



Harvard Law Record

America's Oldest Law School Newspaper

VOL. 83, NO. 1

SEPTEMBER 19, 1986

25 CENTS

Protestors Stop Alumni Dinner

By Hillary Richard

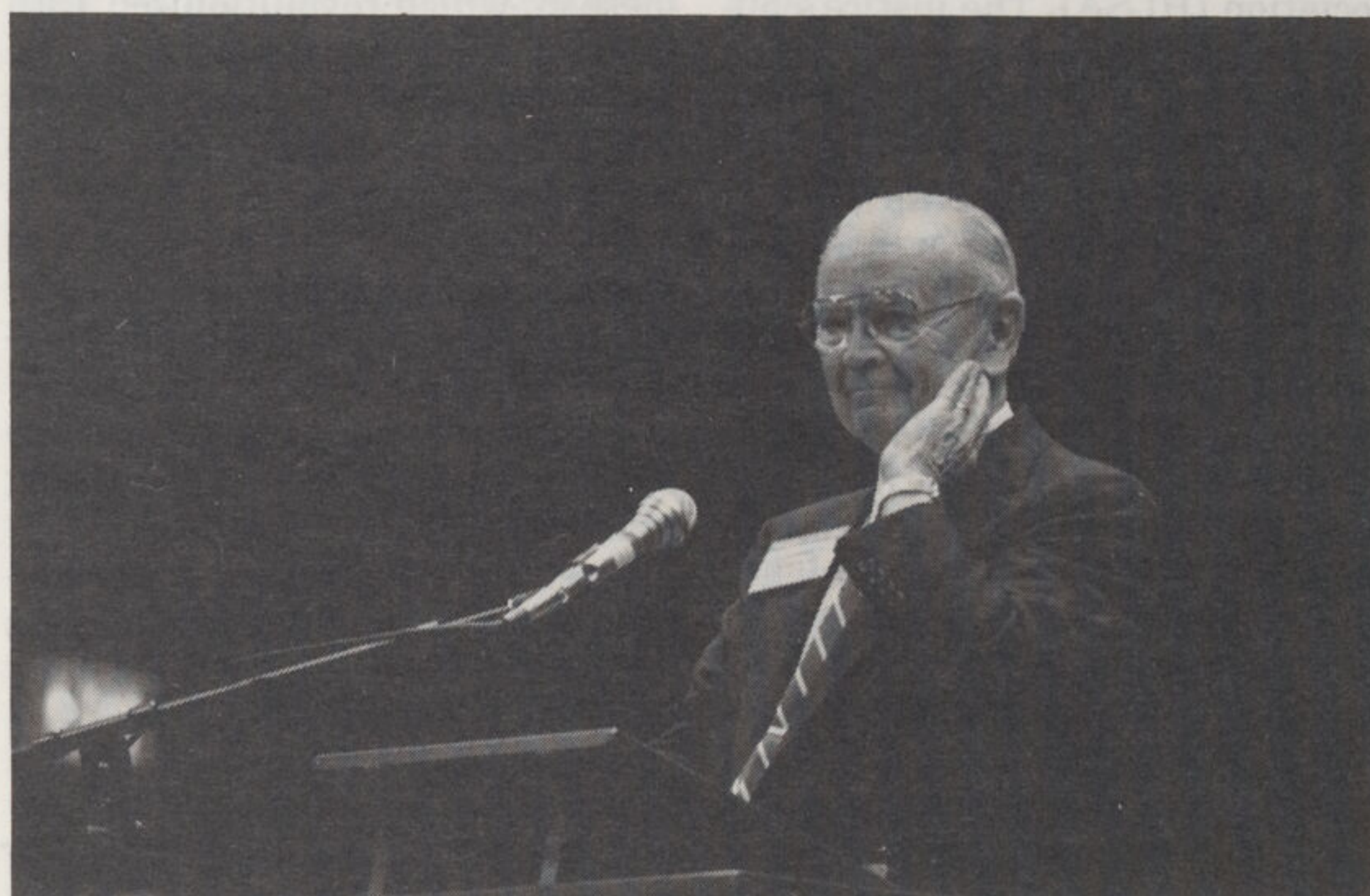
Divestment activists made their first appearance of this academic year by blockading Harvard's 350th Anniversary Dinner at Memorial Hall on Thursday, September 4. Shouting slogans such as, "If you want to digest, you have to divest," a group of approximately 70 people, composed of alumni, labor activists and students, blockaded the entrances to Memorial Hall. Their actions prevented anyone from entering the dinner, as well as preventing those already inside from leaving.

There were no incidents of violence, and although there were many police officers on the scene, no arrests were made. President Bok cancelled the dinner about an hour after the protest had begun. According to the *Crimson*, Bok acted because of his concern that "such a protest at night might be too fluid a situation to control."

The activists were protesting Harvard University's \$417 million investment in companies doing business in South Africa. Harvard has repeatedly refused to divest of all its South Africa connected stock, although it has been faced with student and alumni protest on this issue for years.

Daniel Steiner, vice president and general counsel, issued the following statement: "The University finds the use of force to impose views on others a totally unacceptable form of protest. There were many op-

Continued on Page 7



Rod Dresser

U.S. Supreme Court Justice William J. Brennan Jr.

Tribe Quits Faculty Journal

By Susan Povich

Heralded last winter as the avenue for cutting-edge legal scholarship, the proposed faculty law journal may be in trouble with the resignation of editor Laurence Tribe, '66. Tribe's departure leaves the fate of the journal in limbo, as no new editor has been chosen. Tribe proposed the journal to the faculty last December, and professors unanimously approved the proposal.

During last year's controversy, which surrounded the actual need for a faculty edited journal and the sufficiency of the *Harvard Law Review*, Tribe asserted that law schools remain alone among graduate schools in relying upon student editing of academic journals. His argument that "students are less able to know a great advance when they see it" rested on the belief that there

was a need for a substantial basis of fundamental knowledge in order to evaluate the importance of new developments.

Tribe added that "the hundreds of footnotes" accompanying student pieces "are often a facade." (RECORD Vol. 81 No. 10 p. 1).

HLS Dean James Vorenberg circulated a memo to the faculty on June 23 in which he announced Tribe's withdrawal, describing it as a "setback." Vorenberg recently stated that "at the moment [the journal] is on hold, while we explore the possibility of finding other faculty." He said that in general, the faculty remains interested in proceeding with the journal, but he would not disclose who had been approached to take over the editorship. However, he said that sev-

Continued on Page 13

Banquet Celebrates HLSA's 100th Anniversary

By Michael Reilly

Over 60 people gathered in Memorial Hall on September 5 to hear Supreme Court Justice Harry Blackmun '32 deliver the keynote address at a banquet celebrating the 100th anniversary of the founding of the Harvard Law School Association (HLSA). The justice's 50-minute address commented on the past, present, and future of the Law School, the Association, and the legal profession in general. His remarks were preceded by speeches from Fred Fishman '48, president of HLSA, John Cogan, '52, chairman of the Centennial Committee, Dean James Vorenburg, '51, and Harvard President Derek Bok '54. The evening culminated in the premiere screening of HLS' new promotional film *A Grand Experience*, which Bok jokingly labelled "Vorenberg's answer to *The Paper Chase*."

After a cocktail reception in front of Harkness Commons, the banquet guests walked through Holmes Yard to Memorial Hall. Their passage was without incident, as over 30 Cambridge police officers cordoned off access to the building. On the previous evening, students protesting Harvard's investment in companies that do business in South Africa blocked the entrance to Memorial Hall, causing Harvard officials to cancel a University banquet. The coordinator of Harvard's security called the police presence a precaution.

After dinner, Fishman began the evening's program with a salute to the Alumni Association and the HLS faculty, past and present. Former HLS Dean Erwin Griswold was honored with a standing ovation. Cogan, who, along with past HLSA president Murray Howe, organized the centennial festivities, thanked his support staff and reminded alumni of the many celebratory events at local alumni clubs around the world during the coming year.

Vorenberg thanked the alumni for their continued aid to HLS, saying that "we depend on your support, both moral and financial."

Alumni support, the Dean noted, encourages the faculty to work hard to maintain HLS' reputation.

Bok's address focused on the ferment and reported schism in the HLS faculty. He urged HLS graduates to remember that HLS has "always been a tumultuous place." He pointed out that Langdell's case method, which revolutionized 19th Century legal instruction, has since been adopted by professional schools in fields such as business, government and medicine.

Bok said that this achievement does not imply that law schools have attained the perfect teaching formula. At HLS, he stated, the faculty is making great progress in answering "three of the four remaining problems of legal education."

First, the case method of instruction, with its "monotony of endless dissection," is being supplemented with cases from actual practice, clinical programs, and computer-aided instruction.

Second, the practical skills of lawyering are being developed with

the teaching of negotiation, mediation and trial practice techniques.

Third, there is a "broad scale effort to help make the students become cultivated and responsible members of their profession," through courses in legal profession.

As to the fourth great question of legal education, Bok said he is troubled, as he was while a professor and dean at HLS, that "there are a lot of students who really do deplorably when it comes to writing examinations, no matter how much time you give them." Alumni support of the faculty in their quest to solve these and other instructional dilemmas is important, Bok stressed. He concluded that it is a "great thing" that the Law School is in a state of questioning and exploration. His final comments suggested that "if you try to impose order too quickly on experimentation, the creativity dies."

