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25 CENTS

Faculty Rejects Meese's Views

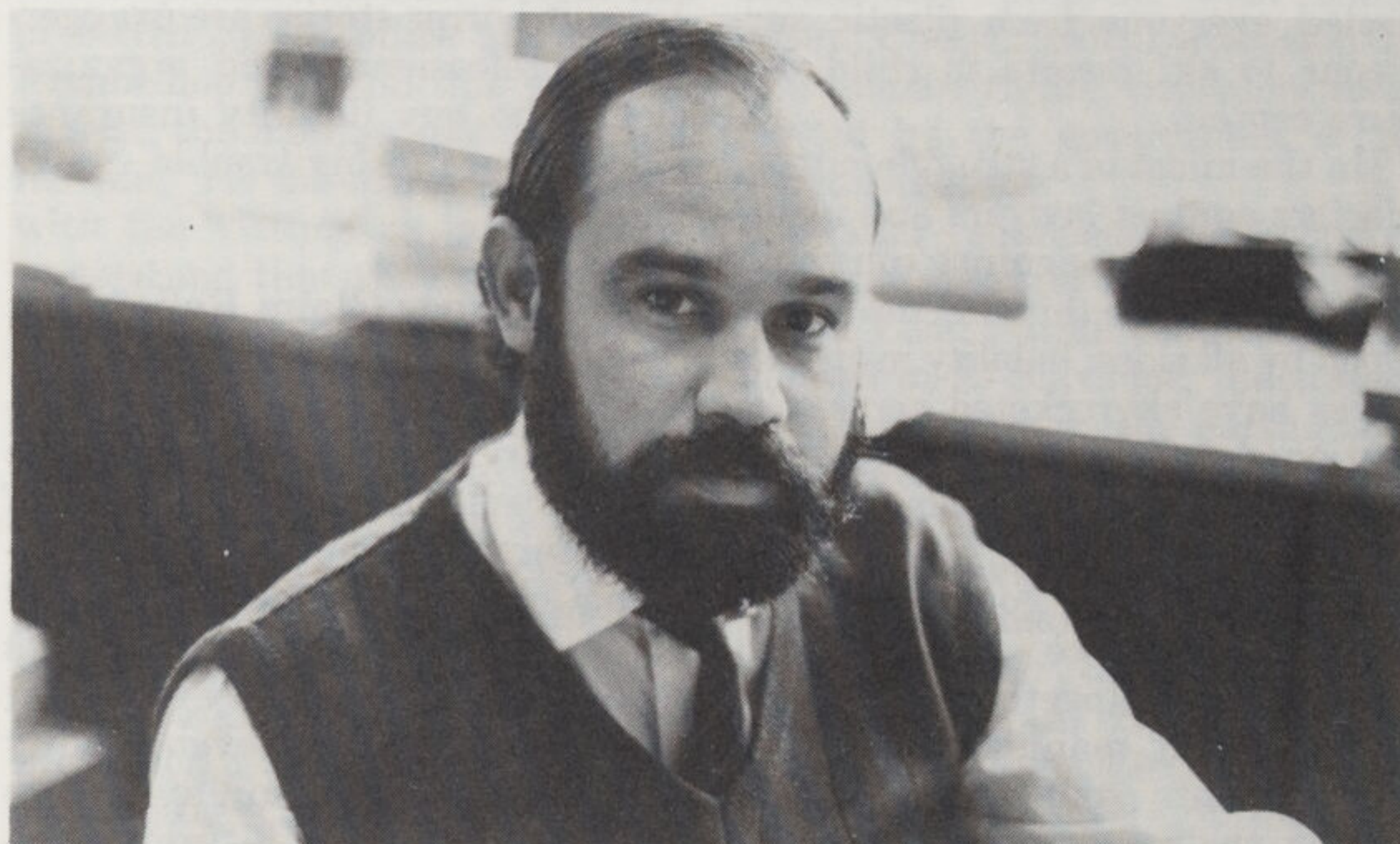
By Marla Becker

In response to Attorney General Edwin Meese 3d's remarks last week that the Supreme Court's interpretations of the U.S. Constitution are not "the supreme law of the land," HLS Professors Laurence Tribe and Alan Dershowitz characterized Meese's comments as misguided and ridiculous.

Meese, addressing the authority of Supreme Court rulings at Tulane University in New Orleans on October 21, stated that a Supreme Court decision "does not establish a 'supreme law of the land' that is binding on all persons and parts of government, henceforth and forevermore." The court's rulings, he said, binds "the parties in the case and also the executive branch for whatever enforcement is necessary."

Refuting the assumption that the Constitution is "what the judges say it is," Meese pointed out that because the court's decisions do "not necessarily determine future public policy," legislators were free to propose bills contrary to the position of the Supreme Court's holdings.

According to *The Boston Globe*, Ralph S. Tyler Professor of Constitutional Law Laurence H. Tribe called Meese's statement "an extremely unfortunate, indeed almost outrageous pronouncement from someone who should know better. . . . If the attorney general's view were to prevail, every school board in the country not part to *Brown v. Board*



Hillary Richard

Roberto Cuellar is studying the development of human rights organizations in Central America. Story on page. 3.

HLS Hosts Poverty Forum

By Jim Goldston
and Zazi Pope

Over 250 students, professors, and practitioners crowded into Langdell South on Friday, October 24 to hear a panel of distinguished scholars and activists offer a range of perspectives on the possibilities for economic empowerment through law. The Symposium on Poverty and the Law, sponsored by the Harvard Civil Rights-Civil Liberties Law Review, the Harvard Legal Aid Bureau, and other campus groups, produced three hours of discussion on urban decay, homelessness, the plight of migrant farmworkers, access to education, and the deindustrialization of the American economy. HLS Professor Frank Michelman served as moderator for the session.

