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25 CENTS

Fisher Takes Part In International Mediation

By David Snouffer

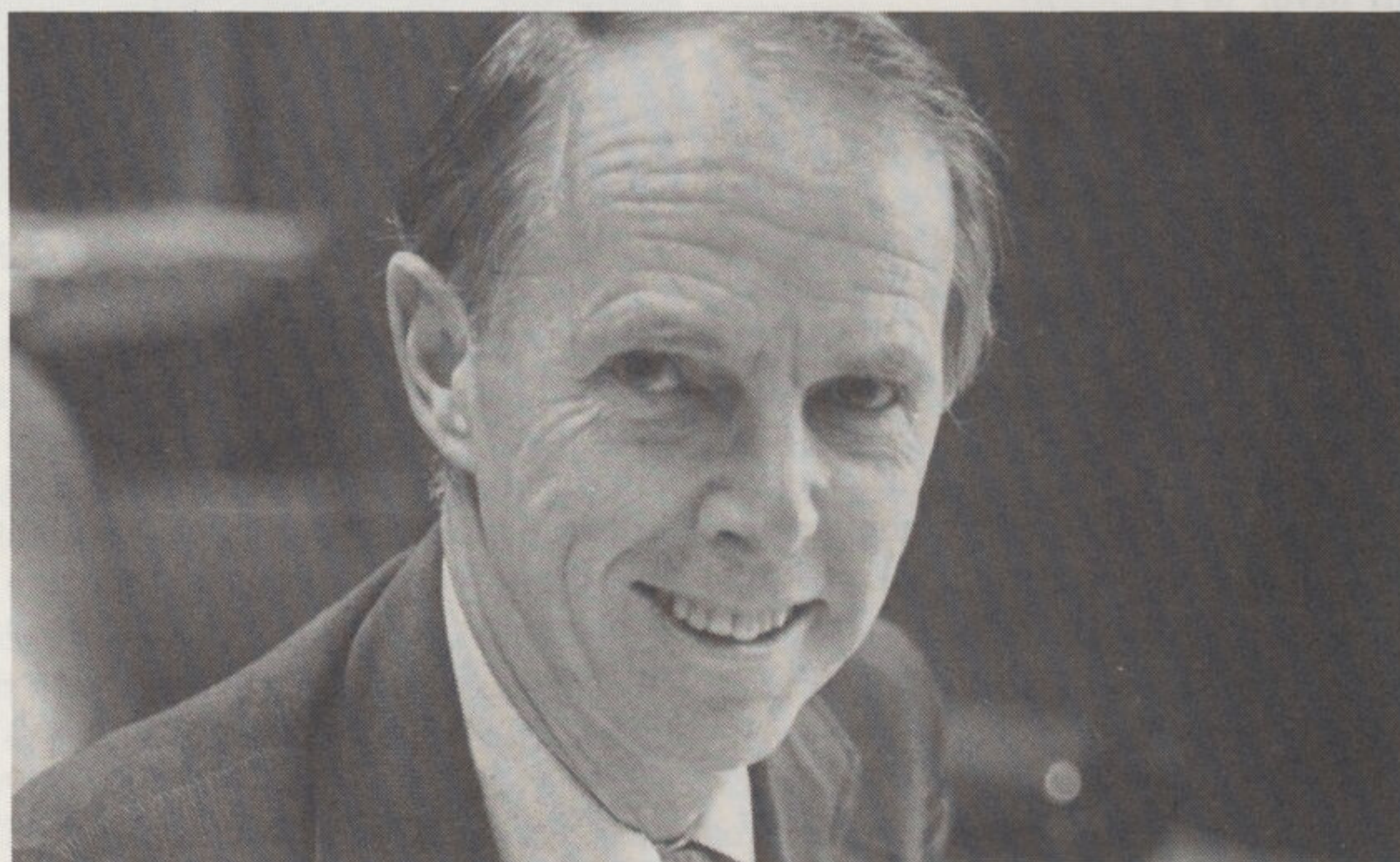
After two recent trips to South Africa as part of an international mediation effort, an HLS expert on negotiation says there is at least a "2 percent chance" that the project can help the strife-torn country avoid an outright race war by helping the white-dominated government and its black nationalist opponents gain a fuller appreciation for each other's views.

Professor Roger Fisher, who holds HLS's Samuel Williston chair, visited South Africa briefly in December and then again for 10 more days last month in an effort by a Swiss-based organization to help the country's various political, religious and business leaders generate new ideas that the group hopes will help move the country toward constructive change.

While the positions that government politicians and black nationalist leaders advocate publicly might appear irreconcilable, their "underlying interests" actually are "more compatible," Fisher said in an interview this week. Government and opposition leaders have been unable to identify common ground, however, because both justifiably fear that their constituents "will desert them" if they appear to be conceding too much to the other side, Fisher added.

For example, he said, black leaders' demands for a one-man, one-vote electoral system cause many whites to fear that the country's black majority would dominate its political system if their leaders make too many concessions to op-

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Prof. Roger Fisher

HLS Yearbook

Miller Argues Bhopal Venue

By Brian D. Rance

Over the past few weeks, Professor Arthur R. Miller has assisted plaintiffs in two highly-publicized suits. In the first, Miller argued an appeal before the Third Circuit on behalf of a class of school districts from across the country seeking to recover asbestos removal costs from asbestos manufacturers. In the second suit, Miller offered advice to a member of the plaintiffs' management committee in the Bhopal toxic gas discharge action against Union Carbide.

In the latter suit, Union Carbide moved to dismiss the action brought by the victims of the Bhopal disaster in the Federal District Court for the Southern District of New York on the ground that the United States is an inconvenient forum for Union Carbide to defend against the

plaintiffs' allegations. Carbide argued, along the lines of a recent Supreme Court case, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), that the presence in India of witnesses and evidence documenting the damages caused by the release of methyl isocyanate dictates that Carbide should be able to defend against the plaintiffs' action in an Indian court.

Distinguishing Bhopal

Miller was retained to offer expert advice on how to distinguish the Bhopal suit from *Piper*. Miller noted that, in contrast to the facts of *Piper*, in the Bhopal action most of the significant evidence on liability, such as evidence on whether the American parent company controlled the operations of its Indian

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Tribe Assists In Pennzoil's \$12b Appeal

By Vincent T. Chang

Ralph S. Tyler, Jr. Professor of Constitutional Law Laurence Tribe has agreed to assist Pennzoil in its \$10.5 billion suit against Texaco. Tribe has agreed to help Pennzoil in its appeal of a federal district court decision that Texaco would not have to post a \$12 billion bond with a Texas state court in order to appeal a \$10.5 billion judgment in favor of Pennzoil.

The federal decision and Pennzoil's appeal represent the latest episode in the ongoing struggle between Texaco and Pennzoil, a battle started after Texaco allegedly interfered with Pennzoil's attempted partial takeover of Getty Oil. After months of acrimonious testimony, a Texas jury agreed that Pennzoil had a binding contract with Getty at the time that Texaco moved in to acquire the company. As a result, the jury imposed a \$10.5 billion damage award — the largest in United States history.

Texaco, however, rapidly assembled a high-powered legal team that includes lawyers from firms such as New York's Cravath, Swaine & Moore to explore the possibility of settlement, but also to investigate all available avenues of appeal. One of these avenues was the court of New York Federal District Judge Charles L. Brieant. Brieant, who sits in White Plains, N.Y., granted a preliminary injunction upholding Texaco's claim that it would be deprived of due process if forced to pay an appeals bond that could put it out of business. The decision enjoins Pennzoil from attaching Texaco assets. In response, Pennzoil wasted no time in filing an appeal.

Significance of Ruling

The significance of Judge Brieant's ruling is, as the judge explained in the *Wall Street Journal*, that requiring Texaco to post a bond in the amount of the entire award could force Texaco to be "squeezed through the bankruptcy court" and that could, the judge argued, touch off "imminent disruption to the na-



File Photo

Prof. Laurence Tribe

tional economy." Brieant also contended that the \$10.5 billion judgment was "too large by several orders of magnitude" and noted that under New York law — which was the governing law in the case — damages could not exceed \$800 million. Given Texaco's favorable chances of success on appeal, Brieant decided to strike down the \$12 billion bond in order to allow Texaco its day in court without having to dismantle the company.

Brieant's ruling and his justification were seen by some as motivated more by expediency than by principle. Pennzoil's lead counsel Joe Jamail was quoted in the *Wall Street Journal* as declaring "we need to bronze this judge and put him in our lawn." Tribe's response was more restrained, but in a recent *Boston Globe* article he came down squarely against Brieant's "unlimited" judicial activism. Tribe denounced the "extraordinary intervention by a federal judge in New York in an ongoing procedure in Texas," claiming that the ruling "violates the fundamental principles

of federalism and judicial propriety." In addition, Tribe argued in the *Harvard Crimson* that Brieant's decision would encourage forum shopping and "invite a jurisdictional ping pong match between courts in various parts of the country."