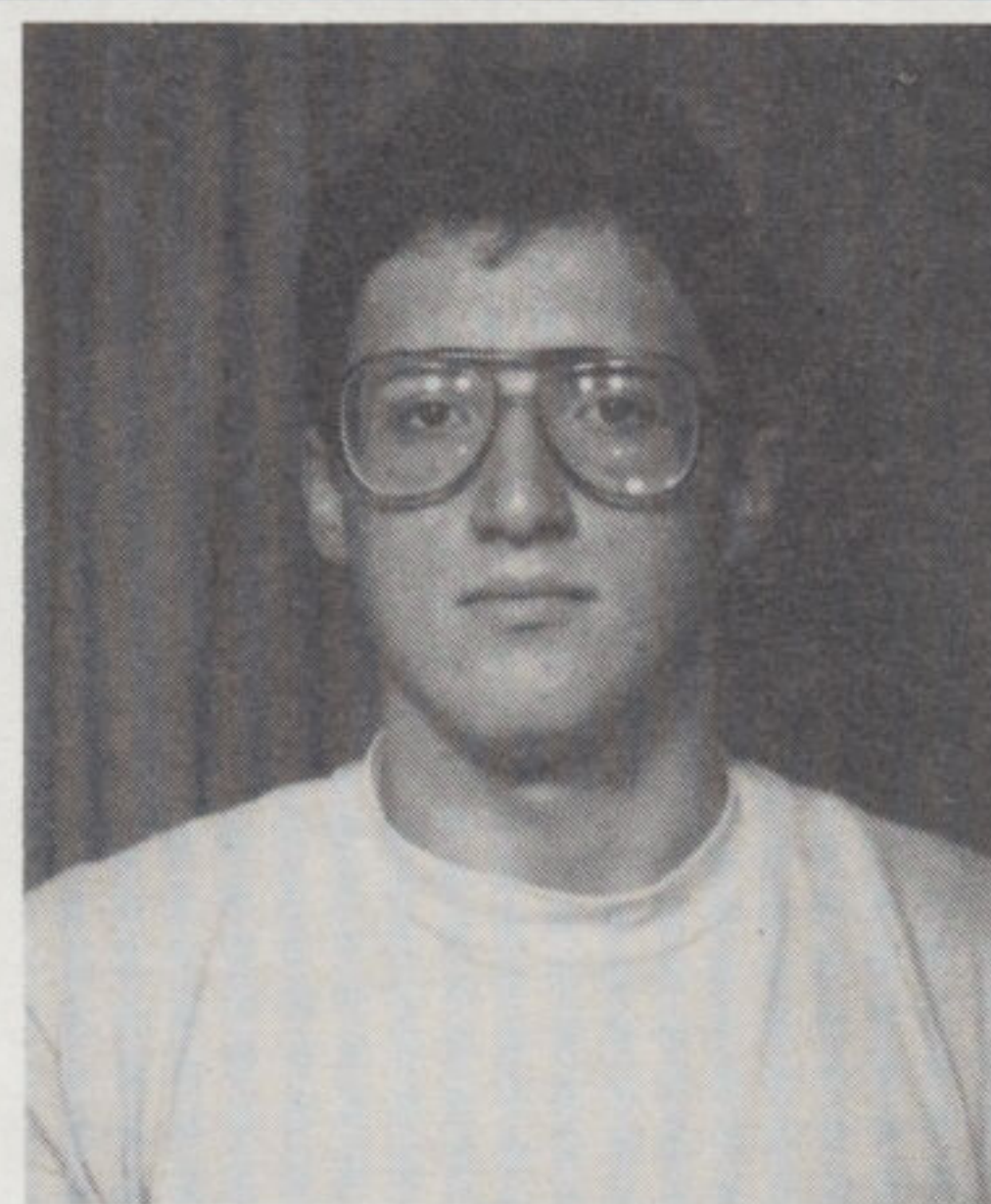
Following Bok, Justice Blackmun took the podium to deliver his long-awaited address. He began with a

Continued on Page 20

In Memoriam

Dan Justus Ford, of Lincoln, Nebraska, died on June 20, 1986. He was the beloved son of David and Ruth Ford of Lincoln and the brother of James. Ford was a member of the Class of 1988 of Harvard Law School, and the Class of 1985 of the University of Nebraska. Dan was a truly gentle and sensitive person and his death is mourned greatly by his classmates.

A memorial service was held on Friday, September 12, 2:00 p.m. at Memorial Church, Harvard University.



The Harvard Law School Association's longtime treasurer, Paul Francis Hellmuth '43 ('47), died at his home in Cambridge on August 3, the alumni organization announced this month. A managing partner in the Boston law firm of Hale & Dorr for

25 years, Hellmuth had been the alumni group's treasurer since 1949, was a popular guest at the annual HLSA *Record* Committee dinners, and recently chaired his HLS class's 40th Anniversary Gift Fund.

Festivities Abound at Harvard's 350th

By David Snouffer

Festivities marking both Harvard's 350th birthday and the 100th anniversary of the HLS alumni organization drew about 700 HLS alumni and guests to Cambridge early this month. University-wide events included addresses by Britain's Prince Charles and U.S. Secretary of State George Shultz, while at the Law School, speeches by two U.S. Supreme Court associate justices highlighted celebrations.

A series of 10 scholarly symposia held on September 4-6 that featured prominent HLS professors, other academics from around the country and several government officials formed the core of centennial activities at the Law School.

In a lecture Friday afternoon September 5, U.S. Supreme Court Associate Justice William J. Brennan Jr. '31 assailed the death penalty, and two hours later, fellow justice Harry A. Blackmun '32 joined Brennan by the World Tree outside Harkness Commons to answer questions that several of about 300 students who attended the informal talk posed on such topics as privacy rights, abortion, lawyers' ethics and the Supreme Court's future under Chief Justice-designate William H. Rehnquist.

That evening, Blackmun shared the podium at a gala banquet in Memorial Hall with Harvard President Derek C. Bok '54.

In a symposium on constitutional interpretation held in a packed Ames Courtroom September 4, U.S. Solicitor General Charles Fried, who is HLS Carter Professor of General Jurisprudence, said the federal government's "only sense of legitimacy" derives from the "original intention" of the Constitution's drafters, who left to the states any residual powers of government not granted to federal authorities in the document.

"We have a national power only in so far as it is constituted by the Constitution, which constrains the judges, as well as the judged, according to its original meaning, its

true meaning," Fried said. He suggested that federal courts may have exceeded their constitutional mandate with such devices as "crushing" punitive damage awards and specific criminal procedure requirements.

Fried's fellow panelist, Tyler Professor Laurence Tribe '66, said however, that the Constitution often provides courts with only general principles of government, rather than the specific methods they should use to apply them. For example, he said courts must determine what specific rights the Constitution guarantees Americans with its general principle of limited government.

"As lawyers, we ought to take seriously the crucial textual command of the document," Tribe said.

Later that day, at a symposium on the drafting of the Constitution, Harvard History Professor Bernard Bailyn challenged the widespread view that the Constitution essentially retreated from the ideals that had inspired American colonists to

declare their independence from Britain a decade earlier, including ideas of natural rights derived from John Locke and other philosophers.

The Constitution's anti-statist model of limited government was "truly revolutionary," agreed another panelist, Cornell University Government Professor Isaac Kramnick.

At a symposium September 6 on government regulation, former Professor Douglas Ginsburg, who is assistant U.S. attorney general in charge of the Justice Department's Antitrust Division, defended the Reagan administration's emphasis on criminally prosecuting price fixing conspiracies, rather than on reviewing corporate mergers and other civil enforcement, a trend he said began in the last years of the Carter presidency.

While government intervention in mergers, which peaked in the late 1960s and early 1970s, tends to benefit competitors, franchisers and ex-employees, Ginsburg said,

Continued on Page 19

Grossman & Co. was founded in November 1981 with the objective of achieving consistently superior investment returns with a relatively low level of risk. Here are the results through 6-30-86:

22.8% average annual compound return.

These results have been achieved through a flexible investment strategy centered on buying undervalued New York Stock Exchange listed stocks, but including the purchase of convertible bonds and the selected selling of covered call options. Dennis Grossman, the founder and president, who managed the accounts during this period, will manage your account. The minimum initial investment is \$50,000. For further information, including a free brochure, call or write:

 **Grossman & Co.**
INVESTMENT MANAGEMENT

90 Broad Street
New York, N.Y. 10004
212 - 422-3056

Member NASD and SIPC

Students Relate Problems With Financial Aid

By George M. Borkowski

The HLS Catalog states that the Financial Aid Program at the law school "is designed to ensure that every student who demonstrates need will be able to complete his or her course of study with as few financial concerns as possible." According to several students in need of financial assistance, however, the actual practice of the Financial Aid Office may not always comport with this stated objective.

One such student is Nancy O'Neal, 3L. O'Neal's parents own a house in Texas. According to O'Neal, the Financial Aid Office has calculated the equity in this house as an asset to be used if necessary, to borrow against in order to send O'Neal through school. The Texas Homestead Act, however, does not allow second mortgages on homesteads. As a result, O'Neal's parents would need to sell their home in order to translate this "asset" into supplemental income.

O'Neal further points out that because the house is included in calculating her parents' assets, their expected contribution to O'Neal's law school expenses is over \$9,000.

"This is ludicrous," O'Neal states. The figure "represents one-third of my father's annual take-home pay. He is 63 years old and has no retirement plan — he will probably retire with only his social security."

"What the law school is saying," O'Neal continues, "is that my parents would have to sell their home in order to afford the parental con-

tribution" imputed by the Financial Aid Office.

Renda Johnson, Director of Financial Aid, noted that the law school is required by the federal government to include the equity parents have in their houses in the figure used to calculate the imputed contribution of a student's parents to his or her education. While Johnson declined to comment on specific cases, she did speak generally about Financial Aid Office policies in an interview with the RECORD.

Johnson stated that while parents' equity in their house is used to determine a family's net worth, a deduction is made for "asset protection allowances based on the family and the age of the older parent." The remaining figure is treated as "discretionary net worth."

Johnson emphasized that if for some reason parents cannot borrow against the equity in their house, "we can work with reducing the equity after receiving documentation from parents about their real situation." Johnson also mentioned that the law school provides for replacement borrowing. "We will still impute a parental contribution, but students may borrow that amount back from loan sources."

O'Neal concedes that she is able to get loans to cover the amount imputed to her parents, but notes that this too is problematic. She must, for various reasons, receive her loans through the law school. This requires her parents to co-sign the loan "for money they couldn't

afford in the first place. Now, if I die, my parents are responsible for paying back the money."

O'Neal also charges that the manner in which the Financial Aid Office operates has caused her great anxiety. She notes, for example, that during her first year, the Office notified her of a drastic reduction in her award figure two days before Christmas break — just as she was about to begin studying for exams. Johnson feels, however, that "the quickest turn-around time is best. If the decision is made, for example, not to give a student a loan, you would not want that person to wait to find that information out."

Another complaint, echoed by a student who asked to remain anonymous, is that the Office changes rules and procedures in the middle of the year without notifying the students.

"They say it will come out in next year's materials, but have already begun implementing the new rule," O'Neal said.

Johnson disputes this contention. "We are very good on sending announcements to students on policy changes to students' mailboxes or to where they are living for the summer. The effort is put forth, but I can't vouch for their reading these materials."

A house is also at the center of a problem Barbara Morris, 2L, has with the Financial Aid Office. Morris, 43, charges that "the school does not recognize the status of older students." The Office informed Morris that she would not be eligible for grants or work-study unless she sold her house in California, since her equity in the home is considered a financial asset.

"However, two of my children are currently living in the house," Morris said. "I could refinance the home, but then I would have to start making payments immediately, and I have income which is pretty much zero."

David Kaplan, 3L, complains that the Financial Aid Office "treats the whole financial aid business as if it were doling out welfare. It's con-

Continued on Page 9

HARVARD LAW RECORD

**HEADQUARTERS FOR
RACQUET SPORTS**

- SQUASH
- TENNIS
- PLATFORM TENNIS
- RACQUETBALL



Tennis and Squash shop

67 Mt. Auburn St.
Harvard Square Cambridge
864-8800

EST. 1924

Largest selection of squash apparel and rackets in this area.

**Professional Dry Cleaning
and Shirt Laundry**
at

Rite-Way
DRY CLEANERS, INC.

547-8008
4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

Ad Board Active in Disciplining Students

By David Snouffer

The HLS Administrative Board announced early this month that one student was expelled and a second told he may not return, following disciplinary proceedings the committee of law students, faculty, and administrators conducted last spring in what the group's head called a "busy summer."