Dean Brackley, a community or-

ganizer with South Bronx People for Change, led off the afternoon with a graphic description of the sweeping decay the South Bronx has suffered over the past decade and the inadequate, largely cosmetic responses of municipal officials. According to Brackley, the area has been plagued by a high school dropout rate of 75-80 percent and a loss of 80,000 housing units in the past 10 years. From 1980-1985, the number of South Bronx residents receiving public assistance increased 26 percent, even as the population in the area experienced a net decline.

"The city is becoming a city of paper pushers," commented Brackley, "white people who are pushing papers across a desk in a world of high finance and people of color who push papers across floors."

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Proposals For Tort Reform Will Be Studied

By Greg Herbert

Time magazine describes it as a problem that "threatens the very character of American life." Ralph Nader calls it the "greatest commercial hoax in the United States." What is it? The controversial, highly publicized liability insurance crisis, which some observers say has affected everyone from plastic surgeons to ski resorts to child day care centers.

In the midst of a struggle pitting doctors against lawyers and insurance companies against consumer groups, only one thing seems agreed upon by all sides: liability insurance rates have skyrocketed across the nation. A nearly 60 percent hike in two years is forcing some professionals and smaller, riskier organizations either to "go bare," operate without insurance, or to abandon their trades altogether.

As a result, manufacturers, local governments and other groups, seeing their premiums triple and their policies canceled, have banded together with insurance companies to launch massive advertising and lobbying campaigns aimed at changing the legal system. Congress and all 50 state legislatures have considered some broad tort reform proposals that limit juries' liability awards or lawyers' contingency fees or both.

Tort reform has become a hot legal issue, one that critics say may threaten not only the livelihood of some lawyers, but the rights of injured parties and the tort liability system as a whole. HLS Professor and legal historian Morton Horwitz said he sees the movement as "the biggest change in tort law in 75 years." While consumer groups say lawsuit horror stories are exaggerated, professionals and organizations who buy liability insurance say they are in big trouble.

OB Docs Claim Relief

Obstetricians present perhaps the most dramatic claim for relief of some sort. According to the American College of Obstetricians and Gynecologists, 73 percent of its 24,500 members have been sued for malpractice. To avoid even slightly risky births which might lead to lawsuits or canceled insurance policies, more and more obstetricians now deliver babies by an increasing number of caesarean sections. In recent years specialists and hospitals have abandoned the field due to high rates and decreased availability of insurance.

In response to the recent controversy, the American Law Institute has selected five law professors,

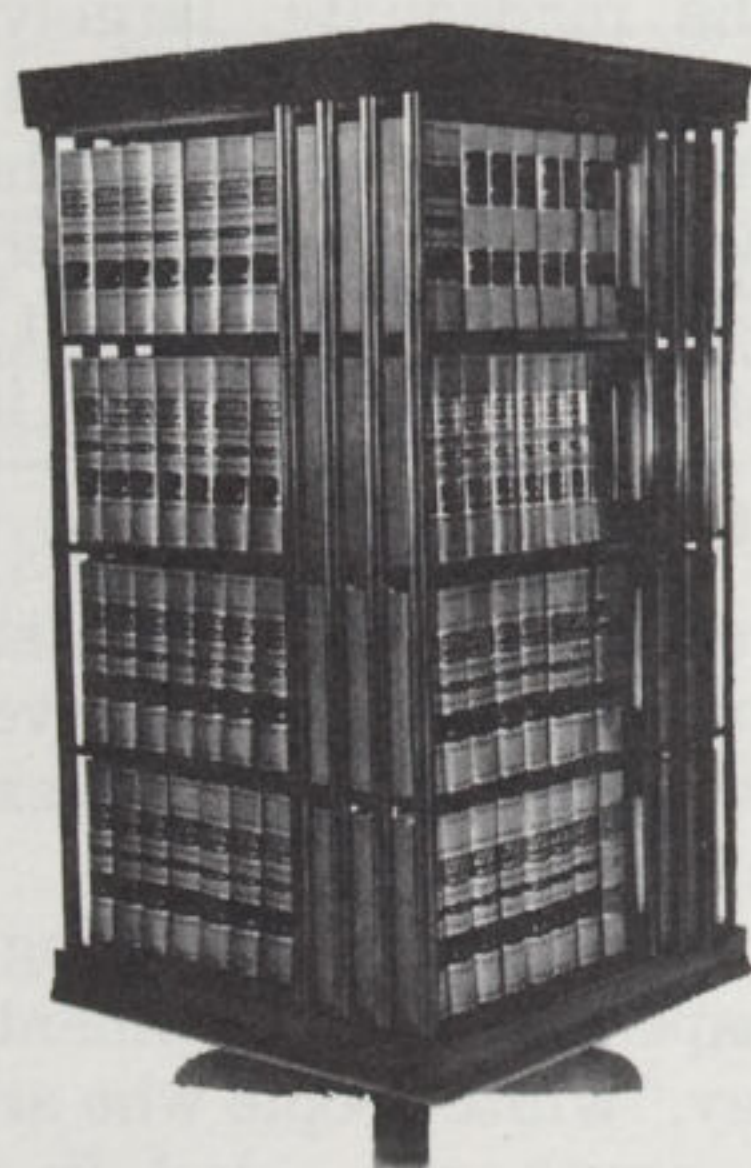
three from HLS, to study the problem and draft some long-term recommendations. Although molded from academe, the committee will aim for more than mere theoretical speculation. According to committee member and HLS Professor Paul Weiler, "We hope to produce some recommendations that have some bite." The committee, comprised of members with diverse views on the subject, will have plenty of arguments to examine before reaching its final conclusions, expected by 1990.

