



Harvard Law Record

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APRIL 4, 1986

25 CENTS

Committee Approves HLS Appointments

By David Snouffer

A committee of Harvard's two Governing Boards last month promoted two HLS faculty members and appointed two new professors. With these additions, which HLS's full professors had voted earlier this year to recommend, HLS is slated to have five tenured women and six full-time blacks on its faculty next year, more than at any previous time.

The Boards' Joint Committee on Appointments granted full tenured professorships on March 17 to Assistant Professors Susan Estrich '77 and Martha Minow, who both joined the faculty in 1981. The committee also named University of Oregon Law Professor Derrick Bell to a full professorship and appointed Washington, D.C., attorney David Wilkins '80 as a tenure-track assistant professor at HLS.

All four appointments are to take effect July 1.

In announcing the appointments, HLS Dean James Vorenberg '51 said last month that the four professors bring a "diversity of expertise and experience" and will "contribute greatly to the intellectual life of [HLS] and to the fields in which they work."

Estrich specializes in criminal law and gender discrimination; Minow has focused her research on children, education and families; and Bell specializes in constitutional law and minority issues. Wilkins, an associate since 1982 with the firm of Nussbaum, Owen & Webster has done primarily civil litigation work.

Bell, who served as Dean of the University of Oregon Law School

for over four years, said this week that he gave up his post last year after he disagreed with some other professors at Oregon over the appointment of a minority faculty member. "I decided that it was about time for me to step down," he said. "Most deans can barely survive five years."

Harvard is a better place to research minority issues than Oregon, he said, because the subject is more widely studied on the East Coast. HLS also is more willing than some other schools to let its professors espouse controversial positions, because faculty and administrators feel confident about the school's future, according to Bell, who taught at HLS between 1969 and 1980.

"I don't have to fear reprisals or admonitions to speak more softly,"

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HLS Communications

Newly appointed HLS professor, Derrick Bell.

Bomb Scare Worries HLS Police

By Brian Rance

On Monday, March 24, the Boston Police Department received a call from a person who said that a bomb had been planted at HLS. The threat, which caused administrators to evacuate Langdell Hall later that afternoon, was made on the first Monday of spring vacation at HLS.

The anonymous caller told Boston Police over the 911 emergency line that a bomb had been planted at HLS and that it had something to do with the PLO, according to Administrative Dean Simone Reagor.

Information about the threat was relayed to the Harvard Police at 8:53 a.m. via the Cambridge Police

Department. The Harvard Police then called Reagor. Asked why the Harvard Police contacted her, Reagor answered that she is "the person responsible for security issues at the law school. Second, [Dean James Vorenberg] was away. In the Dean's absence, I am generally responsible for these matters."

Reagor, in consultation with the Harvard Police, decided that the bomb threat "was not serious. We believed that there was no real danger posed." Reagor listed several facts that led the Harvard Police to conclude that the threat did not present a significant danger to the employees of and students at HLS:

(Continued on Page 6)

Von Bulow Recounts Trial Experiences

By Eric Sullivan

Students, visitors and the press jammed into the Ames Courtroom on March 12 to hear Danish socialite Claus Von Bulow speak publicly for the first time since he was tried in 1982 for allegedly attempting to murder his wife, Sunny. The HLS Forum sponsored the talk.

Von Bulow, who practiced law in England for 9 years, said he had intended to discuss the differences between the American and British judicial systems. But professional commentary gave way to discussion of his two trials. He was introduced by Professor Alan Dershowitz, who along with Professor Susan Estrich and a team of 23 Harvard Law students in 1984 helped overturn Von Bulow's 1982 conviction for attempting to kill his heiress wife by injecting her with insulin.

In his introduction, Dershowitz informed the crowd that the Von Bulow trial gave him the "rare pleasure" of representing an "absolutely innocent man."

Dershowitz attacked those responsible for posting what he called "bravely anonymous" flyers around HLS the day of Von Bulow's speech. Two types of flyers were plastered on bulletin boards in Harkness Commons. Both proclaimed the same message in large black letters: "Claus Von Bulow Murdered His Wife."

Both Dershowitz and Von Bulow said four factors enabled the overturn of Von Bulow's earlier conviction: inconsistent testimony by the prosecution's witnesses, the development of a stronger medical case by the defense, the inclusion of evidence excluded at the first trial, and the exclusion of other evidence which had been admitted

at the previous trial.

Von Bulow discussed at some length the "little black bag" which was, in his words, the "smoking gun" in his case. He said the detective work which followed the discovery of the black bag was of questionable quality. According to him, the syringe found in the black bag was never tested for blood or tissue to determine if it had ever been injected. He also recalled that although police questioned him for 4 hours they never asked him about the bag. Von Bulow said he believes he was not asked about the black bag because the police "didn't want an answer." He summed up his feeling about the authenticity of the bag by quoting from the movie *Peter Pan*: "Do you believe in fairies?"

Von Bulow was very critical of the media coverage of his trial, describing it as sensationalistic and "so much rubbish." He attributed part of this, however, to the "paid public relations campaign" he said was directed against him by his stepchildren whom he referred to as "my principal accusers."

Although his criminal conviction was overturned, Von Bulow is still involved in civil litigation. He said he was, therefore, forced to be "selective" in his comments. The civil litigation involves disputes between his daughter and his stepchildren over their mother's money. Von Bulow said he plans to help his daughter get what he believes is "rightfully hers," then leave the United States to live quietly as a "hermit" in Switzerland.

Dershowitz previewed his theory for why Von Bulow's stepchildren have pursued civil litigation. The theory is fully explained in Dershowitz's soon to be published book. He said there is "a lot of evidence"

to support it. In Dershowitz's opinion, the stepchildren "honestly but mistakenly" believe that Von Bulow is guilty, and that he is "so clever, so insidious" that he could "get away with it." Dershowitz suggested that this belief may have led the stepchildren to "frame" Von Bulow. If the theory is correct, Dershowitz said the Von Bulow case would be "one of the most remarkable cases in the annals of justice."

