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25 CENTS

Students Protest Funding By Dean

By Hillary Richard

A coalition of student leaders from various organizations recently formed a committee to propose a restructuring of the budget allocation process for student organizations at HLS. The ad-hoc group, which was formed during a meeting of the Congress of Student Organizations, is chaired by Law School Council (LSC) 2Ls Neil Quinter, Ted Johnson, Julie Chiu and Ron Davenport.

Three types of student organizations can be funded at HLS: journals, clinical programs and all others. Currently all student organizations in the third category are funded through the Dean of Students, Mary Upton. Most of these organizations are social or political in nature.

The problem with the process as it now stands, according to Jay Ward, 3L, president of the Law School Council, is the absolute lack of student participation in the budget process. Along with the lack of participation, there is also a lack of accountability to students. Ward noted that when groups want money, they approach Upton with a proposal, and she then decides how much money they will receive.

"She has total discretionary control in terms of how much is allocated to student organizations," Ward said.

Ward commented that he thought the informal nature of the process led to an enormous amount of discretionary control over clubs' budg-

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Harvard Partially Divests: \$380 Million Remains

By Hillary Richard



By Hillary Richard

Two Pro-divestment Protestors

In an unexpected turnaround, Harvard University announced early Friday morning that it was selling approximately \$150 million of its investments in companies doing business in South Africa. This partial divestment leaves Harvard with about \$380 million in investments in South Africa related stocks and bonds.

The eight companies that Harvard divested from — Texaco (\$54 million), Ford (\$38 million), Exxon (\$35 million), Royal Dutch Petroleum (a Shell subsidiary) (\$31 million), Schlumberger (\$6 million), Chevron (\$2 million) and Phelps

Dodge (\$97,000) — failed to meet Harvard's standards for companies operating in South Africa. The partial divestment was announced in the annual report of Harvard's investment committee, the Corporation Committee on Shareholder Responsibility (CCSR).

Sullivan Principles

Harvard's investment policy towards businesses operating in South Africa requires the companies to adhere to the Sullivan principles: a set of guidelines that rate businesses by their treatment of blacks in the workplace.

The CCSR report cited a South African law that prohibits oil companies from releasing information to shareholders about sales of petroleum products to the government, while simultaneously requiring the companies to supply oil on demand, as the basis for Harvard's decision to divest from the five oil companies.

Reason For Divesting

The decision to divest from Ford was based on its sales, through a subsidiary, of vehicles to the South African military. Both Schlumberger and Phelps Dodge failed to provide enough information to concretely prove their adherence to the Sullivan principles.

Harvard refused to attribute its decision to partially divest to the persistent student and alumni protest that swept the campus last year,

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Movie Highlights the Bright Side of HLS

By Howard Meyerson

Several years ago, Scott Turow told us all the bad things about HLS; now Ned Johnson, director of the film "Harvard Law School: A Grand Experience," only shows us the good things.

Considering this limitation, Johnson has done a great job. The movie begins with a shot of Austin Hall; the camera moves into the remodeled Austin North, where we see students in search of their assigned seats. The students appear to be in good spirits on day 1, and most of them are happy that they've successfully completed their first task at HLS: they have found their seats.

The scenes shift constantly. Johnson shows us small bits of our professors in action: Alan Der-showitz talks to criminal law students about heroin; Charles Nesson '63 gives a criminal law class his version of the act/omission distinction; Frank Michaelman gets out some big words about property. Robert Clark '72 and Duncan Kennedy are shown back to back. Class is not always as exciting as these clips would have you believe, but the law school does have a group of dynamic professors.

Many alumni are featured in this film including: Emeritus Professor Archibald Cox, U.S. Supreme Court Justice William Brennan, and former Dean Erwin Griswold, among others. Justice Brennan tells us that we all get the feeling, at one time or another, that we can't make it. Cox tells us he couldn't sleep the night before he was to argue in the Ames Moot Court Finals.

Most of the outdoor scenes were taken in fall or spring, but there is one shot of winter to introduce the segment on exams. One alumnus describes the exam period as a time of unmitigated terror, but HLS has changed somewhat in this respect, and the scenes of students taking exams are more humorous than anything else.

There are other enjoyable scenes in this film: a student at the Legal Services Center talking with a

client; a meeting at the Journal on Legislation; Judge Anderson making funny faces at the Ames Moot Court Final.

But there are also aspects of life at HLS that were not shown in this film: the food at the Hark; the Grad

Center dorms; the tunnels; the miserable winter. First-year classes are larger than they appear on film,

An appointment may be made to see the 20 minute film in Pound 209.



Computer Promotion Held At HLS

By Vincent Chang

Several hundred HLS students and faculty turned out to participate in a computer fair held October 1 in Pound Hall. Ruth Block of the Office of Microcomputer Support described the fair as intended to expose students, "as they become computer literate," to "printers which are good for students at reasonable cost" and to "vendors willing to give discounts to students." By most student accounts, the fair successfully demonstrated the application of computers to legal study and resulted in a number of student purchases of new computer hardware and software.

Block said that the computer fair was designed as a response to the "escalating" number of student inquiries on computers — an average of eight or nine per week to Block's office alone. Block felt that she could not "do justice" to these inquiries and therefore sought a means by which many students could speak to a large number of computer vendors. Additionally, Block felt that "it would be nice to have a carnival atmosphere" and thus persuaded the computer vendors to offer door prizes and other gifts such as sports bags and pen sets.

According to preliminary samples from a microcomputer survey distributed to all HLS students, as many as 20% of HLS students may possess or at least are contemplating purchasing computers. Indeed, student interest in computers is demonstrated by the fact that as many as 305 people have had accounts at the new HLS word processing center, which opened last fall with ten IBM personal computers and ten printers in the Langdell basement.

Many of these students came to the computer fair in order to compare the various computers offered. As important as the sales function, however, was the informational function of the fair. As Block noted, "even if students are not interested in computers, they might want to see how they're put to use" in the legal context. Noting the increased use of computers by law firms, Block noted that the features available on a personal computer will increasingly become necessities to sophisticated practitioners.

Vendors at the fair and representatives from Harvard's Office of Information Technology demonstrated some of the new software products available for legal use. In addition to such prevalent data retrieval systems as LEXIS and WESTLAW, the CITERITE software program, which corrects improper citations in a brief or memorandum, was introduced. Also shown was Project Pericles, an artificial intelligence "attorney in a box" which could analyze, for example, computerized applications for legal services and determine potential recipients' eligibility. Another project was Notebook II, an on-line bibliography system which allows users to obtain author, title, and content information about published works.

Most students will probably continue to rely on the school's word processing facilities which are available for \$2.00 per hour. Students can bring their own software if they prefer, but the school's system uses XyWrite, a word processing package chosen for its ease of use and its ability to keep track of footnotes.



Falwell Extols Moral Majority Platform

By John Dwyer

Dr. Jerry Falwell, the controversial evangelical preacher and founder of the conservative Moral Majority, spoke before an overflow HLS Forum crowd in the Ames Courtroom on October 6. Speaking on "Is the Evangelical Vote Monolithic?" Falwell predicted that the Republican party will "win election after election" if it continues to respond to the needs of the 20% of the electorate represented by the evangelicals.

