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25 CENTS

Professor Faces Storm at Stanford

By Eric Goulian

"An Insult To A Law Professor," said *The Washington Post* headline. *The Peninsula Times Tribune* of Palo Alto, California, ran its story under a six-column headline: "Law Professor Alleges Racism At Stanford."

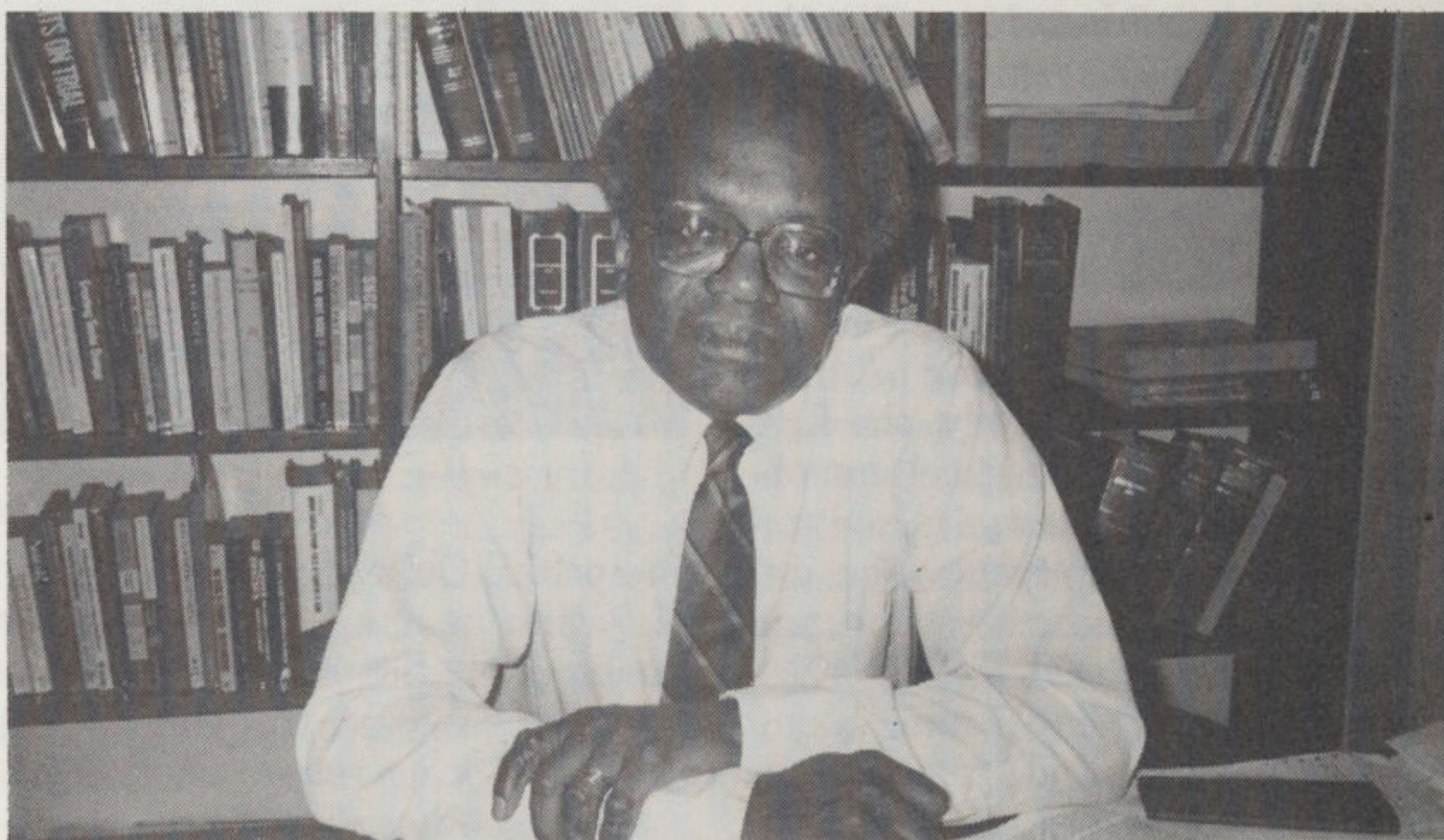
The law professor in question was Harvard Professor Derrick Bell, who experienced what he called "the worst moment of my professional life" while at Stanford Law School last spring as a visiting professor teaching constitutional law to first-year students.

Bell returned to HLS this fall after four years as dean of the University of Oregon Law School.

In what Bell says was a response to student complaints about his teaching, members of the Stanford Law faculty rescheduled a one-week series of lectures on constitutional law designed to supplement his course and make up for perceived deficiencies in its coverage. Bell was invited to give one of the lectures, but he says he remained unaware of their true purpose until members of the Stanford Black Law Students Association (SBLSA) showed him the protest statement they later read before the first lecture.

"Even some weeks after the event," he wrote last May in *The Stanford Law School Journal*, "I am unable to rationally express the range of my feeling — from abject humiliation to absolute outrage. Here were black students, some of whom had hailed my visit as a real

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Karen Russell

Professor Derrick Bell

Judge Criticized After Murder

By Marla Becker

Controversy has surrounded Somerville District Court Judge Paul P. Heffernan since September, when charges were filed against him by the parents of a woman found murdered last August — charges that are now being investigated by the Judicial Conduct Commission. *The Boston Sunday Globe* (Oct. 5 1986) described the controversy this way: "The death of 22-year-old Pamela Nigro Dunn has put Heffernan in the center of a storm that has as much to do with the role of the courts in domestic violence cases as it does with his part in one woman's tragedy. Who is the man at the center of the storm?"

Heffernan is now facing charges because of remarks he made during three of four hearings last March in an abuse case involving Pamela Nigro Dunn and her husband, Paul J. Dunn, 23, the man being sought

for her murder last August. Pamela's first request for a protective order barring her husband from contacting her or entering her home was granted by Heffernan, but he berated her at later hearings for trying to obtain a police escort when she retrieved her clothes from the Medford apartment she had shared with her husband. Heffernan scolded Pamela at the hearings for wasting his time and the taxpayers' money on a domestic squabble that he said was "clearly a little bit out of control," and advised Paul at the couple's last appearance before him that "You want to gnaw on her and she on you, fine, but let's not do it at the taxpayers' expense."

Pamela was found dead, her face in a puddle, at a city dumping ground; she allegedly had been travelling on a bus from work to

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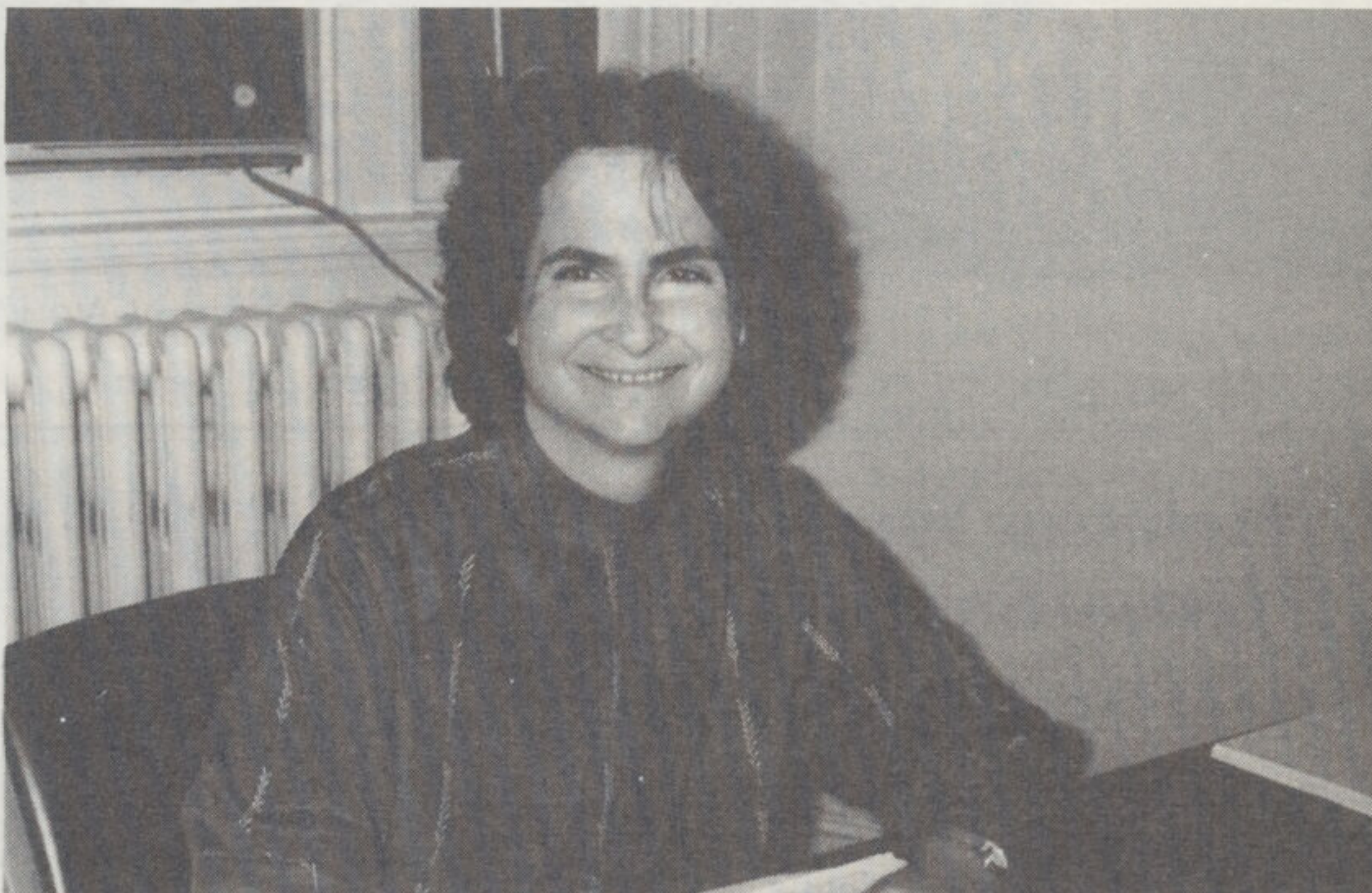
Anker And Anthropologists Study Immigration

