stated that *stare decisis* plays less of a role, since the Court's decisions there can be changed only by a Constitutional amendment. As a result, he said, all of the Justices "feel freer to revisit a question on which we feel a mistake has been made."

The Justice also mentioned that in 1952, the year he graduated from law school, there were only ten to twenty percent as many cases as there are now, and hardly any conflicting precedent.

Commenting on the tenor of recent Court opinions, Rehnquist felt that there was some validity to observations that the amount of shrill rhetoric between majority, dissenting, and concurring opinions has increased, although he is "not sure if it has stepped up over the last

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Ad Board Retracts

By David Snouffer

The HLS Administrative Board voted on Nov. 20 to rescind a reprimand it had imposed on a student three weeks earlier for her participation in an anti-apartheid rally last May.

The student, Jennifer Granholm, 2L, said last week that to her "complete surprise" she received a letter on Nov. 21 from Ad Board Chairman Frank Sander (LL.B., '52), saying that after "further consideration" of her case the disciplinary body had decided to take back the censure. The Board had punished

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Students Argue Final Round of Ames

By David Price

On Thurs., Nov. 21, the finalists in the Ames Moot Court Competition argued before a full house in the Ames Courtroom. The finalists argued the mythical case of *Deuteronomy Chemical v. Glynnis Yardley*, on appeal from the mythical U.S. Court of Appeals for the Ames Circuit.

The members of the panel hearing the case were Justice William Rehnquist of the U.S. Supreme Court, Judge Dolores K. Sloviter of the Third Circuit and Judge R. Lanier Anderson III of the Eleventh Circuit. The oralists for the Charles Sumner team, representing the petitioners, were Fredric Bellamy and Bennett Cooper. The oralists for the Myra Bradwell team, representing the respondent, were Ralph Berman and Lorin Reisner.

Each team also had four additional members to assist in writing the brief and preparing for oral argument. The assisting members



Hillary Richard
Fredric Bellamy and Mark Mathie, members of the winning Charles Sumner team.

of the Charles Sumner team were Ben Gibson, Mark Mathie, Gayle Robinson and Richard Shearer. The assisting members of the Myra Bradwell team were Richard Chesen, Roberta Harding, Steven Kennedy and Edward Yorkgitis.



Hillary Richard
Lorin Reisner, best oralist, and Ralph Berman, members of the Myra Bradwell team.

The panel gave the awards for the best team and the best brief to the Charles Sumner team. The panel named Lorin Reisner of the Myra Bradwell team as best oralist.

The case raised intricate issues of civil procedure, including the extent to which federal courts should create a federal common law in nationwide "mass tort" litigation and whether a district court can certify a class action for punitive damages to spread a limited fund among all class members.

In the Ames Courtroom, the audience appeared solemn and attentive throughout, but the audience downstairs watching the event on closed-circuit television was frequently raucous. Many audience members cheered when Bellemey cited *Erie Railroad v. Tompkins*. A closed-circuit television screen was also set up in a Science Center lecture hall, but few people watched there because the Science Center received no sound transmission from the Courtroom.

HLS Wins in Negotiation

By David Snouffer

Two HLS students bested teams from four other New England law schools in a negotiation competition held Nov. 23 at Boston University. They earned a chance to participate in a national championship that will take place in Baltimore next February.

The students, Beth Green and Tom Wiegand, 3Ls, represented defendants in two simulated negotiations to settle personal injury lawsuits during the tournament, which was sponsored by the American Bar Association.

Professor Frank Sander (LL.B., '52), who coached the Harvard team, said that the victorious Green and Wiegand "did an incredible lot of research" in their two cases. In fictional scenarios, they represented both a mortuary that had been sued by a widower who had suffered a stroke after he learned the funeral

home had misplaced his wife's cremated remains and an ophthalmologist who had performed an allegedly negligent operation.

Pairs of students from Boston University, Franklin Pierce College in Rindge, N.H., Northeastern University and the University of Bridgeport in Connecticut took part in last month's competition. Green and Wiegand were chosen to attend the tournament from among eight teams that entered a preliminary competition run by the Harvard Student Bar Association in October.



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Panel Considers Parent-Child Privilege

By Marla Becker

"Should children be forced to testify against their parents, and vice versa?" was the issue discussed by a panel sponsored by the Children's Rights Project on Wednesday, Nov. 20. Zick Rubin, 1L, the program organizer, introduced the panel's three speakers: Dr. Philip Kraft, '84, clinical instructor in psychiatry at the Harvard Medical School and associate at Fine and Ambrogne in Boston; Professor Charles Nesson, who teaches evidence and criminal law; and Professor Frank Sander, who teaches family law. According to Rubin, while there is a spousal privilege, there is currently no recognized parent-child privilege in the United States.

Kraft, whose article "The Parent-Child Testimonial Privilege: Who's Minding the Kids?" was recently published in the *Family Law Quarterly*, explained that the issue of a parent-child privilege has only emerged in the past 10 years, with most academic authors concluding that the privilege should be absolute.

Wigmore Test

The classic argument usually advanced for a testimonial privilege relies on an evidentiary "Wigmore Test": parent-child communications arise with the expectation that they will be held in confidence, the confidentiality must be essential to the relationship, the relationship, in the opinion of the community, should

be fostered, and the injury to the relationship caused by disclosure should be greater than the benefit to prosecutors. When these four conditions are present, many authors argue, there should be a parent-child privilege.

A second argument usually advanced by privilege advocates, Kraft said, is a constitutional argument of familial privacy. Thirdly, they argue that it is repugnant to our sense of decency that "little so-and-so should have to testify against his parents; it's akin to totalitarianism."

Finally, privilege advocates argue, if a child is placed on the stand to betray parent-child confidences, the child will either refuse to testify and face contempt of court, testify and destroy the familial relationship or, most likely, lie to protect family members.

According to Kraft, these arguments are nonsensical "pure psychobabble."

"The conclusion that testimony will destroy a family is simply an outrageous proposition, born of legal narcissism," Kraft said, because it is typical of judges and lawyers to believe that an event induced by a legal proceeding can destroy a relationship that had evolved for years and years.

Mistaken Assumptions

The arguments are based on three mistaken assumptions, according to Kraft. The first assumption is that "families have to talk through their problems in confidentiality," he said. Kraft said that this is not true for most Americans, because talking is not the cure-all for all family problems.

The second assumption is that "maintaining confidentiality is essential to the well being of the child," he said. Kraft found it hard to believe that "absolute confidentiality is absolutely necessary, because many times a child will come to the parent with something he hopes the parent will tell someone else."

(Continued on Page 4)

HLS Condemns Resume Padding

By David Snouffer

The head of an HLS student organization contacted Dean of Students Mary Upton last month and informed her that an upperclass student who was not in the organization had listed the group on the student's resume, Upton said in late November.

Upton would not identify the student or the group but said the organization was not a law journal or the Board of Student Advisers.

Lying on a resume could be a "serious" disciplinary offense, but the HLS Administrative Board took no action "because the organization handled the matter itself," said Professor Frank Sander (LL.B., '52), who chairs the Ad Board.

"We take this very seriously because we believe students should represent themselves honestly," Upton said. "And there isn't any need here [at HLS] to pad resumes. That's the irony."