Falwell, recognized by *Good Housekeeping Magazine* as the second most influential man in the U.S., traced the birth of the "evangelical vote" to the early 1970s when evangelical preachers began to break from their established practice of not getting directly involved in the political arena. The rise in the divorce rate, the proliferation of pornographic materials, and, most importantly, the Supreme Court's decision in *Roe v. Wade* were the major catalysts prompting these preachers to mobilize the socially conservative bloc now known as the evangelical vote. According to Falwell, this new involvement "broke no precedent with history, only with our own philosophy."

In spite of popular misconceptions, Falwell claims, "The evangelical vote is not monolithic by party, by person; it is by principles. It is not Republican by nature; it has a Democratic majority." He outlined the agenda of the evangelical vote as being most concerned with the following issues: (1) overturning *Roe v. Wade* ("abortion is a national cancer"), (2) reaffirming traditional values, (3) maintaining a staunchly anti-Communist foreign policy ("socialism is mutually shared poverty"), (4) maintaining national defense through the development of the Strategic Defense Initiative and support of "freedom fighters throughout the world," including Nicaragua and (5) continued support of the state of Israel.

Emphasizing that the evangelical vote supported Jimmy Carter in the 1976 election, Falwell stated that

their support of President Reagan in the last two elections was due to the Republican party's willingness to allow their voice to be heard in its national platforms. Reagan's tenuous coalition of economic conservatives and social conservatives (of which the evangelicals make up the major percentage) has provided his party with a "terrific dilemma." Falwell believes, although many in the party would rather not be committed to the socially conservative agenda, "They are also smart enough to know that without them they cannot win . . . They have to decide whether they want to be happy losers or unhappy winners." He claims that although the evangelical vote is not the majority, they are the necessary voting bloc that the Republican Party needs to win.

During the question and answer period, the student audience shifted the focus to Falwell's personal opinion on subjects ranging from his choice for Reagan's successor (Vice-President Bush), to the recent drug bill introduced in Congress

("nothing more hypocritical in the world") to his views on South Africa and school prayer. The most tense moment in the evening came at the end of the question and answer period when a woman confronted Falwell with a question she "had waited two years to ask." During his last visit to the HLS Forum two years ago, a self-described "lesbian, Jewish feminist" asked Falwell a question regarding his stand on abortion. According to the questioner, Falwell failed to provide an adequate answer and quipped, "Of all the people here, you needn't worry." He has since recounted the story to other audiences adding derogatory remarks about the woman's appearance. Falwell replied to the questioner that his response had been "tongue in cheek" and apologized.

Another student expressed concern that the Moral Majority and other similar groups are encouraging dogma rather than education among this new voting bloc. Falwell, the founder of Liberty University in

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Student Organizations Seek Budget Reforms

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ets by the Office of the Dean of Students. This discretion in turn leads to "possible inconsistent budgeting decisions," according to Ward.

"The problem is that we don't know. The process is so entirely vested in the Dean of Students' office that we're not sure what goes on and that causes a great deal of consternation," he added.

Dean Upton, when questioned, was unaware of such complaints. She said that when she started as Dean of Students, five or six years ago, \$2,000-3,000 was available for these types of student groups. Since then, the amount has climbed to over \$50,000, which is distributed to about 35 organizations.

"I've never heard of a complaint," Upton stated, "Maybe there is, and I've never heard of it."

The money which is allocated to these organizations comes from students' tuition, according to Dean Upton. Her office sends a memo to all students organizations at the end of the spring semester. They then fill out a Year End Report, put together a proposal for the following year, and then, Upton said, she "slices up the pie."

Quinter, who is one of the ad-hoc Budgetary Committee Chairpersons, said that a consensus had been reached at the Student Congress to propose a group composed of the Dean of Students, students, and faculty. Quinter said that the consensus was reached after "lots of individual horror stories, stories that I'm not at liberty to repeat, were told" by various student leaders.

Quinter noted that HLS is the only one of Harvard University's nine graduate schools that has no student control over the allocation of funds to student organizations. Allowing students to have some control over the budgetary process would be one way, according to Quinter, to let students "actually affect what goes on around here."

Another problem with the existing system, according to Jay Ward, is "the fact that students have no

idea what the guidelines are." When asked, the Dean's Office provided the forms that were given to guide student organizations in preparing their budgets. The guidelines offered were very general and were primarily concerned with telephone policies, what speaker fees the Law School will and will not pay and office supply information. They do not, however, offer guidelines as to what type of activity or speaker

would be more likely to be funded, nor did they explain how actual funding decisions on student proposals were made. A disclosure of which organizations were funded, and how much they were funded, is not made available.

The ultimate decision on the budget allocation process, and any potential changes in the existing system can only be made by HLS Dean James Vorenberg.



By Hillary Richard

Themba Vilikazi of the African National Congress calls for complete divestments.

Divestment Called Partial Victory

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which culminated in the building of a shanty town in Harvard Yard which remained standing through the graduation ceremonies. Anti-apartheid activists brought the struggle to the forefront of the news this year with the successful blockade of an alumni dinner at Memorial Hall during Harvard's 350th anniversary celebration this September.

While the Harvard administration is claiming that the divestment is a result of Harvard's existing policies, anti-apartheid activists declared the divestment a "partial victory," according to a press release distributed by the Harvard-Radcliffe Southern Africa Solidarity Committee (SASC). SASC promised to continue to pressure Harvard until it has withdrawn all funds from companies that do business in South Africa.

A press conference was held by anti-apartheid activists early Friday morning in Harvard Yard to announce the divestiture and to call for Harvard to fully divest from companies doing business in South Africa.

Themba Vilikazi, Chairman of the U.S. Executive Committee of the African National Congress, also called for complete divestment by Harvard. Vilikazi asserted that, just as the oil companies assist the government in the enforcement of apartheid, so too do the revenue-producing corporations who pay taxes to the same government.

Tom Fox, 2L, a member of the HLS Anti-Apartheid Committee commented the "despite the denials of the Administration it is obvious that the power structure can be moved by student demonstrations..."

HLS Students Flock to Revamped Backbench Pub

By Michael F. Reilly

Returning 2Ls and 3Ls were pleasantly surprised by several improvements in the Backbench Pub made during the summer, co-manager George Hawkins, 3L, reported. The rearrangement of pool tables, the large-screen television and sofas, as well as the addition of new tables and chairs have improved the Pub's ability to serve as social center of HLS. According to Hillary Richard, 2L, another co-manager, the Pub's new ambiance has also seduced many of this year's 1L class. Several have already become Pub regulars, spending hours each day shooting pool or playing foosball.

The most noticeable change from last year's decor is the new placement of the large-screen television in the room behind the bar. Richard said that the move was in response to complaints from TV viewers who had difficulty concentrating on favorite programs such as *Hill Street Blues* or *Cheers* due to all the bar noise in the same room. Although she dissented from the original decision to rearrange, Richard said that she now is satisfied with the new set-up. With the television in the back, the two pool tables and the foosball table have been moved to the barroom. Another change adding to greater student enjoyment of the Pub was the purchase of dozens of new tables and chairs. This furniture is located in the barroom and in the TV/back room.