By Keith Heligman

Deborah Anker, Lecturer in Immigration Law and co-chair of the American Immigration Lawyers Association's Committee on Immigration and Asylum, has received a \$50,000 grant from the Ford Foundation. Anker will use the grant to apply methods adopted from the field of anthropology to study how legal doctrines affect the ways people make decisions during the hearing process in the U.S. immigration courts.

Not only attorneys but also anthropologists are "interested in the courts' functions as social and political institutions," said Anker. Anker believes the study, the first of its kind, offers an excellent opportunity for both lawyers and anthropologists to examine the authority of the Immigration and Naturalization Service (INS).

Over the next year, Anker, along with five HLS students and anthropologists Assistant Professor Jennifer Schirmer of Wellesley and Professor Barbara Yngvesson of



Karen Russell

Lecturer on Immigration Deborah Anker

Hampshire College will attend immigration hearings and interview immigration hearing participants — judges, lawyers, translators and persons seeking refuge or asylum.

Anker believes Boston's three-judge court of immigration affords a good opportunity for study because

of its size and location. It is not so large and busy as Los Angeles', with seven judges, nor so isolated as the single judge court of immigration at the Oakdale, Louisiana facility for long term immigration detainees, said Anker.

The study will be based on the ethnographical model, which, Schirmer says, requires an observer to try to understand a culture on its own terms. In general, ethnography focuses on non-industrial, non-Western societies, but Schirmer believes there has been a "shift to societies closer to our own and [to] seeing the courtroom as a mini society" with its own rules and responses.

By understanding the social mores on which U.S. immigration policy is based, Anker and her associates seek to determine the cultural influences on immigration policy, as well as the "quality of due process" afforded the immigration detainees.

Anker, Schirmer and Tom Dahdouh, 3L, a student taking part in the study, denied the suggestion that their study will have any particular political slant. Their interest lies, instead, said Dahdouh, in "the profound change towards formalization" of a formerly informal system which allowed judges to act as inquisitors.

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200 Plus Boycott Union Busting Firms

By Hillary Richard

An ad-hoc committee formed by several second and third year law students urged their classmates to boycott five law firms they categorized as union-busters. A letter was placed by the "Ad Hoc Committee on Union-Busting Law Firms" into all 2L and 3L mailboxes, urging all students to look more closely at the "true nature and extent" of these firms' activities in the field of labor law.

Bond, Schoeneck & King (Syracuse, N.Y.), Littler, Mendelson, Falstiff & Tichy (San Francisco, Ca.), Morgan, Lewis & Bockius (Philadelphia, Pa.), Seyfarth, Shaw, Fairweather & Geraldson (Chicago, Ill.) and Vedder, Price, Kaufman & Kambolz (Chicago, Ill.) were all accused by the committee of trying to prevent unions from organizing by preparing and/or distributing anti-union literature. The accused firms were also said to have engaged in training supervisors in anti-union strategy, delivering or preparing "captive audience" speeches and directly confronting employees.

According to boycott organizer Paul Bamberger, 3L, these firms "are engaged in the business of preventing unions from forming and preventing unions from growing."

Charles McDonald, National Director of the AFL-CIO Department of Organizational and Field Services, spoke to a group of approximately 25 students at a press conference held in front of the Harkness Commons on Oct. 15. He offered statistics on the pervasive nature of law firms engaged in management side labor law.

Not only are attorneys involved in the dispensing of legal advice to their management clients, McDonald stated, but they are also orchestrating and running organized campaigns against the unions. He said that of a survey taken from 250 NLRB elections, "law firms were involved in over 90% of the elections and in 72% the law firms actually ran the campaign."

Over 200 HLS students signed a petition promising not to interview

with any of the five firms. This was beyond the expectations of the boycott organizers, since last year a similar request letter was signed by only two students, resulting in a decision not to circulate a petition.

Representatives from both Morgan Lewis and Seyfarth Shaw said they felt the boycott had not negatively affected their recruiting season at Harvard.

Gary Skoning, a partner of Seyfarth Shaw and a member of their

administrative committee, said that they were "delighted with the quality of the people that they saw," and did not feel that the number of students interviewed varied greatly from years past.

Skoning also said that the charges of "union-busting" were "totally wrong," explaining that his firm engaged in labor law, and not labor consulting. He said that while his

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Another Look At HLS Life

Julia Loewy

Commenting on recent student dissatisfaction with the quality of life at HLS, Law School Council President Jay Ward, 3L, said that "[a] veritable wellspring of complaints has created a backlog of issues."

The Committee on Student Services and Quality of Life has been established to help remove some of the sources of dissatisfaction. Because the committee is "still in the embryonic planning stages" according to Assistant Professor Kathleen Sullivan, a member of the Committee, it is too early to tell whether it will prove to live up to its creators' expectations.

According to Ward, he and Vice Dean David Smith had complaints "voiced [to them] about the entire HLS experience," and they, along with Dean James Vorenburg, established the committee last spring. In addition to Smith, Sullivan, and Ward, the Committee is composed of Administrative Dean Simone Reagor, attorney Muriel Spence, Peter Kochenberger '86, a former Resident Advisor, DSAC President Karen Leili, 3L, and Scott Kline, 2L. The first three meetings have been devoted to defining the problems faced by students and working on developing a fact-finding process. The Committee plans to take an aggressive approach, using a systematic procedure to reach out into the HLS community and talk with a broad cross-section of students, in

addition to meeting with the heads of student organizations.

One problem faced by the Committee is that a certain segment of the students who are unhappy with their experience at HLS are quite difficult to reach, precisely because they do not identify with campus life.

Smith said that "students who carve lives out for themselves may think the quality of life is terrific. For example a student interested in human rights may have a summer human rights fellowship, work with Human Rights Internet and the Human Rights Yearbook, and take any of several human rights courses offered. Students who don't develop an identity for themselves may be less happy."

Sullivan acknowledged that "there are lots of reasons students are more or less happy. The Committee can examine how to alter institutional processes and spend money, but can't possibly address all concerns about the 'spirit of HLS.'" Ward added that "the very fact that you're here for a professional degree affects the atmosphere. It's not going to be like a small college."

Primary among the services the group is interested in targeting is counselling. Ward sees a need to improve both professional and emotional counselling, noting that there are several "horror stories" of R.A.s having to handle suicide

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Stanford Students Criticize Bell's Course

(Continued from Page 1)

gain for them, forced to bring me the news that even as I taught my courses, walked through the halls, attended meetings and generally participated in the life of this community, a large percentage of students knew that the administration had approved a program designed to compensate for student-reported teaching inadequacies. It was by a considerable margin the worst moment of my professional life."

The SBLSA protest charged that the lectures were motivated by "a hostile and racist response to the teaching style of Professor Bell." After the group voiced its opposition, Professor William Cohen, the first scheduled speaker, refused to participate, and the series was subsequently cancelled.

Stanford Law Dean John Ely, a former HLS professor, denied the charge of racism. "The idea that race had anything to do with this is completely false," he told *The Peninsula Times Tribune*. "At the very worst, it could be construed as complaints about Bell's teaching."

Associate Dean Jack Friedenthal reiterated the administration's position in a telephone interview. "The student complaints as they reached me were not racially motivated; they were based on perceptions of his teaching," he said. Students reported that Bell was "unclear and vague and unresponsive to questions," he added.

Larger Role for Race and Slavery

Bell, however, said he believes the student complaints were based not so much on perceptions of his competency as on reactions to the point of view he presented in class. "Issues of race and slavery played a much larger role in the formulation of the Constitution than most history books report and most Americans realize," Bell wrote. "This, for me, did not mean every subject had to be infused with race. But it did mean that when race played a role in the development

of an area of law, it should be explored rather than, as so often has been the case, ignored."