One student asked Dershowitz why Von Bulow's conviction was overturned when the judge at the first trial believed Von Bulow was guilty. Dershowitz responded that the conviction was overturned because Von Bulow was innocent. He also noted that the judges at the second trial were "not certain" that the conviction was appropriate. Dershowitz said that lawyers are like doctors in that regardless of

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Lawyers Tell Students About Real World

By Michael Reilly

Enticed by weeks of advertising in the *HLS Adviser* promising answers to those in "Dire Straits" or wanting "Money for Nothing," about 200 people attended the "Life After Law School" panel discussions held in Ames Courtroom on Saturday, March 15th.

The four-hour conference, which was followed by the *piece de resistance* — a free lunch in Harkness Commons — left many of those in attendance, including students, spouses and friends, understanding more of what awaits the HLS graduate once he or she leaves the Law School. Besides the panelists and the audience, several administrators were present for the event — including Dean James Vorenberg, Vice-Dean David Smith, and Dean of Students Mary Upton.

Life As a Lawyer

The first panel addressed the topic: "Personal Goals and Law Firm Expectations: Your Life in the Balance." Discussing their experiences in a large firm in a big city were Matthew Mallow, a partner at Skadden, Arps, Slate, Meagher & Flom in New York and Laura Steinberg, '72, a partner at Sullivan & Worcester in Boston. The gov-

ernment service option was discussed by Robert Mathias '80, Office of the U.S. Attorney General, Baltimore, and Susan J. Mathias '80, Office of the Attorney General, Baltimore, while Roberta C. Ramo, a partner at Poole, Tinnin & Martin of Albuquerque described the possibilities of working in a medium-sized firm in a medium-sized city. In addition to presenting their own professional experiences, each panelist addressed the issue of dual career families.

Comparing the various advantages and drawbacks of the different

post-graduation paths, Mallow said that in large firms, young lawyers "will receive first-class training; you will have an opportunity to work on innovative and creative matters; you will be on the frontier of your area of practice; you will work in a supportive environment that rewards you cheerfully and regularly." Mr. and Ms. Mathias, on the other hand, having come to government work from private law firms, cited as a major advantage of the public sector the greater degree of independent decision-making. According

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Sports Quiz

By Russ Marsh

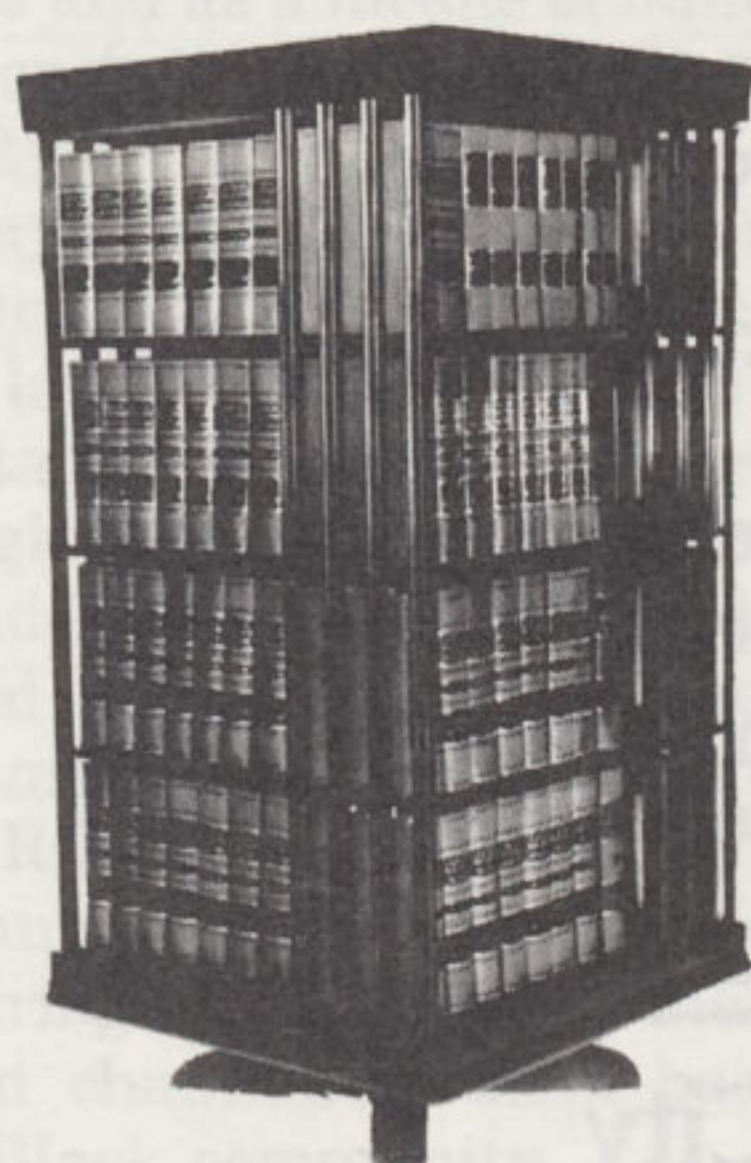
The NCAA basketball tournament, which ended this week, always promises to bring thrills and heartbreak to many fans throughout the country. This week's quiz deals with one of the greatest match-ups in tournament history — the 1979 championship game between Michigan State and Indiana State — and that game's two principal protagonists: Larry Bird and Earvin "Magic" Johnson.

1. What small midwestern town does Larry Bird call home?
2. What Ivy League team did Michigan State destroy by more

than 30 points in the semi-finals of the 1979 Final Four?

3. Who was the other Final Four team that year?
4. The MVP of the 1979 championship game was later chosen as the fourth pick overall in the 1979 NBA draft by the Detroit Pistons. After a couple of mediocre seasons, he was traded to Seattle. Name him.
5. Who was the first player chosen in the 1979 NBA draft?
6. What Big Ten school did Larry Bird leave after his freshman year?