The improvements are due to the efforts of the Pub managers — Hawkins, Richard, and Tony Mirenda, 3L — and DSAC President Karen Leili, 3L. Their initiative, coupled with the use of DSAC and HLS funds, transformed the Pub over the summer. As a result of the investment in decorating, "sales have quadrupled," Hawkins said. The "record business every night" is the product of both the Pub renovations as well as an aggressive advertising campaign waged early in the semester, he added. Richard said 1Ls were targeted in particular.



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News Analysis: Overkill on the Drug Problem

By Doug Ulene

As Congress wraps up its term, attention has been focused on tax reform and South African sanctions. In the days to come, the campaign against drugs will take center stage. With elections less than a month away, elected representatives have been transmogrified into vote-seeking politicians. The antidrug legislation recently passed by the House of Representatives has served to focus concern over the means by which elected officials seek to ensure their re-election.

The House legislation would impose the death penalty on individuals who, in the course of a drug-related act, "intentionally cause the death" of another. In addition, those convicted of selling drugs to minors would face a mandatory life sentence for their second such conviction. While both of these provisions may appeal to voters, they may well prove unconstitutional, denying those convicted thereunder protection from cruel and unusual punishment.

More fundamentally, the provisions represent a regulatory extension over an individual's freedom to choose how he wishes to conduct himself; what he wishes to do to his body.

Harvey A. Silverglate, a Lecturer

on Law at HLS and President of Civil Liberties Union of Massachusetts, notes that "the ACLU takes the position that drug use is a personal matter. It should not be a crime to use drugs, therefore it can't be a crime to sell them either."

He points out that drug regulation will inevitably lead to black market sales of illicit drugs. Police and local administrative corruption is generally not far behind. Eventually we see knee-jerk reactions by government in an effort to purge the evil its own legislation has brought about: "state legislatures going completely crazy."

Another feature of the House resolution would allow the introduction of illegally obtained evidence; evidence obtained by police while acting in good faith, but where there was some error on their part.

Waiving the so-called "exclusionary evidence" rule may threaten civil rights as laid out in the Constitution and developed by the courts over the past few decades. Moreover, such a rule could in effect remove a significant burden of care from local police officials. As such, it may potentially place the public in jeopardy of abusive practices by police personnel.

Many feel the most disturbing aspect of the House legislation is the provision calling for military in-

tervention to prevent the trafficking of illicit drugs into the United States. Silverglate notes that introduction of the military in the regulation of civil activity "has undermined every nation in Latin America and Eastern Europe" where such action has been undertaken.

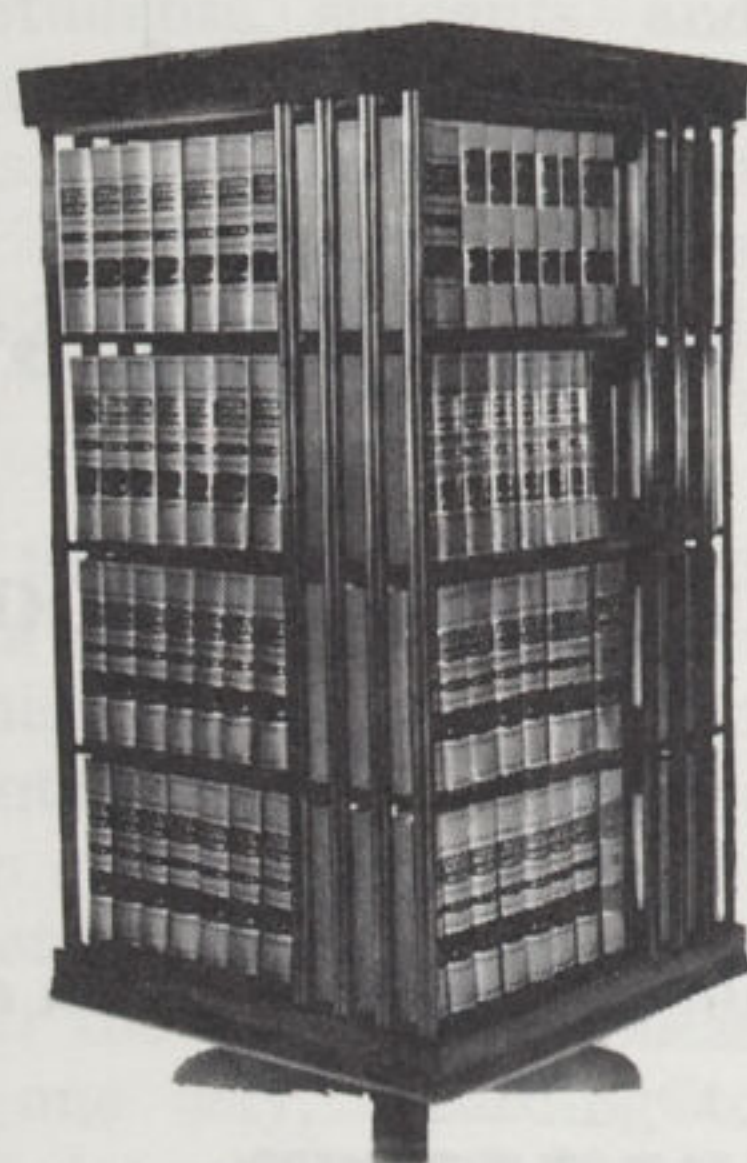
Such a move could erase the historical line between military and civilian law enforcement. Silverglate comments that passage of such a provision would represent "a blunder of historic dimensions." It might indeed mark "the beginning of the demise of the republic."

The influence of the media in political elections cannot be disputed. The House's antidrug legislation was hurriedly passed to beat President Reagan to the television screens of American voters. [President and Mrs. Reagan appeared together in a televised address urging a national campaign against drugs three days after the House resolution was passed.]

The inevitable House/Senate compromise committee will no doubt exclude some of the objectionable elements of the House's antidrug legislation from the bill Congress sends to the President.

Time will tell how the resulting law will be interpreted by the courts.

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Falwell: Competence of Candidates is First

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Lynchburg, Virginia, responded, "I happen to believe you can give both points of view . . . But I also believe you have the right at Harvard to be the bastion of liberalism and we are a bastion of conservatism."

Regarding the 1988 Presidential election, Falwell made an unequivocal show of support for Vice-President Bush. Anticipating a question on why he is not supporting fellow preacher Pat Robertson, Falwell, to the delight of the audience, said the first quality he looks for in a candidate is competence. He sees "Mr. Resume" Bush as the most competent candidate the Republican party can offer at this time. Furthermore, Bush has been loyal to the Reagan agenda and, according to Falwell, can maintain the coalition of social and economic conservatives. "We look to the person closest to our our beliefs, and where or if they go to church is incidental,"

ABA Cites Two Record Articles

The Harvard Law RECORD is the recipient of two awards from the Law Student Division of the American Bar Association for its news coverage during the 1985-86 school year. Both awards were in the Class B division.

The RECORD was awarded an Honorable Mention for "Feature Article on Substantive Law" for an article by Vincent Chang on the implication of litigation targeted against tobacco companies entitled "Cigarettes Become a Burning Legal Issue" in the September 27, 1985 issue [Vol. 81, No. 2, p. 6].