At the center of the insurance controversy are differing views of what spurs calls for tort reform. Supporters of the reform movement blame increased liability premiums on unscrupulous lawyers, increased litigation and excessive damage awards. The costs of greedy lawyers and soft-hearted juries, proponents say, can only be passed on to consumers.

Opponents of tort reform assert, however, that liability suits and damage awards have remained relatively constant, and they charge insurance companies with political opportunism and hyped claims designed to make up for poor management and investment strategies of past years.

The media has also been faulted

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Cuellar Relates His Legal Fight for Salvadoran Rights

By Hillary Richard

Visiting Central American human rights activist Roberto Cuellar was recently welcomed by the Harvard Human Rights Program. Cuellar was invited by the HRP to come to Harvard to conduct a study on the historical development of human rights organizations in Central America, chronicling the methods used by these organizations in both the legal and non-legal realm.

Cuellar began his work in human rights in his native country, El Salvador. Born to a wealthy family and educated in what he described as the best high school in El Salvador, Cuellar was exposed to poverty and desperation which pervaded the Salvadorean barrios when he worked in these areas with a Jesuit priest. The priest, Rotilio Grande, was subsequently accused of preaching communism and in 1972 was the first priest to be expelled from the country. It was his work with Grande that Cuellar said led him to believe that the legal system could effectively be put to work for human rights.

Cuellar described his father's experience with the Salvadoran military government, an experience he credited for his desire to help others through human rights activism. When Cuellar was only ten years old his father was captured by the Salvadoran police, tortured and exiled.

Cuellar said his father's only crime was that he was the Vice-Dean of the national university when students there protested the military government.

When his father returned from his exile, Cuellar saw him "get off a plane with both of his arms broken and his head bandaged."

Cuellar began his human rights work by heading the Socorro Juridica, a group of 15 lawyers, structured like a legal services organization. It was a Roman Catholic organization, Cuellar said, but government officials considered it a communist organization. Soon after Archbishop Oscar Romero was ap-

pointed to head the Salvadoran Church, the prelate asked Cuellar's organization to serve as advisor to the church on human rights matters. The church was persecuted for its political views: priests were tortured, lay workers were assassinated. Although Cuellar said he "never won a case," he felt his work was important because people felt protected by the office and by the Archbishop. He said this was "the richest, the most satisfying part of his life." He described his contact with the victims as making him understand that they accept their suffering and "have begun to fight so that this will never repeat itself."

Cuellar said a number of factors combined to force him to leave his country: the assassination of Romero, the raid by armed forces of the Socorro Juridico office and death threats. He left in July 1980 and began working on the international protection of human rights for such organizations as the United Nations and the Organization of American States.

Cuellar took cases passed on to him by Socorro Juridica and presented them in Geneva, Washington and New York, basing his claims on human rights treaties and pacts that El Salvador has signed.

Cuellar said many countries have approved moral sanctions he has sought. Although there is an enforceability problem with these cases, Cuellar called attention to the human rights violations committed by the government of El Salvador.

Cuellar sounded less hopeful when he spoke of his country's future: "I don't think conditions will change in El Salvador," he stated. "On the contrary, the earthquake will have political consequences; grave consequences. It not only buried the lives of people, but also the hopes of many."

Cuellar also commented that his time here at Harvard is the first time he has had "space in my life these last few agitated years to write something about my experiences."

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Movie Addresses Race Issues and HLS

By Jonathan Grunzweig

Hollywood has contributed another entry to the annals of the motion picture industry's portrayal of our beloved institution with a movie released in Boston last weekend. An overwhelming desire to attend Harvard Law School leads the

Movie Review

wealthy white protagonist of "Soul Man" to masquerade as black in order to become eligible for a restricted scholarship, his parents having refused to contribute to the cost of his continued education. The use of HLS in this newly released feature film, however, is not the primary reason why "Soul Man" requires close examination; indeed, there is little attempt to portray the law school in an accurate manner.

Of real relevance to any consideration of "Soul Man," and the directorial decisions of Steve Minor, is the use of such a controversial and potentially offensive premise. Is the film a comedy of social awareness, an insensitive work of exploitation or a piece of frivolity meriting little serious attention? To some extent, all three questions can be answered in the affirmative.

The difficulty of categorizing "Soul Man" is evidenced by the diversity of reactions it has engendered. *The Boston Globe*, for example, stated that an "oversimplification of black-white relations . . . transforms 'Soul Man' from just another poorly directed, incompetently written film into an aggressively offensive one." A few hundred miles down the coast, *The New York Times* drew a favorable comparison to "Tootsie" in asserting that this "silly, good-natured movie" uses its lack of pretension to make up for any underlying insensitivity. Somewhere in between the views of these metropolitan dailies lie those expressed in *USA Today*, which suggested that humorous antics, might have compensated for the film's story line but were sorely

lacking. Suffice it to say that the generic reviewers currently hosting PBS' "Sneak Previews" disagreed with one another.

The above assessments incorrectly imply that a "high purpose" such as developing social awareness can render unoffensive that which otherwise would be considered a plot unfit for rational treatment. Yet the plot of "Soul Man" cannot itself be classified as unredeemable under any circumstances. It is not difficult to identify purposes which would justify a fictional treatment of racial role-changes. Nor does the fact that HLS is implicated make the bare outline of the film any more insidious. Finally, it is at least conceivable that comedy could serve as a valid vehicle for such portrayal.