"You don't get hired or fired because you did a subcite for a law journal or something," she added.

Upton and Placement Director June Thompson said students occasionally prepare resumes long

before they send them to employers and list organizations they intend to participate in but eventually do not join.

"You just don't think to redo your resume, and you should," Upton said.

Thompson said she only learns of a "fairly serious" misstatement on a resume "every couple of years." Most inaccuracies on resumes have "appeared to be an honest mistake," she added.

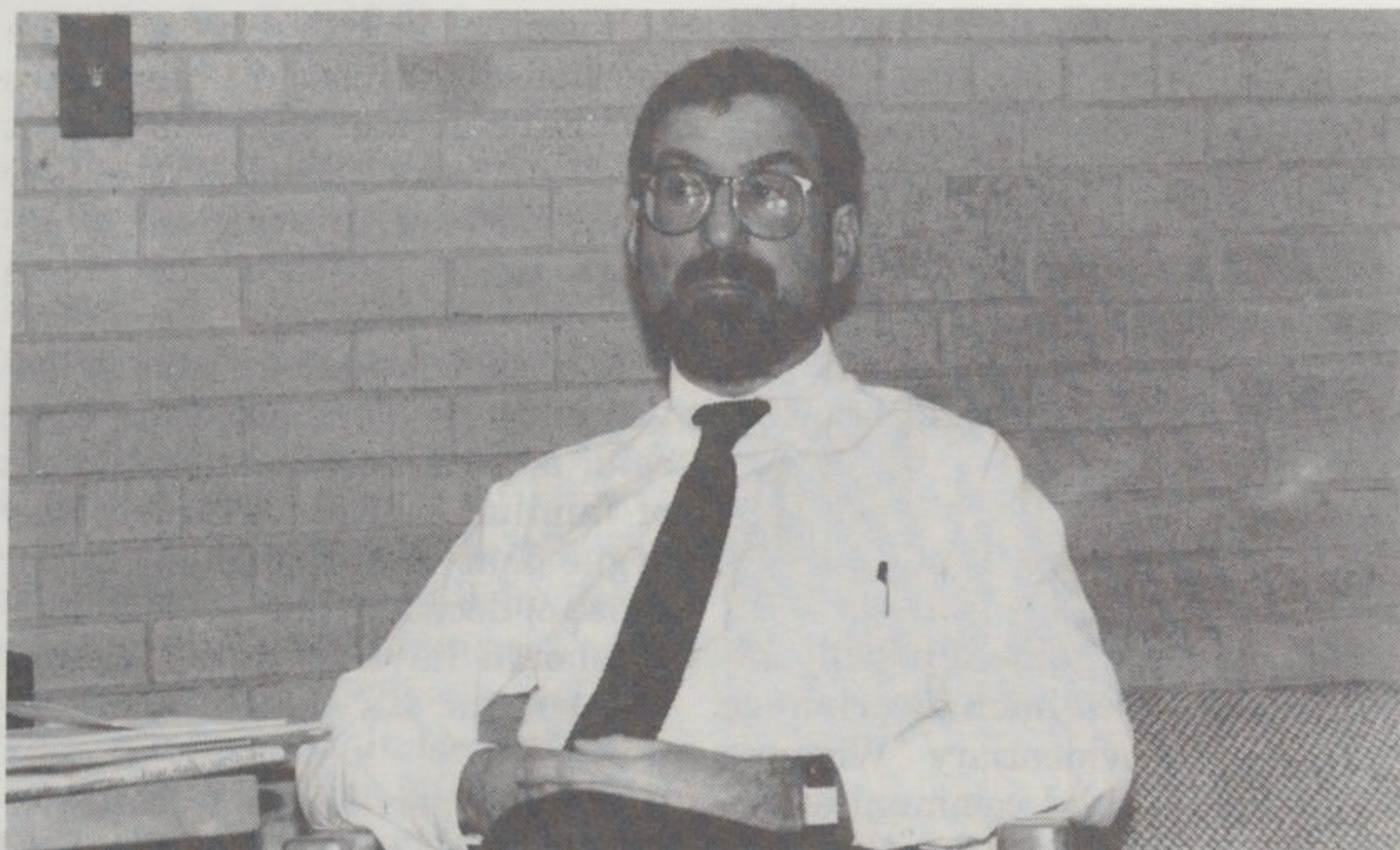
Although Ad Board members hear about resume padding from time to time, Sander said a student was last formally referred to the Board for lying on a resume five years ago and was suspended for the violation.

Law firms "sometimes handle" inaccurate resumes themselves by withdrawing an offer, Upton said.

Last month's incident spurred Upton to place a warning against false statements on resumes in the HLS Adviser of Nov. 21. "The [Law] School regards as extremely serious misrepresentations (whether with respect to grades, memberships, degrees received or employment)," she wrote in the weekly newsletter.



Kraft Decries Psychobabble, Legal Narcissism



Hillary Richard

Dr. Philip Kraft, '84

(Continued from Page 3)

The third assumption is that "irreparable psychological harm will result when a parent testifies against a child or a child testifies against a parent." This assumption underestimates how smart kids are today, according to Kraft, because kids know that the parent is not testifying by choice.

If these assumptions are only based on "psychobabble," then it may be asked, why do so many academics rely on these assumptions? Kraft said that the reason may be related to the fact that in the past 25 years, being a good parent has acquired enormous significance. Now that the "good" parent has been defined, parents are uncomfortable even with the thought that their children could be called upon to testify against them and let the world know that their parenting skills have failed.

Kraft suggested that a better way to look at when the parent-child relationship should be privileged is to realize that parents and children are not equals. A power differential exists between the bigger, more knowledgeable parents and children who depend on those parents.

Due in part to this power differential, a child is often already placed in a situation of harm or abuse before the government asks the child

to testify against his or her parents, since it is likely that the child is being subjected to some sort of abuse in the home.

In these situations, Kraft said that there is room for a parent-child privilege where the child has already been abused and where forcing him to testify to the actions of his parents would simply result in more abuse. For example, he cited a case where a young boy witnessed the murder of his infant sister by his mother. Since "the kid was scared out of his mind," it would have been horrible to force the child to take the stand when he had suffered so much already.

Nesson was called upon to respond to Kraft's observations. He first explained why he thought that a parent-child privilege is appropriate in some situations, where a child in testifying against a parent

could succeed in providing the incriminating evidence that would convict the parent, leaving the child guilt-ridden and family ties seriously weakened.

Nesson cautioned, however, against losing sight of the fact that privilege is privilege. According to Nesson, "privilege is a rule of law setting one class of people apart from other classes of people; it is a concession by the judiciary to an organized class interest."