Apparently after reading a *Wall Street Journal* article in which Tribe expressed opposition to the New York court's injunction, Pennzoil enlisted Tribe's services in its appeal of Brieant's ruling to the U.S. Court of Appeals for the Second Circuit in New York. However, many observers predict that Tribe and Pennzoil will have an uphill fight. Texaco has retained its own constitutional expert, Charles Alan Wright, who co-authored a leading civil procedure treatise with Harvard professor Arthur Miller. Texaco's backers, meanwhile, have applauded Brieant.

Tribe, citing complex lawyer-client confidentiality problems, refused to comment to the *Record* about his involvement in this controversial case until after its resolution.

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Forum May Sue U.S. State Department

By Hillary Richard

The HLS Forum announced to its members on Jan. 30 that it was considering filing suit against the U.S. State Department. In a general meeting held to elect a 1L board member and kick off the new year, the Forum board told members for the first time about the potential law suit.

The suit would be filed against the State Department for its refusal to grant the Palestine Liberation Organization's representative to the United Nations, Zehdi Terzi, a visa to travel to Cambridge to debate Professor Alan Dershowitz on Middle East issues.

Although a complaint has not yet been filed, the Forum is working with attorneys from the Massachusetts Civil Liberties Union to locate documentation for their brief. The organization is working on the case pro bono.

Most of the facts needed must come from Terzi's office in New York. The attorneys for the Forum are in contact with Terzi's staff and

hope that he will provide them with needed data, such as when he has previously been allowed to travel, when he has been denied visas, as well as where he has been allowed to go.

When Forum members initially contacted Terzi last year and invited him to debate Dershowitz in October, the Arab diplomat explained that the speakers club would first have to obtain the State Department's permission for him to travel to Cambridge. Forum President Karl Fickenscher, 3L, contacted the State Department, but officials there told him over the telephone that Terzi would not be allowed to go to Cambridge for the debate because the envoy had made some statements concerning Israel.

Terzi is currently restricted to a 25-mile radius from Columbus Circle in New York City.

The Board agreed that their ultimate goal was to hold the event, so they tried alternative means. The Forum, together with Dershowitz, wrote to the chief legal adviser of the State Department, but he has

not yet responded. The Forum also tried unsuccessfully to arrange a video hook-up that would have allowed Terzi to debate Dershowitz from New York.

Late last semester the board voted to pursue legal action against the government, if legally feasible. Fickenscher listed among the reasons for the Board's decision to go ahead with the suit the importance of the event, as well as Terzi's physical proximity.

He also noted that there was a large audience for such a debate. Calls poured into the Forum office last semester after the debate was announced, and Fickenscher envisioned it as potentially the Forum's largest drawing event of the year.

The Forum would base its lawsuit on an implied First Amendment "right to hear." In addition, the Forum would challenge the Executive Branch's right to exclude aliens. At the same time, Dershowitz is independently pressing a First Amendment claim based on Terzi's "right to speak." Forum officers say they do not yet know if anyone would join the organization as a plaintiff if they decide to file suit.

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Negotiation Competition Completed

By Nancy Linnerooth

Negotiation is an important skill that lawyers need in the real world, but students at HLS often do not get enough in-class experience negotiating. This lack of experience is one of the main reasons BSA sponsors the annual Williston Competition according to Lorin Reisner, 3L, a BSA member who won Williston as a 1L. Reisner helped write the Williston case last year and is in charge of administering the competition this year.

Although Williston is somewhat analogous to Ames Moot Court, Reisner emphasized that the optional competition was developed to show students that there are other ways to resolve a dispute than to take it to court. Students participating in Williston are encouraged to be cooperative and to avoid the atmosphere of Ames, which Reisner calls "too confrontational" for the purposes of negotiating.

Named for Samuel Williston, "the foremost contracts scholar in American legal history," according to the general information packet given to 1Ls, the competition began in 1951. BSA may have skipped a year along the way, so no one at the office is quite sure if this year is the 34th or 35th Annual Williston Competition but BSA has decided to call this the 34th.

Gaining Popularity

The competition seems to be gaining popularity. This year, 140 1Ls signed up for it, up from 130 last year and 120 the year before. Since Ames begins so early this year, Williston had to be moved up even earlier, so Reisner was surprised at this high turn out.

Each two-person team was given the choice of representing union or management. BSA then matched up

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Record Elects New Masthead

Gregory K. Klima of Cleveland, Ohio was re-elected Editor In Chief of the *Harvard Law Record* on February 3 by the Board of Directors of the Harvard Law Record Corporation. He will serve as editor of Volume 82.

Also approved at the meeting was the masthead of the newspaper for the Spring 1986 volume, which is as follows: Managing Editors Rise J. Peters and George M. Borkowski; News Editor David Snouffer; Features Editor Tegan M. Flynn; Business Manager Vincent T. Chang; Photo Editor Adele-Marie Hendrix; Commentary Editor Justin Hughes; and Sports Editor Russell Marsh.

The RECORD also welcomes aboard Ruben Bolling as cartoonist for the new volume.

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Krim Calls For Explicit "Safe-Sex" Education

By Risé Peters

A conference on the legal implications of AIDS (acquired immune deficiency syndrome) was held at Yale Law School on Saturday, February 1. A variety of issues, including tort law, constitutional law, civil rights of lesbians and gay men, and the practical issues facing litigators who represent clients with AIDS were covered.

The conference was presented by the Yale Lesbian/Gay Law Students' Association. The conference coordinators were Lisa Allred, Yale Law School '86, and Mark Collins, Yale Law School '88. The day-long conference was followed by a benefit dance.

The members of the first panel discussed the medical and psychological dimensions of AIDS. The first speaker, Dr. Mathilde Krim, Co-Chair of the American Foundation for AIDS Research, stated that the best method of prevention of AIDS is public education in "safe sex" techniques. For example, as the virus is not easily transmitted, use of physical barriers (such as condoms or diaphragms) to prevent exchange of blood products between sexual partners provides some protection from the disease.

Krim said that in urban areas, where the virus is not rare, men and women should return to the sexual practices of 40 to 50 years ago, before antibiotics and modern birth control removed some of the risks of sexual activity.

Krim went on to discuss the effect of the AIDS epidemic on the U.S. health care delivery system. She stated that "AIDS is an enormous problem. It confronts our health care system, which is inadequate to deal with the problem. Most AIDS patients don't get proper care." Patient care and research are expensive, she said, and "the financing mechanisms are . . . inadequate . . . The best outcome of the whole crisis will be the necessary creation of some sort of national health insurance program."

The second speaker, Walter Batchelor, is a member of the Advisory Group on Mental Health and AIDS



Risé Peters

L-R: Dr. Mathilde Krim; Lawrence Gostin; Rhonda Rivera; Prof. Thomas Stoddard; Moderator Simon Heller, Yale '86.

of the National Institute of Mental Health. Batchelor pointed out that for many people AIDS raises nonmedical problems dealing with homosexuality or intravenous (IV) drug use. Persons diagnosed as having AIDS may lose their jobs, their apartments, their insurance, their friends, their lovers, or the support of their families. They have to deal with constant fear from others. Those close to AIDS patients have to cope with the death of the patient and with fear of being infected.

Batchelor observed that lawyers representing AIDS patients face a wide range of problems. They may become members of the "worried well," who fear contagion by the dying — a psychological reaction which is often encountered by those working with cancer patients and which has little to do with the actual chance of infection. They may face rejection from colleagues with similar fears. Finally, like others serving AIDS patients, they must face the deaths of their clients.

The topic discussed by the second panel was state action in response to AIDS and the impact of state action on individual liberties. The first speaker was Professor Thomas Stoddard of New York University School of Law, legislative director of the New York Civil Liberties Union. Stoddard first set out a constitutional framework for analyzing questions of individual rights. Between the "rational relationship"

test, which is very deferential to the state, and the "strict scrutiny" test, which is very protective of the individual, he located an approach in which the courts examine the ends and the means of the proposed state action to decide whether the means chosen are substantially related to a legitimate state interest.

Stoddard then analyzed a recently-enacted Colorado law, rendering names and addresses of persons found to be sero-positive reportable to state public health officials, according to this median test. He argued that while the goals stated for keeping lists of the sero-positive — which included notice to those tested, provision of counseling as to the meaning of positivity, collection of data on those tested, and notification of treatment when treatment becomes available — were legitimate, the means were unsuited to the ends.

First, Stoddard pointed out that it is not necessary to maintain a list of those notified of sero-positivity. Second, counseling can best be done by counselors at the test sites. Third, data collection is impeded, not aided, by reportability; fear of being listed as sero-positive may skew the sample of those who choose to be tested. Finally, when a treatment for AIDS becomes available, members of high risk groups will be aware of that treatment long before each sero-positive individual could receive formal no-

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CUNY Emphasizes Public Interest Studies

By Julie Loewy

CUNY Law School is the only publicly supported law school in New York City, and it is appropriately dedicated to public service and public interest law. Beginning with the admissions process, the Law School seeks students who are interested in "serving human needs."