Bell said many students and faculty members find this interpretation threatening. So when student complaints reached the faculty, "the content of my course was translated into a competency problem to which response became important. . . . Even constitutional law teachers as renowned as those on this faculty would not attempt to teach the basic constitutional law course in a series of lectures. But I suggest the felt need was not to convey information, but to provide equal time."

Friedenthal denied that the lectures were directed toward Bell or that the administration had any role in organizing them. "The administration was involved only in the sense that Dean Ely was asked to participate. Otherwise the administration had nothing to do with it," he said. "Four popular members of the faculty who normally teach constitutional law were not teaching last year: Gerald Gunther, Paul Brest, John Ely and Bill Cohen. As a result there was talk all along about having special lectures to give exposure to those people as well as those currently teaching."

Gut Feeling of Racism

Cynthia Matthews, a member of the SBLSA who took Bell's course, said the SBLSA went out on a limb with its protest statement. "We never had any proof that the professors set this up to supplement the class," she said. "The whole racism thing was what we felt, not what we knew. We basically went on our own gut feeling."

When asked if she thought her classmates' response to Bell was racist, she declined to use that word, saying only that "their attitude towards him was not what it would have been towards a white professor."

Two of those classmates, who spoke on condition of anonymity, said they thought the SBLSA's suspicions were correct and that the lectures were indeed organized in

response to the student complaints. One said he thought the lecture series was the wrong response. "They were afraid of a racial confrontation, but they just ended up making things worse," he said.

Both students, however, strongly denied that the complaints were motivated by racism. "It was assumed that people were not judging Bell on the merits," said one. "People who defended him did so on the basis of race."

"If the students hadn't done anything," said another, "that would have been the truly racist response, because it would have shown they expected less of him just because he was black. I'm sure there was a racist or two, but most people entered the class excited by the fact that for once we weren't going to be taught by a white male."

When asked what they disliked about the course, both students referred to a lack of structure and theoretical perspective.

Bell said this is a fair criticism. "One problem with the [Paul] Brest book [used in the course] is that it emphasizes historical development and doesn't focus on doctrine right away," he said. "Normally after a month my approach begins to make sense. At Stanford I had no chance to win students over."

Bell Praised for Concern

Friedenthal praised Bell for his concern and responsiveness to the student complaints, which he said were the most intense he had seen in his time at Stanford.

After the incident, the SBLSA circulated a letter around the Stanford Law community criticizing the administration for allowing the "de facto transfer of students to other sections." The letter said that "BLSA is in no way suggesting that anyone has acted in a consciously racist fashion. Nevertheless, we are requesting that students and faculty alike use this incident to examine their own motives and attitudes."

One woman in Bell's class said

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Veterans' Association Provides Support

By Adele Hendrix

After meeting several HLS students who had military experience similar to his, Marine Corp Captain vonLembke, 2L, decided it was time for HLS to have a formal organization providing support and information to students who have had experience in the military. Thus the HLS Veterans' Association was born.

The organization hopes to be a support group for those with military experience, especially those who are new to HLS. "Whether it's helping other families out to find a shopping mall or showing them where to find Häagen-Dazs ice cream, we're there to help," said vonLembke, the group's president.

The group also hopes to bring one or two speakers to HLS each year.

Although conceding that HLS "already has a terrific speaker program," vonLembke hopes the group can attract some speakers who may not otherwise come to HLS. "Someone from the U.S. Defense Department may decide to come, based on our invitation," vonLembke said.

VonLembke stresses that the Veterans' Association is not a political group. "We have no foundation or platform and support no candidate," he said. "We have no particular philosophy."

Anyone with some sort of military

experience may join the Veterans' Association, including those on active duty, on reserve or retired.

The group already has 25 members, four of whom, including vonLembke, are on active duty and will be returning to the military as Judge Advocates for their summers during law school and for at least six years after they graduate.

The group also includes one World War II veteran and members from each of the four military academies.

Members' military specialties range from nuclear engineering to medicine.

The members' military experiences are quite diverse, vonLembke said, "but there is within those experiences a common strand, . . . and it's fun to get together with people who've had that common experience."

The group is planning a Veterans Day dinner later this semester and a speaker in the spring.

HLS' Structure Creates Anomia

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attempts. The goal should be "increased support without being too paternalistic."

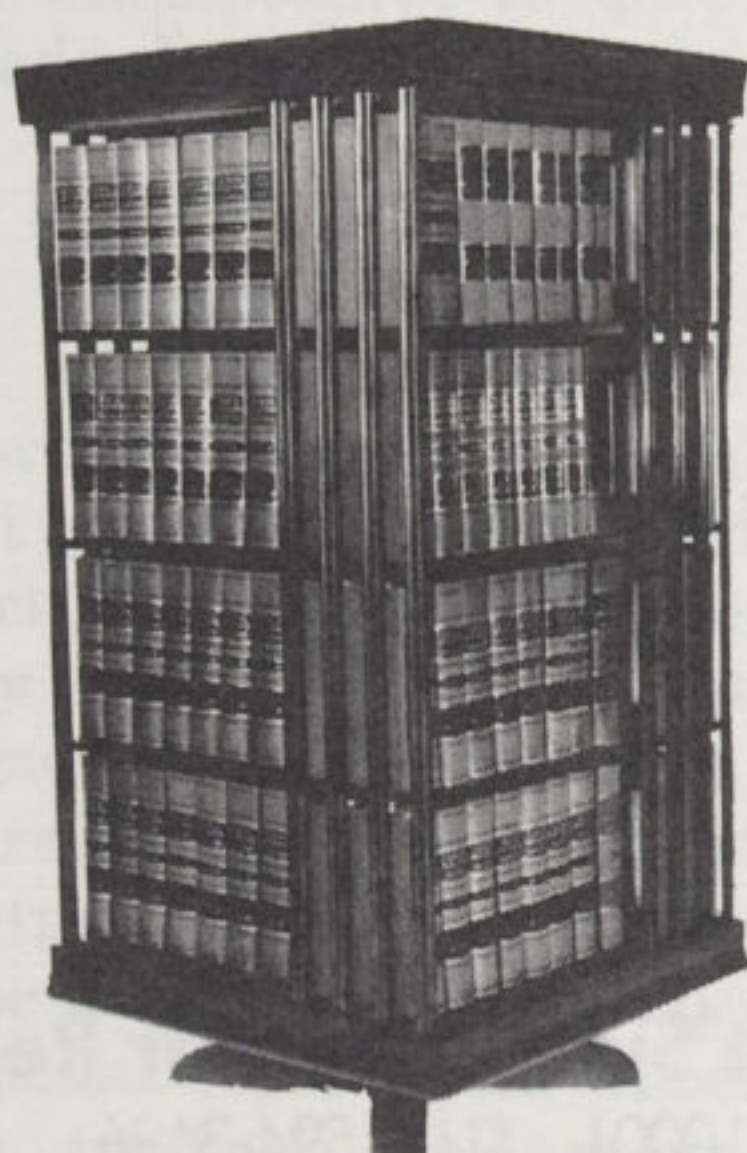
Smith said that the fragmented structure contributes to the problem. "A student may come in with a problem about a course or placement, but it may be part of a larger package involving uncertainty about career choices or unsatisfactory living conditions and those things fall between the cracks."

Special concerns of minorities and women also need to be addressed. The administration is currently recruiting a minority counselor who will work with Smith and Dean Mary Upton to address special concerns.

Ward is particularly interested in working on recreational life at HLS, although he doesn't feel the faculty and administration place as high a priority on it. Ward believes that "DSAC is the key. I don't think social life at HLS is as varied, diverse or active as it should be."

Ward would also like to look into the method of allocating funds to student organizations. Smith said "my impression is that there's not much of an issue there. I think Mary Upton had asked the Law School Council if they wanted to participate, and I'm certain if the Council wants participation, that certainly is open." Communication between

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Willie Brown Kicks Off HLS Forum Season

By Richard Udell

California Assembly Speaker Willie L. Brown, Jr. lashed out at the press in the first presentation sponsored by the HLS Forum for this academic year. Characterizing the media as an "institution running amok," Brown called for stricter journalistic standards and other measures.

Frequently referring to the Supreme Court's landmark decision in *Sullivan v. The New York Times*, Brown said he found objectionable the "actual malice" standard established for cases involving politicians and other public officials. Brown said that jury decisions in favor of plaintiffs, although reversed on appeal, show popular sentiment is on his side.

Brown called for changing the burden of proof in libel cases involving public officials. Currently plaintiffs must show that a reporter or publication made the offending remark knowing of its falsehood or with reckless disregard for its truth. "I don't believe they should be able to lie. They should have the burden when what is published is false," said Brown.

Brown mentioned in passing that his views were contrary to his own immediate interests in that he is presently the defendant in a \$10 million libel suit involving a public official who he added "didn't have much of a reputation" anyway.

Brown said that he believes the power of the so-called Fourth Estate to embarrass and hurt the image of public officials argued for incorporating it more fully as a participant in government. He said that the responsibilities of the press and elected officials were similar. During his opening remarks, Brown repeatedly called for "dialog" and "self-criticism," and said this was necessary if the press was to "stop destroying and trampling reputations."