Having surmounted the threshold question of whether the premise is offensive per se, "Soul Man" can be evaluated on its own merits. Because it fails to fulfill any countervailing objectives, however, the movie's dependence on racial stereotypes will only foster prejudice. The transformation of the lead character into a black person functions only to furnish a convenient framework for farce, always based on well-worn jokes that reflect deep stereotypical perceptions of race relations. Where the jokes "work" and the audience laughs, no insight into the underlying conflict arises to

justify the film's exploitation of racial issues. Regardless of any comedic success, the film never separates itself from the very problems it purports to illustrate.

It is difficult to believe that anything greater than a desire to evoke laughter guided the production of "Soul Man." Yet even if one attributes to the director a genuine intent to raise social awareness by portraying racial insensitivity, "Soul Man" has not successfully maintained the requisite educational posture. Viewers will vary as to the humor each derives from the film, but the amount becomes irrelevant where humor cannot compensate for the offensiveness of its source. "Soul Man" falls prey to its own reliance on preconceived notions of race relations.

HLS administrators declined last week to respond to the Oct. 24 release of "Soul Man." Stephen Bernardi, Assistant Dean for Academic Administration said Friday that he was not aware of any plans by administrators to comment on the film. Several members of the Black Law Students Association have seen the film, and the group will state its position this week, according to its president, Millicent Hodge. Those wishing to make their own assessment will find "Soul Man" at the Beacon Hill Cinema in Boston.

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Tribe, Dershowitz Attack Meese

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of *Education* could re-segregate its schools."

He added that "once the court has interpreted the Constitution in an unambiguous manner, then all levels and branches of government are bound by that interpretation, until or unless that interpretation is overturned."

Professor Alan M. Dershowitz told the *RECORD* that "Meese treats the Supreme Court as though they were nine Judge Wapners," referring to the retired California Municipal Court Judge who presides over the

popular T.V. show, "The People's Court." Dershowitz said that Meese tends to forget that "he's the Attorney General, not a police court prosecutor. The most flabbergasting aspect of his speech was Meese's focus on desegregation; nobody except the lunatic fringe says it's not the law of the land."

Dershowitz concluded by predicting that "once Meese's views become more dominant among the members of the Supreme Court, he'll start arguing that the Supreme Court's rulings are the law of the land. I think his speech will come back to haunt him."

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Sagan Decries Reagan Stance on SDI

By James Vigil Jr.

Emphasizing that nuclear arms "imperil all the world's hopes and expectations for the future," astronomer Dr. Carl Sagan urged a overflow audience of 400 people in the Ames courtroom to oppose the escalation of the arms race. Sagan's talk was sponsored by the HLS Forum.

Describing the collapse of the superpower talks in Reykjavik, Iceland as "a tragic mistake," Sagan called the Reagan Administration's refusal to limit its proposed Strategic Defense Initiative (SDI) in exchange for major nuclear arms reductions "a confession of intellectual and moral bankruptcy." Sagan said the system, presented to the American public as an invulnerable shield, is based upon scientific "looney-tunes" and is really intended to "enhance deterrence" by protecting U.S. missile silos. Sagan pointed out that even at an optimistic ninety percent success rate, enough incoming missiles to destroy

U.S. cities several times over would penetrate the system.

The SDI system, which envisions space satellites using lasers to shoot down nuclear missiles, remains scientifically controversial, said Sagan. He cited the Challenger and Chernobyl disasters as examples of misplaced trust in technology. "If such systems which are repeatedly tested fail, how can we say nuclear weapons will not?" SDI, he noted, would also be expensive, costing \$1.2 trillion, an amount equal to the current national debt. Sagan argued this money could be more humanely spent lowering the U.S. infant mortality rate, which is the world's nineteenth highest.

Imperfect Shield Risky

Declaring "the world is much more at risk with an imperfect shield than with no shield at all," Sagan stated that the Soviets believe SDI is designed to destroy any Soviet missiles which survive a U.S. first strike and that this might re-

quire the Soviets to launch their own attack to prevent American SDI deployment. Countermeasures to SDI, suggested Sagan, include cruise missiles, decoy warheads and depressed trajectory ICBMs.

Sagan, a leading analyst of the consequences of nuclear war, described the initial results of a nuclear exchange as catastrophic, causing up to 2.2 billion deaths worldwide. Persistent radioactivity contaminating the biosphere would destroy fragile food chains and compromise the human immune system. Climactic changes would probably cause a "nuclear winter." Thus, the collateral effects of famines and plagues could claim an additional 2 billion lives. The dimensions, said Sagan, "are unprecedented in human history."

Sagan also attacked the metaphorical language used in arms talks. "Agents of worldwide death, we call delivery systems," said Sagan, drawing strong applause from the audience.