The HLS faculty voted last spring to expel a 3L woman who was about to receive her J.D. degree in June. Professor Frank Sander '52, who chairs the board, explained that she was expelled because she falsified her college transcript and two letters of recommendation. The stu-

dent actually had never finished college.

"Very clearly, that student ought never to have been here [at HLS]," Sander said this week. The student received the most severe of the range of sanctions available to the board, which include a confidential warning, a reprimand, and suspension.

A second student, a 2L who took last year off from study at HLS, withdrew from the school last summer after the Administrative Board charged him with lying to two law firms about his employment plans for summer 1985 and plagiarizing a law review article for use as a writing sample, Sander said.

In response to the student's withdrawal, the board told him he would be ineligible to complete his degree unless he returned to Cambridge "now" for a disciplinary hearing, Sander said.

Sander said the second case especially concerned the board because some students have told him that while the allegations against the withdrawing student are exceptionally serious, "various kinds of irregularities are going on in the placement process all the time."

The Administrative Board began investigating the case after two firms the student worked for last year complained to the HLS Placement Office. The student allegedly told each firm he would work exclusively for it in 1985. He then split the season between the two, Sander said. The board also charged the student with submitting a sample memorandum to one of the firms that he had copied "substantially verbatim" from a law journal article without crediting the journal.

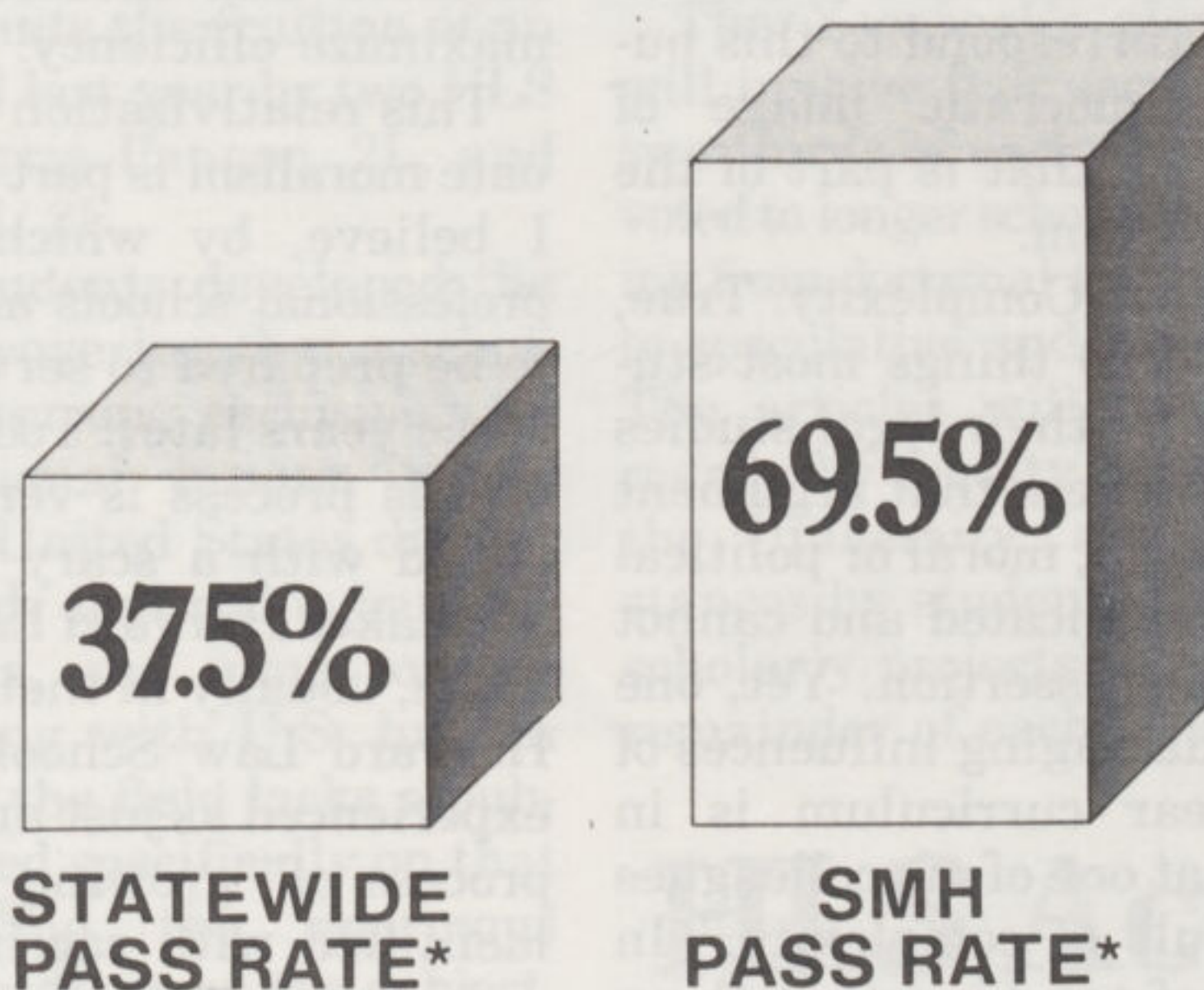
Other cases the board faced last summer included a second accusation of plagiarism of which a student was eventually cleared and charges that an entering 1L had submitted two dormitory applications, Sander said.

The board also has been looking into the extent of involvement by law students in a demonstration by over 50 persons that prompted Harvard officials to cancel a banquet that was to be held on September 4 as part of the University's 350th anniversary festivities. The protesters said they opposed Harvard's investment in firms that do business in South Africa.

Sander said that while some law students may have joined in the protest, the board has no evidence that any of them blocked anyone from attending the banquet. While the group would consider such a charge "very serious," he said, it does not intend to discipline students who merely attended the demonstration peacefully.

WE BEAT THE CROWD

SMH is proud to announce that a higher percentage of its students passed the New York bar exam in February 1986.



For more information about SMH's New York Program, please contact your SMH Campus representative or call:

(800) 343-9188
 (800) 453-2266 (within MA)
 (617) 666-8700

SMH
 BAR REVIEW

*No discriminating data, such as class attendance, have been imposed to enhance statistical performance.

Resist Cult of Complexity, Paralyzing Skepticism

By Morton Horwitz

Morton Horwitz is the Charles Warren Professor of American Legal History at HLS

I am grateful to the HARVARD LAW SCHOOL RECORD for asking me to write this "unofficial" welcome to the Harvard Law School Class of 1989.

You are arriving at the Harvard Law School at an exciting and fateful period in its history.

First, the good news. Never in the history of this school could you have encountered a more intellectually productive, stimulating, creative and diverse faculty than at this very moment. The younger faculty, in particular, is, in my opinion, by far the most brilliant of any law school in the country.

But the bad news is that all of this is threatened. Twice in the past two years the faculty has refused to promote assistant professors associated with the Critical Legal Studies Movement. Last year's tenure denial (the other person was postponed) was the first such tenure denial at the Harvard Law School in 17 years. I fear that a purge has begun.

You are about to undergo a challenge to your identity and integrity in ways that few of you are really prepared for.

The nub of the problem is that even in the conservative 1980s the majority of entering Harvard Law students arrive wanting to get more out of professional life than simply making large amounts of money. However, three years later, in exchange for compromising their political and moral ideals, the vast majority leave here having managed to persuade themselves that good sense requires enlistment in the high-paying ranks of corporate America.

That conversion process is painful and exacts an awful price. It makes people old and gray before their time. Personal opportunism and political cynicism come to serve as way stations on the road to moral

indifference.

Much of the first year curriculum aids and abets this conversion process. There are several basic ploys.

1. Law and Justice — Throughout most of human history, law and justice have been inextricably linked. By contrast, one of the most important hidden messages in the modern law school curriculum is contained in the varying contrasts between "tough-minded" and "tender-minded," "rational" versus "emotional" or "law" versus "justice." There are various ways through which you will learn that "hot" arguments are weak, "cool" arguments are strong. To become a real professional, you are often taught, you must be cool, unemotional, and not confuse "strictly legal" considerations with those of justice and morality. Little by little, many HLS students refashion their identities to correspond to this bureaucratic-technocratic image of professionalism that is part of the hidden curriculum.

2. The Cult of Complexity. True, one of the GOOD things most students get out of their legal studies is a real awareness that argument — whether legal, moral or political — is very complicated and cannot rest on simple assertion. Yet, one of the most damaging influences of the first year curriculum is in teaching what one of my colleagues calls the "cult of complexity." In the process of teaching that there are usually some good arguments on both sides of most difficult questions, law schools simultaneously tend to encourage a kind of paralyzing skepticism. The absence of "killer" argument that settles a question — rare in most other realms of life — is often taken to mean that intelligent moral outrage is impossible because life is just too complicated.

Another variation on this corrosive skepticism is the famous "slippery slope" that first year professors will torment you with. Most



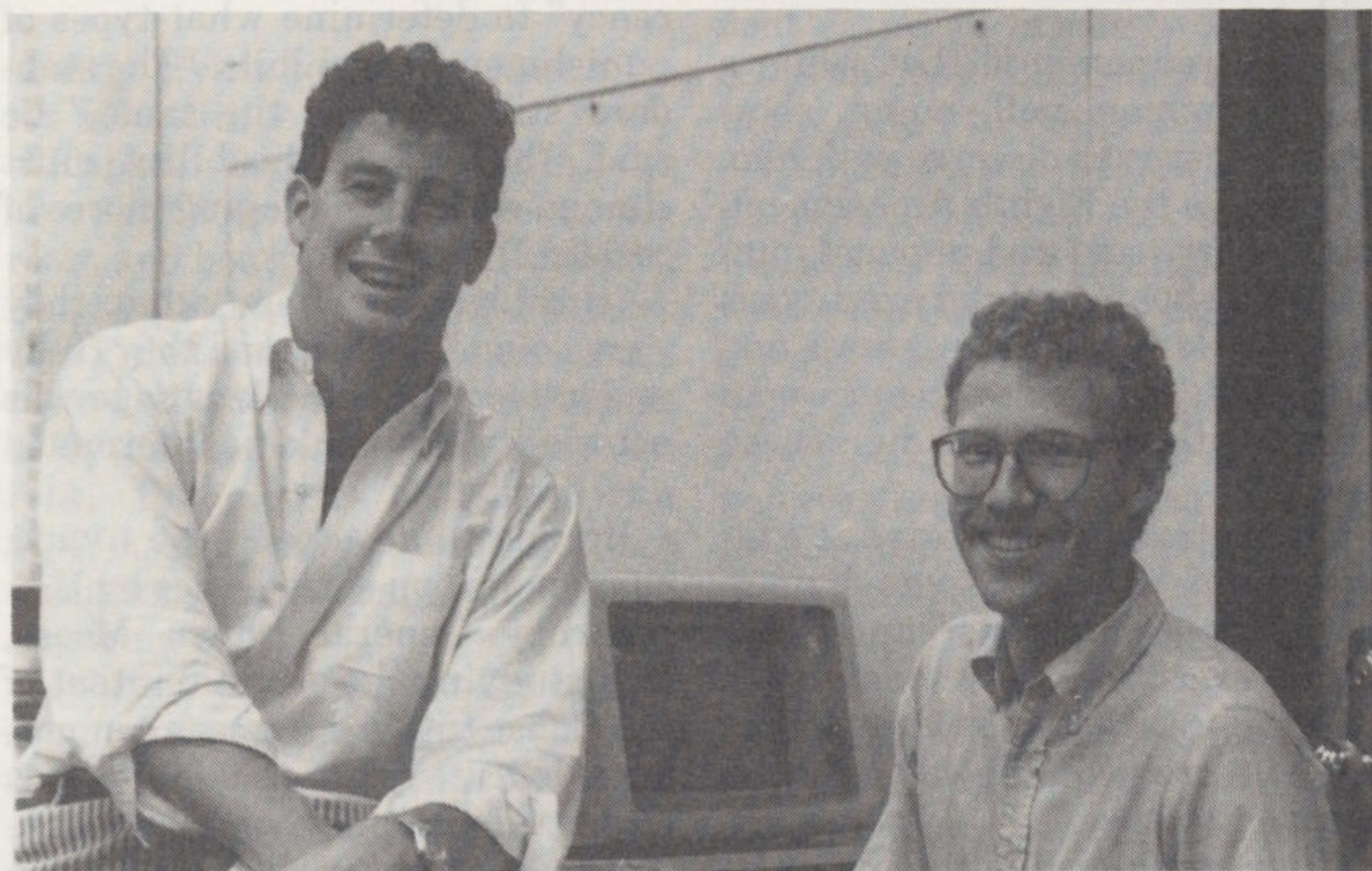
entering law students look for moral or legal certainty in clear, formal, bright-line, on-off distinctions. They are quickly disabused of that idea, as their professors skillfully turn black and white into shades of gray or as students are taught about "balancing tests" and trade-offs. One soon fears that too many students are all too willing to "trade off" their mothers and fathers in order to maximize efficiency.