(Answers on Page 16)



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Graduates of the Class of 1986 will be proposed, seconded and interviewed in one step for membership in the club. Requirements for supporting letters, etc., are waived for this event for 1986 graduates. Information about the club will be available and Committee Members will try to answer any questions you may have concerning membership.

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B.L.S.A. Sponsors Career Conference

By Paula Tuffin

The Harvard Black Law Students Association sponsored its annual career conference on March 14-15. The purpose of the conference was to address the career concerns of Black law students at Harvard and elsewhere. The conference dealt with two important issues this year: first, how to make corporate firms more responsive to the political and professional needs of Black attorneys; and second, what alternatives there are to the corporate law career.

Areva Bell, 2L, headed the planning committee, whose members included Hershey Jones and Winkfield Twyman, 3Ls, Kim Sheftell, 2L, and Karen Hardwick, 1L. Ernest Martin, 3L, also played a substantial role in the planning. Visiting Professor Charles Olgetree, '78, and alumnus Fletcher Riley were instrumental in the preparations for the event.

The conference began on Friday with a panel discussion on "The Business of Businesses: How to indemnify businesses and how to write business plans." Among the panel members was Steven Rogers, Harvard Business School, '85. Rogers is a registered applicant for a McDonald's franchise and expects to receive the franchise within a year. Rogers discussed franchising as a low risk mechanism for starting a business and as a means of building an economic base in the Black community.

Saturday's panels ranged from such topics as sports and entertainment law to the advantages and disadvantages of starting a new firm. Virgil Roberts, '72, executive vice-president of Solar Records, the second largest minority-owned record company in the U.S., and Fletcher Riley led the Sports and Entertainment panel. They spoke of recapturing the resources in these fields and channeling them back into the Black community.

Kodice Douglas, '79, Lawrence Patrick, '75, and Dennis Tourse, '70, headed the discussion on formulas for starting Black firms and the pros

and cons of solo practice as an alternative to a career with a large corporate firm.

Social Events

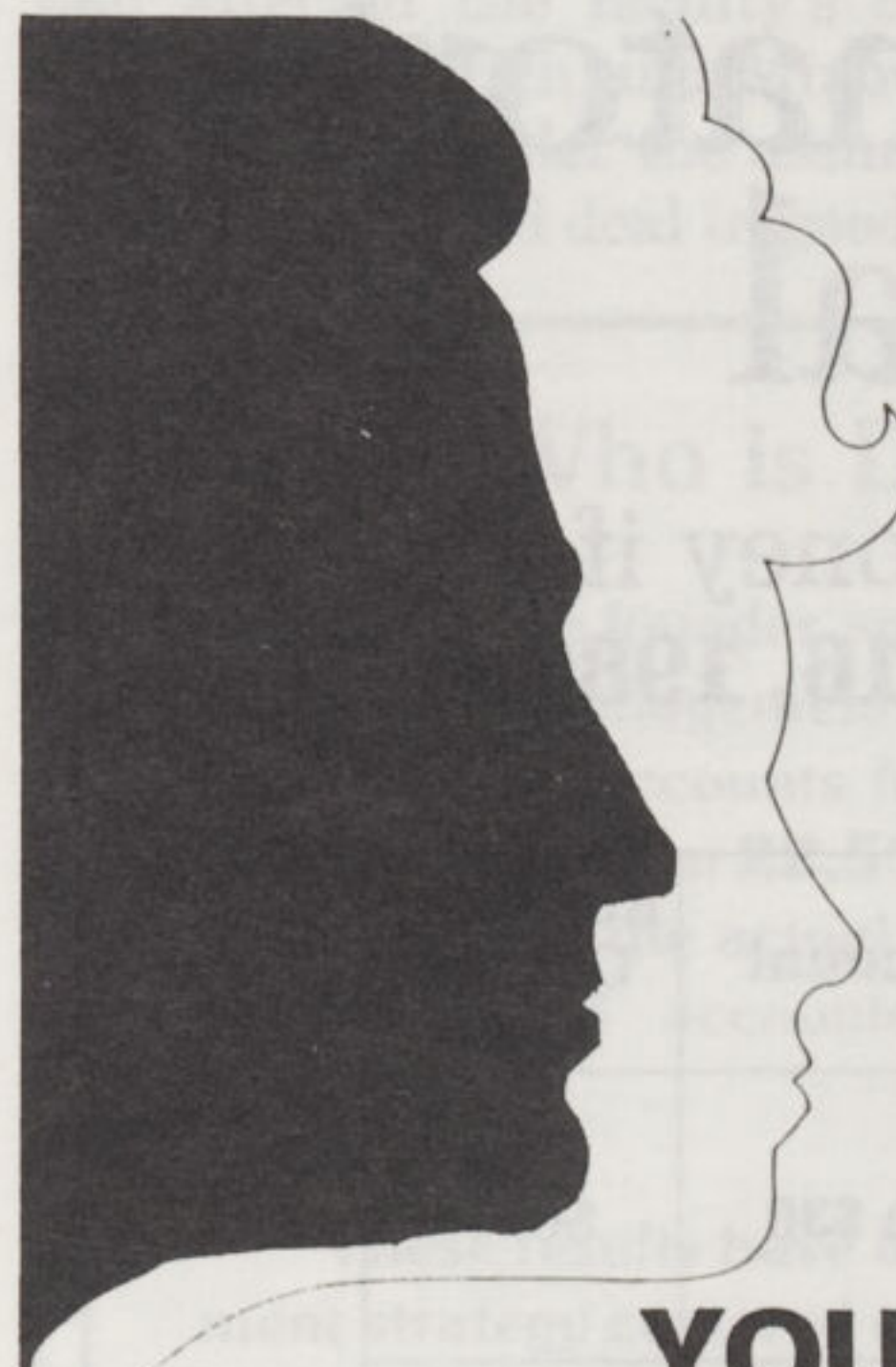
In addition to the panel discussions, the conference offered an array of social events. On Friday, activities included a luncheon with alumni, an encore performance of "Black Out Loud" and a jazz social hour at the Back Bench Pub. The conference culminated in a dinner dance at the Marriott Hotel, Copley Place, featuring Virginia Lt. Gov. Douglas Wilder as the keynote speaker.