Many students are beginning second careers; the median age of the 435 enrolled is 29. In addition to looking at applicants' GPAs and LSAT scores, the admissions committee seeks an active commitment to public service. It is hoped that the choices made throughout life will indicate whether a candidate is willing to take the risks and make the sacrifices required by a public interest lawyer. According to Holly Hartstone, coordinator of field placement development, the school then "gives students selected for public interest reasons the support they need to continue to value this work and the training they need to un-

derstand it and know it" through curriculum and field placement.

The curriculum aims to integrate doctrinal knowledge, practical skills, ethical considerations and historical and societal background through course work and field study. First year courses include: Law and a Market Economy, which combines aspects of property and contract law; Responsibility for Injurious Conduct, which covers principles of tort and criminal law; and the Work of a Lawyer.

Although two experimental sections in the first year class at HLS are moving in the direction of CUNY Law School by integrating the various first year subjects through the use of "bridge periods," the model is completely different, according to Morton Horwitz, one of the professors teaching in an experimental section. While bridge periods integrate the subject matter within a traditional classroom setting, CUNY focuses on integrating practice with other types of learn-

ing. According to Horwitz, CUNY Law School's program is "more ambitious, but more dangerous."

Students are divided into "houses" of approximately 20 members which simulate small law firms with the professors playing the role of partners. Much of the course material is taught in the houses rather than in lectures, placing students in the role of lawyers confronted with issues related to the substantive course material. The simulations conducted focus on problems which might be encountered by a public interest lawyer and the intent is to reduce the sharp contrast between the study of law and the practice of law.

Students are encouraged to begin taking legal work after their first year and so far all who have wanted to secure public interest work, about 80 percent, have been able to do so. Although the Law School is able to provide students a minimum level of income through foundation funding and other resources, "the students do make large personal sacrifices to do this kind of work," according to Hartstone.

During their fourth semester, all students spend two days a week in a field placement while two days of integrated classwork provides a critical perspective on their experiences. This year students were able to choose to concentrate on Criminal Justice, Equality and Inequality and the Role of Lawyers, or Housing and Urban Development.

By the time CUNY graduates hit the job market almost all have had three substantial public interest work experiences, "becoming part of a network which is how much hiring in public interest is done."

Although most public interest law firms don't hire until spring or summer, the initial response of employers has been favorable. According to Hartstone, CUNY students have been offered "a nice number of clerkships." Very few have accepted offers at private firms.

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Group Hopes To Move To Constructive Change

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ponents. White leaders, on the other hand, by retaining day to day control of the government, inspire fears among blacks that whites will continue to dominate the country if black leaders concede too much to the government, Fisher said.

Fisher believes, however, that each side overstates its actual needs in public. Black leaders really want an "end to racial discrimination, equality, fair opportunity, social justice, effective participation in government, an effective government and an effective economy," he said.

The interests of whites in some ways parallel those of blacks, he said. Whites want to avoid "being dominated," to be able to maintain their families and homes and to have a working government and economy, he explained.

Black and white leaders do differ, however, over such issues as ownership of national resources, Fisher said.

In South Africa, Fisher worked as a member of a team of about half a dozen persons organized late last year by the Swiss-based Foundation

for International Conciliation. The group, which includes HLS Lecturer Bruce Patton, is trying to help various leaders talk with one another and generate what Fisher called "yesable propositions — practical, operational decisions that someone could realistically be expected to make within the next few weeks without losing a leadership role."

Patton, who is deputy director of the Harvard Negotiation Project, cancelled his scheduled spring Negotiation Workshop for 24 2Ls and 3Ls in order to participate in the group's effort. Three other members of the team have received negotiation training at the Law School.

"Part of it is to get [various leaders] empathically in the other side's shoes," Fisher said. "People tend to think if they're being reasonable, the other side must be being unreasonable," he added, even if both sides are responding "reasonably" to the political constraints they face.

Fisher emphasized that he and his colleagues have not "come in from the outside with substantive answers." The team has carefully avoided taking sides in the conflict.

Instead, he said the group seeks to help South African leaders "improve the way in which they deal with their differences."

The team can be "especially helpful" because government officials often have refused to talk with black leaders unless they first renounce violence, he said.

As a first step, Fisher hopes the group can help various factions agree on a broad "declaration of intent or goals." Recent government statements calling for eventual universal franchise, one citizenship for all South Africans, power sharing among various ethnic groups, no discrimination based on race, culture or sex, and opportunity for all citizens suggest that state politicians might be able to work out a statement of common principles with their opponents, he added.

The South African government has "encouraged the foundation to play an active role," Fisher said, and opposition leaders also have responded positively to its efforts. Fisher spoke with members of the opposition United Democratic Front, white business leaders and black and white church officials, as well as government officials and members of parliament.

Other members of the mediation team, which is maintaining about five staff members in the country, have met with members of the outlawed African National Congress.

Fisher, who expects to go to South Africa again later this semester, declined to predict success for the group's endeavor, but he said the effort was still "worth doing."

"I think there's a 2 percent chance the things that are being done could make a difference, and those are good odds in this day and age, considering the stakes involved," he said. South Africans "are being killed almost every day in the confrontation between police violence and black violence," he added.

But Fisher cautioned that no results should be expected imminently from an effort that began less than three months ago. "Some people are in a hurry, and it's going to take time," he said.

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Williston Awards To Be Made At Ceremony

(Continued from Page 3)

union and management teams at a meeting on Monday where members handed the participants instruction packets. At the meeting Professor Frank Sander delivered a 20 minute talk with tips on how to negotiate, and Reisner ran through the rules.

Each foursome arranged its own meeting times for negotiating and drafting its contract. Participants were given only two guidelines: some sample contracts from past years to use as models and the suggestion that they set aside half their time for drafting. Reisner warned that it is tempting to slight drafting for negotiation, the "sexy part" of Williston.

He noted that teams would have an average negotiating time of around three hours each day from Monday to Friday, with some teams averaging between seven and ten hours. The time spent depends on how well the two teams worked together and how hard they wanted to work.

Issues Covered

Each year BSA tries to come up with a current issue for its case. The problems in the past few years have ranged from resolving a strike by basketball players to negotiating a contract for pilots whose airline was going bankrupt. Starting at the end of September, BSA members John Gray, 2L, and Ken McVay, 2L, one of last year's winners, with committee chairman Reisner as their editor, constructed a problem between a Board of Trustees and a Teachers Union at a small private school.

The problem includes several factors beyond salary, the main one being how to phase out deadwood teachers and attract bright new teachers. Each team received a set of general instructions and a set of secret instructions with that particular side's objectives and limits. Within the boundaries of those instructions, participants were to come up with a contract that was clear, concise, creative and, above all, operational.

Awards Ceremony

At an awards ceremony on February 6, BSA will award prizes in the three categories of Best Contract for Management, Best Contract for Labor and Best Overall Contract. The two-person team that drafts the contract that has the most favorable terms for its side and is still operational will win \$50 per person. The grand prize, \$100 each to the four people who draft the best overall contract, shows BSA's commitment to the element of cooperation

which sets Williston apart from Ames.

While the fame and prize money are all very nice, the real reward of Williston is the experience itself. "Every year people come in and say it's the best thing they did their first year," Reisner said.

A MESSAGE TO HARVARD & RADCLIFFE STUDENTS REGARDING NOMINATIONS FOR THE COOP BOARD OF DIRECTORS

If you, as a Coop member and a degree candidate, are interested in serving as a Student Director for the Harvard Cooperative Society for the next academic year, you should obtain an application from the President's Office in the Harvard Square Store between the hours of 9:30 A.M.—5:30 P.M., Monday through Friday. *Completed applications must be returned to that office by 5 P.M., Friday, February 14, 1986 for consideration by the Nomination Committee of the Stockholders of the Harvard Cooperative Society.*

The Coop's Board of Directors has a total of 23 members, 11 of whom are students from M.I.T. and Harvard, 11 are members of the faculty and staff or alumni of M.I.T. and Harvard, plus the President of the Society. The Board oversees the operation of the Coop and sets a policy for the Coop's operation. The Board meets monthly during the academic year.

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Monthly Faculty Meeting Held In Two Parts

By Hillary Richard

The HLS Faculty held their monthly meeting on January 29, 1986. The meeting was held in two parts: one open, one closed.

The Administration allowed approximately five students, randomly selected by Dean Upton from a pool of applicants to attend the open meeting and the luncheon which preceded it.

HLS Dean James Vorenberg opened the meeting with an announcement on behalf of the Board of Student Advisers urging the faculty to sign up for the Ames Moot Court Competition. To date only 25 percent had signed up as judges. He urged the others to do so promptly.