This relativization of undergraduate moralism is part of the process, I believe, by which students in professional schools are softened up to be prepared to serve any master three years later. Today, the result of this process is very much associated with a scary stoicism that overtakes Harvard Law School students, usually in their second year. Harvard Law School comes to be experienced as just another painful process of "growing up" which is identified with sacrificing dreams and ideas, becoming more compliant to authority and more "practical" about life. Just at the moment that professionalism holds out the promise of adult status as well as competence and mastery, the professional ideal that is offered is one that is emptied of those things of the spirit and that food for the soul that make life — even professional life — really worth living.

Unless you remain self-conscious and defend your own authentic sense of self, it can be a very difficult year.



HLS Human Rights Journal To Appear



Hillary Richards

Bill O'Farrell and Morris Panner, 2Ls, are the founders of the Human Rights Yearbook to be published next spring.

By Eric Sullivan

The first issue of the *Harvard Human Rights Yearbook* will appear next spring. It's upcoming publication represents the fruition of an idea conceived last year by two HLS students, Morris Panner, 2L, and Bill O'Farrell, 2L.

The two students developed the idea after discovering that a scholarly journal focusing exclusively on the international human rights policy of the United States did not exist. Although civil rights journals are numerous, and some contain articles dealing with U.S. human rights issues, the field lacks a publication focused specifically on that subject. Noting the enormous amount of literature on the subject, the two began to create a forum for this scholarship.

O'Farrell and Panner were encouraged by the enormous support they received for the project. A petition expressing interest in the *Yearbook* was signed last year by over 400 first-year students. In addition, numerous students volunteered to conduct research in order to determine the need for and feasibility of a *Human Rights Yearbook*. The Law School Council wrote a letter of endorsement for the project and the HLS Human Rights

Program, headed by HLS professor Henry Steiner, played an integral part in the development of the *Yearbook*.

Issue Format

The *Yearbook's* planned format will involve four sections. Roughly two-thirds of each issue will be devoted to longer scholarly articles ranging from doctrinal and policy analysis to speculative and theoretical work. The articles will be written primarily by faculty from throughout the University, and in some instances by students doing in-depth scholarly projects in the field. The remainder of each issue will be di-

vided into three student sections. Students will write short pieces analyzing documents addressing U.S. human rights policy and current development in the human rights field. Books and articles will also be reviewed by students.

Steiner believes the publication will be one of high quality which "draws on really diverse parts of the Harvard community." The project, he said, will be a "truly joint venture between faculty and students." Students involved in writing for the *Human Rights Yearbook* will work closely with faculty members. In addition, an administrative board comprised of six HLS professors will participate in the setting of editorial policy, selection of articles, and review of student contributions.

"Non-Political" Journal

The *Yearbook* will not have a particular political leaning. It will, according to Panner, be a "non-political journal looking for all perspectives on human rights issues." A problem, according to O'Farrell, is that people are sometimes "unable to distinguish between truly scholarly pieces and politically biased publicist literature." The *Yearbook* intends to steer clear of this problem by avoiding political bias and concentrating on producing a publication with what Panner and O'Farrell called a "hard scholarly edge."

☛

HLS Activity In Blockade

Continued from Page 1

portunities, including the previous day's rally on Cambridge Common and leafletting in Harvard Square to express dissent peacefully."

The *Crimson* stated that while the exact cost of the dinner had not been determined, one official had placed the loss at about \$20,000. The food was donated to Shelter, Inc., an organization providing shelter and food for the homeless.

Although there was speculation among the students at the law

school that the Ad Board was going to take action against some HLS students for their alleged participation in the blockade, no such charges seem to be forthcoming. Professor Frank Sander, Chairman of the Ad Board, explained that the Ad Board would be very concerned if it discovered that students from HLS had actively prevented people from entering or leaving Memorial Hall, but would not act against students merely holding protest signs, or chanting on the sidelines.

☛

Brennan Predicts Demise of the Death Penalty

By David Snouffer

Over 1,000 persons turned out Sept. 5 to hear U.S. Supreme Court Associate Justice William J. Brennan Jr. '31 predict that the Court will eventually strike down the death penalty.

"That day will be a great day for our country, for it will be a great day for our Constitution," said Brennan, the high court's senior member. Brennan delivered the 26th Oliver Wendell Holmes Lecture to a crowd of Harvard alumni, students, and faculty that packed Memorial Hall's Sanders Theater as part of Harvard's 350th anniversary celebration.

The Bill of Rights charges courts with policing Congress and other legislative bodies, Brennan said. "We do not permit legislatures definitively to define for us the scope

of permissible punishment," he added.

And Brennan said that while a public opinion poll might show many Americans disagree with him, he believes the Eighth Amendment, which bars cruel and unusual punishment, should prohibit executions. The amendment requires state and federal authorities to treat human beings with appropriate dignity, he said.

By contrast, he asserted, torturous punishments "treat human beings as non-humans," and methods of execution used today, such as lethal injection and electrocution, are no more acceptable than other forms of torture.

"How would frying in a chair be distinguished from burning at the stake?" he asked.

Brennan said the amendment's authors intended the government

to use "evolving standards of decency" to determine what types of punishment it prohibits. "The standard still remains the same," he said, "but its applicability must change with the changing mores of society."

"Our framers knew what they were doing," he said, and they "fully understood that this language was not specific and could be interpreted any number of ways."

Brennan attacked the view, championed on some issues by U.S. Attorney General Edwin Meese, that studying the original intent of the Constitution's framers can produce definite answers to numerous constitutional questions. "We cannot say with any certitude what the framers thought were cruel and unusual punishments," he said.

Continued on Page 13

JOSEPHSON * KLUWER'S

1985

MASSACHUSETTS

Pass Rate is 91%

To Find Out Why, contact your

Harvard University Representative

Areva Bell
Romaney Berson
Steven Cushman
Daniel Hefferman

Patrick Horvath
Clara (Zazi) Pope
Sharon Vinick

Financial Aid Office's Policies Criticized

Continued from Page 4

stantly trying to do a minimum — it's an attitude problem."

Kaplan takes issue with the amount Financial Aid allocates for room and board. Living off campus, he pays \$410 per month for rent. The Financial Aid Office estimates room and board for a single student as \$5,360. Subtracting nine months rent, this leaves Kaplan with \$1,670, an amount he states is "not enough to buy books, eat, and have any kind of life."

Johnson concedes that the budget some students are asked to live on may not always be realistic, "based on the area we are living in." Johnson noted that the estimated cost of living for the area is based on figures taken from the Bureau of Labor Statistics.

"For students living in the dorms, [the allocation for room and board] is more than enough. However, for older married students living off-campus, it is a budget which requires some creative juggling."

Nevertheless, Johnson seems to feel that the budget allowance seems to work for the majority of students. "Or, they just don't complain," she added.

Officials in the Financial Aid Office suggested that Kaplan sell off some of his belongings and consider taking a part-time job to help meet his living expenses. But Kaplan

notes that after the first \$200 a student earns, he or she is docked 75 cents on each dollar of grants originally given to the student.

Kaplan earned \$1,000 last year in order to visit his sick mother in Florida. "I asked [Financial Aid] what effect this would have on my award," Kaplan stated. "They said none. But then, they cancelled a \$600 loan I was due and said I would be receiving no more grant money for the year." Kaplan said that he has requested an accounting of what happened, "but they won't give me one."

Johnson takes issue with charges that it is difficult to get an accounting from her office. "We will sit down and go over the entire calculation. In certain cases we cannot discuss parental information because parents have asked us not to do so, but even then, we will explain the way in which we use this information."

Kaplan noted that when he graduates, he will be "leaving this institution with \$50,000 in debt, requiring payments of \$600 a month for ten years. This will have a magnificent influence on the kind of work I can do once I get out of school." Kaplan, who has a strong attraction to public interest law, is unsure whether the amount of his debt will prevent him from practicing in that area.

Johnson states that the size of debt with which many students graduate HLS "is a daily concern to me, the institution and the Financial Aid Committee." She notes, however, that there are only limited resources for grant aid available.

Paul Bamberger, 3L, who is married, has a different problem with law school financial aid, but one also related to a desire to practice law in the public interest.

Bamberger notes that HLS offers a Low Income Protection Plan (LIPP) in which "the school subsidizes loan repayments for people who do public interest law after graduation and who earn less than \$25,799." However, the Financial Aid Office has calculated Bamberger's cutoff point as based on his

yearly salary in addition to that of his wife.

"My wife has also been to grad school," Bamberger notes, "and has borrowed the same amount of money as I have — she has the same debt burden. I consider myself to be in the exact same situation as a single student — I have the exact same needs."

Bamberger feels the law school's treatment of him "in effect excludes me from the LIPP plan. Otherwise, I have two choices. I must tell my spouse not to work — it will be better financially — or we must get a divorce. It's better if you live together. I don't think the law school wants to give such incentive to students."

According to Johnson, however, while a spouse's income is included to calculate the cut-off point for LIPP, certain deductions are first made. "There is a \$7,500 spousal deduction, a deduction for the amount of loans a spouse is paying back over the fiscal year, as well as a \$3,500 deduction for each dependent."

Bamberger's petition to the Financial Aid Committee is currently pending.