Bell found the conference to be the most successful in BLSA's history, with 250 participants including HLS students, alumni, students from other schools in Boston and cities across the country, and elected officials.

Participants in the conference also found the experience to be rewarding. Jocelyn Frye, 1L, said the panels were highly informative, and the presence of alumni "showed that they were trying to give something of themselves back to the school."

Debra Murphy, 1L, said she especially enjoyed the discussion on Black entrepreneurs. "The people leading the conference were really thorough," said Willie Lovett, 1L, and their efforts "successfully brought together students and alumni."

Bell said she hopes that in the future the conference will grow into a problem-solving forum for Black professional and community life, offering suggestions on how to make large firms more responsive to the needs of Black attorneys and how to channel Black resources back into the Black community.



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Va. Lt. Gov. Urges Black Political Involvement

By Michael Sturm

L. Douglas Wilder, the recently elected Lieutenant Governor of Virginia, delivered the keynote address at the third annual Harvard Black Law Student Association Career Conference. Wilder is one of the highest Black elected officials in the United States and he is the only Black elected to statewide office in the south since Reconstruction.

A native of Richmond, Wilder began his career as a chemist and decided to enter HLS only after racial practices in 1950's Virginia prevented his advancement in that field. Upon graduation from law school in 1959, Mr. Wilder was admitted to the Virginia bar despite what he said was its practice of admitting only one Black annually

and despite the lack of any bar review courses that accepted Blacks. He maintained a practice in Richmond, specializing in criminal law and litigation.

In 1969, Wilder became the first Black elected to the Virginia Senate since Reconstruction. He served in that capacity until he decided to run for Lieutenant Governor. That race did not begin auspiciously, as 11 senior members of his party met secretly to devise strategies to dissuade him from running.

Wilder focused his address to the conference on the need for imaginative and innovative Black leadership at a time when he believes the gains won by the civil rights movements are in jeopardy. He noted that when he entered law school 2 years after *Brown v. Board*

of *Education*, many thought that the battle for civil rights was almost won.

Wilder's subsequent experiences in law school, practice, and politics left no doubt as to how mistaken this impression was and as to the many problems that remain today.

Wilder sees particular need for more Blacks to enter politics. He believes that Blacks "do not have the luxury of letting others do it for us." He defended politics as an honorable and valuable career and noted that those who criticize it have generally done so with the hope that Blacks would stay away from the realm of power and let decisions be made for them. In particular, Wilder believes that the practice of law is not an end in itself, but rather a means of becoming a leader.

As a closing thought, Wilder noted that many people are discouraged by the complexity and intractability of remaining problems. Drawing on his own experience, his optimistic reply was "God knows, if we can do it in Virginia, we can do it everywhere." 

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Bomb Scare

(Continued from Page 1)

the caller contacted Boston Police, the caller cited no group responsible for the threat, the caller gave no exact time of detonation, the call failed to name a building where the bomb was located, the threat was made at a time when the law school was in recess, and no activities concerning the PLO were scheduled at HLS during that week.

Reagor acknowledged that "[o]ne of the first thing we did was to check Alan Dershowitz's office." Paul Johnson, Chief of the Harvard Police Department, confirmed that the Harvard Police did conduct an extensive search in the morning, but he refused to identify the location searched. Dershowitz recently announced that he planned to sue the United States Department of State

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Appointments Committee Recruits Professors

(Continued from Page 1)

he added. "I expect that there will be a decent respect for my views, and that is a far less usual thing in American law schools than one would hope."

Among his unpopular stands, Bell cited his opposition in the 1970 to school busing, which many liberal academics then supported as a means of racially integrating schools.

Both Wilkins and Bell said they were attracted by the ideological diversity among the HLS faculty. Reported faculty divisions have received negative publicity from several national magazines and newspapers. But Wilkins expressed some apprehension that professors' disagreements might cloud his prospects for receiving tenure.

"Personally, I think diversity is a very healthy thing on a law faculty," Wilkins said last week. "I wouldn't want to go to a law school where everybody thought the same."

Bell said that because HLS is "a center of legal education," its professors should consider, as they do, such basic issues as whether law is based on "logically consistent neutral principles adhering to predictable norms" or if economic influences "enable it to comport with logic only fortuitously." Professors with different views on the nature of law tend to disagree on what law schools should teach and what strategies lawyers should use to improve society, he added.

Some academics believe attorneys can harness the current legal system to improve society by using test cases or by lobbying legislators, he said. Others, he added, believe such efforts only "give a patina of fairness to a system that is basically unfair."

"These issues are matters of great seriousness," Bell said, and HLS professors hold "strong feelings" about them because "our faculty realizes the importance of these issues."

Wilkins said professors' ideological disagreements "could" hinder their efforts to evaluate his work objectively, but he said friends of

his on the HLS faculty — including both tenured and junior professors of whom he asked "a lot of questions" — have assured him that the negative publicity HLS has received in the press "really caused the faculty to sit up and take notice."

"I don't think the people on the faculty want their law school to be a battleground," Wilkins said, but he nevertheless has some apprehension. "I guess ultimately you pay your money and you take your chances," he said.

While press portrayals of a divided faculty have not aided efforts to attract new professors to HLS, they have not "been a significant negative factor in our recruiting," said Professor Alvin Warren, who chairs the HLS faculty's Appointments Committee.