Cites Recent "Embarrassments"

Noting several specific recent embarrassments for the media, he

charged the "excess of the press" in the post-Watergate era was "cause for alarm" and that the institution had "no self-restraint."

A flyer distributed prior to the Forum by a group calling itself "Concerned Latinos at Harvard," criticized Brown for his role in advocating the construction of a state prison near predominantly Latino communities in East Los Angeles. In response to a question from a first year law student, Brown vigorously defended his position. He said that his stance on the issue was developed last year when the proposal had widespread support

including that of Hispanics in the Legislature. Brown said that the outcry was "political" and had only arisen after "some Saul Alinsky types and some priests organized the community." He argued further that no existing prison was in a Latino community. The student responded that the neighborhoods did include numerous local jails.

Brown was first elected to the California Assembly in 1964 and has held the post of Speaker since December 1980. He is a 1958 graduate from Hastings College of the Law.

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HLS Students: "We're Not Scabs"

(Continued from Page 3)

firm gives advice to clients on the legality of their literature or speeches, as well as advice on the legal consequences of engaging in illegal activity, it does not engage in "persuading activity."

Skoning said he harbored no ill will towards HLS, as he recognized that freedom of speech on campus is "a treasured and carefully guarded right."

Similarly, Richard Hotvedt of Morgan, Lewis (HLS '60) said that far from being a disaster, their on-campus interviewer had "a hell of a day." He stated that Morgan, Lewis does not engage in the kind of practices enumerated by the committee as being "extreme" or "objectionable," and felt that an effort like the boycott could keep responsible students from playing a constructive role in the field of labor law.

Boycott organizer Joe Kohanski portrayed the attitude of the majority of the boycott committee as one of tolerance. "We are not saying that they shouldn't be here at all. We think that students should make a conscious choice to do whatever they want to do. We see ourselves as providing an adjunct to the informational services provided by the Placement Office."

Other labor activists involved in

the boycott, however, did not share Kohanski's attitude. Peter Levine, 2L, commented that those who see the boycott solely as a "free speech issue miss the substance of union-busting firms' work: denying workers *their* right to be represented by an organization of their choosing." He contended that the only responsible action students could take is "to deny these firms the legitimacy that Harvard interviews bestow upon them."

The actual number of students that signed up, as well as the number that cancelled as of Oct. 21 are as follows: Bond, Schoeneck cancelled all interviews, since only two people had initially signed up to interview with them; Littler, Mendelson had 18 people sign up initially, 10 of whom cancelled; Morgan, Lewis had 37 sign-ups and 9 cancellations; Seyfarth, Shaw had 10 sign-ups and 2 cancellations; and Vedder, Price had 6 cancellations out of 12 sign-ups.

The nature of the interview system, however, makes it difficult to determine the actual impact of the boycott on sign-ups and cancellations.

The only figure that seemingly bears any indication of student support of the boycott is the 200 plus signatures on the petition.

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In Salute Of Bernard Kalb

Yet again, the Reagan Administration has shamelessly (and shamefully) lied to the citizens of this country. The President and his unelected cronies have once more managed to deceive the people they are sworn to represent, clearly unveiling themselves as enemies of the fundamental principles underlying an even marginally democratic society.

As is now notoriously known, White House National Security Adviser John Poindexter recently circulated a memorandum outlining a disinformation campaign against Libyan leader Moammar Khadafy. Luckily, this reprehensible attempt to manipulate public opinion and feed untruths to the people in order to advance political expedience was discovered. But instead of realizing its error and apologizing for its deliberate use of falsehood, the administration reacted in the only way it seems capable — it played self-righteously dumb. Mr. Poindexter, incredibly, stated that the government has an *inherent right* to use deception to protect what he called the national security.

This galling statement of a high-ranking government aide supporting official lying should not come as a surprise. Lies, disinformation, and a concerted effort to keep the citizens in the dark are the only discernable achievements during six years of the Reagan presidency. Who can forget "our" government's war against the public's right to know during Rambo Hits Grenada, the KAL airliner episode, or the bombing of Libya?

In all fairness, one must note that not every member of the Administration is an active practitioner of sophistry. One person, State Department Spokesman Bernard Kalb, showed himself to be an honorable man. In protest of this latest example of official lying, he resigned. Were it only so that the rest of the government would take the hint.

A recent occurrence, both sad and amusing, effectively comments on President Reagan's unceasing efforts to keep the public as ignorant as he is. Neurologist Oliver Sacks was recently studying a group of aphasics — people with a total or partial loss of the power to use and understand words. Their aphasia, however, enhances their sensitivity to tone, gesture, voice, and grimace. Watching a televised speech by President Reagan one day, Sack's patients *laughed* at the President's talk. They laughed because his voice, his manner, and his gestures rang false. They laughed because they could not believe our President.

So the next time either dear Ronnie or one of his glib conspirators tries to get us to believe whatever new dross sputters out of their mouths, let us all learn a lesson from these aphasics — people in certain respects more astute than we.

—G.M.B

—R.J.P

HARVARD LAW RECORD

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Fenno

"So, what can I tell you about Dewey, Cheatem, and Howe?" the distinguished-looking, gray-haired, power-suited interviewer queried, as he looked at Fenno's grades and turned Fenno's resume over to look at the life history of the next, more-promising candidate.

He knew it was a bad sign when the interviewer barely suppressed a yawn, but Fenno, a veteran of 156 law firm interviews, pressed gamely on. "Well, is working in Newark really as stimulating a legal environment as everyone says it is?" Fenno inquired.

"I'm glad you asked that," the interviewer transparently lied, launching into his canned "I'm from Jersey and proud of it" monologue. "We're just off Exit 15W on the Garden State Turnpike — that name is no misnomer you know — and we're on the 'cutting edge' — to coin a phrase — of a variety of sophisticated areas of law."

"Hazardous waste law, you mean?" Fenno asked, realizing, as he saw the interviewer's pained grimace, that he may have hit upon a sore spot. "So, what do you do for enjoyment outside school hours?" the interviewer asked, deftly switching the subject.

For Fenno the question was laughable — for him, there were no school hours. But he found himself tongue-tied, as he tried to think of what his entertainment had lately been. It had largely consisted of late nights at Rocco's Bar and Grille — overlooking the heart of Somerville, interspersed with the obligatory round of firm cocktail parties and receptions.

"How can they ask such deadly questions?" Fenno mused to himself. "I, um," Fenno stammered unconvincingly, "am trying to memorize the blue book at night in an effort to further refine my legal skills."

Fenno mentally patted himself on the back as he perceived himself as finally hitting, by chance, upon a socially respectable answer to that agonizing question.

But instead of letting up, the interviewer fired yet another zinger at Fenno. "So what cities are you thinking of practicing in?" the interviewer asked suspiciously.

"Whatever city will hire me," Fenno thought to himself, but replied instead, "my focus is on the firm, not the city." Ruining this facially plausible answer, Fenno, however, committed the gaffe of saying, "yeah, yeah, that's right; the firm, not the city. That's the ticket."

By this time, the interviewer had seen enough and decided to wrap things up. "We interview a vast number of candidates — often in the double digits — for a limited number of summer positions. We'll get back to you as soon as our committee has had a chance to review the excellent resumes of the people we've seen here at Harvard."

Fenno mumbled something incomprehensible as he lurched out the door and sprinted to his next interview at the Sheraton Commander.