The next item on the agenda was the proposed Teaching Program for 1986-1987. Associate Dean Richard Stewart, one of the drafters of the program, along with Assistant Dean Stephen Bernardi, Associate Dean Phil Heymann, Registrar Sue Robinson and Dean Vorenberg, spoke briefly about the program, mainly pointing out its highlights.

In reference to the first year program, Stewart noted the eclectic mix of electives. He said this mix of traditional second and third year courses with Federal Litigation courses was representative of the

faculty's idea of what should be offered as electives. As Fed Lit is the most popular elective, eight classes will be offered in spring 1987. Administrators have already found instructors for five of the sections and hope to find three more.

Stewart also mentioned that additional Constitutional Law sections had been added in an attempt to meet the extra need predicted for next year, when second year students will be given priority in three basic courses over third year students.

Next, Dean Vorenberg offered his comments on the proposed teaching program. He spoke of the ever-increasing popularity of Fed Lit and the efforts made to meet the demand, specifically the "cloning" of instructors (having a professor sit in on a course, thereby enabling

him/her to teach a section the following year). Dean Vorenberg expressed optimism that next year, for the first time, HLS would offer enough courses to meet student demand.

A general discussion ensued on the lack of appropriate classroom space, complaints of the winter session and other such woes.

The conclusion to the first half of the meeting was a fairly routine and certainly peaceful vote on the proposed schedule. It passed unanimously. Dean Vorenberg commented that he didn't quite know what would be done if the schedule didn't pass, as he couldn't remember that ever happening. The meeting was closed after the vote was taken, before the faculty heard reports from its Appointments and Lecturers Committees. 

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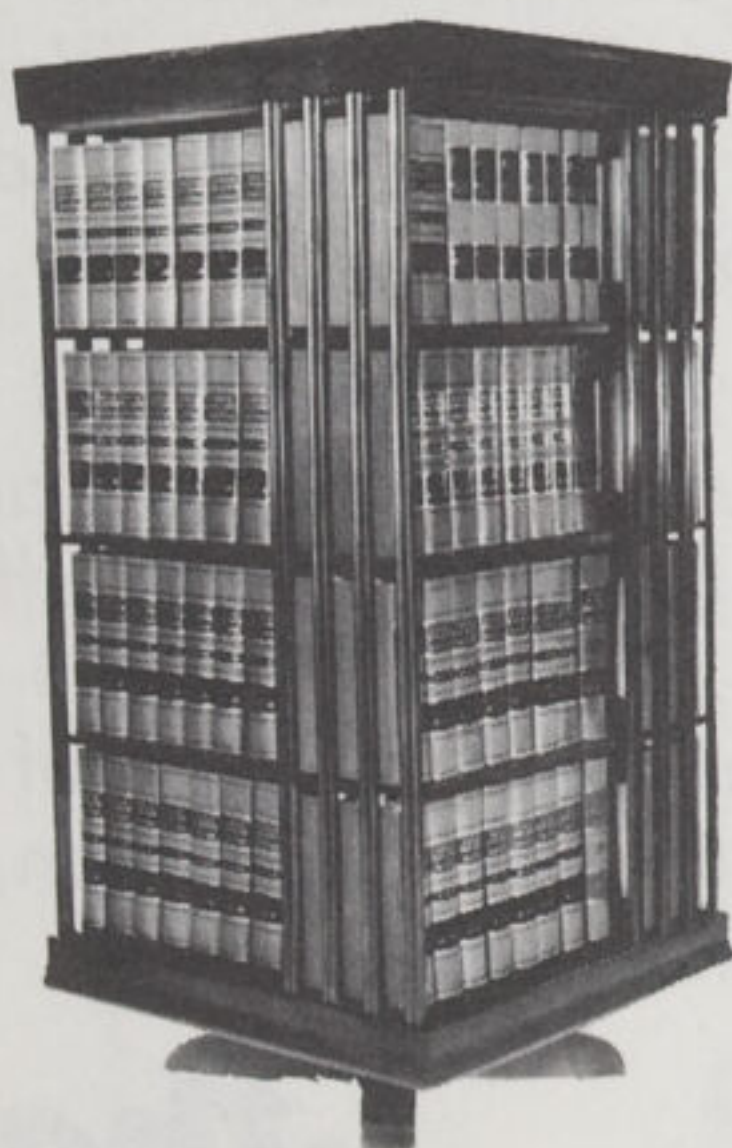
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Miller Tackles Novel Asbestos Case

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subsidiary and whether the subsidiary's operations measure up to American scientific and technical standards, is in the United States. Moreover, not only is Union Carbide's base of operations in the United States, but also, the Republic of India, the country with the greatest interest in the protection of the Bhopal victims, seeks to bring the action in the United States. District Judge John F. Keenan must now rule on Carbide's dismissal motion.

Because the motion is based on the doctrine of *forum non conveniens*, the judge has broad discretion to sustain or deny the motion. According to a story in the Jan. 20 edition of *The Wall Street Journal*, Keenan has decided to delay ruling on this motion to give the parties to the suit more time to negotiate a solution. In the interim, the judge will meet with several victims of the disaster.

Asbestos Litigation

In the asbestos litigation, Miller appeared in various segments of an almost four-hour oral argument before the U.S. Court of Appeals for the Third Circuit and asked it to overturn a lower court injunction last year that required all school districts seeking punitive damages from asbestos manufacturers in asbestos removal cases to join a mandatory class action in Federal District Court for the Eastern District of Pennsylvania.

Representing a group of school districts that do not want to join the class action, Miller argued that there is "no evidence" that some courts might grant "unduly burdensome awards" to certain claimants and leave manufacturers with inadequate resources to satisfy other claimants, because punitive damages would be set in proportion to the compensatory damages awarded to individual school districts.

Miller also objected to the lower court's ruling because he said it "extended federal judicial power in



HLS Yearbook

Prof. Arthur Miller

an unprecedented manner for the hypothetical benefits of economy, efficiency and comity, which aren't likely to appear. This is a case where faster is likely to mean slower."

Miller said "alliances among plaintiffs and defendants were forged and broken and re-formed" throughout the oral argument, "depending upon the issues being discussed." During

the trial court argument, the judge noted that Charles Alan Wright, the co-author with Miller of the treatise, *Federal Practice and Procedure*, was representing the school districts in favor of the creation of a mandatory punitive damage class. The judge wryly asked Miller how he and Wright could have collaborated on their treatise.

WASHINGTON, D.C. HOUSESITTING

Summer 1986

Our family is planning to be abroad from mid-July to mid-August 1986. We would like a reliable married couple or one or two caring HLS students to look after our Northwest Washington air-conditioned home, gentle cat, small lawn, and fertile flower/vegetable garden. We are a 5-minute walk from the subway which is 10 minutes to downtown Washington. We are flexible on having the housesitters move in a week or two before departure. Applicants must be planning to be in D.C. at least until August 22. Terms very favorable; preference to financial aid students or those working with public service organizations. Address available from *The Record*. Ask for Housesitting #1.

Don't Blame The Lawyers This Time

The American Medical Association is currently encouraging both Federal and state legislators to enact laws establishing limitations on medical malpractice suits. These limitations entail abolishing punitive damages, limiting the amount of damages for pain and suffering, restricting the amount of expert testimony at trial and controlling contingency fees for attorneys. These limitations are a slick attempt by the medical community to place the blame for the medical crisis that plagues the United States on external forces instead of on their own doorstep where the blame belongs.

The AMA has requested these limitations because it says that rising malpractice insurance costs are responsible in a large degree for rising medical costs. The AMA also claims that rising malpractice insurance costs are forcing many practitioners to give up their practice.

However, these limitations would result in more harm than good. First, there is no reason to exempt physicians from the legal processes to which all professionals are subject. Malpractice suits not only help restore the injured party to his previous condition, they also help keep the professional diligent in his duties. Removing the threat of an onerous suit may cause even an iota less caution, which is unacceptable. If large malpractice suits help drive incompetent doctors from the profession, then they serve a very positive function.

Second, the AMA is unqualified to determine how wrongs should be legally addressed. Doctors are untrained in the workings of the justice system. They do not foresee the possible ramifications that changes in the way injuries are addressed can have.

Third, it is dubious that these limitations on malpractice suits will have much efficacy in controlling medical costs. Other means of controlling costs should be attempted before physicians limit the amounts awarded to victims of their incompetency.

Finally, we must continue to believe that the jury system is an equitable way to address medical wrongs. One occasionally hears of huge malpractice awards, but these instances are the exception, not the rule. Controlling the discretion of juries and regulating the way lawyers accept cases set a dangerous precedent.

The way to medical reform is not by means of the legal system. Hopefully, legislators will deny passage of these limitations and will begin addressing the current problems with medical care by closely examining practices within that community.

Fenno

Fenno let the phone ring. The Registrar would just have to wait. He lay in a bed surrounded by veritable moguls of dirty clothes that he had separated for washing over three nights previously. They, along with various and sundry beer cans and party supplies, were all that remained of Fenno's winter recess. *Recess?* More like winter *gasping time*, Fenno thought.