Warren and Vorenberg both said they saw no evidence that ideological differences among professors had affected the faculty's consideration of Estrich and Minow.

"I operated under the assumption that people would deal in good faith,

and they did, I think," Estrich said this week. "The reality is that people were able to come together and evaluate work in a straightforward and non-political way."

Now that she will be joining other HLS full professors in voting on future tenure recommendations, Estrich said she is "very hopeful" that professors of diverse views will continue to make a "good faith effort" when they evaluate scholarship that "reflects a different set of values, interests or approaches" than her own.

Vorenberg and other professors have said faculty with divergent views might have more trouble agreeing on whether to offer tenured posts to senior professors from other law schools than on whether to hire new assistant professors just out of law school or to promote junior professors already on the faculty. But Vorenberg said ideological disagreements "did not raise difficulties" when professors considered whether to offer full professorships to Bell

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Travesty Of Justice

The American Heritage Dictionary defines "distinguished" as "characterized by excellence or distinction; eminent; renowned." These are quite impressive characteristics. One would then naturally expect a person awarded with a medal for "distinguished public service" to actually possess such traits. Wrong. According to the Kennedy School of Government, such an award may also be given to U.S. Attorney General Edwin Meese.

As is by now notoriously known, Dean Graham Allison of the K-School, along with an advisory panel, has decided to dignify the 50th anniversary of his school (as well as the 350th of the University) by honoring the ever-intrepid Mr. Meese for his "longevity and variety of experience" in public service.

Unfortunately for the K-School, Mr. Meese's variety of experience is limited to two eye-catching categories. The first is the variety of banks which Mr. Meese approached during his years in California in an attempt to secure loans under questionable circumstances. Indeed, it was Mr. Meese's convoluted finances that in large part concerned the Senate during its confirmation proceedings, and almost led to his rejection by that Republican-controlled body. Mr. Meese's other experience with variety has to do with the variety of old friends and acquaintances who once did him financial favors and who now hold positions in the federal government, thanks to the influence of our honorable and ethically solid Attorney General.

The K-School attempts to justify its decision by claiming that the school applies "no ideological litmus test" and that it "should not presume to tell anyone what their convictions should be." This, however, misses the point. No one is arguing that Mr. Meese should not espouse his opinions, however warped they may be. The problem arises when his absurd and dangerous notions are allowed to manifest themselves, by virtue of his position in government, as a driving force to overturn the basic and fundamental principles upon which justice in this country supposedly now rests.

No person who advocates both the position that *Miranda* should be gutted because those suspected of crimes by the police should be presumed guilty and that the fundamental freedoms enshrined in the Bill of Rights do not apply to the states has any claim to make for distinguished public service. No person so blindly hostile to any notion of affirmative action or active advances in civil rights to help make up for the past disgraces of this country can even conceivably be considered a public servant. No person with a murky financial jungle in his or her past has the ethical stature to be termed "distinguished." Yet Mr. Meese possesses all of these traits.

If there is a way for the University as a whole to overrule this travesty, it should be done. Since that is unlikely, Harvard students, faculty, and alumni/ae must live with the fact that their institution is honoring a man who feels that stories of hunger in America are "merely anecdotal." Tragically, the K-School's award cannot be so characterized.

G.M.B.

HARVARD LAW RECORD

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Fenno

Fenno searched the list of this year's graduating class but, of course, his name was nowhere to be found. That meant that he had to pre-register once again for classes next year. To Fenno's dismay, he discovered that he had only ten minutes to choose his classes. He found a list of the courses offered but no descriptions of them. Fenno had to figure out for himself what the classes would be like on the basis of the names alone.

Fenno liked the sound of "Seminar: Adoption, New Reproductive Technologies and the Law." Fenno loved to experiment with all sorts of new reproductive technologies. He thought that maybe the professor would explain to him how to use the strange device he recently had received in a plain brown package.

Fenno then considered "Anthropological Approaches to Law." He figured that this class involved the same techniques as all the legal research he had done: digging and picking deep down through piles of rubbish with painstaking care just to find some rotting, ancient case at the bottom of the heap.

Fenno couldn't figure out "Seminar: Civil Rights at the Crossroads." Did it deal with such difficult concepts as the freedoms of individuals to cross against the green or with the liberties of drivers to mow down the jaywalkers? Fenno liked that. Or maybe the course got into things like competition among push-cart vendors and drug dealers. Fenno envisioned writing a paper on the application of alternative dispute resolution techniques to fights between vagrants over returnable bottles and cans.

Fenno picked three courses because they were obviously easy. The first was "Federal Common Law." Fenno remembered — surprisingly — the *Erie* case from first-year civil procedure, in which the Supreme Court held that there was no federal common law. What a class, Fenno thought — it doesn't exist! The second was "Financial Policy in Developing Countries." Fenno had that one pegged: the only financial policy of developing countries is to beg for loans. Easy class! Third, Fenno picked "International Law: Human Rights." Fenno knew this too would be cake, because in the third world, there are no human rights.

Fenno definitely would take "Seminar: Pacific Community Legal Research." He loved the idea of wearing a t-shirt and shorts to class. Moreover, Fenno figured that they would spend most of the course watching surfing movies.

For a last class, Fenno toyed with the idea of taking "Sex Discrimination." After some thought, however, Fenno realized that he wouldn't make it through half a semester in that class without being murdered. Instead, Fenno found the perfect match for himself: "Seminar: Mental Retardation and the Law."

☞

TOM the DANCING BUG BY RUBEN BOLLING



Great Moments in the Law

An interview with Attorney General Edwin Meese in an October 1985 issue of the weekly news-magazine *U.S. News & World Report* included the following dialogue:

Q: You criticize the *Miranda* ruling, which gives suspects the right to have a lawyer present before police questioning. Shouldn't people, who may be innocent, have such protection?