Ultimately, Johnson notes that "dissatisfaction with our policies without coming in and voicing these concerns as to what can be done will not change the problem." Three of the students interviewed for this article, however, bluntly stated that voicing their concerns to the Financial Aid Office and Committee has gained them nothing but frustration and bitterness.

☛

Dershowitz Weds

Professor Alan M. Dershowitz was recently married in Charleston, South Carolina to Carolyn Cohen, who just finished her Ph.D. in neurophysiology at Boston University. Dershowitz met Cohen, whom he described as "beautiful and smart," when he spoke at a Jewish singles breakfast in Newton, Massachusetts.

☛

JAMES F. BRINE INC.
29 BRATTLE ST.
HARVARD SQ. 876-4218

SPORTS EQUIPMENT AND APPAREL
FOR THE ENTIRE FAMILY

SOCCER SHOES	JOGGING WARM-UPS	SQUASH RACKETS
BALLS	SHOES	SHOES

ATHLETIC SHOES BY:
ADIDAS, TIGER, ETONIC, NIKE,
BROOKS, LE COQ SPORTIF.

WARM CLOTHES FOR FALL &
WINTER
DOWN PARKAS & VESTS, WOOL
SHIRTS, RUGBY SHIRTS, WOOL
SWEATERS.

"BETTER BUYS AT BRINE'S"

More Unsolicited Advice

Each year, this newspaper seems to begin the initial issue of the academic calendar in the same, time-worn fashion — offering all of the 1Ls trite, unsolicited (and often pretentious) advice and encouragement. "You are all the best and the brightest. You have been accepted by the most eminent law school on this and several other continents. Don't get too uptight during your first year; you'll all make it through. Be happy and relax. Try not to be overcome with angst."

Not surprisingly, this is all so much nonsense. You should, in actuality, be very uptight. You should be nervous, anxious, and never, ever, relax. Why? Because if you are not careful, Harvard Law School will stab you in the back.

This plunging knife may well not be maliciously sent. Rather, it may be powered by the forces of indifference and bureaucracy; it may be aimed through the sights of insensitivity and ignorance of overall impact. That, however, is small comfort, as the results of its devastating flight are often the same.

Welcome to a University which persecutes those opposing the moral

abomination that is apartheid with a vigor often seen only in pursuit of war criminals. Welcome to an institution that suddenly changes its policy of priority in course registration and allows one class to bear the full brunt of this "improvement." Salutations from a school that has substantially raised tuition for two consecutive years, yet still allows certain students to fall through the cracks in the Financial Aid Office. Felicitations from a faculty almost uniformly far too occupied with its own matters to be of help to students after regular classroom hours. Not quite the picture painted in the application brochure and catalog, is it?

So be wary. Do not let this place try to put one over on you. Stand up and fight when the school tries to jerk you around. Each of you has an obligation to make HLS a more humane place for the rest. And if you abandon this duty, if you become complacent puppies, happily biding your time until you can graduate into power, prestige, and the almighty dollar, then to hell with you all.

—G.M.B.

—R.J.P

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617) 495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass.

Copyright 1986 by the Harvard Law School Record Corporation and by the contributors.

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

Each alumnus/a receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$5.80 of H.L.S.A. annual dues are used to purchase the Record subscription he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began in April 1986 and ends in March 1987 will purchase a subscription that begins in September 1986 and expires in May 1987, and so on in following years.

HARVARD LAW RECORD

EDITORS IN CHIEF George M. Borkowski, Risé J. Peters
MANAGING EDITOR Tegan M. Flynn
NEWS EDITOR Hillary Richard
FEATURE EDITOR David Snouffer
BUSINESS MANAGER Vincent Chang
STAFF: Marla Becker, Ken Fisher, Fenno, James F. Hoffman, Julia A. Loewy, Susan Povich, Mike Reilly, Hillary Richard, Walter Sargent, Mike Sturm, Eric Sullivan, Paula Tuffin, Jonathan B. Wiener
PHOTO EDITOR Sal Casente
PHOTO STAFF: Sal Casente, Joseph Gourneau, Adele Hendrix, Hillary Richard
COMMENTARY EDITOR Eric Sullivan

Fenno

Fenno was depressed. Here it was, a week before classes began, and he was already in Cambridge. Now, normally Fenno didn't make it into Massachusetts before mid-October, choosing instead to revisit every known American and Canadian brewery, culminating in a two-week pilgrimage to the great shrine of Meister Brau.

This year, however, Fenno had run out of money. He had lined up a great summer with the established New York law firm of Nasty, Brutish and Short, but had been fired after only one month because of an incident involving the senior partner's twin daughters and seven crazed performance artists in SOHO.

Having already spent most of his imputed summer savings on beer, taco sauce, and Ding Dongs, Fenno was broke. He managed to hitchhike back to HLS where he planned to work on his tan during the tail end of Boston's glorious summer weather.

As he got out in the Square, Fenno sensed that something was amiss. Not only was he not instantly badgered for money by representatives of every vegetarian cult known to the world, but Fenno noticed that most of the people around him were either wearing suits or nice dresses and had an average age of 67. Scratching his head, Fenno turned toward the Yard and saw massive banners proclaiming the 350th anniversary of Harvard.

"Three hundred and fifty years," Fenno said to himself, amazed. "Why, that's even longer than the time I've been a student in law school!"

Fenno decided to check out the festivities. He had little else to do, and besides, maybe they were giving away free beer. As he made his way toward one of the gates leading into the Yard, he was stopped by a campus security guard.

"Where d'ya think you're going?"

"I'm going to check out the celebration my school is having," Fenno replied.

"No way," the guard responded. "The celebration is not for students. It's only for people like alumni who can give the school large amounts of money. Besides," the guard snorted, "you're probably one of those pro-divestment pinko-radicals!" Stunned, Fenno turned slowly away and began to walk toward the Charles. "This is just like working in New York. I wonder if there are any performance artists around."



15 Years Ago At HLS

Rats Routed from Wyeth Rooms

By Carol Plumb

Law students housed in Wyeth Hall enjoy such comforts of gracious living as: elevator service to all floors, an intercom system, a laundry room, a kitchen on each floor, bars on the first floor, a TV lounge furnished with TV set, ping-pong and chess and checker tables. There is also an effective security system consisting of an intercom system of entry, bars on all first floor windows and protected fire escapes.

An now, even the clinical problem in rodentology which persisted over a period of several weeks in a portion of Wyeth Hall this summer seems to have been solved. No live rats have been sighted in the second floor kitchen for the past two weeks.

...

The easement which the rats had acquired in this Law School dormitory was extinguished easily. The first time Charles B. Temkin, 3L,

became convinced by overwhelming circumstantial evidence that four-footed trespassers had invaded the 2nd floor community kitchen, he followed the law and order approach. He notified the Law School administration. While daubs of poison were placed about the kitchen in response to his plea, the suspicious circumstances continued unabated.

Law Review Editor Converts to Activism

When Temkin entered his cuisine one evening and saw not one, but two large, healthy specimens of the genus *Rattus* scuttling for cover, he decided that the time for radical student activism had arrived.

Intent on self-help, Temkin, a normally conformist member of the Gannett House Establishment, strode purposefully into a nearby hardware store and invested some of his own funds in

a rat trap. The next morning white militant Temkin, carrying a plain brown paper bag containing real evidence in the form of a rodent *corpus delicti*, staged a one-man civil rights march on Dean Bruce's office.

Less than two hours after Temkin had deposited Exhibit A on Dean Bruce's desk, a task force of maintenance men bearing rat traps descended on Wyeth and proceeded with an entrapment process.

"I can't say what the cause and effect relationship of my demonstration was because the administration said it had already ordered the rat traps; but as far as the time element was concerned, it certainly coincided," says Temkin. "We all learned what it was like to live in a semislum," he summed up. Mr. Temkin disclaimed reports that he is about to give up his membership on the *Law Review* and run for the presidency of the Radical Law Students Association.

Letters to the Editor of the Record

Challenging Faculty Premises

To the Editor:

Fifty years from now what appear to be the two great questions of today's Harvard Law School will, I predict, turn out to have been only one. The matter of Critical Legal Studies, which now gets tremendous press coverage, will be seen to have been a short breath of turbulent air. However, the matter of a rival law journal, edited by faculty instead of students, may come to be seen as an earthquake which weakened the School and the legal profession without receiving sufficient prior reflection.

The charm of the *Review* is that the finest scholarly publication on the law is edited by students who have a general education and only one or two years of professional schooling. That has not been invariably successful, as critics delight in pointing out. But original scholars in other fields are occasionally rejected by their establishments. The philosopher Ludwig Wittgenstein spent a lifetime publishing pioneering works in a vain attempt to earn a doctor's degree from Oxford. Socrates himself was put to death

by the citizens of Athens; in their narrow view, he corrupted the youth. The *Review* has going for it the Nineteenth Century belief that the child is father to the man; that subtle judgment is suspect if it requires long experience; that the bravest soldiers in the battle for truth and justice are not those with the most voluminous knowledge.

The *Review* may need changes in format to be as useful to today's lawyers and judges as in the past; even so, one fears that the School may currently be experiencing the part of human nature represented in Greek mythology by Chronos, the most senior of the gods, the god of time, who consumes his own children. The Administration, though apparently committed to opening up another channel for its legal scholars, should take balancing measures to prevent damage to the resource that we already have.

Dyer S. Wadsworth, '62

New York, NY

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which have been covered in the RECORD. Short letters are more likely to be printed.

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

Multistate Bar Exam

CONFIDENCE

The key to confidence on the bar exam is
PREPARATION.

- Preparation through the most clear and concise outlines available in bar review.
- Preparation through instruction with the nation's leading bar review lecturers.
- Preparation through selected essay questions graded and critiqued.
- Preparation through hundreds of Multistate questions.
- Preparation through a complete simulated bar exam.

CONFIDENCE IS PREPARATION and last year we prepared more students for the Multistate bar exam than did any other bar review in the United States!

barbri

415 Seventh Avenue, Suite 62
New York, New York 10001
201/623-3363

160 Commonwealth Avenue
Boston, Massachusetts 02116
617/437-1171

Student Speculation On Tribe's Resignation

Continued from Page 1

eral faculty members have been informally approached.

Student speculation surrounding Tribe's departure and the future of the journal, according to Adam Cohen, *Harvard Law Review* president, is due to the failure of the faculty to keep students informed. "The faculty sprung the journal on students during winter exams and they still haven't communicated to students how it will affect our journals," Cohen said. Although student journal editors sent a letter to Vorenberg last year asking that they be kept informed about the progress of the faculty

journal, no such information has been forwarded and no lines of communication have been established.

Tribe explained that he resigned because he felt he did not have time to do the new journal justice. He is currently on research sabbatical, is involved in the Pennzoil litigation, and is working on the second edition of his treatise on constitutional law. In addition, Tribe emphasized that he would like to be available to attend some of the numerous speaking and conference invitations which he receives and he has had to turn down in the past.