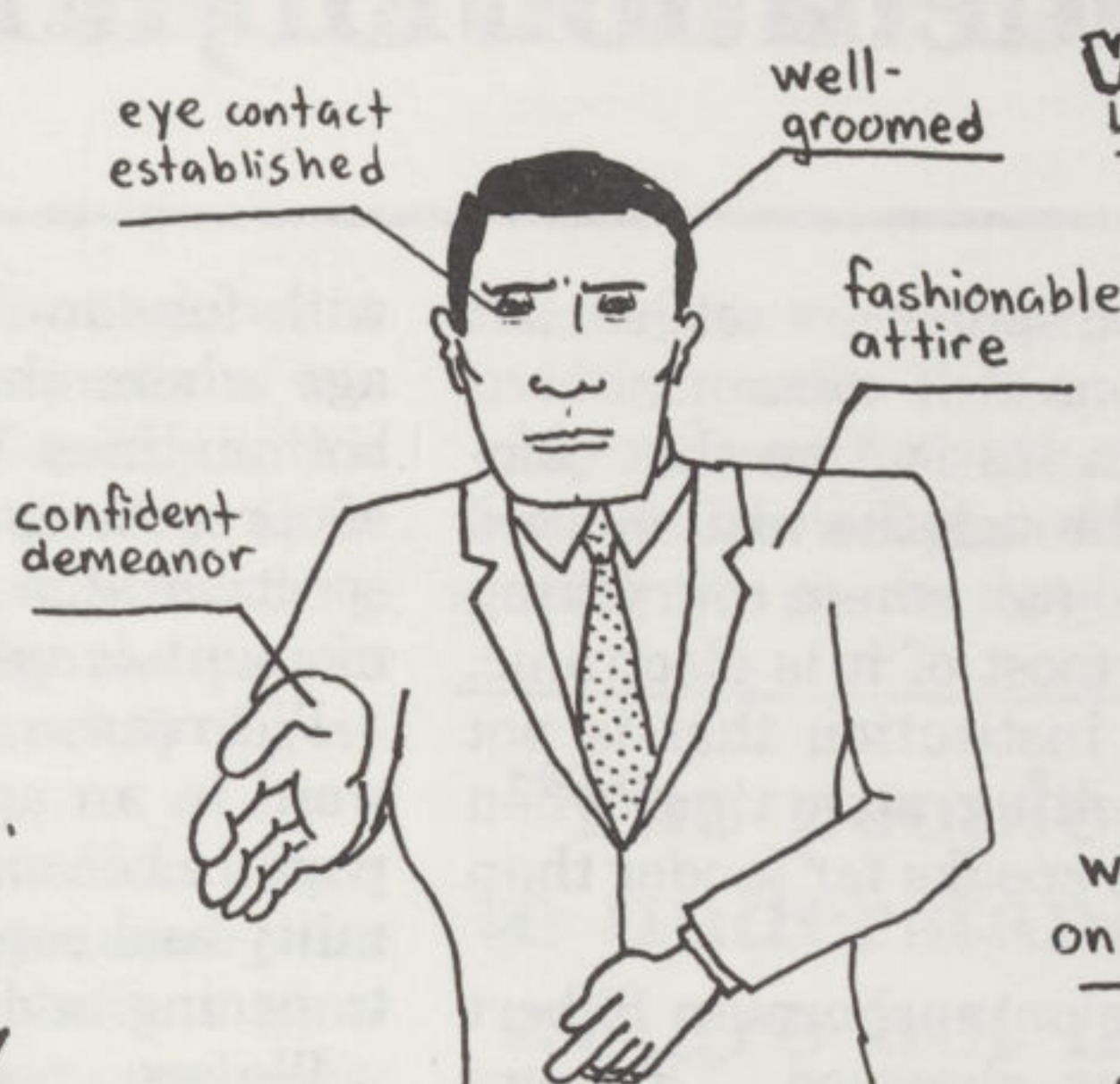
TOM THE DANCING BUG

BY RUBEN BOLLING

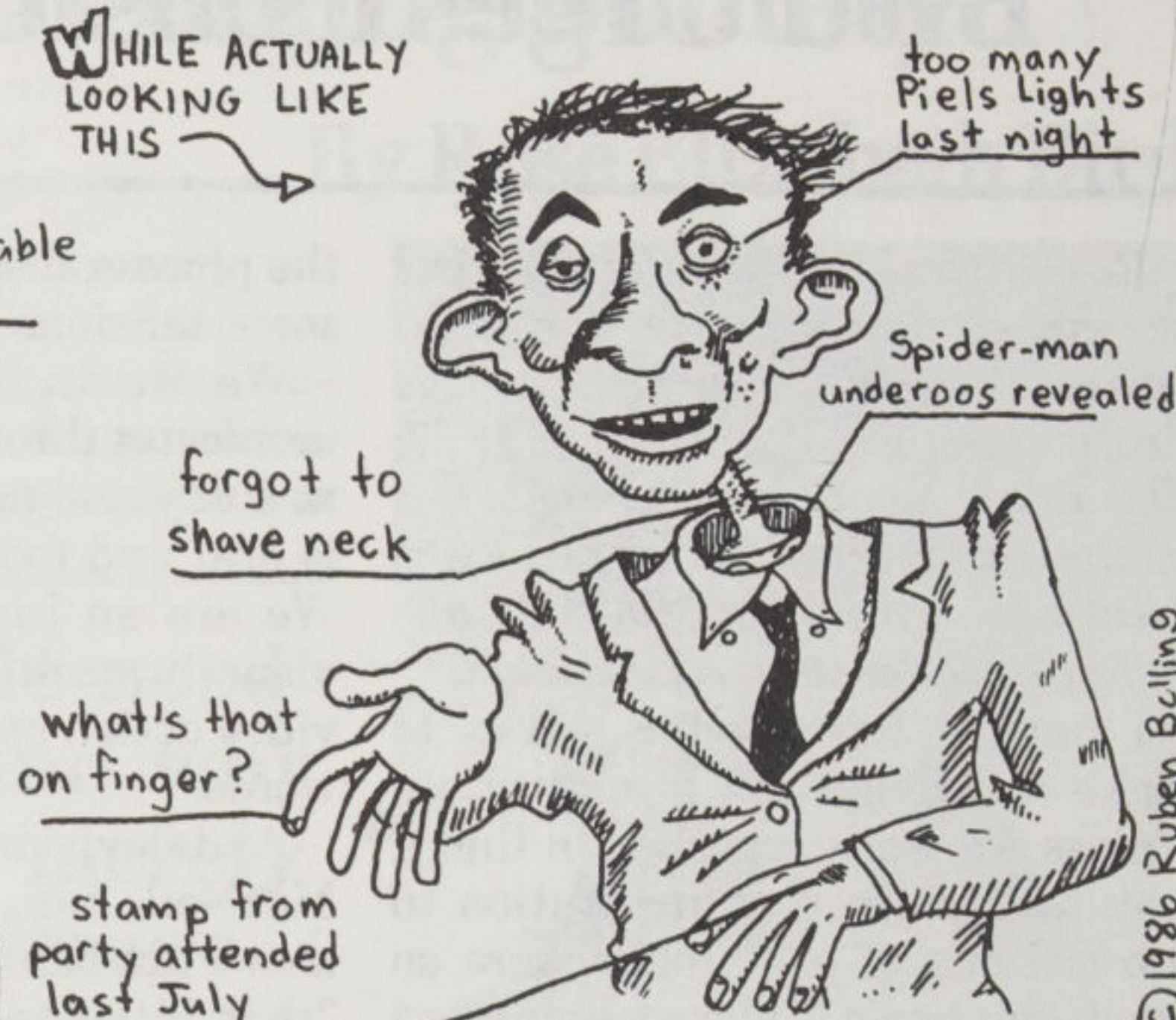
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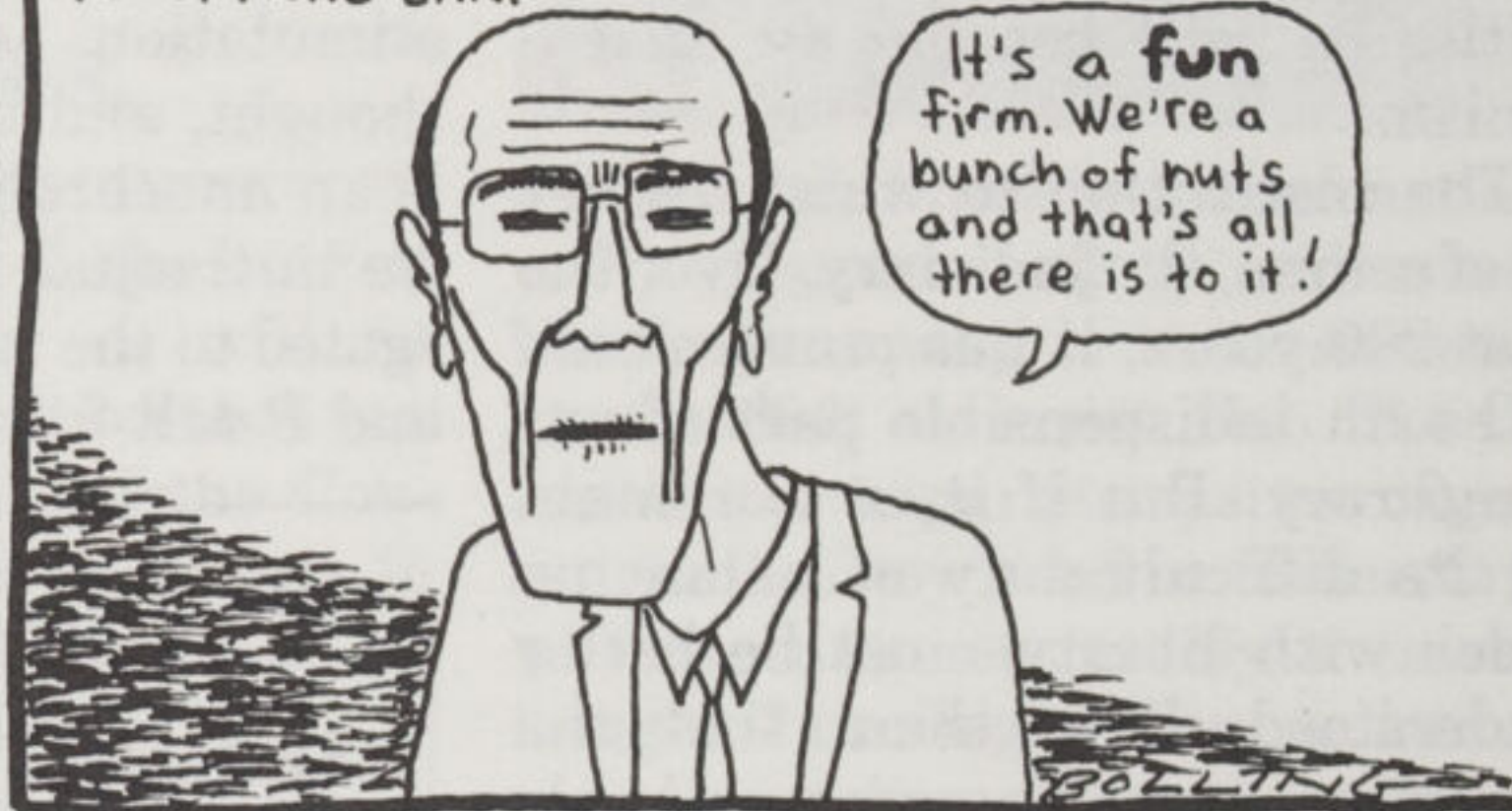


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FINALLY, ALWAYS LISTEN TO YOUR INTERVIEWER WITH A SKEPTICAL EAR!