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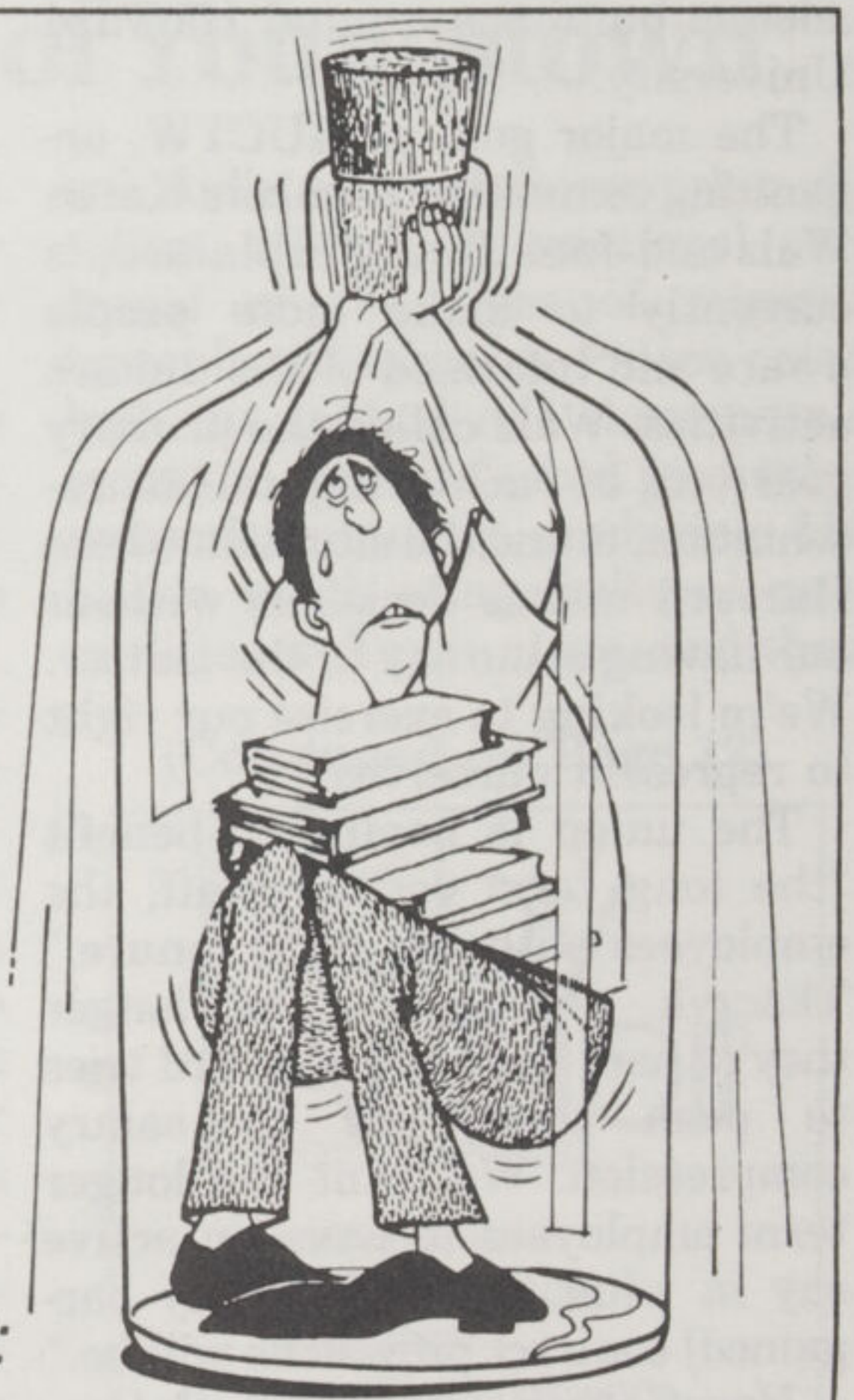
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Grassroots Union Organizes Clericals, Technicals

By Marla Becker

The Harvard Union of Clerical and Technical Workers (HUCTW) has used a "grass-roots," one-on-one approach to union organizing since its separation from the United Auto Workers in August of 1985. Wearing buttons that proclaim that "We can't eat prestige," office, library and laboratory support staff as well as glassblowers, medical, museum and computer workers are building the independent organization from the bottom up. The union has concentrated on issues important to women, as 83 percent of the almost 4,000 clerical and technical workers at Harvard are women.

According to law school organizing committee member Cecilia Tkaczyk, the union has succeeded in getting more than a thousand of the staff workers at Harvard to sign a petition announcing their support for HUCTW; that petition has been reproduced as a poster and can be seen hanging in the halls of Harkness Commons as well as other academic buildings around Harvard University.

The major goal of HUCTW, organizing committee members Karen Walz and Jane Ewing explained, is currently to make more people aware and informed of the union's activities. Walz called the primary goal one of "achieving self-representation, to end the situation where Harvard makes decisions without our having some say in the matter. We're looking to exercise our right to represent ourselves."

The union is hoping to benefit "the long term service staff, the employees with the most tenure," Tkaczyk explained. "The longer they're here the more Harvard tries to push them out by salary compression. We want the longer term employees to have an active say in what the [collectively bargained] contract provisions will be."

Negotiating a contract with Harvard that will establish consistency is a longer term goal of HUCTW, Ewing said. "Right now, Harvard is able to make and bend its policy at will. With a contract, the rules

couldn't be bent that way." One illustration of the University's inconsistencies, Ewing and Tkaczyk explained, is in Harvard's treatment of merit pay for staff employees. The organizing committee said that information given to employees of different departments was inconsistent. "They would tell the employees in one building that nobody would get greater than a 2% merit increase and would tell a different department something totally different," said organizing committee member Marilyn Byrne. The committee cited problems with "inconsistent policies across the board."

HUCTW Seeks Right To Negotiate

When asked about specific issues the union would concentrate on in its organizing drive, Tkaczyk responded that "at this point what is most important is winning the right to negotiate a contract with Harvard. Everyone has their own gripes with the administration; but we're not ready to write down the things that we want changed. The issues we're concerned about will be negotiated into the contract."