Student speculation on the explanation for Tribe's resignation

ranges from those who believe that he wants to develop a higher public profile which would necessitate an active lecture and dinner circuit, to students who believe that he wishes to concentrate on the lucrative Pennzoil litigation, to those who believe that Tribe realized that believe that Tribe realized that running a journal can create enemies.

Cohen suggested that "perhaps one reason why Tribe resigned is that he realizes it may be easier to criticize a publication [the *Law Review*] than it is to run one that makes all people happy."

Justice Brennan

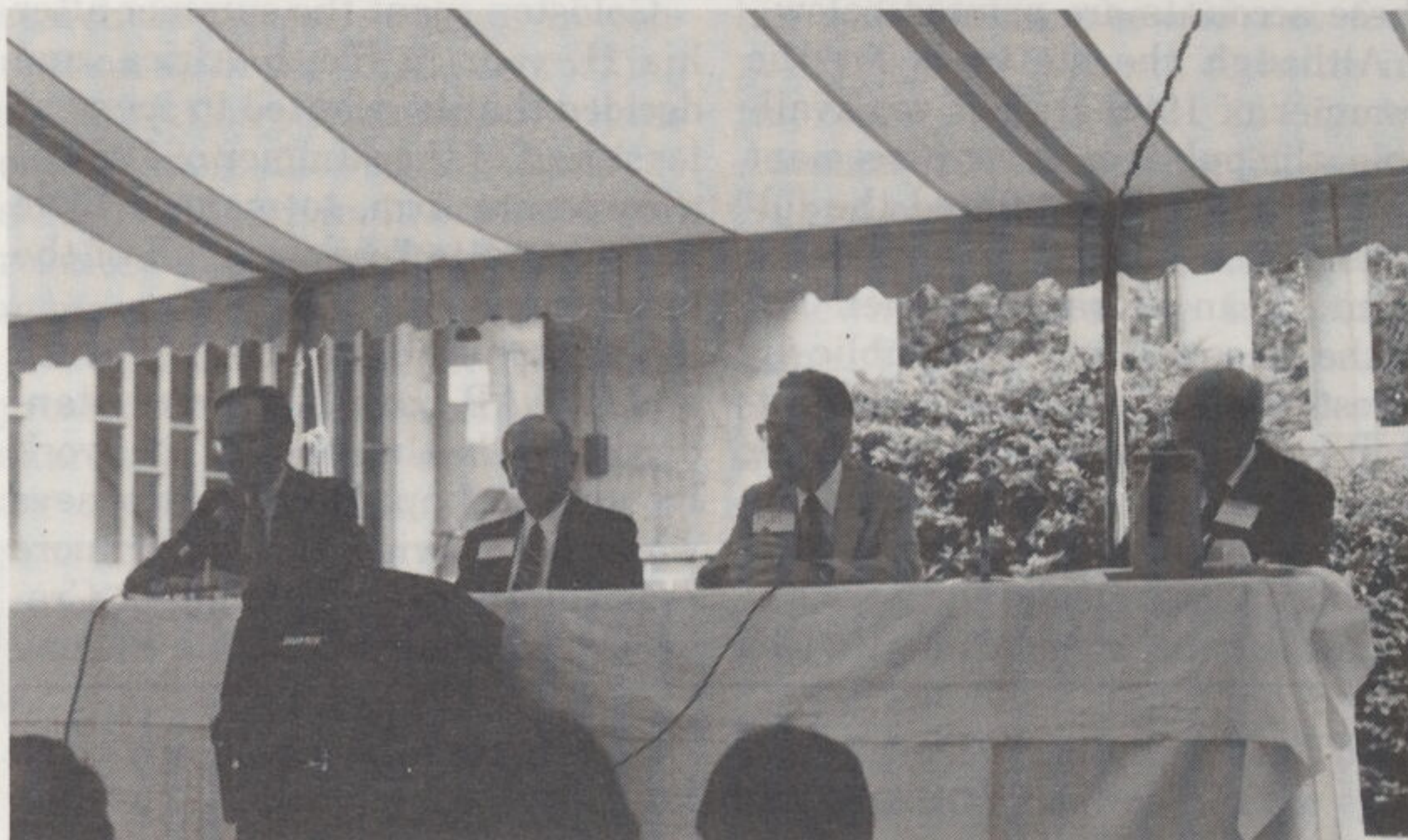
Continued from Page 8

Some scholars have argued that since capital punishment was practiced in 1791, the Constitution's framers must not have meant to prohibit it. But Brennan said if the document's authors wanted to bar only a "specific set of brutal practices," then they would have named them.

On the contrary, he said, the Eighth Amendment's legislative history shows it was "understood potentially to bar, not to uphold," executions.

Brennan also challenged the argument that since the Fifth Amendment mentions capital crimes, the Constitution's framers must have envisioned executions. This reasoning, while "superficially attractive," is "based on little more than assumption and negative implication," he said.

The audience, which gave Brennan a standing ovation when he concluded, also interrupted him with applause when he suggested that some observers who have said they base their conclusions on an obedient attempt to follow the original intent of the Constitution's authors have actually shown "nothing more than arrogance cloaked as humility."



Sal Casente

As part of Harvard's 350th Celebration, Justices Brennan and Blackmun (center) met with HLS students.

MICROCOMPUTER INFORMATION FAIR

WED., OCTOBER 1

Ropes-Gray Room Pound Hall

1:00 PM TO 6:30 PM

Software and Hardware Demo's
Computers, Peripherals & Printers

Door Prizes

HLS Student Find Alternative

By Hillary Richard

While most HLS students take the traditional summer route of working for a private law firm, some students opt for a different summer experience and choose to work in the field of public interest law. Public interest law encompasses work in the field of government agencies, legal aid bureaus, organized labor, human rights, lobbying agencies, and all other non-private sector work.

The HLS students who traveled the most exotic paths were those doing human rights work last summer. Some have written about their summer work and their feelings about their experiences, and these accounts are printed below.

Although the statistics for the summer of 1986 are not yet available, the public interest placement director, Ron Fox, offered the following 1985 statistics as a reference point for an average summer: 120 of the class of 1987 took public interest jobs (this figure includes students doing academic research for professors), while about 80 students in the class of 1986 worked in the public interest field.

Last summer's public interest jobs

kept students as close as Boston (students working for PLAP, the District Attorney and the Attorney General) and took them as far as Jerusalem (to Na'amat, a women's rights center), South Africa (human rights research), Nepal (a World Bank/U.N. internship involving the study of land development), Honduras (human rights work) and Chile (human rights research for an organization of the Catholic church).

Jim Goldston, 3L, split his summer between the New York law firm of Cravath, Swaine and Moore and the Texas Rural Legal Aid Bureau (TRLAB), which represents migrant workers.

Goldston spent the summer after his 1L year in South Africa, and decided that he wanted to spend at least half of the summer of 1986 at a corporate firm, to make a little money and to "see what all of the fuss was about."

Goldston said that both Cravath and TRLAB have high work standards, with the quality of work "roughly comparable." Attorneys work hard, with the work more consistently overwhelming at Cravath, and attorneys at the Bureau

work especially hard when they have cases coming to trial.

After his work at the Bureau, Jim travelled to Mexico and Guatemala, both of which he has contemplated returning to after graduation.

Goldston described his most vivid impression of the summer: "The best thing I did was I went out and picked onions one day. I had to sneak onto the field and I had to make like I wasn't white and make like I wasn't rich at all. It made quite an impression on me. I had to cover my entire body with dirt, with the temperature above 100 degrees. I wanted to see what the hell they were going through."

Nathalie Augustin, 2L, went to Senegal on the C. Clyde Ferguson Fellowship, which was administered by the Harvard Human Rights Program.

In Senegal, Augustin worked at the African Institute of Human Rights, one of the largest human rights libraries in Western Africa. She researched the creation, activities and structure of the Institute, and evaluated its success. She also studied other human rights organizations in Senegal, primarily those concerned with development

**You are cordially invited
to a cocktail reception
and slide presentation
on lifestyle and practice opportunities in**

Pittsburgh

**Wednesday, September 24, 1986
5:00 to 7:00 P.M.**

The Sheraton Commander Hotel

Buchanan Ingersoll, P.C.

Kirkpatrick & Lockhart

Reed Smith Shaw & McClay

**WANTED:
TYPISTS**

*Great Pay: \$5.50/hr
Great Schedule: Monday
and/or Tuesday pm.*

**Call HLS Record
495-4418**

**Next
RECORD:**

**September 26,
1986**

Summer Positions

projects, because, as Augustin explained, "in the African context human rights and development go hand in hand."

Augustin's experience as a human rights researcher last summer assured her that she did not want to pursue the field as a permanent career, although overall her summer experience was a positive one. One of her first lessons of the summer was that to work in the human rights field you have to be a real optimist. While she will not do it full-time, she intends to integrate human rights work into whatever career she ultimately chooses.

While there was certainly poverty in Senegal, as well as the great disparity between classes that is prevalent in many former colonies, Augustin found Senegal relatively assimilated and westernized, probably because of its still strongly maintained ties to France. She ruminated, with a hint of sadness, that the Senegalese seemed to be moving further and further away from their African tradition of strong familial bonds towards a very individualistic based society; a society very much in search of an identity.

Augustin offered the following as her most climatic experience of the summer: "The greatest thing that stands out in my mind is that being a Black American, being of Black heritage, you go to Africa with certain expectations and you face the fact that these people, that Africa, does not and will not hold all of the answers to one's identity. This was the most amazing thing. I met people who were struggling, I mean struggling, with their very own African identity."

Second year student Rob Ricigliano spent his summer at the Henry Dunant Institute in Geneva, Switzerland. Dunant was the founder of the Red Cross and the institute bearing his name is one of the research and publication centers of the Red Cross.

The Institute is concerned with a variety of topics related to human rights issues and Ricigliano research focused on the issue of nuclear weap-

ons and international humanitarian law, or the law of war. His summer project was the study of the legal status of nuclear weapons as determined by international conventions, as well as research on whether the principles of humanitarian law should be applied to restrict the use and possession of nuclear weapons.

His summer work at the Institute allayed much of Ricigliano's fear that after spending so much money on his education in law school he saw himself heading for a public interest job where he might not even be serving in a legal capacity. Why then had he gone to law school?, he envisioned asking himself. He found out this summer that working at a research institute, working in connection with the U.N., or working in connection with a human rights organization, allowed one to use the skills obtained in law school and resulted in a more effective performance.

Ricigliano was particularly impressed with the level of optimism shared by everyone he dealt with through the Institute. Even Third

World countries, while being virtually ignored by the U.N.'s Committee on Disarmament, maintained an extraordinarily high level of optimism and enthusiasm, according to Ricigliano.

While he plans on continuing in the field of human rights as a career, Ricigliano intends to pursue his goal at a firm doing human rights work. He felt his summer experience was invaluable, if not profound.

Ricigliano described his most valuable lesson as the realization that he could make a contribution, regardless of his physical location. Although he was surrounded by the beauty of Geneva all summer, he did not feel that this detracted from his contribution; he did not feel guilty that he was not fighting in the hills somewhere in Latin America. He proposed the following: "If you can find your niche, if you can find your way to contribute somewhere, that's the important thing. There's just too much work to be done. Where you do it is not what's important."