Letters to the Editor of the Record

Raskin Disputes Tribe

To the Editor:

With his second letter in the space of two weeks attacking the *Harvard Law Record*, Professor Laurence Tribe takes me to task for a single passage in an article I originally wrote for the *Los Angeles Weekly* and other popular newsmagazines. I was not writing a law review case comment (at the time), but an article to communicate to non-lawyers the governing impulses of Chief Justice Rehnquist's reactionary jurisprudence. The *National Law Journal* reports that 71% of Americans do not even know who Mr. Rehnquist is, and I was trying to contribute to public understanding of the new Chief Justice's philosophical orientation. Still, a writer owes to his or her readers a high degree of accuracy, and Professor Tribe is right to hold me to it. Let us (charitably) assume that I was not simply a moving target in my former Professor's shooting war with the *RECORD*, and evaluate his substantive criticism of my work.

Professor Tribe takes exception to a passage (though he does not quote it fully) in

which I wrote that, "Unlike most other Justices, Rehnquist rejects the standard view that the Fourteenth Amendment incorporates the states into the protection of the Bill of Rights . . . Rehnquist's Constitution applies only to Congress; the states can pretty much do as they please." Professor Tribe disputes the essence of this claim, writing that Justice Rehnquist "has opined that Bill of Rights guarantees apply only indirectly, and with reduced force, through the Fourteenth Amendment." And, yet, it has always seemed to me that the Bill of Rights is either incorporated through the Fourteenth Amendment or it is not; to say that "it applies indirectly, with reduced force," is simply a rhetorical trick and a hedging technique, a way to walk a tightrope between two mutually exclusive possibilities.

Professor Tribe is absolutely right to point out, as I did not, that Chief Justice Rehnquist has indicated that he would vote to strike down a state law that literally *established* a religion, but in the real world, no state would be so dumb anymore as to do that in writing. Thus, the actual effect of Rehnquist's jurisprudence is the same: whether the First

Amendment Establishment clause applies to the states not at all or only in cases of direct establishment of a church, "the states can pretty much do as they please," as I

(Continued on Page 14)

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.

Bird Urges Consideration Of Judiciary's

Rose Elizabeth Bird is the first woman ever to serve on the California Supreme Court. She was sworn in as Chief Justice in 1977. The following is a previously unpublished excerpt from a speech she delivered in July 1986 to the California Broadcasters Association.

I have a few brief remarks to make in defense of an institution. Unless we work together to find a way to explain that institution to the citizens of a society where so much emphasis is placed on instant answers and bottom lines, on winning images and pleasing personalities, it will become an anachronism.

The institution to which I refer is, of course, the judiciary. Over the past 200 years, it has proven itself to be an indispensable part of our democracy. But if it is to remain so, its difficult duty of balancing order with liberty must be better understood. It is there that the American press has a crucial role to play, both now and in the years to come.

It is easy to see why the judicial system might not be well understood in a nation so driven by the momentum of the moment. We are an institution whose rigorous procedures and adherence to precedent are out of step with an instant society where amusement and gratification — or at least their illusion — are immediately available.

There are any number of ways in which the judicial branch does not mesh with that brave new world. Let me suggest just a few.

We are not an institution that can relieve societal pressure in the same manner as the legislative and executive branches. There, the process is designed to make everyone feel that they've won or at least that they didn't lose.

In the courts, however, the nature of the adversary system and the need for a definitive resolution of legal rights lead to the inevitable result that one side must lose. In

the process, disputes are settled, but some tensions still remain.

We are an institution that communicates through the written word in a day and age where everything is oral and most of it is electronic. We are an institution that is not visually exciting at a time when video action speaks far louder than words.

As television anchorman Robert MacNeil has observed, TV news shows are based on the assumptions "that bite-sized is best, that complexity must be avoided, that nuances are dispensable, that visual stimulation is a substitute for thought, and that verbal precision is an anachronism." In that arena, we in the judiciary are at best relegated to the ranks of talking heads and B-roll footage with voiceovers.

"There are any number of ways in which the judicial branch does not mesh with the brave new world."

We speak in a collective voice in an age where everything is individual. We wear robes to depersonalize ourselves, both symbolically and literally, at a time when personality is of mesmerizing interest.

We are taught to set aside our personal views about the issues before us during an era in which everybody is expected to have an opinion about everything and to express it freely. We must carefully consider the gray areas of the law at a time when everyone wants instant answers in black and white.

We are first and foremost an institution based on rationality, in a society where communication is increasingly based on emotional appeals and entertainment value.

We are an institution that deals

with fundamental principles in an age where the only interest is in bottom lines. We are an institution of precedent and historical perspective at a time when only the moment counts.

We reason through the written word in an age where the printed page is becoming passe and continuity and context take a backseat to pacing and patter.

We are an institution that looks at the facts and the law during a period in which the public seems much more interested in the celebrity and notoriety of the litigants and their political and economic clout.

We are an institution that is asked by the theory of checks and balances to make unpopular decisions against the state, presidents, governors, special interests, and majority views in a day and age where popularity is the beginning and end of the definition of success.

We are an institution with strict rules of confidentiality in an age where there's less and less privacy. The reason behind these rules is to protect the judicial branch from the kinds of pressure regularly brought to bear on the other branches by a vast array of affected parties and special interest groups in an effort to influence the outcome of legislation and executive action.

These pressures — including both threats of harm and promises of reward — have no place in the judicial decision-making process, which must always be governed by the rule of law and guided by the Constitution and the Bill of Rights.

We are an institution that deals in subtleties at a time when simplification masquerades as understanding. We are an institution that must grapple with complex issues at a time when quick fixes are valued far more than lasting solutions.

We sometimes must stand in the way of the most powerful groups in our society — governments, presidents, governors, legislatures, spe-

Peculiar Situation In Changing Society

Off the Record

By Rose Elizabeth Bird

cial interest — in order to do what our oath of office demands of us. And yet we have no means by which to enforce our decisions other than the acceptance and understanding of this difficult role by the people and the other two branches of government.

We are not an institution which can achieve that acceptance by the use of slick public relations gimmicks and entertaining news hooks. We have no way of pandering to the public or pampering the press.

We are, in short, an institution that is as peculiar to this age as it is essential, that is as hard to explain as it is vital to do so.