The RECORD's news analysis on the growth of "national" law firms, "National Law Firms Expand, Seeking Client Service, Profits for Partners," also received an Honorable Mention for "Feature Article on Law in the Community." The March 14, 1986 article [Vol. 82, No. 3, p. 12] was written by Brian D. Rance.

he added. However, he warned that the Republicans do not own their vote and the situation in 1988 can be radically different than it is today.

In response to a question on South Africa, Falwell, who recently completed a highly publicized trip to that country, stated that he supports Harvard President Derek Bok's position on the subject. Bok has resisted divestment movements on campus for fear that a removal of U.S. funds from that country will remove any leverage that the U.S. currently possesses to dismantle the apartheid regime. Falwell also maintains that there is not a single elected black leader in South Africa that supports the campus divestment movements.



By Luke Cole

The Rev. Jerry Falwell speaking to the Forum.

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Let The Process Grow

In taking on the editorship of this paper, we are following in a tradition that is about to reach its fortieth year. On December 6, 1946, seven HLS students — Charles Porter, Charles Davis, Charles Sweet, Rinaldo Capone, Paul Hellmuth, Thomas O'Toole, and Nathan Fitts — formed the Harvard Law School Record Corporation with the purpose of publishing a newspaper "for the students, alumni, and faculty of the Law School of Harvard University."

The RECORD is only one of the many voluntary associations in which HLS students participate. Such organizations span a wide range, from those ancillary to classroom activities (such as "killer" study groups) to those more or less deliberately divorced from the study of law (such as the athletic association which styles itself "Running From the Law").

Voluntary associations provide opportunities for students to reinforce aspects of their personalities that are undernourished by legal study. Mediators practice conciliation; dramatists, photographers, and writers develop artistic and expressive skills. Members of political groups seek to influence the policy development of their communities, rather than simply accept it.

The activities that people choose — the ways that they choose to integrate themselves into the larger scholastic, urban, and national communities — express and shape their perceptions of themselves and, by extension, their roles not only as students but as lawyers.

These perceptions are also shaped by the ways in which the organizations themselves are structured and the mechanisms by which they relate to the outside world. One of the most important of such relationships is that of an organization to the entity that provides and controls its funding.

Discussing the founding of the RECORD, Mr. Porter states that "The smartest thing we did was to seek out the veteran prime mover and Treasurer of the Harvard Law School Association, Reginald Heber Smith. . . 'Reg' arranged for a portion of the HLSA dues to be paid to the RECORD." The RECORD has been fortunate to receive its funding from a source which has never tried to influence internal or editorial policy — probably because the HLSA RECORD Committee is heavily populated with former RECORD editors. The RECORD staff's relationship with the Committee is friendly, occasionally conspiratorial.

Other organizations at HLS are not so fortunate. Except for journals and clinical programs, student organization funding is controlled through the office of the Dean of Students, Mary Upton. The decision-making process has no room in it for student participation.

No one has claimed that Dean Upton has abused her power, or even that the decisions she has made differ from those that would be reached under a more inclusive process. But the present process teaches students affected by it dependence on a decision maker whose processes are opaque, whose discretion is absolute, and from whom there is no effective appeal.

Given the fact that the source of the funding is students' tuition, that the activities funded are student activities, and that the ostensible goal of education in a democratic society is to train adults to participate in the processes that determine their fates, there seems to be no reasonable argument against a process that would involve students in fund allocation.

— R.J.P.

— G.M.B.

Fenno

Call Me Ishmael. Yes, indeed, it had arrived: The Environmental Law Society's annual Whale Watching Trip. Fenno mistakenly showed up last year at the Lesley College dormitory and missed the Boston departure. This year, Fenno had been sucked in by the adorable pictures of whale tails they had plastered all over the Hark. And more importantly, over the summer his mother had reminded him that law school would be a great place to meet his future wife, his dream cupcake, Fennette. In case this was true, Fenno was hitting every law school function. He tried them all. On the whole, however, he felt his chances were being dampened by Cambridge's lack of a rather new phenomenon: The Yuppy Pick-Up Supermarket. The Beacon Street Star Market just didn't cut it.

As he boarded the boat he shoved one more chocolate eclair in his mouth. The grease and sugar soothed his throat — which had recently been subjected to a long night of Jack Daniels, traveling through it in both directions. "Here, eat this too." The beautiful 2L handed him some onion rings with ketchup. Ummm, just what his hangover needed at 8 am. "And this," said the 3L as she seductively waved a piece of pepperoni and anchovy pizza from The Aces in front of his terrified eyes. Fenno was no fool. He knew they were feeding him these colorful foods so that after a few hours on the High Seas they could watch a TOTAL TECHI-COLOR BARF-O-RAMA.

But he had *The Patch*. Behind his ear was the little Anti-Seasickness patch the Health Services Nurse had prescribed for him. "More effective than condoms," she had said with a wink.

A Harpoon — that's what I forgot, Fenno thought. "Thar she blows," shouted the Environmentalist. No, a net. With a net I could get both the Whale and the Environmentalist, he mused. Fenno peaked over the edge of the boat to catch a glimpse of the huge mammal which, millions of years ago, had made the mistake of continuing its evolution in the Ocean, instead of on land where some day there would be bars.

"You can only watch the damn things for so long," he observed to his friends, "let's go do some more group bonding." They returned to enjoy the sunshine on the top deck. As the boat neared Boston Harbor (and THE Harvard Law School) the sky began to turn grey. It got cold. They squished closer together . . . a Huddled Mass, yearning for freedom . . . and free love.



HARVARD LAW RECORD

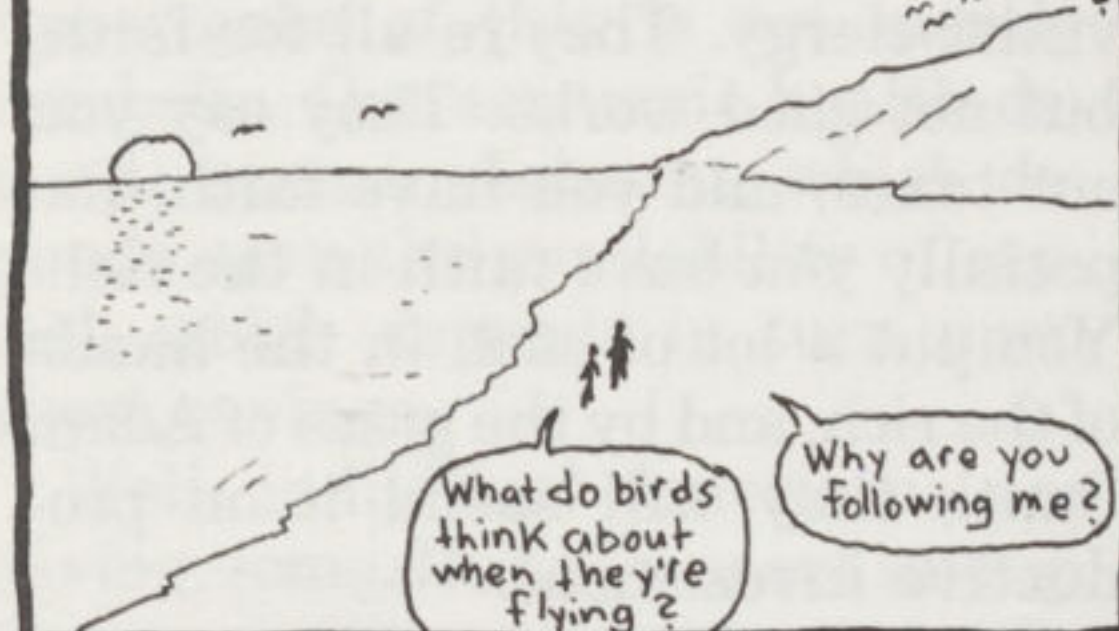
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Please stop bothering me.