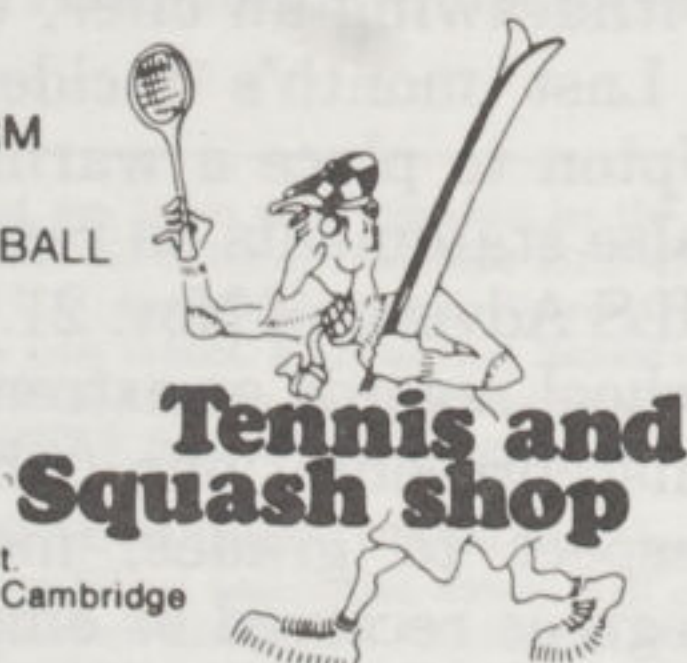
He asked those listening if, like the priest-penitent privilege, the spousal privilege, and the privileges of attorney-client and doctor-patient, there is a widespread political movement to obtain a special privilege for the parent-child relationship.

Sander saw many instances where a parent-child privilege might apply but where there was no evidence of abuse, such as when the father is involved in giving asylum to political refugees and tells the children what he is doing, or when the father discusses his assets with his children and then his wife, suing for divorce, wants the children to testify against their father.

Sander believed that intra-family warfare should not be waged in a courtroom, that turning child against parent "is not the way we should be solving cases." Sander said he favors the establishment of the boundaries of the parent-child privilege on a case-by-case basis, rather than by statute, to take into account the particular circumstances of each case.

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U.S. Att'y Harrington Favors Victims Rights

By Julia A. Loewy

Lois Haight Harrington, Assistant U.S. Attorney General, spoke about victims' rights to a small group in Austin Hall on Nov. 20.

Harrington, who graduated from U.C. Davis and received J.D. and L.L.B. degrees from Hastings College of Law, heads the Justice Program in the Department of Justice. She has extensive experience in criminal law, including having worked as a juvenile probation officer, a defense attorney and a prosecutor, and having served as Chairperson of Crime Prevention International.

A strong advocate of victim's rights, Harrington stated that the focus of the criminal justice process is misplaced; serving the offenders, judges and lawyers, while ignoring the victims. Victims aren't thought of as people involuntarily dragged into the system; instead they are ignored and blamed.

This results in a large number of crimes going unreported. According to a Bureau of Justice survey, only 47 of every 100 violent crimes were reported last year. Once victims have been through the process one time, they often refuse to cooperate again.

Balancing Process

According to Harrington the treatment of victims must improve and "if you can't look at it in terms of justice, look at it for pragmatic reasons of taking criminals off the streets." This involves a balancing process. "The rights of the accused are all sacrosanct. Don't take away the rights of the accused; add to the rights of the victim," she said.

To improve the situation of crime victims, they must be afforded protection from threats and intimidation. According to Harrington the only criterion currently used in granting bail is whether the defendant will return to court, while the determination should be made on the basis of whether the defendant is a threat to society. In addition the defendant is routinely

given the victim's address and phone number, increasing the possibility that the victim will be threatened or harmed.

The system needs to be made more responsive to the victim, she said. "His pain is the reason for the action . . . yet he is often not notified as to what is going on."

Continuances are often used by defense attorneys to "age" a case, creating great hardship for victims who want terribly to put the episode behind them. Harrington said she felt this was ironic in light of concern about the defendant's right to a speedy trial.

Impact Should Be Considered

Changes in the sentencing process are also needed to improve the

training could greatly increase their sensitivity, she said.

Crime also places a heavy financial burden on the victim. Harrington said it was unjust that "the victim's taxes pay for the defendant's prison, attorney, job rehabilitation and welfare, but the victim gets nothing for his attorney, medical bills and other expenses." In response to this injustice, up to \$100 million a year out of federal criminal funds from fines and penalties has been set aside for victim's compensation and victim's assistance.

Family Violence

In addition to working to increase victim's rights, Harrington implements programs dealing with family



Hillary Richard

Lois Haight Harrington, Assistant U.S. Attorney General

representation of victim's interests throughout the judicial process, she stated. Many sentencing judges don't know what the fate of the victim was.

Harrington said she wants to allow victims to submit an impact statement to be used during sentencing. Such knowledge of the impact of the crime will "aid in the attainment of justice."

Special training should be given to all those working with crime victims including judges, law enforcement officials, prosecutors and doctors. Many of these professionals "just have not thought about the affect on the victim" and such

violence. Family violence is another problem of great magnitude about which "there is incredible ignorance."

There are a large number of myths about family violence. Twenty percent of all murders are committed by family members of the deceased. There is also no economic or racial pattern to family violence.

Another misperception is that if the police get involved, the situation will be aggravated. On the contrary, overnight incarceration decreased the incidence by 50 percent. Such violence should not be considered a private matter because the be-

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Bar Examiners Concentrate On Incompetents

By David Snouffer

Although one state ethics panel considered denying bar membership to a civil protester three years ago, most states do not hold acts of civil disobedience against applicants to the bar, according to panelists at a discussion on "Law Students, Lawyers and Civil Disobedience" sponsored on Nov. 26 by the Harvard Lawyers' Guild.

Robert Muldoon, who chairs the National Conference of Bar Examiners, told an audience of about 40 persons that the vast majority of jurisdictions admit to the bar people who have engaged in civil disobedience, at least unless they have committed violent acts.

Because lawyers have varied political views, bar examiners try to use "neutral principles" when they evaluate applicants' "character and fitness to practice law," said Muldoon, who has been a member of the Massachusetts Board of Bar Examiners for 11 years.

Massachusetts bar examiners, who receive applications from about 2,000 aspiring lawyers a year, "presume that those who have gone through the process of preparing themselves for the bar have purged themselves of all anti-social tendencies," he said.

Alex Charnes, an attorney practicing in Durham, N.C., said, however, that a state ethics board admitted him to the North Carolina bar only reluctantly because he had been convicted in 1982 of lying in a road at the Fort Bragg, N.C., army base to protest the training there of Salvadoran soldiers. A federal judge sentenced him to three months in prison for the offense.

"In a state where neo-Nazis and [Ku Klux] Klansmen can shoot down people and be acquitted, ... standing and lying in a road of a military base was a badge of moral leprosy," Charnes said.

Charnes said an ethics panel notified him shortly after he left prison that he lacked the "requisite moral character" to practice law. With the help of the American Civil Liberties Union and the National Lawyers'



Sal Casente

Panelists Alex Charnes, Lee Goldstein, Robert Muldoon and Dan Klubock spoke on "Law Students, Lawyers and Civil Disobedience."

Guild, however, Charnes obtained a hearing before the state's full board of bar examiners, which admitted him to the bar "with misgivings," he added.

"Probably a third of my problem was being a Yankee, having a loud

mouth and not keeping my mouth shut," said Charnes, a Detroit native.

Muldoon called Charnes's experience "almost unique" and said other states have admitted attor-

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"In-House" Attorneys Receive Pay Increases

By Hillary Richard

There is good news for budding young corporate attorneys, according to the recently published Survey of Law Department Salaries. This annual survey, conducted by management consultants Altman & Weil, Inc. revealed an increase in salary, as well as in bonuses, for most corporate lawyers this year.