A: Suspects who are innocent of a crime should. But the thing is, you don't have many suspects who are innocent of a crime. That's contradictory. If a person is innocent of a crime, then he is not a suspect.

U.S. News permitted Mr. Meese to examine his answers before they were published. — Ed.

Letters to the Editor of the Record

To the Editor

In a letter published in the February 21, 1986, *RECORD*, John Dyche wrote that he had expressed to Dean Vorenberg his belief that "the [American] flag should be flown on the flagpole at Harkness Commons." Why, I would like to know, would one believe that the Harvard Law School "should" fly the American flag?

Reflect for a moment on the where and why of flag-flying. In Washington, D.C., where I work, and in other American cities, American flags are so common that it is hard to remember whether a particular building flies one, or whether a flag that one has seen was on a building of a particular sort. Outside the cities, on the other hand, I think American flags are most closely associated with Federal Government property (such as Post Offices) and other public property (such as town halls, public schools, etc.), and serve to call attention to the public nature of the property. American flags are also flown by individuals who wish to identify themselves publicly with something, such as an event in American history, and by businesses endeavoring to exploit whatever marketing value flags have.

Where does the Harvard Law School fit into all of this? The flag is a symbol, and it is worthwhile to consider what would be symbolized by a flag flown by the Law School. It is particularly worthwhile to consider this when members of the community call attention to the flag-flying issue, since people rarely do this for noncontroversial reasons.

In fact, the advocacy is intriguing. I would like the flag boosters to explain why the Law School "should" fly the American flag. Personally, I think flags tend to establish associations that are too simplistic to be worthy of the Law School. I would see the flagpole removed, not adorned.

Where is a dialogue on flag-flying likely to lead? I would hope to an understanding of what values the American flag symbolizes to those who would fly it over the rest of us, and to some consideration of whether proclaiming such values is consistent with what the Law School is really out to accomplish.

Let me offer what I hope is a helpful beginning to this dialogue. The Law School exists to explain, analyze, evaluate and criticize legal institutions, principally American ones. The teaching of law is itself a contin-

uing testament to the grandeur of legal institutions, including American ones. But the law is part of a process, is itself a process, and the association of the Law School with any symbol other than a symbol of change and adaptation must harm the Law School's ability to assist in the law's evolution.

I recognize that from time to time in flag arguments, some say that the freedom to promote change is what is most wonderful about America, and that the flag symbolizes this freedom. But do they really mean it? Even if the flag symbolizes liberal values to some people, what does it symbolize to those who want to raise it above us? Perhaps I am too cynical, but if freedom to change were truly what the flag symbolized to everyone, I suspect that the aggressive flag boosters in my lifetime would have been looking for something else to hoist up the pole.

We are in the midst of a time when many of our political institutions are adrift, and old fashioned (perhaps misguided) liberalism is being buffeted simultaneously by reality and reactionaries. Reality, and only reality,

(Continued on Page 13)

Young Associates And Outsiders Should

Robert D. Shattuck, Jr., is an attorney in Birmingham, Alabama. The RECORD here merely presents his ideas, unedited, on a topic of considerable interest to law students and young lawyers.

A current concern in the legal profession is that there are too many lawyers and that the lawyer overpopulation problem will result in per capita and individual incomes not rising in a desired manner and perhaps falling.

Lawyers and law firms have reacted to the perceived problem with a broad range of responses. Examples include the retention of outside consultants to render advice to law firms about how to market their services and also increased advertising by attorneys.

To a significant degree, the lawyer community, however, is engaged in a zero sum game, and many lawyers will lose out compared to how they would fare economically if there were fewer lawyers. In this competitive situation, the more established members of the profession have advantages and are in a position to fend for themselves better than those lawyers who are not so established. Take, for example, so-called "outplacement firms." Outplacement firms have come into existence to help large firms get unneeded and unwanted associates out of the law firm. This is done for a price at upwards of \$10,000 per associate lawyer, a rather daunting purchasing power for a young associate lawyer to go up against. Two tier partnerships are another example of the power of the more established over the less established. There is no evidence or proof that the new, younger partners in the second tier are any less qualified than senior partners in the first tier, and the explanation is that the first tier members have an advantaged position allowing them to implement the two tier partnership regime for their benefit.

The use of outplacement firms, and the imposition of two tier partnership regimes, are not wrong or immoral acts by the more established lawyers. At the same time, they are not to be described as right or moral. Rather, outplacement firms and two tier partnership should be looked at for exactly what they are, i.e., stratagems and techniques which, in the overpopulated lawyer environment, certain persons have the capability and where-withall to pursue and implement for the benefit of themselves and, to the extent the game is zero sum, to the detriment of others in the profession.

"[Is] assiduous
dedication
to work alone
the only thing
that is to be
recommended
to associate
lawyers[?]"

If there are stratagems and techniques for surviving and succeeding in the present competitive situation which the established members are able to avail themselves of, what then for the less established members and in particular young associate attorneys at bigger law firms all over the country?

The traditional way for young associate lawyers to survive and succeed has been to dedicate themselves to years of good hard work, which are rewarded by partnership in the law firm. Given the glutted conditions in the industry, a legitimate question arises as to whether assiduous dedication to work alone is the only thing that is to be recommended to those who are presently associate lawyers. Many lawyers will undoubtedly be of the view

that good hard work will always find its reward no matter what. On the other hand, it is not outside the bounds of rationality to think that, in the present overcrowded situation, hardworking associates, in many cases, may not get their just rewards (i.e., a partnership position or other acceptable employment). Concerns in this regard gain justification if one thinks about the stratagems and techniques just mentioned which are availed at by the established members of the firm in furtherance of their own self interest.

Under the circumstances, at least some persons should conclude that it is legitimate for associate lawyers to consider whether there is anything else in addition to assiduous dedication to work which they should or might do in order to protect or advance their interests in the overpopulated lawyer environment.