A weekend and two school days. That was all the administration had given Fenno to schedule his annual January ski trip. Normally, of course, he would have planned — without a moment's hesitation — to blow off the other three days of classes for an extra five days on the slopes. But Fenno knew better. He remembered with a mortal funk the year when he left for vacation having pre-registered merely for six credits (the only two *obviously* easy classes) and then returned two days late to face hellish options in his class schedule. Forced to live a nightmare worse than a free vegetarian dinner at the local Center for Krishna Consciousness — having to pay a \$100 late registration fee in order to face Frug, Wolfman and Herwitz at 8:30 in the morning in *small group* classes — Fenno vowed never to commit such suicide again.

So this year he planned ahead. Fenno knew better than to assume that he would take the time to schedule and sign up for a full array of classes before the first day of the semester. As such, just to guarantee a seat in all the *true* gut classes, Fenno made the ultimate sacrifice and decided to stay in Vermont for just a few days of skiing instead of his customary week out West.

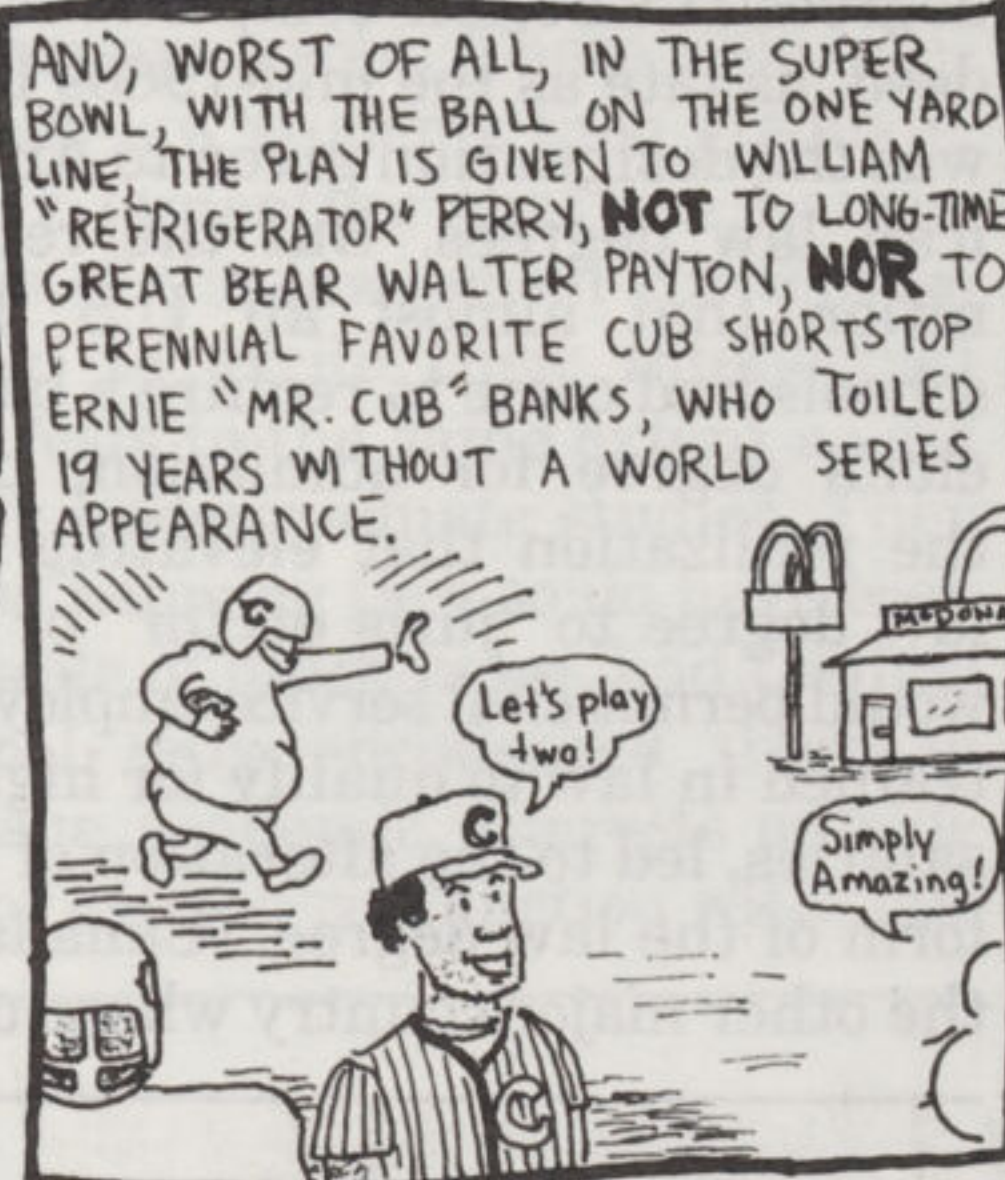
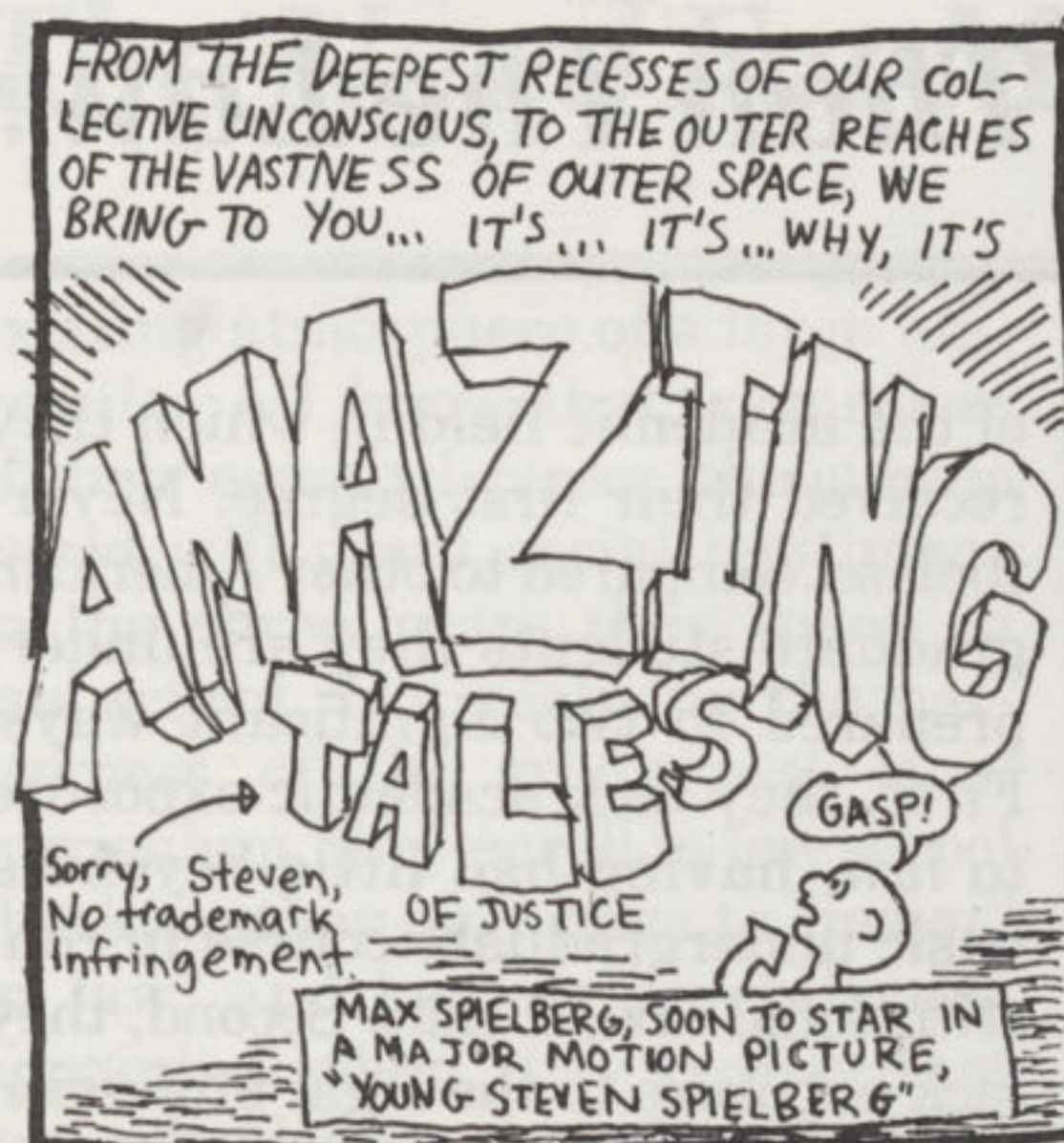
Fenno arrived eager to find a mountain loaded with powder and a lodge stocked with bunnies. But to his dismay, it rained and iced, and Fenno ended up doing things that looked much more like slam dancing and professional wrestling than anything resembling skiing. He was so dejected that he spent most of the time by the bar in the lodge. In fact, Fenno drank so many Meister Braus that he didn't even *think* of meeting anyone — until *he* was approached by The Woman of His Dreams just at the moment when he had to leave to return to school.