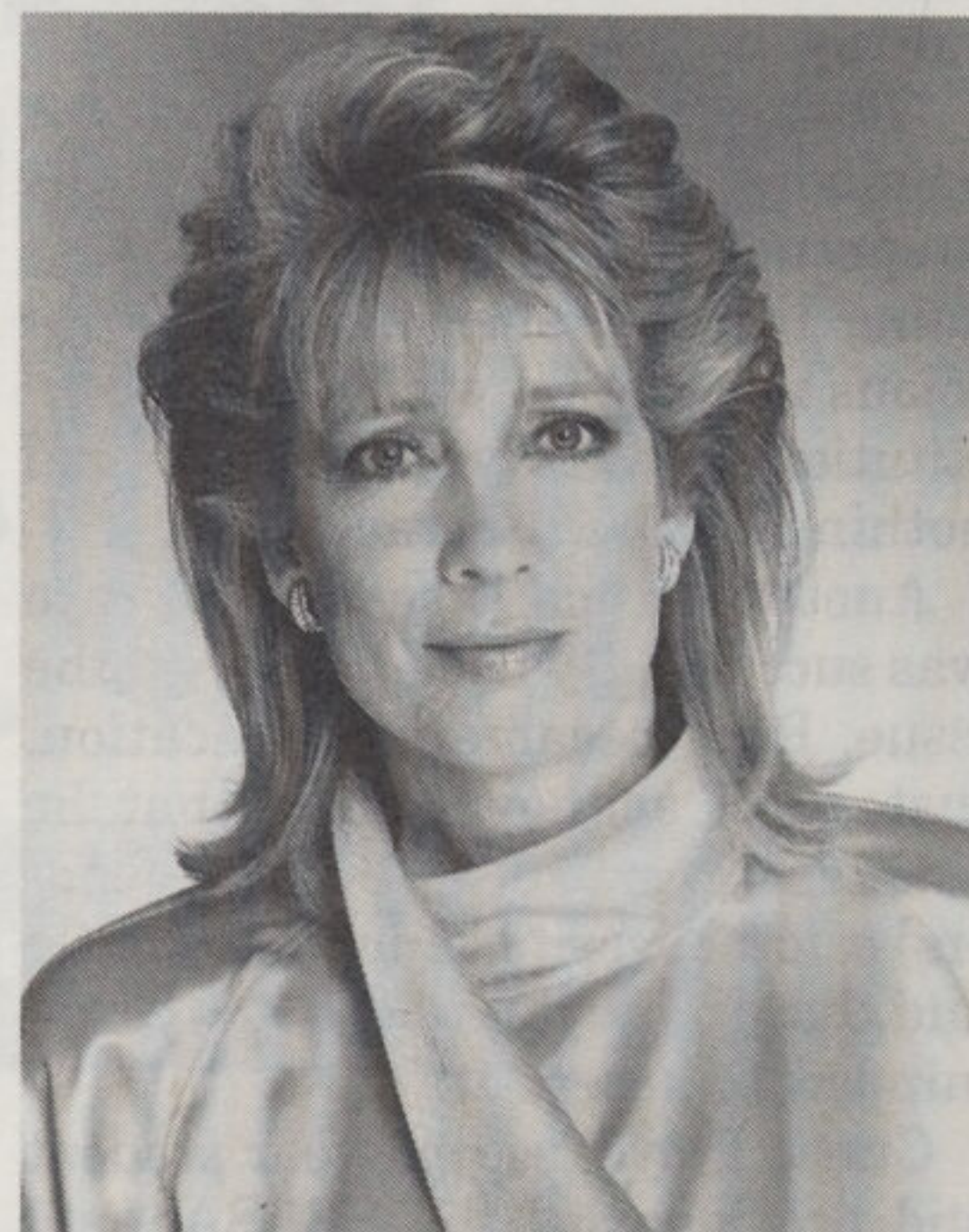
The point I am making has validity regardless of who sits at the conference tables of the United States Supreme Court and the high courts of each state. They are all people of good will regardless of

whether or not you like each individual justice.

My concern is with the institution. This is a day and age where, should we go too long without a

"The people need to understand why we are not merely a mirror image of the legislature and executive branches."

true understanding of the role of the judicial branch, we will no longer have an institution that can serve as the guardian of the Constitution and the Bill of Rights in



a diverse and multi-cultural nation.

The people need to understand the reasons why it was necessary to establish an institution like the courts in a tripartite system of government. They need to understand why we are not merely a mirror image of the legislative and executive branches.

They need to understand why our founding fathers and mothers set up a branch of government that would require the powerful, the weak, the popular, and the unpopular alike to abide by the rule of law and respect the principles set forth in the Constitution and the Bill of Rights.

That role will often be an unpopular one, but the public must understand that the judicial branch is fulfilling its obligations to all of the people when it steadfastly performs that difficult duty.

Clark Scores With New Book

By James Hoffman

This summer, Little, Brown and Company published HLS Professor Robert Clark's new treatise, *Corporate Law*. In his book, Clark has tried to write a straightforward and concise treatise on corporate law not only for law students, but also with the practitioner in mind.

In an interview with the RECORD, Clark said "I felt there wasn't any good one volume or multi-volume work that took a comprehensive view of the subject of corporate law. . . . The last good treatise was *Valentine on Corporations* in 1945 and that was done at a time when there was no economic analysis." Clark stated that he also believes strongly that "one can write clearly and include a sophisticated analysis of the subject" at the same time.

Clark is using his treatise in his class on corporations this year instead of a casebook, although students are being assigned certain

cases to read in multi-lithed form. He estimated that he was assigning about one-fourth as many cases as he did last semester. These consist of the most significant cases, including recent cases and cases which are exceptionally useful. While he doesn't believe law school should eliminate the case method, Clark sees the treatise as being a "more enjoyable way to get to speed on important topics."

Clark thinks that his book allows students to get a firmer grasp on the main elements of the class and how they are connected. He also thinks that a typical casebook often has important information buried in footnotes, and it can better placed into a treatise in unfiltered form without having to drag in an excessive number of cases to illustrate points.

"Response has been very positive and favorable and I have been flat-

(Continued on Page 14)

**Next
RECORD:
October 31**

Students Charge Attacks Racist

(Continued from Page 4)

she found the implication of unconscious racism in the letter "insulting."

"It was totally wrong for [SBLSA members] to be so presumptuous as to speculate about why people were doing things," she said. "My conscious motivation was to learn constitutional law. My displeasure had nothing to do with race at all."

Another student said that "race was successfully used to change the issue. Race became a justification. Instead of acknowledging that he was teaching badly, [Bell's defenders] said he was teaching differently and that [his critics were] too close-minded to accept it."

Curtis Floyd, second-year student and president of the SBLSA, said the racism charge was accurate. "A lot of white students didn't want a black person telling them the Constitution was based on racism," he said. They had never before had a black in a superior position." Floyd added that the reaction of the faculty in setting up the lectures was also racist. "They've never done this in response to complaints about white teachers."

"It's not really a question of racism, although that may be some of the motivation," Bell said. "Most faculty members just aren't black, so when such a person comes along, you're perceived as different."

Beyond the "threatening" impact of his ideas, Bell attributes the student reaction to the fact that he was a black man teaching in the place of popular professors at a school where he was relatively unknown among students.

"Once students know you by reputation, race is less of a problem," he said.

Bell said he seeks to draw positive lessons from his unhappy experience at Stanford. "My purpose was never to trash the school or criticize it," he said. "The real issue here is not Stanford, but the willingness in legal education to accept difference — whether it's blacks or women or simply someone with a different view. The value of publicizing what for me was an embarrassing incident is to show it could happen to anyone — particularly minorities — but anyone who is different."

Letter Urges Reflection, Discussion

To that end, Bell is circulating around the nation's law schools a letter signed by 22 minority law professors addressed to "Our Colleagues of the Majority Race." The letter, citing Bell's Stanford experience as a stimulus for concern, urges reflection and discussion on "ways in which teachers of law may play more positive roles in establishing an atmosphere in legal education in which all may flourish."

Bell said his stay at Stanford would have been entirely different if there were more blacks on the Stanford faculty. "Their visible presence would have quieted the concerns of a number of those students who, aware of the dearth of teachers of color here, viewed me as a token, visiting presence of questionable competence and unacceptable politics," he wrote in his article. He compared HLS favorably to Stanford, stating that when he returned there in the fall he would be one of six blacks teaching full-time.

Committee Tackles Student Problems

(Continued from Page 6)

students and the administration is another area the Committee hopes to focus on.

One specific problem is that there is no system for hearing about student concerns, and Smith said "LSC and DSAC may need reshaping." Furthermore the Dean's Office may need to do a better job at communicating responses to student concerns. Smith noted several examples of direct response to student proposals such as the summer loan program which allows students to take lower paying jobs, but said he wasn't sure whether students realize that such changes are made responsibly.

At this point, Committee members appear to have high expectations and a broad range of goals. Although problems such as inadequate athletic facilities and cramped dorms cannot be remedied immediately, Smith said "the Committee is not just interested in short range issues such as recycling bins in the Hark, but would like to hear about the whole range of issues."

Ward emphasizes that "this is an open and responsive effort to find out what's ticking students off, from the older student whose needs are not met, to the jock who can't get in enough time on the basketball courts in Hemenway."



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Rave Reviews For New Corps Treatise

(Continued from Page 11)

tered by it," Clark stated.

Student reaction to the book has also been favorable: "I think it is refreshing because as an alternative to the case law method or after we've used the case method in the first year, there seems to be no reason to hide the ball anymore, so it makes sense to set forth the basic principles in a clear manner and proceed from there in class," stated Nathaniel

Margolis, 2L, a student in Clark's class.

Clark agrees that all classes don't have to be taught with a case law method. "In corporate finance or tax, what is the point of using cases to illustrate a point? You need some cases, but using cases for a minor interpretive point is often an impediment to learning."

Clark does acknowledge that there has been one problem with his book. "I've had to work a lot

harder this year. My main points are in the book so I can't surprise students anymore. I've been very busy rewriting my class notes and hypotheticals. Some student from past years are disappointed that Clark didn't include the lyrics from his famous corporations songs in the treatise. "In the next edition I might have one song per chapter with a card where you can send away for a cassette," Clark said.

☛

Letters to the Editor (Continued)

(Continued from Page 9)

wrote. On the scale of my criticism of Chief Justice Rehnquist's legal thinking, if I may say so, Professor Tribe's "rejoinder" has the moral force of finding a misplaced comma. I would be willing to bet Professor Tribe that between now and the time he retires as the Tyler Professor of Constitutional Law, Chief Justice Rehnquist does not vote to strike down a single state law as violative of the Establishment Clause.