The question then becomes what can young associate lawyers possibly avail themselves of other than individual good hard work in order to survive and succeed?

As a beginning matter, consider whether associates at a law firm could make an appeal to their firm along the following lines: The appeal would refer to historical trends in the profession over the past 20 years and particularly to the tremendous growth in the industry during the 1970s. In this period, law firms expanded dramatically all over the country, as did corporations' legal departments. The growth fueled law school admissions, and large numbers of graduates were absorbed fairly easily into the profession. They filled out the base levels of expanding law firm pyramids and then moved up as greater numbers of new lawyers replaced them at the bottom. Those who did not make partner, in the law firm they joined immediately after law school, had much opportunity and mobility to go elsewhere, such as laterally into

Challenge Partners' Privileged Position

by Robert D. Shattuck

other law firms or into flourishing corporation legal departments.

In the 1980s the growth has slowed very substantially. The pyramidal structures of large law firms are large indeed, but the expansion which is required to sustain them is petering out. Nonetheless, there continues a great outflux from law schools, and thousands of associate lawyers continue to move through the pipeline seeking partnership positions or alternative acceptable employment.

The traditional criteria for making partnership positions available in a rapidly growing law firm, if continued to be applied in the current situation, result in a significant insufficiency of new partnership positions as growth slows or stops. Moreover other comparable and acceptable employment cannot be found because of the pervasiveness of the glutted conditions throughout the industry. Therefore, taking into account the long range developments which have occurred, some changes are appropriate in order to accommodate all the various segments of the process in the new environment. Specifically and most importantly, there simply needs to be a greater sharing by law firms of partnership positions, and the income associated with partnership positions, then has been the case in the past.

At first blush, the concept of such an appeal by associate lawyers to their law firm appears ludicrous. Whichever associate lawyers made the appeal would likely be advised in due course that they did not have good long-term prospects with the firm and should seek employment elsewhere. The arguments themselves would surely fall on deaf ears.

The purpose of this article is to challenge the conclusions that any such attempted action by associate lawyers is ludicrous.

The first problem alluded to above to the effect that associate attorneys are in a much too vulnerable po-

sition to try to appeal to their law firm is soluble. The associates as a group could hire an outsider to make the arguments on their behalf, so no associate lawyer would be identified with the matter and risk being fired for his activities. It might take a while for associates at a firm to find a trustworthy and capable outsider to act on their behalf, and also the outsider would need to communicate extensively with the associates in order to develop objectives and negotiating positions which were appropriate for the particular firm. These, however, are not insurmountable difficulties.

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The critical issue is whether the outsider hired by the associate lawyers could possibly achieve anything on their behalf. On this point there is bound to be the most skepticism. Before it is concluded that absolutely nothing could or could not be achieved, the scenarios should be considered.

Suppose a law firm took a hard-line position in its dealings with the outsider and stated that it had no intention of changing its practices to accommodate associate lawyers who, after a certain time, are unneeded and unwanted in the firm which is not expanding sufficiently to justify the admission to partnership of otherwise qualified associates. If that message were conveyed by the law firm, certain ramifications and repercussions can be envisioned. For example, the

message might be relayed back to law schools where it could have a detrimental impact on the firm's recruiting program. Associate lawyers at the firm itself might take the message to heart and seek other employment sooner than otherwise and at a time when they were still valuable to the firm. Further, two or more associates might depart in an organized fashion in the face of the hard-line position taken by the firm and feel justified in going to the limits in trying to attract clients of their old law firm. Possibly, the outsider who conducted the negotiating with the firm could even be used to communicate to the clients what has happened at the old law firm so that the clients could make more informed decisions about legal representation.

In sort, it is suggested that a hard-line response by the law firm to the outsider's approach on behalf of the associates could not be completely immune to adverse consequences for the firm, and that there would be some leverage against the firm in the scenario which has been described. For this reason the outsider's approach to the law firm might not be rebuffed and negotiations would develop which could lead to the outsider accomplishing something on behalf of the associate lawyers as a group.

The suggestions made by this article are novel and untried, and obviously no predictions can be made about the degree of success which would be achieved if they were followed by associate lawyers at big law firms around the country. The important questions are whether the suggestions are worth trying and what is to be lost if attempts to implement them fail.

As to the latter, if complete confidentiality of all communications to and from individual associate lawyers is preserved by the outsider who acts on their behalf,

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Minority, Women Profs. To Have Positive Role

(Continued from Page 7)

and two other outside academics given lateral appointments this year. Bell said the faculty recommended his appointment unanimously.

Wilkins applauded Vorenberg's attempts to recruit black professors and said he wants to become "a part of that effort."

The increasing number of blacks and women on the HLS faculty should make life easier for professors who already are here, Bell and Estrich said.

Black professors are expected to represent minority views in faculty discussions and on administrative committees, Bell said. They also act as role models for black students and as "countercultural figures" for white students, he added, and the six black faculty at HLS next year will be able to share that "burden."

Bell is the first tenured black professor at HLS since the late Clyde Ferguson died in 1984. HLS had three tenured blacks on its faculty during the late 1970s.

Having more women on the faculty "gives each of use more freedom to be ourselves," said Estrich, who urged HLS administrators to hire

more women when she was a member of the Women's Law Association in the mid-1970s. In addition, she said women give the HLS faculty "talented people of diverse perspectives," something it needs if it is to remain "the best law school faculty."

While Estrich said her job has not changed much since she was promoted, both she and Minow outlined their goals for coming years as permanent members of the faculty.

"One of my major interests is to work out a combined perspective on criminal law and issues of gender discrimination and apply it to the problem of rape," Estrich said. "These two areas, in combination, have so far been unexplored."

Minow emphasized her plans to continue teaching first year civil procedure and more advanced courses. "My upper class courses," she said last month, "provide an



HLS Communications

Newly appointed assistant professor, David Wilkins, '80.

opportunity for my students to grapple specifically with the legal problems facing individuals and groups and to confront the limitations of the existing legal traditions of children, women and handicapped people."