The report focuses solely on attorneys employed in industry and differentiates between chief legal officers — those individuals heading the legal department as their only paid duty — and the "nonsupervisory attorney."

Two hundred thirty chief legal officers of publicly owned corporations were surveyed, with their base annual salary averaging \$135,000. This is an increase of almost \$5,000 over last year. Within this group, roughly 30 percent earn over \$200,000.

Chief legal officers will also see a raise in their bonuses this year. Those employed by publicly owned corporations will receive on the average about \$50,000 as a bonus, an increase of \$4,000 over last year. Attorneys performing the same function for a corporation owned by another corporation will see bonuses of about \$32,000, up from last year's bonuses of \$23,200. Even some not-for-profit corporations are offering their chief legal officers bonuses. While not all of them receive bonuses, those who do will average over \$15,000 this year.

The base salary of the non-supervisory attorneys surveyed had also increased over last year's. Of the 4,529 non-manager attorneys

surveyed (including all specialties except patent law), the median salary was \$56,000 including cash bonus. This is an increase of \$3,600 per annum.

Factors

Many factors determine an attorney's salary. Most important is the type of industry in which the attorney is employed and the location of the company. Not surprisingly, the highest median salary for non-management attorneys, \$68,000, is found in New York City. California ranked second, with a median salary of \$58,000. Most regions were comparable, with the lowest median salary, about \$54,000, found in the Western states (not including California).

A similar range in salaries was found in the chemical/pharmaceu-

tical industry at \$66,075. A close second is the petroleum/extractive industry at \$61,170. The lowest median salary in an industry was found in the banking industry at \$48,400.

Expanded Survey

The survey this year expanded to include a comparison between attorneys actively engaged in litigation and those who are not. As it turned out, there was very little difference between the salaries of the two groups.

According to Robert I. Weil, a principal of Altman & Weil, Inc., surveys over the last few years have consistently shown salary increases. One of the more positive aspects of this trend, states Weil, is that the salaries "seem to be achieving some degree of stability."

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State Bars Admit Protestors

(Continued from Page 6)

neys who had demonstrated at a nuclear plant and at an abortion clinic or had blocked police who were trying to arrest a group of Libyan fugitives. In addition, he said the New York bar may soon admit Bernardine Dohrn, a former member of the Weather Underground.

States are more lenient to practicing lawyers than to applicants to the bar, said Dan Klubock, bar counsel of the Massachusetts Board of Overseers.

"It's very hard to get disbarred in this day and age," Klubock said.

"You have to be convicted of a very serious crime."

Rather than pursuing lawyers for civil disobedience, Klubock said he and other bar disciplinarians want to crack down on the thousands of "corrupt or incompetent" attorneys across the Bay State.

"We do not hassle lawyers who get involved in civil disobedience," he said.

Lee Goldstein, president of the Boston chapter of the National Lawyers' Guild, said lawyers should engage in peaceful disobedience in order to "convey a symbolic message consistent with integrity" and to "legitimate dissent."

Participating with clients in disobedience "breaks down barriers" and gives lawyers "a say in the strategy," Goldstein said. "I find that exhilarating," he added.

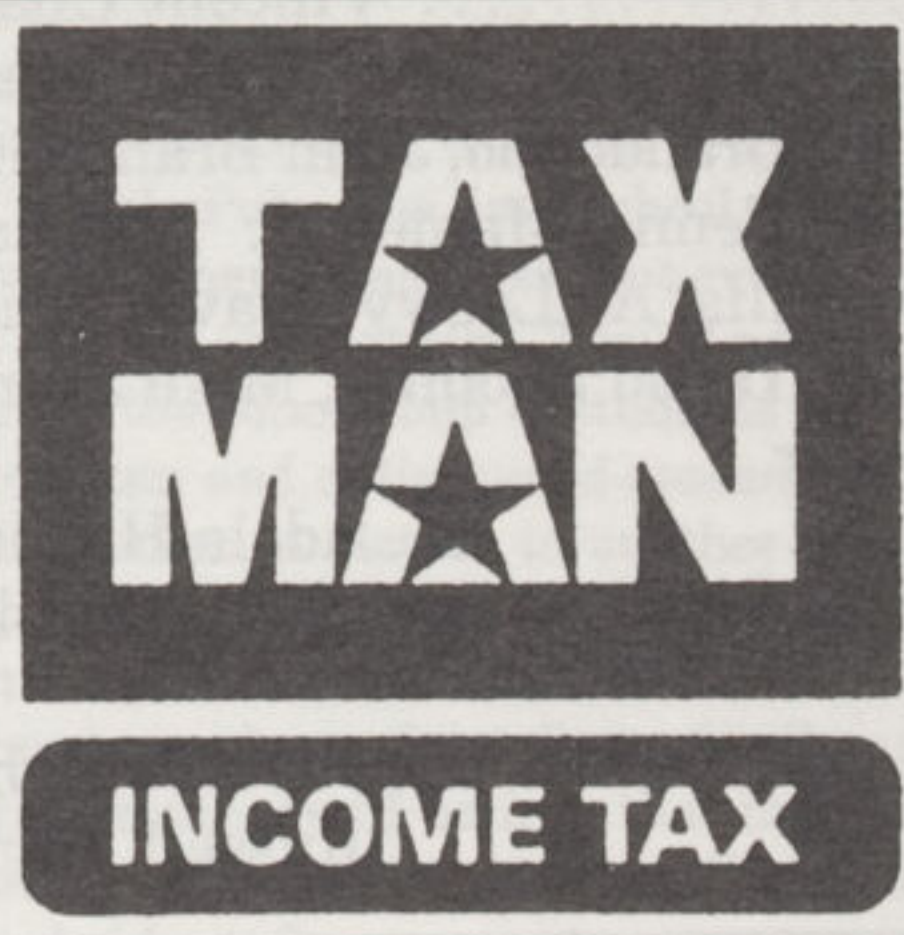
But Klubock said lawyers should maintain a professional "distance from clients" in order to serve them effectively. Demonstrators should find attorneys who were not involved in their protests, he added.

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Rethinking With A Heart

Sometimes just when I start to think that Harvard Law School really is a horrible, inhumane place to go to school, something happens that makes me realize instead it is not so bad after all and may actually have a heart.

This time around the Administrative Board reconsidered its reprimand of Jennifer Granholm, 2L. The reprimand caused a wave of comments condemning their actions as insensitive and unfair (including a comment in these pages, see RECORD Vol. 81, No. 7). Evidently, these comments helped the Ad Board realize exactly what they had done and the Board stopped to rethink Granholm's case.

The Ad Board's action should be commended and respected. This was a difficult decision to make. Whenever any administrative body overturns one of its own decisions, the body opens itself up to criticism for being indecisive and manipulable. But faced with a situation like Granholm's, the Board evidently decided that it could risk the possibility of appearing indecisive to correct a mistake in judgment it had made earlier.

The Ad Board faces questions of policy in a difficult area: when should testimony delivered in the course of its investigations be used against the person testifying. I am glad that it was able to show some sympathy and humanity as it confronts this new problem.