Professor Tribe writes that as a "frequent critic" of Chief Justice Rehnquist, he finds himself in the "odd position" of having to criticize my piece. I know how he feels. As a frequent admirer of Professor Tribe's work, I find myself more than a little puzzled at his frequent increasingly disproportionate attacks on student writing, whether directed at the editors of the *Harvard Law Review* or reporters and contributors to the *Harvard Law Record*. As the most recent target of his innovative approach to faculty-student contact, I wanted to take the opportunity to rise to the defense also of my friend Susan Povich, who is not allowed as a staff writer to reply to criticism. Professor Tribe chastised her two issues ago for a single sentence in which she reported, in journalistic fashion, student speculation about Professor Tribe's reasons for withdrawing from the faculty law journal. Povich also quoted at length Professor Tribe himself on his decision. Surely a reporter is not required to report just one side of a story, and Professor Tribe does not accuse her of making anything up, so it is hard to see exactly what his complaint is. As in my case, the imagined transgression hardly seems to warrant the excessive rebuke Professor Tribe gave it. Such overkill, in any case, contributes little to the spirit of intellectual inquiry and openness that I always thought Professor Tribe personified.

Jamin B. Raskin, 3L

Upton Will Listen

To the Editor:

I am writing because I am surprised by the recent statement of the president of the Law School Council with respect to my funding of student organizations.

Over the past three years, I have had a number of discussions with past presidents of the Council concerning whether the Council would be interested in participating in the funding process. This year no one, except for the *RECORD* reporter, has approached me on this matter.

Had I been approached, at any point, I would have welcomed the help and advice of students in the budget process. This issue remains open and I hope that the Council will come forward with a proposal, which we can discuss, relating to student input into the process.

Several years ago DSAC and I worked out what I consider an excellent system for the R.A. selection, which includes several students. I would be happy to go through the same process with the Council.

Sincerely,
Mary D. Upton
Dean of Students

Upgrading Emanuel

To the Editor:

I was, of course, delighted to see the favorable press I received in your recent issue ("Students Throw Party For Author of Outlines"). However, there is one error in the article which I would like to correct, since uncorrected it may jeopardize my professional standing, indeed my livelihood. In my 1974 civil procedure exam, I received a grade of "B," not "C."

Let me take this occasion to mention how much I enjoyed my recent visit to Cambridge; my wife and I were overwhelmed by the enthusiasm and kindness of the Harvard Law students we met.

Steven L. Emanuel '76
Larchmont, NY

Upton Praised On Pub

To the Editor:

Absent from the article on the new and improved Backbench Pub ("HLS Students Flock to Revamped Backbench Pub", *RECORD* Oct 10, 1986) was recognition of the important contributions of the Dean of Students, Mary Upton.

Dean Upton offered support, both administratively and financially in the conceptualization and the actual implementation of the changes in the Pub and gameroom. Her office paid for the installation of the big screen TV in the gameroom area, the new plants, and the new pub tables and chairs. Dean Upton has also subsidized several DSAC parties held in the Pub. Future events are currently being planned between DSAC and the Dean's Office. We felt it was important to acknowledge Dean Upton's contributions. Special thanks are also owed to Dean Smith, Dean Reagor, Rocco Forgione, Frank Cammantea, and Nick Iula.

Karen Leili, 3L, President, DSAC
George Hawkins, 3L, Manager,
Backbench Pub
Tony Mirenda, 3L, Manager,
Backbench Pub

☛

Murder Results In Charges Against Local Judge

(Continued from Page 1)

meet her mother, who was driving to pick her up in her car. While waiting for her mother, Pamela was allegedly attacked by Paul, who allegedly shot, stabbed and strangled his pregnant wife and then proceeded to spray mace in Pamela's mother's eyes. Paul then allegedly discarded Pamela's body at a Lexington dump.

The formal complaint filed with the Judicial Conduct Commission by Pamela's parents is at least the second complaint that has been lodged with the commission against Heffernan. According to the *Globe*, the panel in 1983 dismissed without explanation a complaint that Heffernan had assaulted an 18-year-old Concord youth in Quincy Market and used his influence to intimidate security guards and police who tried to interfere. Friends insisted that Heffernan was merely trying to break up a fight between his son, David, and Mark Boudrot of Con-

cord, but two witnesses, through affidavits filed with the commission, swear that they saw Heffernan strike Boudrot repeatedly.

The *Globe* quoted First Justice of the Boston Juvenile Court Judge Francis G. Poitras as praising Heffernan as "probably as good a probation officer as I have ever seen" and describing Heffernan as "one of the finest men I know. He is a very sensitive person. Even if we consider that he made a gross error in one case — and I am not conceding he did — he is a good judge, an extremely hard-working judge who doesn't walk away from the tough cases." Poitras called Heffernan's record in juvenile justice "exemplary."

Poitras was also quoted as ex-

plaining that Heffernan's exasperation with the Dunns is typical of the frustration District Court judges express about domestic abuse cases known as 209As; "it's a judicial order that by itself is an empty shell. Its only enforcement is in the event of a violation. The wife often changes her mind; couples reconcile."

Several lawyers, prosecutors and advocates for victims of domestic abuse who have appeared before Heffernan agree that a distinction should be drawn between his conduct in juvenile cases, where he generally receives good marks, and his handling of domestic abuse cases, where there is a pattern of verbal harassment of victims.

☛

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Readers' Forum

Pledge to FIPIL; Learn of Local Activism

By FIPIL

On Monday, October 20, the Harvard Fellowship in Public Interest Law ("FIPIL") began its 1986 pledge campaign. FIPIL asks each graduating 3L to pledge one-percent of his or her first year's earnings. Begun in 1981, FIPIL has grown from having 120 pledges in its first year to over 200 pledges in each of the last three years. With 206 pledges last year, FIPIL was able to fund four fellowships running from September 1986 through August 1987.

FIPIL officers hope that the response of the class of 1987 will equal or surpass the response of the Class of 1986. FIPIL has funded, among others, fellows performing child advocacy work in Baltimore, researching racial bias in jury selection methods in the South, monitoring the implementation of the New Jersey domestic violence law, and performing assorted legal duties for the AIPS Legal Defense Fund. Fellows for 1986-87 (funded by the Class of 1986) are researching human rights violations for the TransAfrica Forum, conducting legal advocacy for the Virginia Poverty Law Center, working on employment discrimination and racially motivated violence issues for the Boston Lawyer's Committee for Civil Rights Under Law, and working for the National Coalition for the Homeless. FIPIL President Neville Reid, 3L, notes that pledging "provides legal services to many groups that could otherwise have to do without any legal representation. Not only does FIPIL demonstrate concern among Harvard students for public interest law, but it also shows our support for our classmates who seek to begin public interest careers."

Pledges are set at one percent so that each 3L, upon graduation will make the same proportionate contribution. Payments are

made on a quarterly basis, with the first payment due on Nov. 30, 1987. Because FIPIL is a tax-exempt organization under Section 501 c(3) of the Internal Revenue Code, each pledge is deductible. Furthermore, only about 1% of contributions goes to administrative expenses.

To allow those who pledge to participate actively in the fellow selection process, contributors elect (and may run for) a Board of Directors that selects the fellows. Contributors receive summaries of all applications for review and comment. Finally, any 3L is eligible for a fellowship.

More detailed information about FIPIL was distributed to 3L Hark boxes on Tuesday, October 14, and pledge forms and brochures are available at the Langdell receptionist desk. Volunteers are calling all 3Ls this week and again during the week of November 10.

By Jane Ewing, Nancy Tompkins and Cecelia Tkaczuk, HLS Staff Members

Look around you. You may have noticed posters hanging on many public bulletin boards, proclaiming "We believe in ourselves," followed by signatures. Or staff members wearing buttons that say "We can't eat prestige." These are the outward signs of a process that is going on all around campus, and that is the organizing of the non-exempt clerical and technical workers of Harvard. Ours is a local, Harvard-based union, known as HUCTW (Harvard Union of Clerical and Technical Workers), which has been an independent union since our split with the United Auto Workers more than a year ago. Of the staff at Harvard, approximately 4000 people are eligible and 83% of them are women.

Among the many goals we have for ourselves are consistent and real pay increases,

a revised pension for long-term employees, increased tuition benefits, and employer paid health benefits. But the first hurdle is recognition for our union and that is where you, as a student at the Law School, can help. What we want from you is awareness: who we are and what we are trying to do.

Most of us have *chosen* to work in a university setting — but certainly not for the pay. Annual salaries are on the average \$3000-4000 less than in private industry. Many, like ourselves, identify with the goals that a university like Harvard strives to achieve, such as education, research, upholding of free speech and diverse ideas. We believe strongly in the crucial role we play in maintaining the standards of excellence at Harvard. And we believe it is time that role is acknowledged.

We might ask to speak to student groups at HLS to give you a more detailed picture than the space here allows. A number of student organizations have already endorsed our efforts: the *Crimson*, Harvard Democratic Club, Radcliffe Union of Students, Association of Black Radcliffe Women, the House Committees of Lowell, Dunster, Mather and Adams House. Many of you are involved in civil rights, human rights, prison and legal assistance programs, and other associations. We would really appreciate the chance to tell you about some activism close to home.



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