Walz added that "there is a wide spectrum of issues, with the focus on organizing together to get a contract in place. We'll decide as members in a democratic fashion what our priorities will be vis-a-vis particular issues."

The union is making a conscious effort to organize in a style very different from that of the UAW, a union whose organizing drives usually rely on heavy distribution of literature. The focus of HUCTW is on "one-to-one" organizing, which Tkaczyk described as having an organizing committee member "talk individually to co-workers; the best way for an employee to find out about the union is to talk to someone you know and can trust."

The union also regularly holds lunch hour "information meetings" which are publicized by word of mouth and fliers. The meetings act as a forum for the union's "effort to keep the population informed

about what is going on with the organizing drive. It's a forum for people to ask basic questions about what the union is and what it can do for them," Walz said. Attendance has varied from about 20 to 40 people, and has reached as high as 70 to 75, she added. The union has also sponsored social and political events such as the rally for HUCTW attended by over 500 people at the Old Cambridge Baptist Church in May of 1985 and a HUCTW benefit concert by Patty Larkin held last spring.

The union has garnered grass-roots support from other union locals at Harvard and local support from the city of Cambridge. Local 877, International Union of Operating Engineers AFL-CIO, wrote to HUCTW that "we are stating our belief in the value of solidarity between all of Harvard's workers and their unions . . . the members commit themselves to doing all we can to help HUCTW to build a strong and democratic union." The Cambridge Commission on the Status of Women, the City Council of Cambridge, the Harvard University Police Association, and the Boston National Organization for Women have similarly publicly endorsed HUCTW's efforts to gain recognition as the exclusive bargaining unit for clerical and technical workers at Harvard.

Citing the increased visibility the union has attained due to the placement of posters around the University, the law school organizing committee is now working to increase student awareness of its campaign; it will send memos to all of the HLS student organizations in the near future. Ewing added that "some of the professors are very supportive; they think that having a union represent us will increase the stability of the workforce."

The annual turnover among clerical and technical workers is 40 percent. "People don't stay because they're not happy," said Tkaczyk. Harvard tells us, 'if you don't like it here, then go elsewhere.'"



Observers Debate Causes of Insurance Rate Hikes

(Continued from Page 2)

for distorting facts in what critics describe as overused anecdotes of wild injury awards and failing to dig for statistics to back up reports of exceptional tort awards.

One well-circulated story involves a \$1.75 million award granted to an overweight man with a heart condition for a heart attack he suffered while trying to start a Sears lawnmower. Contrary to media lore, the 32-year-old man had no history of heart trouble. In fact, the mower's defective exhaust system caused the starting failure. The case was settled out of court.

Who's To Blame

The insurance industry generally concedes that the sharply cyclical nature of its business, combined with poorly calculated past investments, are partly to blame for the soaring cost of premiums. About



Yearbook Photo

Prof. Paul Weiler

1981, when interest rates topped 21 percent, insurance companies slashed prices and expanded high-risk coverage in an effort to amass premiums for extremely profitable investment opportunities, which form the majority of insurers' prof-

its. When the bottom fell out on interest rates, investments which once earned up to 20 percent began to bring returns of only 7 percent, while losses from high-risk under-

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Scholar Portrays Deterioration of Youngstown

(Continued from Page 1)

Brackley charges that the city's programs have been subsidizing economic development for the rich while accelerating the deterioration of poorer neighborhoods, stating that "we have public spending for private profit without social responsibility." Brackley estimated that the cost of adequately housing New York City residents would exceed \$30 billion.

Staughton Lynd, historian, legal scholar and litigation director of Northeast Ohio Legal Services, followed with a survey of the decline of the nation's steel industry in and around Youngstown, Ohio, which he described as "the South Bronx of the industrial heartland."

Lynd detailed the progressive radicalization of steeltown communities' responses to the crisis — from initial appeals for congressional aid for their employers to recent proposals for transfer of own-

ership of abandoned mills to community and worker authorities via the legal mechanism of eminent domain.

The eminent domain perspective supports private ownership of industrial facilities so long as corporate owners reinvest profits into the mills for modernization. But, Lynd said, "if U.S. Steel refuses to run the mill, then we the people will have to find another way."

Lynd stressed that a "community right to industrial property" can be made acceptable to Americans if two conditions are met. First, it must be agreed that the private sector can retain ownership of all plants it is economically prepared to sustain. Second, local, community entities rather than large, administrative bureaucracies should be the primary vehicles for the implementation of this vision of economic democracy.

Viviana Patino, director of the Hereford branch of Texas Rural Le-

gal Aid's migrant farmworker division, offered an emotional portrayal of the lives of migrant agricultural laborers. Patino noted both the central role these people occupy in America's food production network, annually producing \$10 billion worth of agricultural commodities in Texas alone, and their

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Veiled Threats

It gets dark, here in Massachusetts, at about 5 p.m. this time of year. Not coincidentally, we all tend to be a little down, which is caused in part by a physical reaction to the shortening daylight hours, and in part by the ongoing national spectacle of pre-election antics and other political conniptions.

Once more in evidence on the national scene — though not electioneering — is Attorney General Edwin Meese 3d. In a speech at Tulane University, Meese indicated his belief (pace *post hoc* denials by his chief spokesman, Terry Eastland) that Supreme Court rulings on constitutional issues bind only the parties to the case decided and the executive branch of the federal government, and do not establish a supreme law of the land. This is an invitation to chaos. If Meese's view became reality, the Court — with its limited resources — would be reduced to piecemeal rectification of only the most blatant violations of constitutional protections, while malefactors not directly involved in a specific dispute continued blithely on.