Although they at least had an hour together, and both vowed to write and visit, Fenno knew he wouldn't make it to Ottawa too soon. He cursed the administration for making him leave Her and for turning his skiing into a chapter of *Tales from the Crypt*. Angered and resentful, he drove back to school in a snowstorm that would bring two feet of luscious powder to the sheer iceberg that he had attempted to ski. After he returned home, despite all of his planning, Fenno's defiance overcame him. Fenno ended up staying in bed and skipping the first three days of classes anyway. He realized what that meant. Fenno opened another beer and let the phone ring.

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Tom The Dancing Bug by Ruben Bolling



Great Moments in the Law

An Arizona law states, "It shall be unlawful for any visiting football team or player to carry, convey, tote, kick, throw, pass, or otherwise transport or propel any inflated pigskin across the University of Arizona goal line or score a safety within the confines of the City of Tucson, County of Pima, State of Arizona."

Maybe that's what the Patriots needed! — Ed.

**Next
Record:
Feb. 14**

Letters to the Editor of the Record

Remember Other Priorities

To the Editor:

Like many other HLS alums, I have noted the news media's accounts of polarization within the Law School faculty between the so-called Right and the so-called Left; i.e., the faculty partisans of the Critical Legal Studies movement. Living in Cambridge, I have had occasion to discuss this alleged polarization with a number of current HLS students and several professors. And, of course, Dean James Vorenberg's recent letter to alums sheds some light and presented significant data regarding the realities behind the rumors exaggerating the politicization of faculty affairs, especially re appointments, tenure and retention.

Like other "minority" HLS graduates and current students (those of Asian, African, Caribbean, Latino and Native American descent), I have been concerned that ideological impassess within the faculty might complicate the Law School's realization of its commitment to affirmative action in faculty and

staff appointments. History teaches us that rapid, significant changes in the racial composition of the faculty require concerted purpose, conscious attention and consistent leadership by institutional decision makers.

In practical terms, this means that (a) the goal of hiring minority faculty should not be marginalized as the spotlight focuses on the faculty's intramural ideological disputes, and (b) the Law School's affirmative action policy ought not be misconceived as the special preserve of any political faction. Further, as a practical matter, the Law School's conscience must be kept by the faculty itself. The intensity of the HLS commitment to hiring minority faculty and staff ought not wax or wane as a function of fluctuations in student activism.

Therefore, a sign of hope may be found in the decision of the Dean to play a more directive role in some aspects of the hiring process. This hope is that Dean Vorenberg, who has a solid record of effective advocacy for racial justice in the society at large, will use his considerable leadership skills to assume the vanguard for racial diversification of our school's staff and faculty. Especially in the areas of visiting professor appoint-

ments and non-teaching professional staff appointments, the Dean's hand ought not

(Continued on Page 19)

Letters Policy

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

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

Educating Lawyers On More Than The Law:

Tom Rozinski is a joint JD/PhD candidate in Political Science.

In *The (Harvard University) President's Report 1981-82*, Derek Bok focused on the problems and prospects of legal education. One of the principal areas he identified for change was "the striking lack of professional commitment displayed by many (law) students." Observing that "law schools have traditionally been the refuge of able, ambitious college seniors who cannot think of anything else they want to do," he concluded, "it is not surprising that many students tire of their studies and grow unwilling after their first year to prepare their coursework or participate in class discussions." Bok ended with an appeal to legal educators: "If law faculties wish to counter these attitudes, they should welcome the chance to motivate their students by giving them a larger vision of their calling, a sense of what a life of leadership in the bar might entail, an awareness of the urgent problems of the profession that they could help to resolve." President Bok went on to outline two areas for curricular reform: the expansion of coursework in alternative methods of dispute processing and delivery of legal services, and the application of social scientific methods of inquiry to legal problems.

President Bok is certainly correct that many students entering law school today are uncertain about their career choice. But is Bok right in assuming that attendance at law school should be limited to those who intend to enter the legal profession? Moreover, is there any realistic way of identifying such applicants? Or is the presence of students not committed to a legal career inevitable in American law schools, and if so, are there ways of both satisfying the broader goals of these students and encouraging them to make contributions to

scholarship in law and other disciplines?

The United States is one of very few countries in the world where legal training is pursued almost entirely at the graduate level. In almost every other country, undergraduates enroll for courses in law upon finishing high school or its equivalent, and receive bachelor's degrees (LLBs) on completion. Indeed, as late as the mid-1960s LLB was the designation given to American law degrees. But the recognition that almost all U.S. law schools had come to require a bachelor's degree for admission, plus the realization that elevating the law degree to "juris doctor" or JD would permit civil service employees trained in law to qualify for higher salaries, led to the alteration of the form of the law degree. (Canada is the other major country whose uni-

*"All student know
that regardless
of their eventual
career, the
outside world
will grant social
legitimacy to
the three
years spent
in law school"*

versities require an undergraduate degree prior to admission to law school, although some of its law schools waive this requirement for highly-qualified candidates with a year or two of college-level training.)

The structure of legal education in the U.S. creates two anomalies. American students entering law school are more prepared for their studies than their foreign counterparts. Not only are they several years older, but they have also been trained in the scholarly techniques

of the academic field in which they received their first degree. Nevertheless, compared to other American graduate students they are underprepared in two significant ways. First, they lack academic exposure to law, having had little beyond a basic undergraduate course in constitutional law, if that. Second, they lack exposure to the legal profession in general, unless they happen to be related to, or retain, a lawyer. Unlike those who go to graduate school in economics, biology, or art history, they know little of what to expect, either in law school or afterwards. This is true even in comparison to medical students, who at least had personal experiences with family physicians.

One of the major effects of these anomalies is that a large number of students who lack the intention of joining the legal profession are attracted to law school. According to President Bok, these are "able, ambitious college seniors who cannot think of anything else they want to do." But this description is, quite clearly, an oversimplification. One group of these "able, ambitious" seniors consists of those who have decided not to pursue further study or employment in the area of their major. Instead, they turn to the one field denied them at the college level: law. And who can blame them? Unlike many other professions, law offers high prestige, good financial rewards, and (depending on your point of view) intellectual challenge. Given the large number of successful lawyers in the U.S., they reach the not-implausible conclusion that law could be the right field for them. And, they will never know unless they attend law school.

Others go to law school for even less definite reasons. Some attend law school in hope of sating intellectual curiosity left over from (or stimulated by) their undergraduate education. Some have definite gaps they want to fill; others merely long for three more years in the (often)

The Need For More Cross-Registration

by Tom Rozinski

exciting atmosphere of a large university. All know that, regardless of their eventual career, the outside world will grant social legitimacy to the three years they spend in law school. Not realizing the narrowness of the traditional legal curriculum, they enroll in law school thinking they only have to "major" in law, and become severely disappointed when they realize that law school does not offer the flexibility of a liberal arts curriculum.

What should law schools do about such applicants? Admission committees can try to give preference to those "seriously interested" in practicing law, but gleaning this information from application essays is chancy at best. In any case, the students' own experiences in law school will likely alter their commitment to the legal profession; some who enter without enthusiasm may find a career they really enjoy (and vice versa).

Instead of such a futile, possibly harmful filtering process, it would be better if law school administrations realized that, given the structure of legal education in the U.S., there is little they can do to evade the enrollment of able, ambitious seniors uncertain about their career plans. Law schools should recognize the differing interests of these students and help them to pursue them while at the same time providing them with a comprehensive legal education. As a result, they might facilitate the interdisciplinary study which President Bok spoke of in his *Report*, and thereby generate benefits for both the legal profession and society as a whole.

President Bok is correct to note that the alienation and apathy which characterize many law students emerge principally in the second and third years. After an intensive year consisting of nine months of studying nothing but law and three of working at a law firm, many students return to Harvard hoping for the chance to learn about something other than law. Frustrated by law school policies that

are at best unencouraging and at worst downright hostile, they take the path of least resistance and complete their last two years confined to courses in Pound, Austin, and Langdell. By third year, having mastered the art of learning law by making only token appearances in class, they spend most of their time on outside activities except for the two months of the year in which exams are given. These able, ambitious law students then graduate, many lamenting that the narrow focus of the law school curriculum failed to excite their intellectual interests to the same extent as did their undergraduate studies. They leave knowing they could have been capable of much more, had the law school only encouraged them to pursue academic interests outside of (or even in conjunction with) law

*"By third
year students
have mastered
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learning law
by making only
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in class."*

during their last two years.

Here at Harvard, each entering class contains a large number of students who have been successful scholars in a wide variety of academic fields other than law. Many could bring their past training in economics, computer science, history, literature, and foreign languages to legal studies, providing the fresh analytical techniques and experience unavailable in countries where law is studied at the under-

graduate level. But in order for these talented individuals to do this, they should be encouraged, not discouraged, to integrate their existing expertise with that which they are paying over \$30,000 for the privilege of learning.