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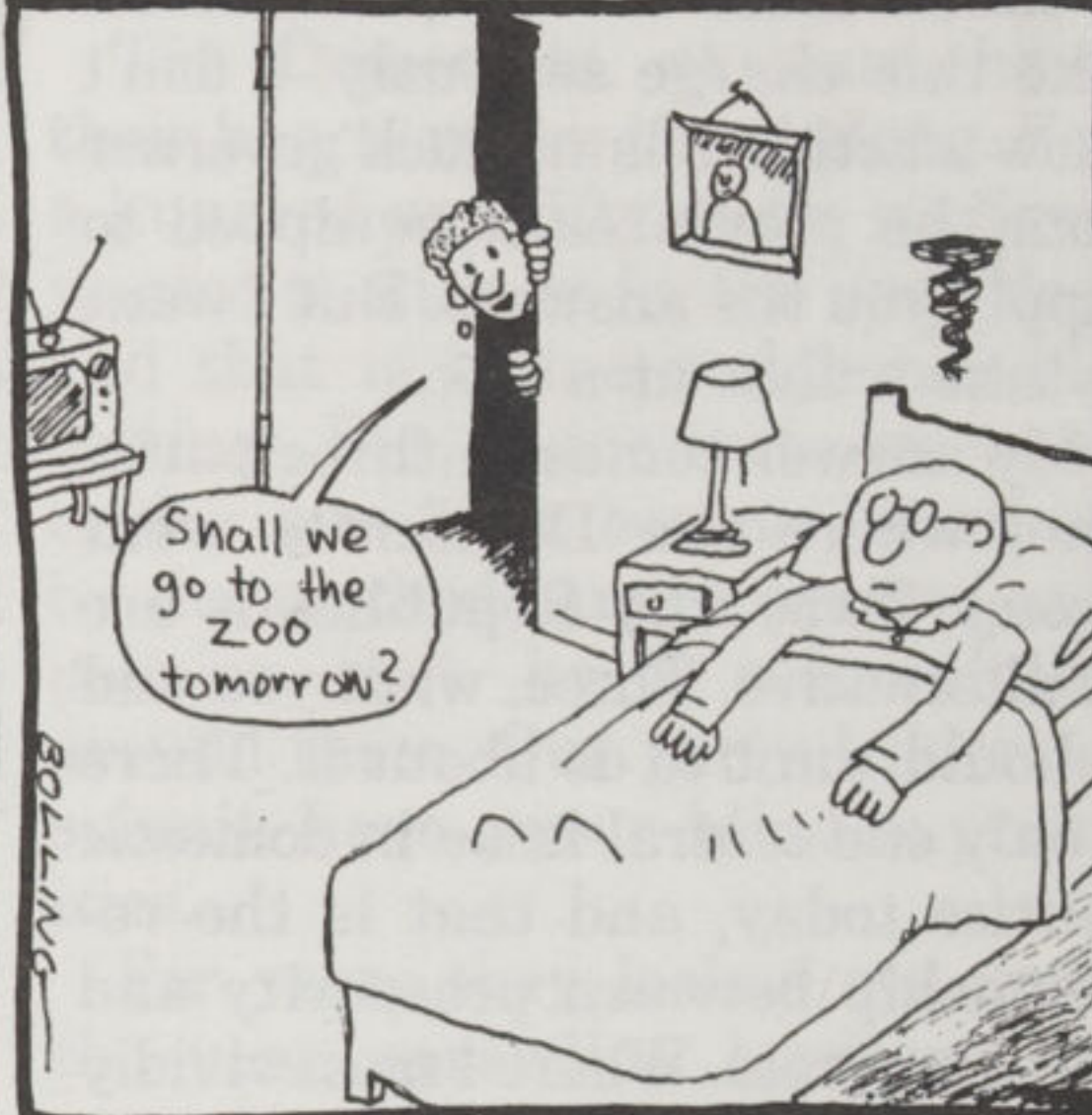


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How did you get into my house?



Shall we go to the zoo tomorrow?

NOTE: THE COMIC STRIPS OF MARCH AND APRIL, 1986 WERE ALL A DREAM! TOM'S LEGS WERE NEVER ACTUALLY TORN OFF BY A SADISTIC SEVEN-YEAR-OLD CHILD, SEE PEOPLE MAGAZINE FOR DETAILS. -R.B.

Letters to the Editor of the Record

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.

Next RECORD:
Oct. 24

Tribe Disputes Raskin

To the Editor

As a frequent critic of Chief Justice Rehnquist, I find myself in the odd position of disagreeing with so much in Jamin Raskin's article attacking the new Chief Justice in your September 26 issue that I simply cannot let the occasion pass without at least a brief rejoinder. My objections do not go to the correctness of Raskin's overall sense of the Rehnquist philosophy — there is no doubt that the new Chief reads constitutional commands through lenses highly favorable to claims of government power over people's lives — but, rather, to the carelessness of Raskin's specific charges. Repeatedly, what Raskin says of the Rehnquist position is simply and demonstrably false — and gratuitously so: it is hardly necessary to *invent* things to criticize in this justice's legal views!

To pick but one egregious example, Raskin says that "Rehnquist believes that states can censor newspapers, deny free speech, and establish their own religions." Nothing

in Chief Justice Rehnquist's opinions warrants any such conclusion; he has opined that Bill of Rights guarantees apply only indirectly, and with reduced force, through the Fourteenth Amendment. But that view has been shared by many less extreme Justices, and is a far cry from the position Raskin attributes to Justice Rehnquist, who has in fact voted to strike down state censorship and has said that, in his view, a state that *did* in fact "establish" its own religion would be in violation of the Fourteenth Amendment.

Contrary to Mr. Raskin's assertion, it is not at all because of a supposed view that the "Constitution applies only to Congress" — a view attributed by Raskin to Rehnquist without foundation — that Justice Rehnquist, dissenting in the moment of silence case, would have allowed Alabama to set aside time for silent prayer. Rather, the new Chief Justice voted as he did in the Alabama case because of a theory that the First Amendment's Establishment Clause forbids only those government acts that literally

(Continued on Page 16)

Babbitt's New Democratic Agenda: Replacing Entitlement

Bruce Babbitt is nearing the end of his second term as Governor of Arizona, an HLS graduate, he is considered a potential Democratic candidate for president in 1988. The following is a previously unpublished excerpt from a speech he delivered at Yale University last year.