The only reason the American people have not risen up in moral revulsion and demanded Meese's removal is that his pronouncements are so vague that the threats underlying them are hidden in obscurity. Stuart Taylor, writing for the *New York Times*, says that "Mr. Meese's speeches about the Court and the Constitution have been especially provocative of [speculation about his message] because he often makes potentially far-reaching but fundamentally ambiguous statements about issues of great profundity and complexity without spelling out what he means."

Another threat, similarly veiled by convoluted language and by the unwillingness of its proponents to say what they mean — lest they lose the votes of those they hope to mislead — is Question #1 on the upcoming Massachusetts ballot. While those supporting the pro-choice position have focused on issues of freedom and intrusion by the government into private choices, antiabortion forces have tried to frame the issue as one of how the state should allocate its tax revenues. But the antiabortionists' focus on the narrow costs to taxpayers of providing abortions to poor Massachusetts women is telling. Pro-choice advocates have forgone the argument that the cost of an abortion is far less than the cost to taxpayers of supporting an indigent child, because they understand that people's lives — children's lives, mother's lives, and the lives of poor women — cannot be summed up on a balance sheet. Antiabortion forces have ignored that issue for two other reasons: because the numbers go against them, and because they reject the suggestion that the society that claims to have an overriding interest in the birth of infants to poor women should undertake any obligation to support those children. What they are pushing is not a wide-ranging right to life, but one which stretches only from the moment of conception to the moment of birth.

R.J.P.
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HARVARD LAW RECORD

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Fenno

Fenno tapped his foot anxiously, while stealing yet another glance at his cracked Mickey Mouse watch. "Damn," he muttered, "my sister's ride with that biker gang is taking longer than expected. We're going to miss the 'Ed Meese Constitutional Law Symposium: Wine and Cheese Reception to Follow.'" The bum he was addressing his comments to belched and rolled over.

Suddenly Fenno heard the roar of revving motorcycle engines and the screams of preppies hitting the pavement. "Fenesse!" he screamed, "I'm over here, under the cement bench with the winos."

"Come here you little worm," she cackled, "slip your sister some tongue."

Chuckling at her characteristic vulgarity, Fenno dragged her to the law school. "C'mon Fenesse, free food and grog," he said enticingly. "Any studly dudes gonna be there, bro?" she asked, as she winked and leered at a passing twelve-year-old boy.

Fenno and Fenesse strolled into the Ames Moot Court Room, Fenesse dropping the ticket-taker with one quick blow, while Fenno's experienced eye searched for the free alcohol. Meese was droning on in the background: "So, once we get rid of all of these silly laws and that goofy Supreme Court we can get on to the real important stuff like discovering which paper towel really is more absorbent."

"Gawd, I've never seen a sorrier looking buncha guys in my life. Where's the veal?" Fenesse bellowed. "Who's got the Clearasil concession in here? Must be a millionaire," she screeched. "Hey baby, wanna get lucky?" she inquired of a terrified looking 1L whose derriere she held firmly in her right hand. "Huh, wanna?"

Fenno was reluctant to leave his sister alone, lest she run off and disappear for weeks at a time, as was her wont, but the glint of a Colt 45 can under one of the seats caught his eye and . . . The next thing he knew there was a stampeding mob heading for the front of the room where Fenesse was challenging a half-naked Ed Meese to another game of strip speed chess.

"C'mon Fenesse, let's get out of here before we get caught," Fenno said as he eyed the three guys in dark suits coming towards them. "I'll take you to O'Henry's where you can meet some real men."