☛

S. African Whites Face Dilemma

By Carl Soderbergh

I spent the summer on a human rights internship in South Africa. This initially took me to an Indian law firm in Durban. I worked on a few public interest cases there, familiarized myself with the legal side of apartheid, and travelled extensively round the townships and KwaZulu, the Zulu 'homeland,' nearest Durban. Then I went on around the country, doing my own research into children's rights.

I arrived in Durban on the day that the current state of emergency commenced. My host family was coping with having relatives in hiding, and other friends who had been wounded during a police raid that day.

I was constantly struck by the intense emotions displayed around me. It requires enormous bravery on the part of blacks to maintain

some sort of ordinary life. There was that horrified look in the eyes of a Soweto resident — her fourteen-year-old nephew had been rede-tained after having been released only a few months earlier, and she had seen what torture had already done to him then. Many blacks I talked to are pessimistic about the future after having witnessed the cruel efficiency of this emergency.

Others are continuing the struggle. I met some community organizers who were in hiding; we sat talking, huddled in a corner of some warehouse, surrounded by stacks of tins and boxes. They said they are certain freedom will come, and so in their hearts they are already free.

Another foreign student described the panic she had noticed amongst many whites — usually liberals who wonder every day about the future to which a government that does

Continued on Page 18

A Summer Spent in Santiago, Chile

By Elizabeth Rolando

I spent the summer as an intern at the Vicaria de la Solidaridad in Santiago, Chile. The Vicaria is a human rights organization of the Chilean Catholic Church which has been providing desperately needed assistance to the victims of the military junta's political and economic policies since 1974.

The people involved in human rights work with whom I spent time in Chile (at the Vicaria and its affiliated organizations throughout the country) had the strongest impact on me of all my internship experiences. A number of the people who work at the Vicaria have been there for the duration of military rule in the country — 12 years of grueling, stressful, emotionally draining work, not without its satisfactions, but with more than its fair share of frustrations and danger.

Life threats to workers and their families in the form of letters, telegrams and telephone calls, or more gruesome devices such as a pig's head with a bullet lodged in the middle of its forehead and the "bombing" of a house with bags of blood appeared to be fairly commonplace occurrences. Last year, one of the workers, José Manuel Parada, was abducted and later found by a roadside with his throat slit. During my time in Santiago, a doctor and a lawyer affiliated with the Vicaria were jailed for nearly 3 months for having provided medical and legal assistance to an individual the government believed to have been involved in the killing of a uniformed policeman. But, in spite of all this, they keep at it in the face of constant official government attacks and harassment.

My work at the Vicaria was legal research. I was placed in the legal analysis department and spent the bulk of my time working on a comparative constitutional study of states of exception in Chile and the United States, a topic of great interest to Chileans given that the 1980 Constitution, engineered by the military junta, allows for the

suspension of essentially every civil and political right for something as vague as a "danger of disturbance of the interior peace" of the country.

Twelve years ago, the Vicaria started out providing emergency legal assistance and keeping meticulous records of human rights abuses. Today, they have expanded into a remarkably well-organized institution which provides various kinds of legal assistance, furnishes medical and psychological assistance to many of those who are tortured or otherwise brutalized at the hands of the various state security forces, and provides basic poverty relief in the mushrooming shantytowns ("poblaciones") which surround Santiago. They also house an organization for the families of those who have disappeared or been detained, publish a biweekly newspaper (staffed by professional journalists and photographers), publish monthly and yearly human rights reports, maintain a small library or "documentation" department, have instituted a program to educate people on human rights, and, looking to the future, are interested in prospective research on legal topics.

Having referred to the future, I should mention at this point that the Chilean 1980 Constitution calls for a return to democracy by the year 1989, when Gen. Augusto Pinochet's term as president will end and the junta will nominate a candidate for the people to ratify. Nothing would prevent Pinochet from being nominated. Sounds fairly democratic so far, doesn't it?

As to what experiences, events, sights, and even smells from my time in Santiago remain most vivid in my mind, there is the ever-present smell of tear gas and sight of the water cannons; the uniformed police in riot gear; the crowds taunting them and yelling "Assassins!"; the military in the city with camouflage uniforms and painted faces; a great deal of poverty. I listened to young people bemoan that the military regime had burned away their youth and innocence, I listened to the stultifying account

of the methodical, almost bureaucratic burning of two: Rodrigo Rojas and Carmen Gloria Quintana — listened to it over and over again without being able to fathom how human beings could do such a thing. I went to court and heard the account of the burning, given by the lawyer defending the military personnel involved — an account devoid of any logical flow, claiming that the two young people had set themselves on fire by accident with Molotov cocktails. I attended Rodrigo Rojas' wake, I listened to the medical account of Carmen Gloria Quintana's condition and learned medical personnel had had to remove about 5 kilograms of her skin. I was told of abduction, torture, internment in concentration camps, exile and disappearances by the victims and their families.

Throughout my time in Chile, I found people willing and anxious to help foreigners understand what was happening in their country — anxious that foreigners should tell people in their own countries what was going on. In fact, there was a disconcerting belief among many Chileans that the U.S. government could get rid of Pinochet whenever it wanted (which seemed to puzzle U.S. embassy officials) and that therefore it was particularly important to inform the American public.

As with any kind of powerful experience, I would expect, I have returned from Chile somewhat jolted, less sure about many things, and frustrated by the complexities of the Chilean situation.

I find reason for hope in the fact that after 13 years of brutality and oppression, and despite the fear, anger and frustration, there appears to be a commitment to non-violent solutions and some idealism left; on the other hand, I am less hopeful when thinking about how long the idealism and commitment to non-violence will last. There are many seriously disheartened people in Chile today.

A Summer With Texas Rural Legal Aid

By Lynn Blais

This summer, I worked with Texas Rural Legal Aid (TRLA) near the Mexican border. There are many compelling reasons to spend a summer, or a lifetime, working with legal aid. Some people work with legal aid to help provide access for those the judicial system systematically excludes. Others want to change the system, through carefully chosen and hard-fought battles involving "impact litigation." Still others hope to empower their clients to change the system themselves through a combination of providing access and promoting organization. Many work with legal aid primarily to gain extensive litigation experience early in their legal careers.

While all of these objectives fac-

tored into my decision to go south for the summer, none of them now seem as compelling a reason to go back as simply gaining the opportunity to get to know and work with the clients themselves. The remarks made by one client on the witness stand in mid-July epitomize for me the courage and dignity with which our clients approached an often oppressive system for relief.

During one week in mid-summer, the other summer associate and I accompanied some of the attorneys from TRLA to a trial in west Texas. The case involved a class of 550 plaintiff Mexican farmworkers and 30 or so defendant American farmers. The farmers, after arranging for their farmworkers to receive special visas to work in the United States systematically paid piece-

rate wages that were substantially below the prevailing minimum wage. In addition, they often deducted Social Security taxes from the wages of people with no social security numbers as well as providing less work than they had promised the farmworkers.

The case was in the damage assessment stage, and TRLA had to put each farmworker on the stand to testify about his or her particular circumstances. The attorneys had worked out a scheme to obtain temporary visas for the plaintiffs and bus them to the courthouse, which is almost 100 miles from the border. On each trip, paralegals explained to the plaintiffs what would be happening in the courtroom, answer their questions and review the subject of the farmworkers' testimony with them.

After a few plaintiffs had testified, the defense attorney attempted to prove to the judge that the witnesses were being coached by TRLA paralegals. When he found a suitably vulnerable witness, the attorney assailed him with questions such as, "Did your lawyer tell you what to say?", "Did your lawyer tell you to lie?", and "Have you testified today about anything that you didn't remember before you talked to your lawyer?". The witness, obviously nervous, began to fidget in his seat and answered softly each time, "No, sir."

The defense attorney tried another tack, and asked "Are you here to 'get' the farmers?", "Are you here because you disliked your foreman?", "Are you here to get some free money?". To each question, the witness shook his head and at the translator's prompting softly responded, "No, sir." Exasperated, the defense attorney threw up his hands and demanded of the witness, "Then why are you here today?" Confused and visibly shaken, the witness turned to the judge and said, in a voice audible only to the bench, "I thought this was my chance to fight for justice." The defense asked no further questions. The witness was excused. The trial continued uneventfully. ❖

A Summer in Honduras

by Rebecca Tillet

I spent this summer as a Human Rights Fellow with the Committee for the Defense of Human Rights in Honduras. Although Honduras is the linchpin of the Reagan Administration's Central American policy, little is known about it in the U.S.

Our attention is not drawn to it by an embattled revolutionary government nor by constant clashes between conservative government troops and guerillas. The number of disappearances in Honduras does not compare to neighboring Guatemala and El Salvador. And so Honduras is an invisible country to us, rarely mentioned except as a sight of Contra activities. The lives of Hondurans and the effect of U.S. policy on them is generally overlooked. Yet it was clear to me during my visit that the people of Honduras suffer constant violations of human rights which will only be increased by a continuation of current U.S. policy in the region.

I was privileged to be the first person given the opportunity to study the Honduran Supreme

Court's files on habeas corpus petitions. Through this research it became clear that the police, a branch of the military, consistently arrest and detain people illegally. Although detention by police prior to presentation of a suspect to a judge is limited by law to 24 hours, I found no case in five years in which police obeyed this rule. In two cases men had been imprisoned for 22 and 23 years respectively without any orders of arrest or detention.

Reports of torture during detention are frequent. The Supreme Court justices I spoke with told me that the court cannot control the military; though the Constitution protects human rights, the judiciary has no power to stop constant military violations.

By most analyses, Honduras is the second poorest country in the Western Hemisphere. Its fragile economy depends almost entirely on U.S. aid, and thus it has become nearly impossible for the Honduran government to refuse to allow the southern area of the country to become Contra territory. The in-

Continued on Page 18

Honduran Judiciary Unable to Restrain Military

Continued from Page 17

creased militarization of the country strengthens the role of the Honduran army leaving it even less controllable.

The primary reason human rights violations in Honduras are not as striking as those in Guatemala and El Salvador is lack of necessity. The Honduran military is not currently threatened by a strong opposition movement. It is clear, however, that there are no safeguards in place to prevent the army from massive human rights violations.

Although my opinion is of course subjective, I felt an increasing opposition to the U.S.-funded Contras operating in Honduras. I would say that although most Hondurans do not support the Sandinistas, neither do they support the Contras, whom they see as representing a more clear and present threat. While I was in Tegucigalpa, a house in my neighborhood was bombed one night. It turned out that a group of 50 Contras was meeting in the house at the time of the attack. The response of the neighbors was interesting: rather than blame the bombers, people were furious at the Contras for putting the neighborhood in danger. Additionally, people I spoke with resented the comparatively incredible economic power of the Contras, who are able to live well on dollars while people literally starved in southern Honduras this summer.