While a full discussion of the many ways in which the law school can afford, a summary of some of the more important reforms can be presented:

1. **SCHEDULE REFORM.** While the Faculty of Arts and Sciences (F.A.S.) offers classes on alternate days beginning on the hour, the law school persists in using a schedule which maximizes the number of potential conflicts for students who wish to cross-register for non-law courses. Block D, for example, obstructs no less than six F.A.S. time periods. Minimal changes would be necessary to ensure that no law school class obstructs more than two F.A.S. time periods. Applying the "least restrictive means" test that has been battered into our heads, we should ask if there is a compelling reason why the law school is the only one of Harvard's graduate schools in Cambridge to refuse to conform to the F.A.S. schedule?

2. **IMPROVED DISSEMINATION OF CROSS-REGISTRATION INFORMATION.** Many of Harvard's graduate schools list in their catalogues the related courses offered by other graduate schools. Some even list courses available at Fletcher and M.I.T. The law school could collect descriptions of courses offered by the Kennedy School, Graduate School of Arts and Sciences, Business School, Education School, and Design School, and distribute these to all students at registration.

3. **OVERT ENCOURAGEMENT OF CROSS-REGISTRATION.** If the law school truly wants to bring scholarly techniques developed in other fields to the study of law, it should actively encourage second-year students to take courses outside

(Continued on Page 19)

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Blue Blood Boston Law Firm Shuts Its Doors

By Eric Sullivan

Herrick & Smith, one of Boston's most prestigious law firms, announced on Jan. 10 its decision to close its doors March 31.

News Analysis

Herrick's decision to "disband" is unprecedented. Boston, unlike other major cities, has not faced the dissolution of a law firm of Herrick & Smith's size and "vintage."

The firm, formed over 50 years ago, enjoys an outstanding reputation and recent growth. Besides concern for the future of those lawyers currently employed by Herrick, the breakup raises some important questions about the legal profession in general.

Reactions to the announcement have varied. In light of Herrick's profitability last year and its recent climb from 16th to 15th largest law firm in the Boston area, some observers were surprised. HLS students who received encouraging letters concerning their chances of landing a summer associate position with Herrick & Smith, were disappointed.

The American Lawyer ranked Herrick's 1985 summer program as the best in Boston and one of the top three nationwide. This, and the difficulty 1Ls have experienced this year finding jobs in major cities like Boston, made the closure disappointing for those students affected.

Rumors had circulated for months within the Boston legal community, stemming from the recent departure of several important partners and Herrick's loss of a few large clients, including MIT and Massachusetts General Hospital.

Sources at Mass. General said the reason for their shift was twofold. The combination of their bringing the bulk of their legal work "in house" and the departure from Herrick of the partner the hospital had worked with most closely led them to discontinue their relationship with Herrick.

Spokespersons at both Mass Gen-

eral and MIT stressed that over the years Herrick had consistently provided them with outstanding legal work. A source at MIT said that their decision to switch law firms was a major one, prompted by Herrick's loss of another partner. After the lawyer with whom MIT had dealt most extensively left Herrick, MIT went "lawyer shopping." A review and selection process was initiated, the product of which was the decision to consolidate their legal services at another firm.

Some commentators, who asked not to be identified, believe that Herrick's loss of MIT and Mass General's business, and its eventual decision to close down, are symptomatic of important new trends in the market for legal services. The position, stated succinctly, is that in order to remain viable a modern law firm must act like a business and not a "club."

Increased Competition

As the number of lawyers and law firms continues to outgrow the number of clients in this country, the supplying of legal services has become increasingly competitive. Many feel that aggressive marketing techniques, unheard of for law firms as recently as 20 years ago, are essential for continued viability. This change often creates tensions among partners. Older partners sometimes view the use of a public relations firm's services, for example, as unnecessary or undignified. Many of their younger colleagues believe these practices are essential for survival in the modern legal community.

Productivity is sometimes a source of tension within firms. Junior partners are becoming increasingly dissatisfied with compensation schemes based strictly on seniority. Many feel that they should be paid based on the volume of business they attract to the firm and the number of billable hours they are able to charge. Some have gone so far as to suggest that partners who are not doing their share of the "rain-making" or hour-billing should

leave.

Many firms have responded to these changed views by enacting schemes which closely link a partner's income to his or her productivity. Senior partners sometimes resent these changes, feeling that they deserve a certain amount of security and relaxation in return for decades of hard work and dedication.

A recurrent theme in most discussions of the legal profession's future seems to be the changed conception of loyalty. It is becoming increasingly accepted for clients to "shop around" for a better deal at other law firms. MIT's creation of an elaborate selection process to choose a law firm is not at all unusual.

Partners, too, have a changed sense of loyalty. "Making partner" is not always enough anymore. In the past, law firms were "clubs" in which a young lawyer acquired a life membership upon graduation from law school. Things have changed. Herrick & Smith is one of many firms which have lost partners to a market in which competitors are not afraid to "steal" entire legal divisions using lucrative financial incentives.

Regardless of the specific reasons for the closure, many believe the fall of an established "blue blood" firm of Herrick & Smith's caliber is symptomatic of dramatic changes in the legal profession.

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"BETTER BUYS AT BRINE'S"

Yale AIDS Legal Conference Panelists



Risë Peters

Harry Britt, San Francisco City Supervisor, addresses AIDS Legal Conference. Seated: Abby Rubenfeld.

(Continued from Page 4)

tification from public health officials.

Moreover, Stoddard said, keeping names and addresses of those who are sero-positive implicates fundamental privacy questions. Showing the danger of the statute, he said that one week after Colorado enacted its reportability statute, a 17 year old high school student revealed to a school nurse that he had been found sero-positive. The information reached the school board, which removed the student from school. The local Superintendent of Schools then asked public health officials for the names of all students who tested sero-positive so that they might likewise be removed.

Lawrence Gostin, a Senior Fellow at the Harvard University School of Public Health and AIDS Advisor to the U.S. Department of Health and Human Services, spoke concerning proposals to quarantine or isolate those who test sero-positive. He stated that any general quarantine of the sero-positive would be impossible, given the numbers of people infected. Further, any quarantine of the sero-positive would be constitutionally overbroad. Sero-positivity does not mean that an individual has the AIDS virus; persons who have the virus are not necessarily infectious; persons who may be infectious are not neces-

sarily likely to act irresponsibly and transmit the disease.

Gostin argued that even a limited quarantine of those unwilling or unable to control their sexual behavior is problematic, both because it is difficult to predict which individuals would be recalcitrant, and because such a measure would be discriminatory. Quarantine, Gostin said, would be "a lottery that would affect the poorest and the most vulnerable."

Rhonda Rivera, Associate Dean of Ohio State University College of Law and Co-Chair of the Governor's Committee on AIDS (Ohio), concluded the second discussion by pointing out the difficulty of championing the civil rights of a "traditionally despised minority in the face of state action based on the strongest of state powers, the police power" as embodied in public health laws.

The third panel discussion centered on private disputes involving persons suspected of having AIDS who have lost their jobs, apartments, and health insurance. Guido Calabresi, Dean of Yale Law School, took up the question of whether society is entitled to discriminate where life, death, and health are at stake. He asked, "If the only way to diminish these risks is discrimination, may discrimination still be unfair?" and responded, "We have patterns of behavior in our history

that demonstrate that equality is more important than life. . . . Certain risks of life are to be taken by a decent society when the alternative is discrimination against groups that have traditionally been scapegoated."

Matthew Coles, author of the San Francisco AIDS antidiscrimination ordinance, stated that "to argue civil rights statutes depending on precedents is to depend on the courts to use rational common sense. If the rest of the society is panicked, the courts, made as they are of white male lawyers, aren't likely to take great progressive strides. We need to stop society and the vast majority of the medical establishment from getting panicked, before the problem gets to the courts. As long as the Center for Disease Control and the medical establishment say that workers suffering from AIDS do not pose a danger to their co-workers, we can hold the line."

The fourth panel dealt with the special problems of Blacks, Hispanics, and IV drug users. Catherine O'Neill, Staff Attorney at the Legal Action Center in New York City, pointed out the magnitude of the problem posed by IV drug abuse. According to O'Neill, there are 250,000 active IV drug addicts in New York State, and 1,575,000 in the U.S. Because hypodermic needles are legally available only by prescription, addicts outside the medical profession run a risk of contracting AIDS from contaminated needles.

Professor Harlon Dalton of Yale Law School pointed out that of those people presently diagnosed as suffering from AIDS, 60% are white, and the remaining 40% are persons of color. He stated that it is as necessary that "safe drug use" techniques are taught for the protection of the population of IV drug users as it is necessary that "safe sex" be taught for the protection of gay men. He predicted that (given the demographics of IV drug use) if safe drug use techniques are not successfully taught, what has been called a "gay plague" will become a "brown and black" plague, as

Address Problems, Possible Remedies

Blacks and Hispanics become the predominant victims of the disease.