Anyone Seen Reading Period?

The end of the semester is almost upon us. Students will undoubtedly find themselves a few pages behind in the reading for at least one of their classes, and will appreciate the so-called "reading period" to catch up. But wait, where did the reading period go?

This year (I am not sure if this is a new phenomena or a continuing travesty) some students actually have exams the day after classes end. That's right, one day they have their last class and the next day they have their first exam. Nothing like a little time to study, huh?

To be honest, the only exams scheduled that week are take-home exams. But an exam is an exam, and some people consider take-homes to be more stressful and more exhausting than in-class exams.

I suggest that when the powers that be sit down to set the calendar, they at least try to provide the reading period that they promise. An honest week would be optimal, but at least a day off would be nice.

HARVARD LAW RECORD

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Fenno

It was holiday season and Fenno found himself, once again, the victim of a law school party. He wouldn't have been there at all, but he ran out of beer three hours before and he's heard that withdrawal symptoms kick in at the fourth hour. He'd been through preliminary alcohol withdrawal before, during the second half of a Law and Video exam. It had been an ugly experience culminating in a muscular spasm that sent his bluebook flying and inspired the exam proctor to ask Fenno to leave early.

At home he'd been afraid that he might start shaking like that day at the exam. He knew if his hands shook too much he'd be unable to hold a bottle up to his mouth. It would have been too humiliating to ask someone to come over and pour beer down his throat, so he went to the party.

It was held in one side of a two family house in Somerville. He'd rung the wrong bell at the doorstep and been greeted by a bull mastiff named Wretched and a woman who told him that she'd set Wretched loose on him if he took another step toward the door. He lunged for the other door.

The party was not very crowded and people didn't seem to be dancing much, which is to say it was in full swing. Fenno thought briefly about combat explosives and headed for the kitchen.

"Have you tried the dip?" a woman asked Fenno. Fenno breathed in a heavy waft of her Opium perfume. Since he was not sure if she was referring to herself or to the food, Fenno turned away quickly.

"What's the matter? You don't like dip?"

"It's not that," Fenno said.

"Well, then what's the matter? You look like you're gagging. Here, try this." She ground a week old Christmas cookie into a mound of green chunky dip. "It's luscious," she said and held it out in front of Fenno.

Fenno looked at the loaded pastry. He noticed the dip was the same putrid green as the woman's eyeliner.

"I'm Carol Lynn — two words."

"Uhuh." Fenno said. He thought what a fine thing it would be if nuclear warheads could be targeted at one person and be contained.

"Well, are you going to eat this or what?" Carol Lynn said.

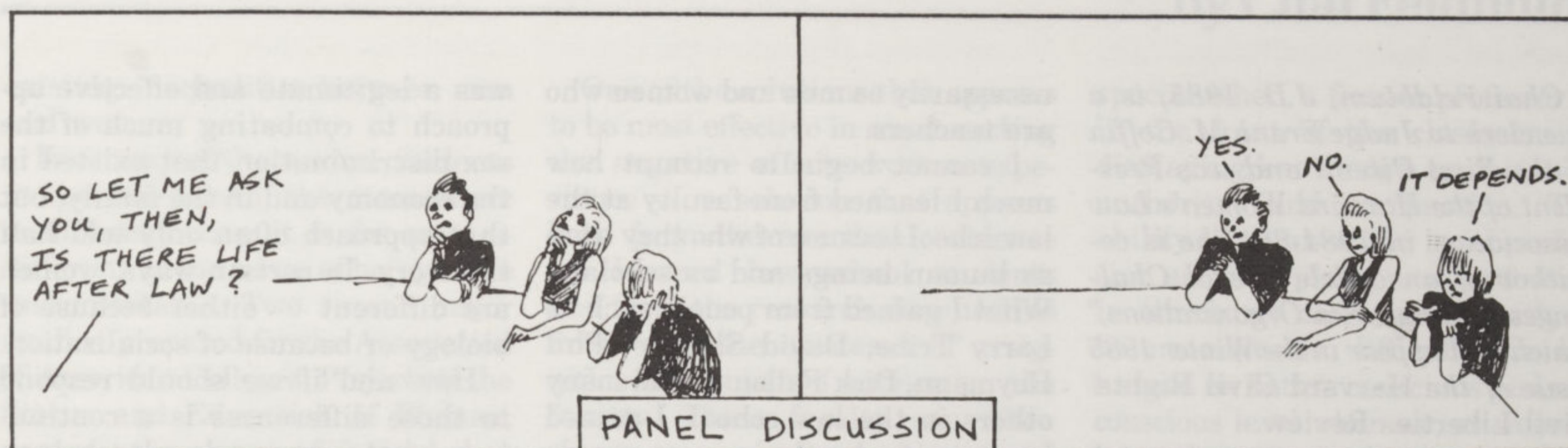
Fenno felt his stomach convulse. From the corner of his eye he saw a Budweiser bottle and he moved toward it.

Around the beer cooler were a group of law students. "If a non-flammable Christmas tree catches fire, I believe the buyer would have both tort and contract claims," stated one of the students.

Fenno reached for a bottle, but it was too late. He had gone without beer too long. He felt his knees buckle as he fell into Carol Lynn. That was the only physical contact either of them would have that night.

"The In-Law"

by Jinku Lee



Letters to the Editor of the Record

Coors Beats Kleindienst

To the Editor:

I have noted your articles in the Nov. 4 issue on Coors and Kleindienst.

I might hold my nose and drink Coors, but Kleindienst — never. His record and views make Bill Coors seem like Mother Theresa!

Jesse H. Oppenheimer, '42
San Antonio, Texas

Remembering Dawson

To the Editor:

I was stricken to read in the October 25 RECORD about the recent death of John Philip Dawson. He may not be well remembered by today's students or by recent graduates,

but there was a time when Professor Dawson was the acknowledged "king of contracts" at HLS. He was, very simply, a wonderful teacher. He possessed the great intellect that one expects of an HLS professor. But what set him apart, what made him so cherished and revered, was his tremendous warmth and humanity. I never observed him to be arrogant or short-tempered with students, and he used the Socratic method to perfection and with compassion. With the passing of Jack Dawson, they threw away the mold and the blueprint. He was one of a marvelous kind.

William B. Sullivan, '70
Washington, D.C.

Coors Deserves "Day In Court"

To the Editor:

I greatly enjoy reading the RECORD, particularly articles concerning my friend and classmate Abe Chayes, Melvin Belli (who I also know), advertisements for Houston (where I used to live), sports trivia, and other articles.

I was particularly interested on the articles pertaining to the sale of Coors beer in the Back Bench Pub. The law school did not have a pub when I was there; but even then, in my wildest imagination, I could not have conceived that one group of students in our cosmopolitan and enlightened student body would attempt to dictate to another group what beer they could or could not drink! (We left that up to our taste buds!)

Several members of the Coors family are friends of mine, and I believe that most interested parties will admit that Joe Coors was probably as fine a regent as ever served

the University of Colorado. Neither I nor any law firm I have been connected with has ever performed any services for any of the Coors companies or family members.

Be that as it may, I would suggest that those students who so vocally oppose the sale of Coors, as Professor Morgan used to say, "marshall the evidence before making a final decision." The tenor of the debate seems, on the one hand, to take the stand that Coors is anti-union, and on the other, that students should have the freedom of choice.