John Ferch, U.S. Ambassador to Honduras for one year before he was summarily dismissed shortly following the Contra-aid vote this summer, gave a very interesting interview to the *Miami Herald*. He said that during his term as Ambassador he had believed the Reagan Administration's contention that a show of military strength in the area was necessary to force diplomatic solutions. He believes he was fired because he was not considered sufficiently hard-line to lead the major military action which could be coordinated with the newly-granted funds. Ferch now thinks that Reagan plans to use military

force rather than diplomacy in Central America. The people of Nicaragua are not the only ones

who face increased hardships due to the U.S.-funded war. Honduras' suffering will also deepen.

S. African Whites Face Dilemma

Continued from Page 15

not speak for them is driving the country. It always came up in conversations, whether they should leave or not, but some are determined to stay and do what they can. I encountered plenty of small organizations run by whites to ease township life. There is a real moral dilemma for them though: are they

not simply making apartheid more acceptable by helping those who suffer under it?

And then there are the stubborn ones who refuse to accept any changes. I would often be told: Carl, there is no apartheid here. You must tell the truth about our country when you go home.

I doubt whether we would have agreed upon what that truth was.

Amnesty International Vigil Held

By Hillary Richard

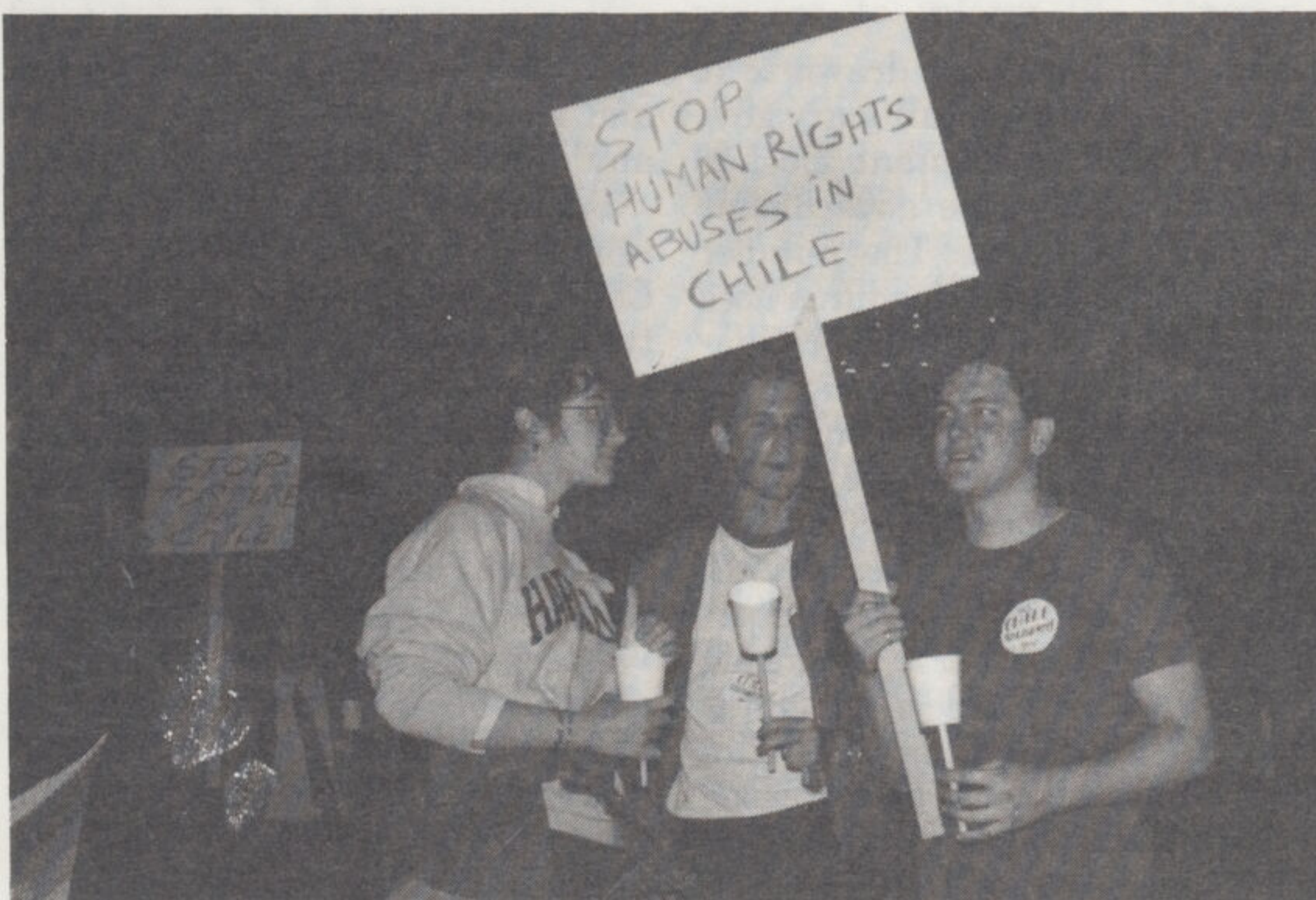
A candlelight vigil was held in Copley Square on Sept. 11, the 13th anniversary of the military coup in Chile. The vigil was organized by the Boston chapter of Amnesty International, to commemorate those who have died in Chile, especially persons who died under torture.

A group of HLS students, responding to fliers posted by Eliza-

beth Rolando, 2L, met in the Hark and attended the vigil. Of the approximately 50 people participating in the vigil, 20 or so were from the Law School.

The vigil was held as a response to an increasingly alarming situation in Chile. Amnesty International calls attention to the tens of thousands of political prisoners, the

Continued on Page 20



Hillary Richards

HLS students attended candlelight vigil to commemorate the 13th anniversary of the military coup in Chile.

Panelists Discuss Results of Corporate Mergers

Continued from Page 3

prosecuting conspiracies in road building and public construction helps consumers. By developing clear rules about what types of mergers it will accept, the Justice Department has spurred most corporate managers who design mergers to propose only combinations that "pass muster" and don't require government intervention, he added.

The recent spate of corporate mergers has produced a "surplus of executives," said the panel's moderator, U.S. First Circuit Appeals Judge Stephen Breyer '54, a lecturer and former professor at HLS. "What we've decided to do is to put them in jail for price fixing," he quipped.

Another speaker, Professor Robert Clark '72, praised the Justice Department for resisting what he called largely irrational criticism of recent mergers in the news media and by some public officials. Mergers tend to bring better managers

to target companies, and by combining two complementary enterprises can make both more successful, he said.

Clark cautioned, however, that takeover fights can lay waste to corporate assets. Executives of potential target companies are especially tempted to use corporate assets to ward off hostile buyers because their own jobs may be at stake, he explained.

"You can't imagine a greater conflict of interest" than when corporate executives who want to keep themselves in office have control over shareholders' assets, he said. He proposed that the Securities and Exchange Commission, rather than courts, regulate mergers.

J. F. Kennedy School of Government Lecturer Robert Reich, however, said state regulation of mergers was safer than SEC control because individual states can serve as test laboratories whose policies can be followed by other states if

they succeed or be rejected if they fail.

Reich challenged the view that government regulation of corporations is decreasing. As evidence of rising government involvement, he pointed to growing federal tariff barriers, research and development funding and defense projects, as well as "extraordinarily active" state regulation of health and safety standards, consumer protection and bank depositor protection, and greater court regulation of products liability through a "litigation explosion."

❧

**The RECORD needs
typists. We pay
\$5.50/hr. Please
Call 495-4418.**

RES IPSA LOQUITUR

The Pieper New York State — Multistate Bar Review offers an integrated approach to the New York Bar Exam. We emphasize sophisticated memory techniques, essay writing skills and a concise, organized presentation of the law. You will be prepared and confident.

PIEPER NEW YORK - MULTISTATE BAR REVIEW
It Speaks For Itself.

90 Willis Avenue, Mineola, NY 11501 Telephone: (516) 747-4311

PIEPER REP

DAUNA R. WILLIAMS

EARLY REGISTRATION DISCOUNT TO DECEMBER 1, 1986

Blackmun: "The Republic Will Survive"

Continued from Page 2

personal tribute to fellow Justice William J. Brennan, Jr. '31, saying that "as the years have gone by, your opinions have become sharper and more perspicuous than ever before." Blackmun drew heavily from writings and orations by Holmes, Story, Jay, Cardozo and others as he traced the history of the HLSA, HLS and the development of the law over the past century. Blackmun called HLS "the place of our professional roots," where students "found the art as well as the science of law."

Turning to the current state of the Supreme Court, Blackmun spoke briefly, calling the past term "a very grim year." Addressing the retirement issue facing several members of the Court, including himself, he quoted Holmes as saying that the "life of a lawyer was always in the fray." Blackmun then read from a letter by Justice Story in which Story explained his forthcoming retirement from the Court because of his unsatisfactory position as the lone dissenter on a court in transition. Story retired from the Court to an illustrious career at HLS, Blackmun told the audience;

in reference to the current situation, Blackmun advised: "Whatever happens, and it will happen, let us not despair on the one hand or be unduly jubilant on the other. Time has a way of smoothing things out, and above all, the Republic will survive. I know it will, it always has."

The Supreme Court justice concluded by reminding lawyers that in "probing [for the truth] may we not forget that one of the faces of the Law is compassion. . . . The element and goal of compassion may at times be our only guide and comfort." ❧

Chilean Transition to Democracy Unlikely

Continued from Page 18

systematic and widespread torture, and the deaths of upwards of 300 people by clandestine squads as evidence of the "government sponsored systematic destruction of human rights in Chile."

The repression in which the government of Chilean President Augusto Pinochet has allegedly engaged was widely publicized this summer in the U.S. press when Chilean soldiers reportedly beat and

then set on fire two Chilean teenagers. One, 19-year-old Rodrigo Rojas De Negri, died of his injuries.

The Chilean government has since become less stable, with the discovery of a cache of armaments belonging to leftists who were previously believed to be a small group, incapable of a serious military threat to the government, coupled with the assassination attempt on President Pinochet.

The state of siege now in effect in Chile renders the long-promised

transition to democracy an unlikely occurrence anytime in the near future.

❧

Address changes for Alumni subscribers (all subscribers with computer-printed address labels) should be sent directly to the Harvard Law School Association, Cambridge, MA 02138. Prompt notification will save the RECORD the postage which is charged for returning incorrectly addressed issues. Thank you.

SECOND-CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS
(EXCEPT FOR ADDRESS CHANGES):
HARVARD LAW RECORD
(ISSN 0017-8101)
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138-9984

Koby
Antupit
PHOTOGRAPHERS

Creative Portraits
Resume & Publicity
Photographs
Instant Color Passports

Harvard Square
8 John F. Kennedy St.,
(formerly Boylston St.)
Cambridge

547-7552

*Wanted:
Autographs*

of Presidents and Famous People.

*Old Stocks & Bonds
Political Pins, Ribbons,
Banners, Baseball Memorabilia
and Baseball Cards*

High prices paid

PAUL J. LONGO, BOX 490-HL,
SOUTH ORLEANS, MASSACHUSETTS
02662
(617) 255-5482