Dalton said that persons of color need to become more involved in safe-sex education; that efforts to educate high risk groups on preventive techniques need to be designed to reach members of those groups, and that attention must be paid to members of "forgotten subgroups" among the high risk population. He said that "because racism is rampant in the gay community, and homophobia is virulent in the Black community, predominantly white safe-sex educators are not likely to be effective for the most marginalized of the marginal, Black gay men."

"Efforts to educate gay and bisexual men have been hampered by priggishness on the part of public officials . . . [who also argue] that it would encourage illegality, or at least immorality. The same arguments are raised about safe drug use, providing free needles, or telling people not to use dirty needles."

"If we focused on that part of the sero-positive population that includes IV drug users, prostitutes, and poor Blacks and Hispanics, we would worry less about job discrimination, job screening, and loss of insurance and housing, and more about getting people jobs and insurance. We'd worry about getting people who may not have a family or community to rely on a decent place to die. And if we focused on IV drug users, prostitutes, and the poor, we'd realize that one place to find those people is in prison, and we'd worry about what's going on in our prisons."

The fifth panel concerned the impact of AIDS on lesbian and gay rights. Harry Britt, San Francisco City Supervisor, said that he favored political action over legal action for protection of lesbian and gay rights because he feels that "politics is a more effective tool. If you're weak, you need a bunch of lawyers to protect your rights. But what you need most of all is not to be weak."

Britt pointed out that the AIDS epidemic entered the political picture at a time when gay men and

lesbians were beginning to offer the world chances to see them in positive, powerful roles. He said that while the primary response to the epidemic must be to get rid of AIDS, the secondary response should be one which continues the fight against homophobia. He said that "those who would deny us our rights are going to have to deal with our power. . . . That is what a political movement is. The AIDS epidemic has given us center stage. What you do, if you have center stage, is you act, you emote, you have props and you throw them around. I think if we use this chance, we can come out of this having made significant progress against homophobia."

Abby Rubinfeld, Managing Attorney of the Lambda Legal Defense and Education Fund (LLDEF) stated that, because "the main-

stream media give figures for AIDS among 'homosexuals,' and does not differentiate between lesbians and gay men," legal problems related to AIDS affect lesbians almost as much as gay men.

Elvia Rosales Arriola of the LLDEF Legal Committee and Mark Senak of Gay Men's Health Crisis comprised the final panel, which dealt with the practical difficulties of representing AIDS patients. Senak stated that often a person who comes in to make a routine will has been discriminated against in employment, housing, and payment of medical claims. Both Arriola and Senak stated that the relative scarcity of court cases involving such discrimination is due to the fact that the potential plaintiffs often die before suit can be brought.

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BAR REVIEW

Paper Chases And Cross Registration

(Continued from Page 13)
of the law school. Currently, second-year students may count towards law school requirements four hours of cross-registered classes, provided they convince Professor David Herwitz that they possess "special law study objectives" which will be served by their enrollment in a non-law school class. What these "special law study objectives" are is anybody's guess, and why they are required for second-year but not third-year students (who can obtain law school credit for six hours of courses in any field) is also mystifying. The stricter requirements on second-year cross-registration discourage law students from taking courses outside the law school in the one year it seems most appropriate for them to acquire or refine scholarly skills in other disciplines that might assist them in writing innovative third-year papers.

The law school's limit of four credits in the second year also encourages law students to defer outside courses until their third year.

Why should law students start a foreign language or take two graduate economics seminars in their second year when they can receive the full six hours credit if they wait another year? It seems somewhat absurd that a law student enrolled in advanced Chinese should receive four hours of credit for the course itself and a two hour bonus for being a third-year student.

Harvard Law School's administration may be reluctant to loosen requirements for cross-registration credit for fear of having to compensate F.A.S. and other faculties for courses taken by law students. (After cross-registration is completed, the law school must compensate all other schools which enrolled more law students than the number of their students taking courses taught by law school faculty.) Yet the law school would currently seem to be running a surplus given the high rate of law school faculty participating in the undergraduate core curriculum; Professors Lloyd Weinreb, Roberto Unger,

Charles Fried and John Kaplan have taught courses in this program in the last three years. And even if the law school does incur a "credit deficit" with other graduate schools, the cost may well be justified by the increased abilities of more broadly trained law students to make enterprising contributions to legal academia.

Finally, a law school policy encouraging cross-registration would also permit law students to do advanced work in other academic disciplines. After all, is it fair for the law school to deny the benefit of the skills its students already possess to the very departments which trained them as undergraduates? Harvard Law School would greatly benefit from a cross-registration policy which encouraged its students to participate in the larger university community, rather than to withdraw solely into legal studies that in their current form will never be fully satisfying to the "able, ambitious college seniors" it enrolls year after year.

Letters to the Editor of the Record

(Continued from Page 11)

be fettered by factionalism. In these areas, the minority presence has been significantly augmented in the past several years. Good. But there is room for even more progress. The classical admonition to "seize the day" is quite on point.

I venture here no opinion about the esoterica of philosophical debates among Harvard's august legal scholars. But I do venture a vote of confidence that, with the pragmatic leadership of Dean Vorenberg, the Harvard Law faculty will maintain, strengthen and achieve its express commitment to racial inclusion, no matter what other issues might excite the media sensationalism.

Muhammad Isaiiah Kenyatta, '84
Cambridge, Mass.

Memories Of Dawson

To the Editor:

The passing of John P. Dawson furnishes the basis for a few statements as to the type of man he was.

I first met Dawson in the fall of 1954 when, as a graduate law student, I took his required course in comparative law. It consisted mainly of a study of Roman, French and German law.

In the course of the school year during which our small group of graduate students studied with Dawson, it was, I believe, the almost unanimous view of that group that here was a man of unique mental ability. Certainly in my own case and during the course of a fairly long lifetime, I have been exposed only to one other person whom I would put in the same class as Dawson. That individual is Gustav Bergmann and he, fortunately, is still alive.

One other incident comes to mind. When it became necessary for me to examine some records at the office of the State Insurance Commissioner, again it was Dawson who

cleared the path for me. When I arrived at the office, I received red carpet treatment. I realized, of course, that it was Dawson who was being honored and not I.

Lest it appear that Dawson was an angel, I do have one memory about him that is not favorable. A judge from Ceylon was visiting the campus. Dawson suggested to members of the class that it might be worthwhile to sign up to eat dinner at the same table with the judge. I fell for this, and wound up sitting next to someone whom I can only describe most favorably as a drunkard. Dawson struck out on that one.

If Dawson by any chance is presently resting among the angels, let him know that I wish him well.

William Moldoff
Nassau, New York

Student Phoners Find Funds For HLS

By Gregory K. Klima

The Harvard Law School Fund has found a new way to successfully raise money in its phone-a-thons: using current HLS students to make calls. The HLS Fund used student phoners for the second time this past fall with very positive results.

The last Fund Phone-a-thon, which began at the end of October and continued during November, involved 15 to 20 students, according to Warren "Skip" Hance, the director of Development and Alumni Relations. Those students reached just under 2000 donors and raised slightly over \$125,000 in bona fide pledges and a substantial amount in unspecified gifts.

Students had their first opportunity to make calls for the Fund during the 1984-85 school year. Six upperclassmen were used during the Fall '84 drive. In the Spring '85 drive, the Fund used 1Ls as well and had 10 to 12 students on the phones.

During those drives, students called alumni from HLS classes graduating in the late '70s and '80s.

According to Hance, students were used because the giving from those classes had been low. The Fund hoped that by providing alumni an opportunity to talk to students, giving would increase. The result, said Hance, was that "they had good success increasing the number of givers in the younger classes."

Because the student callers had so much success, the Fund decided to expand the categories of alumni that they would call. During the last drive, the students called more regular donors from all classes, but they concentrated their efforts on calling two specific groups. The first target group was the "LYBUNTS" — "last year but not this" — alumni who had donated to the Fund in the past, but for some reasons had skipped a year. The other target group comprised regular donors in the \$300 to \$1000 range.

"We were very pleased with the results," stated Hance. He explained that while most of the alumni continued to give without question, there was a small minority of alumni who wanted to ask questions about what has been happening at

HLS. Those alumni were concerned about the whole range of issues, from the recent CLS controversy to developments in the divestment movement to issues of students' ability to carry large loan burdens. The students were able to effectively talk to those alumni and convince them to give to the Fund.

"Students are particularly able to respond [to the alumni's questions] because they are here and they are believable because they are here," explained Hance. "Students can interpret the school in a way that the alumni can appreciate," he continued.

Hance stated that the Fund would continue to use students for phoning and planned to use students in its Spring '86 drive. He explained that the students' efforts would again be concentrated on younger classes, even though the gifts from that group are smaller, because the Fund wanted to get those classes involved in the Fund now.

☛

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