Ideas and values are the flesh and blood of any politics worth having. And my party is alleged to be out of them. I am a Democrat, and I take this charge seriously. I don't know whether a lame duck governor from the provinces is equipped to supply you the answers. But I want to take a shot at a few.

My answer comes in three parts. One, where the Democrats went wrong. Two, why Republicans are no alternative. Three, what you and I should want to do about it. There is only one central issue in domestic politics today, and that is the relationship between prosperity and social progress. Where I most vividly came to perceive this relationship is in a mining town called Morenci.

Arizona is the largest copper producer in the nation. Years ago, copper meant jobs for Arizona. The mines were our major employer. There is plenty of copper left in those mines. But no longer so many jobs. Supply and demand have conspired against Morenci. On the supply side, there's a surplus — from Zambia, Chile, Mexico, and other such low-cost producers. On the demand side, glass fiber optics are replacing copper in market after market. The combination means layoffs, cutbacks, and closures.

It seems to me that Morenci stands just at the cusp of what divides Democrats from Republicans — it shows what is right, and what is wrong, with so many of us both. That Arizona miner represents every working American who is threatened by the forces change. I believe change is constructive . . . desirable . . . inevitable in a dynamic, free-market economy. But I know it is also painful and frightening for those it casts aside. Re-

publicans, by and large, understand the first of these truths. Democrats, by and large, understand the second. What we need today is a vision which accounts without flinching, for them both.

Democrats in Arizona watched the decline of the miners and they tried to stop change in its tracks. I will tell you how politicians responded. They decided to stop change. They came to me and they said: Let's save the copper industry. Let's abolish severance taxes and cut property taxes on mines. Let's lead the fight in Congress for import quotas, to keep cheap copper out.

But the politicians were wrong. Lower taxes for one industry mean higher taxes for all others. Higher prices for copper mean higher prices for everything made with copper —

I believe change is constructive . . . desirable . . . inevitable

and everything made with everything made with copper. And so to save one uncompetitive industry we hobble a hundred more.

At the national level, my party is looking backward to the central planning models of the '30s. Some propose to resurrect the Reconstruction Finance Corporation — to hand out government credit, like bandages, to industries in distress. Others pull for bulky councils of big government, big labor and big industry. We used to call that NRA.

Well the Blue Eagle, for all its psychological appeal, didn't fly in 1933, and it won't fly today. Take the Concorde, Europe's answer to "industrial policy." Oh, it *flies* all right. It burns up losses at twice the speed of sound. If you want a domestic example — this one burns nothing at all, and never will — take a tour of a multi-billion-dollar synfuel plant. You can see the rust just waiting to happen.

Our president has an alternative and equally obsolete theory of

growth. He calls it "supply side" economics. That's not what I call it. The Reagan Republicans are Calvinist clergy. They're all for faith, but not good works. They say you cut taxes, and you have faith. Especially you have faith in the rich. You put a lot of cash in the hands of the rich, and by the grace of Adam Smith they will spend it on productive investment.

Well, as Will Rogers liked to say: "It's not what they *don't* know. It's what they know for sure that just ain't so." What just ain't so is that rich people are our major creators of wealth. Neither, for that matter, are the large corporations which are the alternative constituents of Reaganomics.

The real creators of wealth, and the real creators of jobs, are new and small businesses. They're on Main Street, not Wall Street. In the last ten years the Fortune 500 companies — all of them, combined — have created, net, not a single new job for America. Small businesses have created 11.8 million. That's two-thirds of all the new jobs in our economy.

Now there is nothing wrong with attending to the "supply side." But you had better know where it is. Our supply side — our real source of wealth and new employment — is our people: our workers our entrepreneurs, our family businesses.

What that demands of our economy is a return . . . to basics. To the stimulation of savings. To the promotion of investment. To the growth of productivity through training and education.

Ronald Reagan, of course, believes in these things. He has faith. He affirms that faith in every economic speech. But in this earthly world, faith is not enough. We need good works as well, and this administration has failed dismally to provide them.

Take the federal budget. The Reagan deficit is so large now as to rival the combined savings of business and individual Americans.

Programs with Social "Empowerment"

By Gov. Bruce Babbitt

It has so distorted our accounts as to make us an international debtor for the first time in history. The importance of this is not merely symbolic. Our economic health depends upon investment, which depends upon the availability of capital, which depends in turn upon gross savings.

Well, individual Americans are saving, some. Businesses are saving. Our government is spending like there's no tomorrow. That means interest rates are much too high. And so a family that wants to buy a home, cannot. A business awaiting expansion, waits longer. Our economy as a whole grows more slowly than it might.

An economic policy geared for growth would cut the deficit, not by gimmicks but by setting real priorities. It would also do a great deal more. Above all, it would mix a coherent blend of fiscal, trade and monetary policies. Let me give you three examples, all of them based on the tax code.

One. Savings and consumption. In Japan, people deposit their paychecks. In America we spend them — and then beyond them, with plastic. And why not? We tax interest on savings; we allow full tax deductions for interest paid on consumption. If we are serious about encouraging capital formation we should be doing just the reverse: abolish the taxation on savings, and remove the deduction of consumer credit.

Two. Capital gains. Why my father's capital gains are taxed at a more favorable rate than the earnings of a copper miner in Morenci has always been a mystery to me. At the very least we should distinguish investment from speculation. We cannot continue to reward land speculators with just the same incentives as the entrepreneurs who risk their capital on job-creating enterprise.

Three. Small business. Even as it creates all those jobs, the average small business pays higher net taxes

than the oil companies. That does not make sense. We should adopt Peter Drucker's suggestion: exempt small business from every corporate tax. It is fundamental to our economic health that many new enterprises be launched. And it is inherent in our free market system that some of them will sink without a trace. You can't have free enterprise without failures.

So what then, of the left-behinds? What about the unemployed miner in Morenci? Through no fault of his own he has been cast out at the roadside of economic change. What can we — what should we want to do about it?

This conservative ethos, so puffed up with its own morality, is in fact deeply amoral. It begins and ends with self interest.

It may seem odd, perhaps, to ask this question at the very moment of stalemate and panic in Washington. But I am reminded of that famous Chinese character for "crises:" a combination of "danger" and "opportunity." The Gramm-Rudman proposal offers just such a crisis.

Senators Gramm and Rudman, and the two-thirds of their colleagues who support them, have expressed their alarm at the federal deficit by proposing to wash their hands of hard choices. They profess their incompetence and their irresponsibility. Someone's got to stop us, they say, before we spend again. Here's how they want to do it. They want to take half the budget and declare it solemnly inviolate. And they want to slice the other half, in exactly equal proportion, to the bone.

Now it seems to me that this is a mindless moral equivalence, as if

every federal program — from the life-and-death treatment of infants to the marginal improvement of our roads — were equally important.

Senator Rudman has been quoted as calling his plan "a bad idea . . . whose time has come." Well, he's half right. Make no mistake: Gramm-Rudman is about social policy, not economics. And it represents a desperate failure of politics, on both sides of the aisle.

The Democrats, at least, have their hearts where they belong. For a hundred and fifty years we have wanted to stick up for the underdog, and that is a fine and honorable instinct. But, as instincts are wont to do, ours have become obscured by the methods and programs and policies that have accumulated around them. Our party leaders, I submit, have grown blind to priorities.