Factually, few concerns in Colorado have done as much for the public good, particularly for minorities, as Coors. Coors has about the highest percentage of minority employees of any company in Colorado. It has established programs funded, I believe, in the millions of dollars to aid black and latino businesses to get started and succeed.

Coors has strongly supported one of the world's great educational institutions, the Colorado School of Mines at Golden, Colorado. A few weeks ago, I was present when the younger Joe Coors gave the University of Colorado a \$100,000 grant.

I am sure my consumption of beer is far below the national average — I might drink a six-pack in a year. Therefore, what beer is sold, given away, or not sold at the Pub is of little or no concern to me, even during the times I am in Cambridge. I simply stand firm in the belief that a party is innocent until proven guilty and that Coors should be given its day in court to determine whether it will have a day in the Pub.

Once again, I enjoy the RECORD.

Robert C. Hawley, '49
Denver, Colorado

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.

(Continued on Page 14)

Considering Sameness and Differentness

Chai Feldblum, J.D. 1985, is a law clerk to Judge Frank M. Coffin of the First Circuit and was President of the Harvard Women's Law Association in 1984-85. She is co-author of an article "Legal Challenges to Single-Sex Organizations," which will appear in the Winter 1985 issue of the Harvard Civil Rights/Civil Liberties Review.

I have just emerged from three weeks of reading sociological data on boys and girls — how they are more similar than different in most respects, and yet how girls are still treated differently and unequally in mixed-sex settings. I thought it would be a bit of a jolt to move from that research into writing a short piece on the upcoming tenure decisions at the law school, but the two areas turned out to be more similar than I had expected.

As recent RECORD stories have made clear, a significant percentage of the school's younger faculty may be considered for tenure this year. Inevitably, there will also be a great deal of discussion about the need to maintain and expand the number of women on the faculty. Of the faculty who may be considered for tenure this year, three are women. As small as that number sounds, it is almost half of all the women faculty at the school.

The main point that faculty and students should remember in the tenure discussions that will ensue is that women are more *similar* to men than they are *different*. That is, most of the men and women on the faculty are trying to achieve the same goals: to be creative and rigorous in their scholarship, to transfer their knowledge with intelligence and enthusiasm to students in the classroom setting, and to have fulfilling and productive relationships with students and other faculty. Faculty members are trying to achieve these goals as *human beings* who are teachers — not

necessarily as men and women who are teachers.

I cannot begin to recount how much I learned from faculty at the law school because of who they were as human beings and as scholars. What I gained from people such as Larry Tribe, David Shapiro, Phil Heymann, Dick Fallon — and many others in the law school, I gained because of who they are as people and scholars. And what I gained

"For women, the ability to think of the legal profession as 'our' place is enhanced by contact with women faculty."

from Martha Minow, Clare Dalton, Elizabeth Bartholet, Kathleen Sullivan, and Zipporah Wiseman — I gained primarily because of who they are as people and scholars. In any tenure discussions, therefore, I would expect that men and women faculty would be measured by essentially the same standards and be required to have achieved the same goals — that is, being a good teacher and a good scholar, regardless of gender.

There is, however, a significant "but" in this discussion. In our haste to emphasize the "sameness" between men and women, we must be careful not to lose sight of the "differentness" that still exists between the genders. Much of the historical effort to achieve legal equality between men and women was based on the argument that women were the "same" as men and therefore should be treated no differently in the economic and personal spheres. Undoubtedly, this

was a legitimate and effective approach to combating much of the sex discrimination that existed in the economy and in the family, but that approach often only told half the story. In certain ways, women are different — either because of biology or because of socialization.

How and if we should respond to those differences is a continuing debate among legal scholars. Martha Minow, in a book review in the March 1985 issue of the *Harvard Law Review*, has vividly described how the tensions between sameness and differentness were a central component in the life of the early feminist Elizabeth Cady Stanton and how the contemporary debate about the rights of women continues to revolve around the same themes. Sylvia Law, in a 1984 issue of the *Pennsylvania Law Review*, has presented an ambitious proposal for recognizing pregnancy as a legal difference between men and women, while rejecting myths about pregnancy that may result in legal restrictions on women. And the three weeks I spent researching "sameness" and "differentness" among boys and girls was research toward a legal doctrine for justifying the continued existence of all-female organizations — a doctrine that would allow certain differences to be recognized by the law without reinforcing old stereotypes about men and women.

The debate among scholars as to the best way to approach "differentness" will continue for some time to come. Nevertheless, the fact that there are still differences between men and women has direct ramifications for the tenure decisions at Harvard. Yes, male and female faculty members at Harvard are more similar than they are different and so they should be judged essentially in an equal fashion. But having women on the faculty brings something extra to the law school — something that helps counteract

In Tenure Decisions on Women Faculty

by Chai Feldblum

existing inequalities between men and women.

For many of the women students at the law school, the atmosphere is different than it is for men — different in the sense of being more uncomfortable. Two recent major studies, prepared for the Association of American Colleges' Project on the Status and Education of Women, document a range of factors that make the average university climate a "chilly" one for women. These include male dominance of classroom discussions, devaluations of women's contributions in class, and women's subjection to stereotyped comments and expectations on the part of faculty or other students. These reports should be required reading for every faculty member who will ultimately cast a tenure vote, because the problems discussed in those reports are not restricted to some "other" university. These difficulties have been consistently raised at meetings of the Harvard Women's Law Association and were, in fact, the subject of a luncheon meeting in March 1985 between approximately thirty WLA members and thirty faculty members.

One of the solutions that appears to be most effective in counteracting the negative effects women experience — a solution that appears both from the anecdotal evidence of Harvard law school students and from the research done in this area — is the existence of a significant number of women on the faculty. These faculty can often create an environment that counteracts the negative messages that many women students pick up and

special when a female professor is in the front of the classroom — displaying knowledge, competence, authority, and compassion. The ability to think of the legal profession as "our" place, as a profession in which we can succeed without insurmountable difficulty, is enhanced on both a conscious and unconscious level when we, as women, have the opportunity to come into contact with a range of women faculty. There is no doubt that many of my interactions with the women faculty were particularly special to me and important in helping me find my place in the profession.

I suppose I would end just where I began — with an exhortation that we remember that, in most respects, women faculty are more similar to male faculty than they are different. From what I know of the teaching and scholarship of each of the women who are coming up for tenure, I have no hesitation in saying that each will more than measure up to the standards that will be appropriately set by the Appointments Committee and the faculty for granting tenure. But although these standards will and should be essentially similar for men and women faculty, faculty members must also remember that their choices will be important for rectifying a situation where things are not yet similar and equal. It may be that in an ideal society, when all vestiges of sexism are gone, there will be no need for the people making tenure decisions to keep in mind the importance of keeping women on the HLS faculty. Yet, in the current society, where differences between how men and women are treated still exist, ignoring those differences in an effort to treat men and women faculty the "same" may result in simply perpetuating inequality under the guise of equality.

"Three women may be considered for tenure this year. As small as that number sounds, it is almost half the women faculty at HLS"

helps these students achieve their fullest educational potential (while having a much better time along the way).