No Bomb Found At HLS

(Continued from Page 6)

over its decision not to grant permission to Zehdi Terzi, the PLO's United Nation's representative, to travel to Cambridge to debate Der-showitz.

Later Monday afternoon, Harvard Police investigated a book bag that had been sitting in the Reading Room in the law library for several hours. After examining the bag, the Harvard Police requested the assistance of the Boston bomb squad and directed that Langdell be evac-

uated. The bomb squad subsequently determined that the book bag posed no threat and that a suspicious box found in the bag contained only file cards.

Reagor said that she was "grateful for what seemed to me the widespread sense of concern but lack of panic that was evident throughout the school." According to an HLS student who asked not to be identified, "the only people who panicked were 3Ls working on their papers who were asked to leave the library."

Letters

(Continued from Page 9)

should be our guide. When reactionaries unfurl their banners and offer to lead us into the future, I hope we are still permitted to resist being forcibly associated with symbols not of our thoughtful choosing.

Neil Kimmelfield, '79
Washington, D.C.

Correction

Because of a printing error in an article that appeared on page 17 of the RECORD (Vol. 82, No. 5), it was incorrectly stated that Dean Vorenberg's budget incorporated changes "opposed" by the Financial Aid Committee. The word should have read "proposed." The RECORD regrets the error.

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Von Bulow Answers Student Questions

(Continued from Page 2)

their theory they can only work with whatever evidence they have. Another student asked Von Bulow if his decision to speak at Harvard was an attempt to "legitimize" himself by using a respected forum. Von Bulow responded that he had decided to speak at HLS out of gratitude to Dershowitz's legal team and a fondness for the "venue of Cambridge."

Another member of the audience asked Von Bulow if he thought it tasteful for him to appear with his leather-clad mistress on the cover of *Vanity Fair* Magazine while his wife lay in a coma. Von Bulow conceded that it was not, but added that his wife would have understood his seeking emotional support during his 5-year ordeal, as would "any other decent human being."

Both Dershowitz and Von Bulow said the case would not have existed if both sides had not been able to spend substantial amounts of money. Dershowitz said justice would not have prevailed if the butler had been charged because the successful defense required



Harvard Crimson

Claus Von Bulow spoke to a full crowd in the Ames Courtroom.

"enormous investments in expert witnesses and testimony." Von Bulow recalled how he had heard a female journalist at the trial complain that the proceeding were boring. She went on to remark, he said, that she wished that she had married someone rich so she wouldn't have to sit through the trial. That is exactly why he did have to sit through it, according to Von Bulow.

Von Bulow concluded the prepared portion of his speed by reminding his listeners that the case was not melodramatic. He said that although it had "all the ingredients of *Dallas* and *Dynasty*" it was also tragic. "It was a tragedy and it satisfied all of Aristotle's definition of tragedy," he said. "Everyone is wounded, some fatally." ✽

Shattuck

(Continued from Page 11)

there should be no chance for retribution against particular associates, and the only thing to be lost is the money the associates have to pay the outsider for his services. As to what can be achieved, it is impossible to make predictions and the only way to find out is for the suggestions to be actually tried. Those who are presently associate lawyers at a law firm cannot wait indefinitely for results to come in from elsewhere and will need to decide what they think can be achieved by the suggestions without the benefit of experiences at other law firms.

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Panel Discusses Life After Law School

(Continued from Page 3)

to Robert Mathias, "every decision I make is based on what I consider to be right or wrong."

Eschewing the stereotype of HLS grads going off exclusively to large firms, Vorenberg quoted findings by the law school which revealed that many students are pursuing paths like those chosen by the Mathiases. "In fact," he said, "there is much more mobility and opportunity for individual choice than you may think."

Normal Life

For many students present at the conference, concern for a "normal" family life is a major consideration in their career choices. Steinberg, a mother of children aged 10 and 7, has worked full-time since her graduation from HLS in 1972, whereas Susan Mathias, the mother of a 1-year-old, has chosen to work part-time. Both agreed that the part-time option is much more viable in the government/public sector than in a large private firm. Several female HLS students were dismayed at the speakers' experiences, and quite a few members of the audience

wished that the speakers had addressed the issue more directly and in greater depth.

More optimistic were the words offered by the members of the second panel: "Are the Pro Bono and Public Service Options Real Ones?" Speakers in this session were Nancy Drabble of Congress Watch in Washington, D.C.; L. Scott Harschberger '68, District Attorney for Middlesex County; Jack Kerr, partner at Simpson, Thacher & Bartlett in New York; and Robert Mallett '82, associate at Kaye, Scholer, Fierman, Hays & Handler in Washington, D.C.

Harschberger, who left early in order to return to the courthouse before a major verdict came in, spoke first, blasting lawyers in private firms who perpetuate the myth that public-interest lawyers are second-rate. Such tales, he said, are "the biggest stain on American law today." He said the "single most important fact in public-interest law today is that it must be held to the same high standard of excellence as in private law practice." He said that his career path, although one in which he sacrificed future earnings, offers great personal satisfaction and excellent training for young attorneys.

Drabble echoed his thoughts in reference to her life as a lobbyist in Congress. She mentioned the extensive feedback she receives as well as the thrill of participating in the

passage of legislation she believes is important.

The possibility of *pro bono* work in private firms was explored by Kerr, who is chairman of his firm's pro bono department, and Mallett. They indicated that their firms and others believe that a significant part of a lawyer's time should be made available for such work. Kerr said that "if you want to do it, you can."

The opportunities for public service are many, as Nancy Drabble said in conclusion: "You can make a difference."

Sports Answers

1. French Lick, Indiana
2. Pennsylvania
3. DePaul
4. Greg Kelsner
5. Magic Johnson; Bird was the sixth player chosen in the 1978 draft.
6. Indiana

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