For years they looked out upon the vast, sprawling landscape of government spending and stood for a one-word platform: "More." Theirs was the Brezhnev Doctrine of domestic politics: that every dollar and every program is forever, that revision — any revision, anywhere — is to be resisted to the end. It didn't work, couldn't have worked, not even in a nation as wealthy and as generous as America. There are trade-offs in government, as in life. Some things are more important than others. Progressive Democrats failed to see that, and when it came time to choose they laid down their gloves and surrendered.

There is even less to be said for the predominant ideologists of the Republican Party. Every government program, to that kind of mind, is equally expendable, and the allocation of sacrifice is a matter of indifference. These people believe, with their president, that government is the enemy. That it has no useful role in easing hardship and promoting the advancement of good. That hunger . . . is a valuable eco-

(Continued on Page 13)

Haile, 1L, Makes Long Trek To HLS

By Risé J. Peters

This year, as has rarely happened in the past, there are several international students beginning the JD program here at HLS. For the most part, these students have come to HLS by nontraditional routes.

One such student is Johannes Haile, 1L Sec2, who grew up in Eritrea, which is part of Ethiopia. He got involved in student activities in the aftermath of the revolution in 1974, when the emperor of Ethiopia was overthrown by the military regime.

Haile's mother sent him to school outside of Eritrea to get him out of his home town, where all young people were subject to random harassment by the secret police. She decided that it was safer for him to go to school someplace else; it was also a convenient way of leaving his home city, the border of which and the transportation from which were controlled by the government under a state of emergency.

But the situation in which Haile found himself deteriorated.

The new government was forcing the students to go to the rural areas, which were very turbulent. The students of the school he was attending conferred and decided not to accept relocation. Haile was one of the group sent to formally declare that decision to the person in charge of that area. The members of that group were detained for a few days, and when he was released he found that the other students had left the school, "some to go back home; some — who knows."

Now, not safe away from home either, Haile traveled 500 miles back to his home town. Once more, his mother was worried. People were being executed and tortured. So she sent him to stay with some relatives, who lived about 80 miles east on the Red Sea coast.

Haile describes his life there as being under "house arrest"; the relatives were in charge. He got tired of it and decided to leave the country altogether. He got some money from his mother and his relative, sold some of his belongings, and con-

tacted a city agent, an "underground businessman."

Smuggled From Ethiopia

Haile says, "I don't really remember how I met [the agent]. That person is somewhat an intermediary between people who smuggle people out of the country, people who are going out to the Sudan, and you. So you pay a fee so that he can find somebody to take you to the Sudan. So I did that, paid some money, so that I could establish contact with that person."

The city agent walked Haile six hours out of the town and there he met the smuggler, who he calls his "friend."

Haile paid his fees and they walked to the Sudan, about 300 miles. Twice during the course of the walk planes dropped bombs close to their course. They walked at night and slept in the daytime. Haile says, "In that way, I arrived at the Sudan, and stayed there for about a year. I lived literally, the life of a vagabond. Sometimes I would work. It was not just me. Thousands of people had come to the Sudan, thousands of people without homes, fuel, or shelter. You had to submit yourself to go to camps, special camps where they give you rations of flour, and oil, and a tent. Many people died there, of malaria, of dehydration.

"I chose to be a vagabond. I just worked off and on, and it was like an aimless drift. There's a point at which you become so desperate that you will do anything, take any risk, and so I stowed away out of the Sudan, in a boat."

Haile travelled along the coast of Europe in the boat. He says, "No-

body would take me, because I didn't have papers. I could not do anything." Later, the people on the boat negotiated with the Egyptian government, and Haile was allowed to land in the Suez Canal. Haile contacted the United Nations High Commission for Refugees, which convinced the Ethiopian embassy to issue him identifications papers, ostensibly so that he might be deported back to Ethiopia. It was a successful ruse.

While in Egypt, Haile met an American family which sponsored his entry into the U.S. Although he first came in on a student visa, he later returned to Europe where he applied for and eventually received an immigrant's visa in 1981. He anticipates becoming a U.S. citizen.

Haile took the high school equivalency exam in Oakland, California and was admitted to community college there. He then transferred to UC Berkeley, where he majored in economics and political science.

Haile isn't sure what he will do this summer. He would like at some point to go to Switzerland and work with the UN.

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Redefining The American Social Welfare State

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nomic force. This conservative ethos, so puffed up with its own morality, is in fact deeply amoral. It begins and ends with self interest. And it rests, at the bottom, on a cold, hard failure of empathy. And that, ladies and gentlemen, is why I will never be a Republican.

I would therefore like to speak to you of the future of an American movement. It is a progressive movement, premised upon a public philosophy of prosperity and social advance. It is a movement of economic renewal. It embraces change as the harbinger of opportunity, and it holds the sweeping aside of the old regime to be a condition of the arrival of the new. But it insists that a helping hand to those who have been overtaken is the price of our collective conscience. That individual dignity, as much for the down and out as for the rest of us, is the soul of the society we want in our hearts to become. For our vision of ourselves is not only a rich society, not only a powerful society, but also, as a Democrat said twenty years ago, a *great* society.

Now the present situation includes the debris of a fifty-year experiment. Our welfare state is an ad hococracy, the product of fits and starts and revisions over time. It shows no philosophical pattern, because no single philosophy contrived it. That is why Gramm-Rudman is both a danger and an opportunity. A danger because its passage would dismantle the apparatus of social progress. An opportunity, because its mere introduction may allow us — finally — to take that apparatus and make sense of it.

I believe it is time for a radical new look at the social goals of government, and that the principles behind it should be three. First, we must set limits, and therefore priorities. That means we must target our spending more closely on some measure of need. Second, we must buy opportunity and not dependence. Third, we must affirm that the benefits paid to our citizens bring reciprocal duties to the society

which foots the bill. In fact I would like to stop using the word "entitlement" when we discuss the needs and resources of able-bodied adults. For these men and women, and for their children, the vital idea is "empowerment." We must empower then to find reward in work and satisfaction in the use of their talents.

Empowerment begins with our children, for the children are our future. And the surpassing problem for children today is medical care. One of five children in America now

lives in poverty. Less than half of these are even eligible for Medicaid. That is a shameful state of affairs, and one we should remedy now. Day care, too, is an issue of opportunity and of growth. We ought to say as a matter of national priority that every woman who works will have day care available.

And what of the unemployed miners of Morenci? We now have a baffling collection of adjustment programs for the unemployed. But empowerment demands something
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Readers' Forum

Record's Founder Comments on World Affairs

By Charles O. Porter, B.A. '41 ('47)
LL.B., '44 ('47)

Early in 1946 an idea came to me that Harvard Law School needed a student newspaper. That impersonal, feverish place needed a newspaper to help create a Harvard Law School community. Two classmates, Paul Hellmuth and Charlie Sweet, concurred. Like me, they had just resumed their legal studies after four years of active duty in World War II.

Sardonic HLS Dean Jim Landis approved the establishment of the RECORD 40 years ago. I became the first President, Charlie Sweet the first Managing Editor, and Paul Hellmuth the first Business Manager.