Even for women who have little difficulty with life at Harvard Law School there is still something



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Ex-prisoner Denounces Japanese Internment

By Eric Sullivan

On Nov. 22 Minoru Yasui discussed the legal ramifications arising from the internment of Japanese Americans during World War II. Yasui, Korematsu and Hirabayashi were the three men whose convictions for violation of government curfew and internment orders during the Second World War eventually were appealed to the Supreme Court in the 1940s. By refusing to overturn their convictions, the Court failed to find the internment of Japanese Americans on the West Coast unconstitutional.

Forty years after the war ended, Yasui finds himself embroiled in yet another judicial battle which could reach the Supreme Court. He has petitioned a federal court in hopes of having his wartime conviction for curfew violation overturned.

A similar petition filed by Korematsu was granted by a U.S. District Court in 1983. Korematsu's petition contained allegations that in presenting its case against him before the Supreme Court in 1944, the U.S. government deliberately withheld evidence, altered records and misrepresented facts. The judge decided that the government's failure to respond to these allegations was "tantamount to an admission"

that they were true.

Yasui's petition has not been as successful. He believes that the government was determined to prevent his petition from being granted because the government had "taken a beating" in the Korematsu case. A federal judge granted the government's motion to dismiss Yasui's petition but also vacated the conviction that he was petitioned to overturn. Yasui appealed. He wants his conviction overturned, not vacated, as a statement about the "wrongs" committed by the government against Japanese Americans.

The wartime service records of Japanese Americans serving as U.S. troops help substantiate Yasui's claims as to their unquestionable loyalty. He is infuriated by the government's continued insistence that internment was necessary for security reasons. The government alleges that cables from the Japanese consulate instructing the Japanese diplomatic corps to recruit disaffected minorities substantiate its claims that Japanese Americans

(Continued on Page 13)

1Ls See Court In Action

By Holly House

There is life after law school — and the Board of Student Advisors (BSA) spent the past three weeks trying to prove it to interested 1Ls by offering the Court Visitation Program.

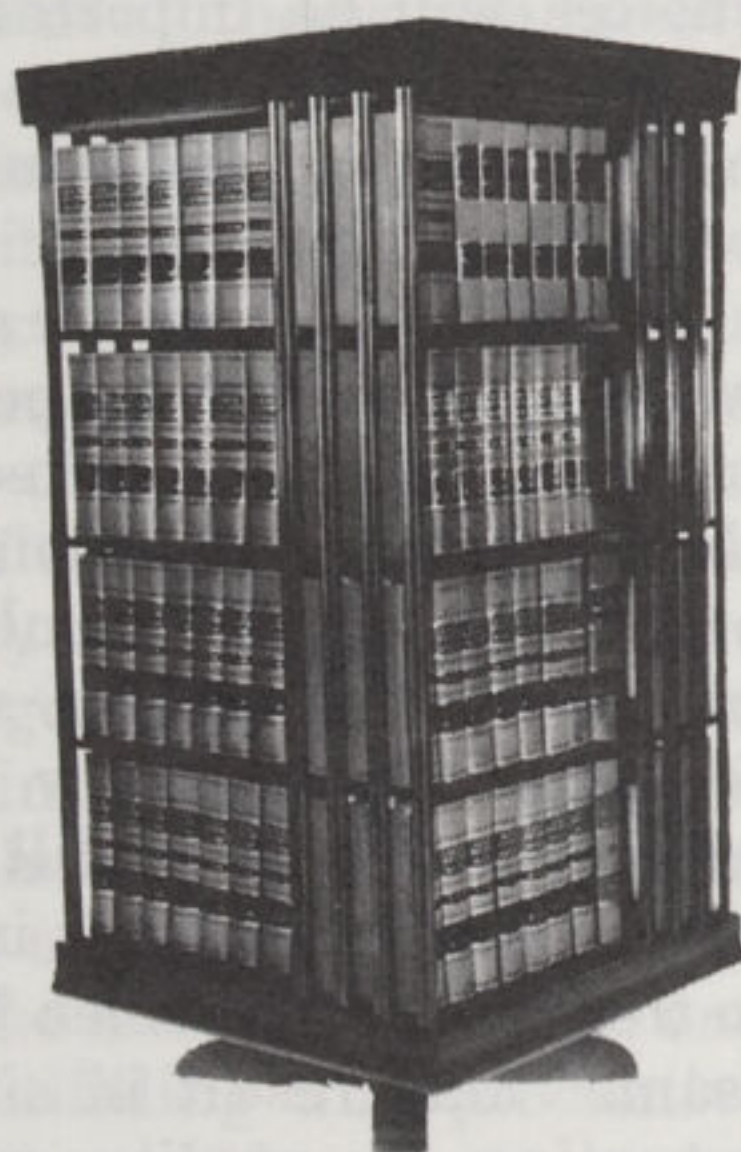
The brainchild of the Orientation Committee, the program began several years ago to complement the BSA's other orientation activities — O-groups, Legal Methods and legal research training.

"Seeing courts in action seemed a necessary conclusion to the 1Ls' introduction to the practice of law,"

explained Yolanda Townsend, 3L, president of the BSA.

Preparations began early in the semester when letters to judges were sent out. Follow-up calls in October sealed the event, and sign-up sheets were posted a couple of weeks in advance. Each BSA student guide made final arrangements on the day of his or her visit with a call to the court to pinpoint the most interesting trial.

Groups met at the BSA office and then journeyed by "T" to the heart of the city's business district where the McCormack Courthouse is located. (Continued on Page 13)



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Students Watch Murder And Patent Trials

(Continued from Page 12)

cated. After a security check, students entered a courtroom where a trial was in progress.

The proceeding the author witnessed was in its 18th day and concerned an alleged patent infringement of a medical scanning machine. For almost two hours, students watched a parade of expert witnesses attempt to make the machines' complex processes comprehensible to the jury.

When the court adjourned, the presiding judge, the Hon. Robert E. Keeton (who is Langdell Professor of Law, Emeritus, having taught at HLS for 26 years), called the students forward to ask any questions about the trial or the federal system in general.

"I'm happy to help students understand the law in action, and the best way to do that is to see the goings-on in an actual courtroom," Keeton commented. Keeton went out of his way to make the pro-

ceedings as interesting and accessible to the students as possible — sometimes allowing students to sit in the jury box to get a better view of and feel for the trial.

Mixed Reaction

Student reaction to Court Visitation has been mixed. Only a quarter of the first year class actually took advantage of the program. Those students who did participate differ in their evaluations.

The luck of the draw seemed to dictate response. One woman and her friends gave up and went to Filene's on day 10 of the patent

case when language difficulties between the examining attorney and a Chinese engineer brought the trial to a frustrating halt. However, those who attended a murder trial came away enthusiastic. "I thought the program was interesting — but only because we had a good case," emphasized Bruce Nussbaum, 1L.

However, the BSA is satisfied with the program and student response. The BSA has no plans to make the court visit mandatory in the future. Says BSA president Townsend, "Visiting a working courtroom is fun and rewarding. We can only urge students to take advantage of the opportunity." ❧

Yasui Denounces Internment

(Continued from Page 12)

were disloyal. Yasui believes these cables, which have turned up since the war, are "junk."

Yasui is currently pushing bills in both the House and the Senate. These bills call for official pardons

of individuals such as Yasui who were convicted of similar crimes. They also recommend financial redress for the harm suffered by internees. In support of these bills, he has presented the 1980 findings of the Commission on Wartime Internment and Relocation of Civilians. The commission found that the evacuation of Japanese Americans during World War II was based on race prejudice, war hysteria and failure of political leadership — not military necessity.

Former Chief Justice Earl Warren, considered by some "a great civil libertarian," was the young, politically ambitious attorney general of California in 1942.

During the war, Warren said that the government's inability to find any evidence of sabotage or espionage by persons of Japanese ancestry was "proof positive" that they were so clever they had set a predetermined time to strike, Yasui recalled.

Yasui concluded by observing that the United States is like no other country in its respect for human rights. He believes this partly explains this country's greatness. Yet he thinks the U.S. government lectures other countries on human rights issues when it is "damn well time" to emphasize them within its own borders. ❧

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Letters to the Editor of the Record

(Continued from Page 9)

Fashionable Wives

To the Editor:

The report in the October 25, 1985 edition of *The Harvard Law Record* of the fashion show sponsored by the Committee for Sports and Entertainment Law and the Student Entertainment Society was interesting but your description of that show as "the first-ever fashion show held on campus" was not accurate.

In 1958, the Harvard Law Wives presented a fashion show in the main meeting room on the ground floor of Harkness Commons. The costumes that were worn by the models were supplied by a local Cambridge store and the models were the wives and children of then law students. In those days, Harvard Law Wives was a very active enterprise which afforded an opportunity for married students to get to know each other. The advisor to the organization was Mrs. Griswold, the wife of Dean Erwin Griswold.

Back in the 1950s, the student body of Harvard Law School was about 98% male, financial aid was not so available to students

as it is today and quite a few wives of students were working at Harvard Law School and other parts of the University to help cover the cost of the education that their husbands were receiving.

I do not know whether Harvard Law Wives still exists, but it was a wonderful organization and the role that it played should be remembered.

Peter L. Malkin, '58
New York, New York

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"BETTER BUYS AT BRINE'S"

Justice Advises Students

(Continued from Page 1)

three or four years."

"But there is a step up I feel is unfortunate," he said. Rehnquist, however, does not think this is indicative of any ascerbity or lack of civility between the Justices. "On occasion," he said, "it's just one law clerk fighting with another law clerk."

Rehnquist advised those starting out on careers in the law to seriously think out what they really want to get out of life. He said graduating students should determine in what kind of city they would like to work.

Students should decide between a

city like New York, "where you'll work eighteen hours a day so the firm can justify your salary," and a smaller city, "where you can be a citizen of a community, and not just commute into work every day."

He also advised students not to feel they must "try to pick up every gauntlet they come to. Instead of constantly rising in the legal universe to some rarefied atmosphere," Rehnquist said, more "laid back types" should "take a closer look at where [they] want to end up."

"There is a lot of hope beyond law school for the people who get through it," he said.

Harrington

(Continued from Page 5)

havior is learned by other family members who replicate it, creating a "time bomb."

One myth about family violence that has been given a great deal of credence lately is that children lie about being the victim of sexual assault. Juries are instructed to question carefully the word of a child because they are prone to suggestion and fantasy.

Harrington said that children are reliable witnesses and that the judicial system should use flexible court procedures for them. "It is a paradox that child offenders are protected behind closed doors, while child victims are thrown in the adult system without protection."

Shelters, rape crisis centers and other new groups working with the victims of family violence are good sources of support for victims. Harrington recommended that such organizations use volunteers as much as possible because volunteers are the most responsive and care the most.

In conclusion, Harrington expressed grave concern that for every 47 violent crimes reported, only 11 people are convicted and only 6 people serve time in prison. The average time served for murder is five years and nine months; the average for rape of a child is one year. Serious crime has increased 320 percent in the past 20 years, while prison capacity has increased only 27 percent.



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Disciplinary Board Admits to Acting Hastily

(Continued from Page 1)

Granholtz for blocking a police car for about 45 minutes during the demonstration against a visiting South African diplomat at an undergraduate dormitory complex, she said.

The diplomat, Abe S. Hoppenstein, South Africa's consul general in New York City, tried unsuccessfully to leave Lowell House in the car after he spoke to members of an undergraduate club. About 200 protesters detained him in the building for over an hour following the speech.

Granholtz had not been under investigation by the Board until she came forward during an Ad Board hearing on Oct. 1 and testified on behalf of Michael Anderson, 2L. The Board had been investigating Anderson for blocking the car and for more serious allegations of misconduct that a Harvard police officer had made against him.

The Board decided to revoke its punishment of Granholtz because members decided that when Granholtz testified they had not been "sensitive" to her "dilemma" of wanting to help Anderson without implicating herself, said Sander, who declined to identify Granholtz or Anderson by name. "This all happened fairly quickly, without

much forethought on our part," he added.

Board members "believe that we should do our utmost to avoid putting students to the difficult choice between self-incrimination and disloyalty to fellow students," Sander wrote to Granholtz.

"I think the Board did a really courageous thing," Granholtz said, because it was difficult for the students, faculty and administrators in the group to admit that they did not like their earlier decision. "They realized that the repercussions [of punishing Granholtz] could be that students would refuse to testify" before the Board, she added.

Granholtz credited Professors Andrew Kaufman (LL.B., '54) and Charles Nesson (LL.B., '63) with being "instrumental" in urging Board members to reconsider their decision to reprimand her.

Kaufman, who chaired the Ad Board in the mid 1970s, said he communicated with Board members about Granholtz's case but declined to disclose what he told them. The Board "should be commended for being willing to think about [her case] again," he added.

"I am delighted with the Board's change of heart," said Nesson, who represented Granholtz and Anderson when they appeared before the Board on Oct. 1 and who argued

during the meeting that Granholtz should not receive as severe a punishment as Anderson.

Sander said the decision to revoke Granholtz's reprimand comes as Board members analyze how political protesters should be disciplined in the future.

Sander emphasized that the Board was not granting a "blanket immunity" to students who appear before it as witnesses for other students. Instead, he said the Board will ask students it investigates not to call other law students as witnesses if their testimony would implicate them, unless what the witnesses have to say is "unavoidably necessary" in order for investigated students to refute accusations made against them.

In some cases, other witnesses who are not law students — and therefore not under the Board's jurisdiction — might be able to provide the same information as law students, Sander said. In addition, he said if witnesses are reluctant to testify, the Board will ask the investigated students to outline what the witnesses would say so that Board members can decide if they need their testimony.

The Board has not decided, however, what it will do when students under investigation do need other students' testimony to support their defenses and the witnesses would implicate themselves with their statements.

The Ad Board developed its new procedure for screening witnesses' testimony last month when it was investigating the participation of Doug Hagerman, 3L, in the Lowell House blockade, said Sander, who declined to identify Hagerman by name. Hagerman met with Board members on Nov. 6 and offered the testimony of another student who attended the rally, but the Board decided it did not need to hear from the other student, whom Sander did not identify.

Shortly after meeting with Hagerman, Board members voted not to charge him with any wrongdoing.

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