Erwin Griswold, who was appointed HLS Dean just before the RECORD's first issue, had been one of two faculty members opposing the founding of the RECORD. He quickly became and remained an enthusiastic supporter.

Like the RECORD and any other idea, implementation and realization depend on enlisting able co-workers. Here are a few of my other ideas:

Moral Latin American Aid Policy Early in my two terms in Congress it became clear to me that the U.S. "national interests" foreign policy referred to U.S. military and economic interests and to hell with U.S. morality and human rights. The United States helped those governments that played ball with major U.S. corporations and the Defense Department. The United States didn't care what kind of a son of a bitch governed a particular country through murder, torture and corruption so long as he was "our" son of a bitch, as FDR once said in reference to the Dominican Republic tyrant, Trujillo.

Because Trujillo ordered one of my constituents, a young man from my hometown, Eugene, strangled in December 1957, the month before I was sworn in as a Member of Congress, I became involved in U.S.-Latin

American policy. I urged a "moral" foreign policy to help those governments decently trying to relieve their people's misery, not add to it.

Sen. Jack Kennedy joined me in the House TV studio in 1960 to make a film for use in my campaign for re-election. Here I don't have to talk about the cock crowing and the sun rising. It's all on film. Jack gave me credit for the hemispheric theme of his Alliance for Progress plank.

Sad to say, after he became President, the Alliance for Progress theme rocketed briefly, then fizzled out. Today the U.S. persists in helping the wrong people in Central and South America and elsewhere, all on the pretext of fighting the fancied Communist threat.

Foreign aid indeed. If I were in Congress today I'd vote against it. It usually identifies the United States with vicious, arrogant, greedy governments. It misrepresents the moral principles honored by most U.S. citizens.

Phasing Out the U.S. "lease" of Guantanamo In December of 1960, appearing on national television with Adolf Berle, I proposed that the organization of American States sponsor literacy, auto mechanics and nursing schools for Latin Americans for 10 years on the Cuban soil occupied by the U.S. Naval Base at Guantanamo, Cuba, after which time the property should be unconditionally returned to Cuban sovereignty.

This "lease," with nominal payments which Castro doesn't accept, was exacted by the United States in 1902 from the Cubans under duress. The Base no longer serves any function for the protection for the Panama Canal. It is a country club for the U.S. Navy, an expensive symbol of anachronistic U.S. imperialism.



Babbit

(Continued from Page 13)

more: it demands universal job training as a matter of right, and a willingness to work as a matter of obligation. The price of these proposals, in a time of fiscal squeeze, may be a cutback on grants to state and local governments. That's a price I am willing to pay.

Now empowerment is a form of social self-interest, because it is an investment in our people, and we can expect our investment to pay off. But I do not propose to make a profit on the needy. There are others — the old and the infirm, the handicapped, the chronically ill — whom we should help simply because it is the right thing to do.

What I have said is a challenge to orthodoxy — both of my own party and its counterpart. I think we need such a challenge. Two hundred fifty years ago, our forebears imagined America before it was. One hundred fifty years ago they imagined great farms and cities with only wilderness stretched before them. Fifty years ago they imagined prosperity amidst Depression. Today we must look beyond ourselves to become what we may be — a vibrant, progressive society which embraces the challenge of change.



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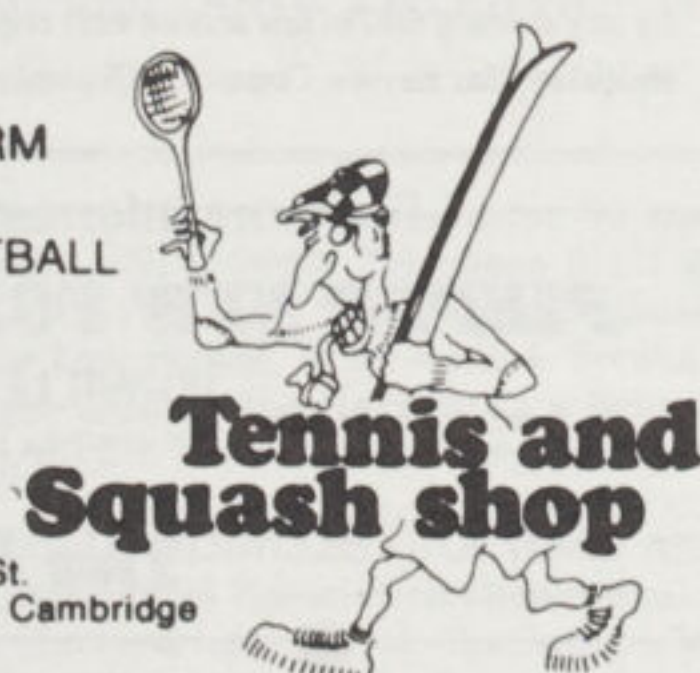
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Moving TV Screen Improves Pub's Atmosphere

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The increase in Pub use has encouraged the managers to further upgrade the Pub's interior. Forthcoming alterations include: a new audio-visual system allowing simultaneous control of television, radio and video systems from behind the bar; installation of a color television over the bar; improving the track lighting over the pool tables; and creation of a large bulletin

board for the posting of intramural sports calendars and records. Hawkins stressed that all of these improvements are coming out of funds generated by the Pub. Besides offering students a comfortable place to socialize inexpensively, the Pub is DSAC's main source of funding. Any monies left over after expenses are paid are used to improve student life, Hawkins said.

Last month's free barbeque was just one example of DSAC's use of

Pub profits. Hawkins emphasized that DSAC always welcomes suggestions for other events or Pub improvements. The next major event in the Pub will be an evening of jazz, featuring a 16-piece professional band. Besides students, faculty, administrative personnel and their families are invited to this concert. Hawkins hopes that the Pub will become a center for the entire Law School community.

☛

Letters to the Editor (Continued)

(Continued from Page 9)

establish a church or that discriminate among religions. That narrow reading of the Establishment Clause which Chief Justice Rehnquist would apply to Congress no less than to the states, is in many ways *more* troublesome than the quite different theory that Mr. Raskin identifies as responsible for the Rehnquist dissent. But, whichever theory one deems the worst, the fact is that the two theories have virtually nothing in common. For critics of Supreme Court Justices, no less than for their supporters, there is a responsibility to be at least reasonably accurate. Whether the Harvard Law RECORD owes its readers a closer job of editing is, I admit, a more debatable question.

Laurence Tribe
Tyler Professor of Constitutional Law

Forum Expanses High

To the Editor:

I read with interest Luke Cole's Questions on Quality of Life at HLS in the last issue and would like to answer one of his questions. Mr. Cole inquired as to why the HLS Forum charges admission to its events. As a student organization, the Forum receives some funding from the Law School, but this amount is far below the amount necessary to cover what are often substantial expenses. The Forum must pay the expenses of flying guests in from wherever they normally reside, and putting them up in hotels. There are often significant security costs which the Forum must bear and, of course, large publicity costs as well. In short, our expenses are heavy and we charge a small admission fee to defray some of these expenses. It should be noted that the Forum still loses money

on every event. So there's an attempt at an answer to one of Mr. Cole's questions. I hope he finds answers to his other questions as well.

Jim Peck-Gray, 3L
President, HLS Forum

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