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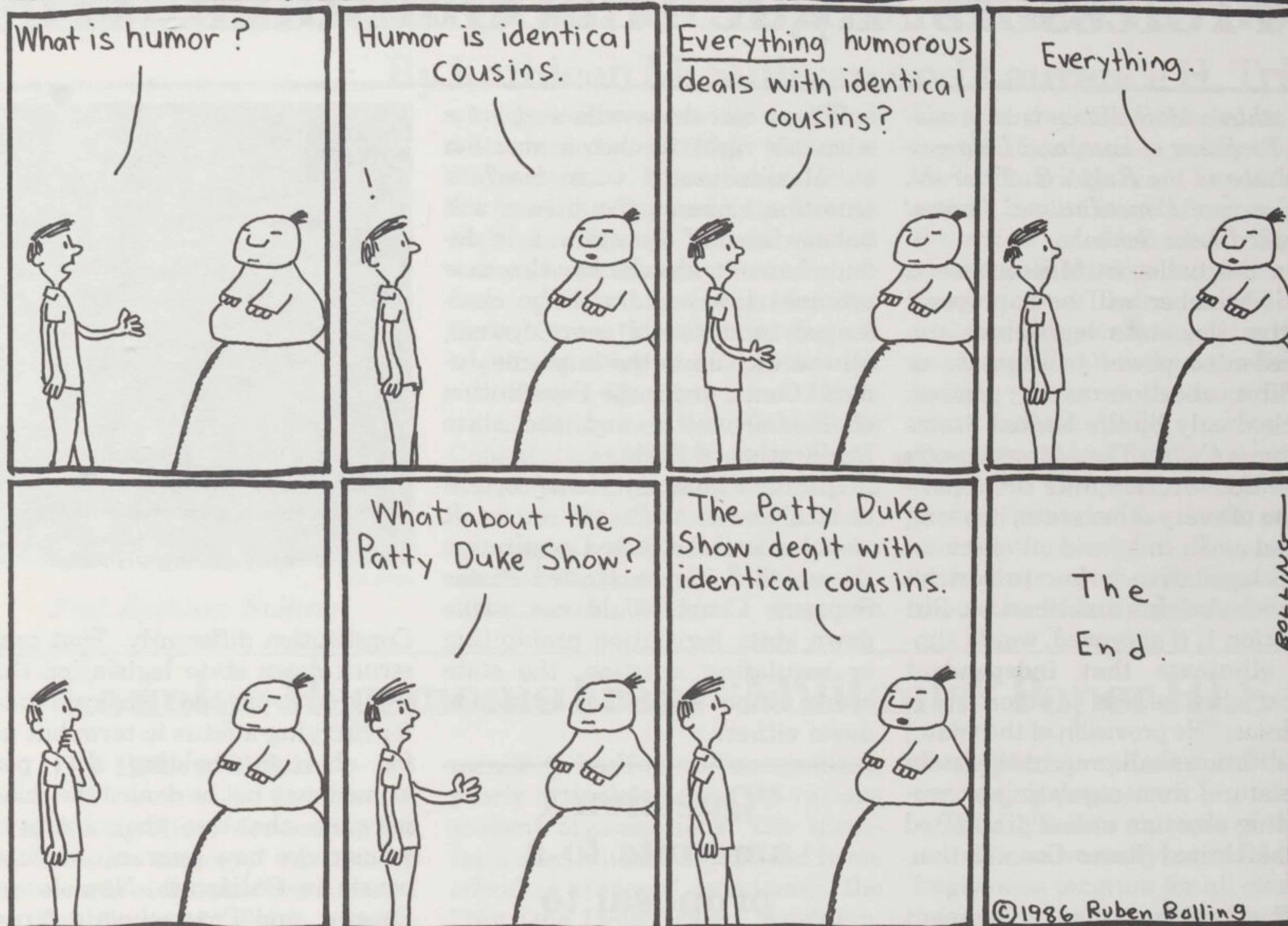
Nov. 7th



Happy Halloween!

TOM THE DANCING BUG

BY
RUBEN BOLLING



Letters to the Editor of the Record

Boycott Coverage Flawed

To the Editor:

Jeff Gershowitz's article on law student boycotts of firms ("No Boycotts Planned for this Recruiting Season," RECORD, Oct. 3, 1986) was one-sided and misleading. In discussing the boycott of Covington and Burling last year, he reported only the firm's publicly-stated opinion on the effect of the Boycott. Although many people who were involved in organizing Boycott '85: Don't Advocate Apartheid are still here at HLS, Mr. Gershowitz's article shows no attempt to contact us to learn more about the action. Had he done so, he might have learned that the boycott of Covington and Burling and other firms which represented the South African government was a national student action coordinated by the HLS Anti-Apartheid Committee. Before Covington ever arrived at Harvard it had faced cancellations of interviews at NYU and could count on more problems at Harvard, Yale and Michigan, to name a few of the schools involved. Furthermore, since Covington dropped South

Africa as a client before arriving at Harvard, the boycott here was called off. All of the 500-plus people who had signed the Boycott pledge in the two days of canvassing before Covington's decision were free to interview with the firm. Thus, the decrease Gershowitz reported in numbers of students interviewing with Covington has nothing to do with the effectiveness of the Boycott.

Mr. Gershowitz also said that no boycotts are planned for this year. He must have depended on Placement Director June Thompson for his information, although why he'd think that she would have definitive information on this subject I don't know. If he'd talked to the Labor Law Project he would have learned that they are in fact organizing a boycott of union-busting law firms. On the part of the Anti-Apartheid Committee, let me say that we are not doing a boycott this year because research done by last year's Boycott organizers at the University of Michigan discovered no firms interviewing at Harvard which represent the South African government.

I hope next time Mr. Gershowitz writes,

he will do a little more investigating with his reporting.

Rebecca Tillet, 3L
for the HLS Anti-Apartheid Committee

(Continued on Page 16)

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.

Professors Argue That Question 1 Will

Kathleen M. Sullivan is an Assistant Professor of Law, and Laurence H. Tribe is the Ralph S. Tyler Jr. Professor of Constitutional Law at Harvard Law School.

On the ballot in Massachusetts this November will be a proposal to give the state legislature unprecedented power to regulate or prohibit abortion as it pleases, checked only by the United States Supreme Court. The Massachusetts State Constitution, like the constitution of every other state, has long served as an independent check on state legislative power to restrict individual rights and liberties. But Question 1, if approved, would simply eliminate that independent check when access to abortion is the issue: "No provision of the [state] Constitution shall prevent the [state legislature] from regulating or prohibiting abortion unless prohibited by the United States Constitution. . . ."

What might this amendment mean? Consider the following scenario. It is late 1987, and Justice Robert Bork has just replaced Justice Lewis Powell on the Supreme Court of the United States. With Bork's appointment, the balance has swung from 5-4 in favor of *Roe v. Wade*, to 5-4 against. Not enough foundation in the text of the United States Constitution, says the Court's newest member, to uphold the right of a woman to obtain an abortion. And without such a foundation, abortion rights must be left to the winds of politics in each state.

The state legislature convenes in Massachusetts in the wake of the Supreme Court's changing of the guard. The winds of politics are blowing anti-choice. The legislature overwhelmingly passes a bill imposing criminal penalties on anyone who performs or receives an abortion in Massachusetts, except to save a woman's life. The bill's supporters confidently predict that the new criminal law will survive if challenged in the new United States Supreme Court.

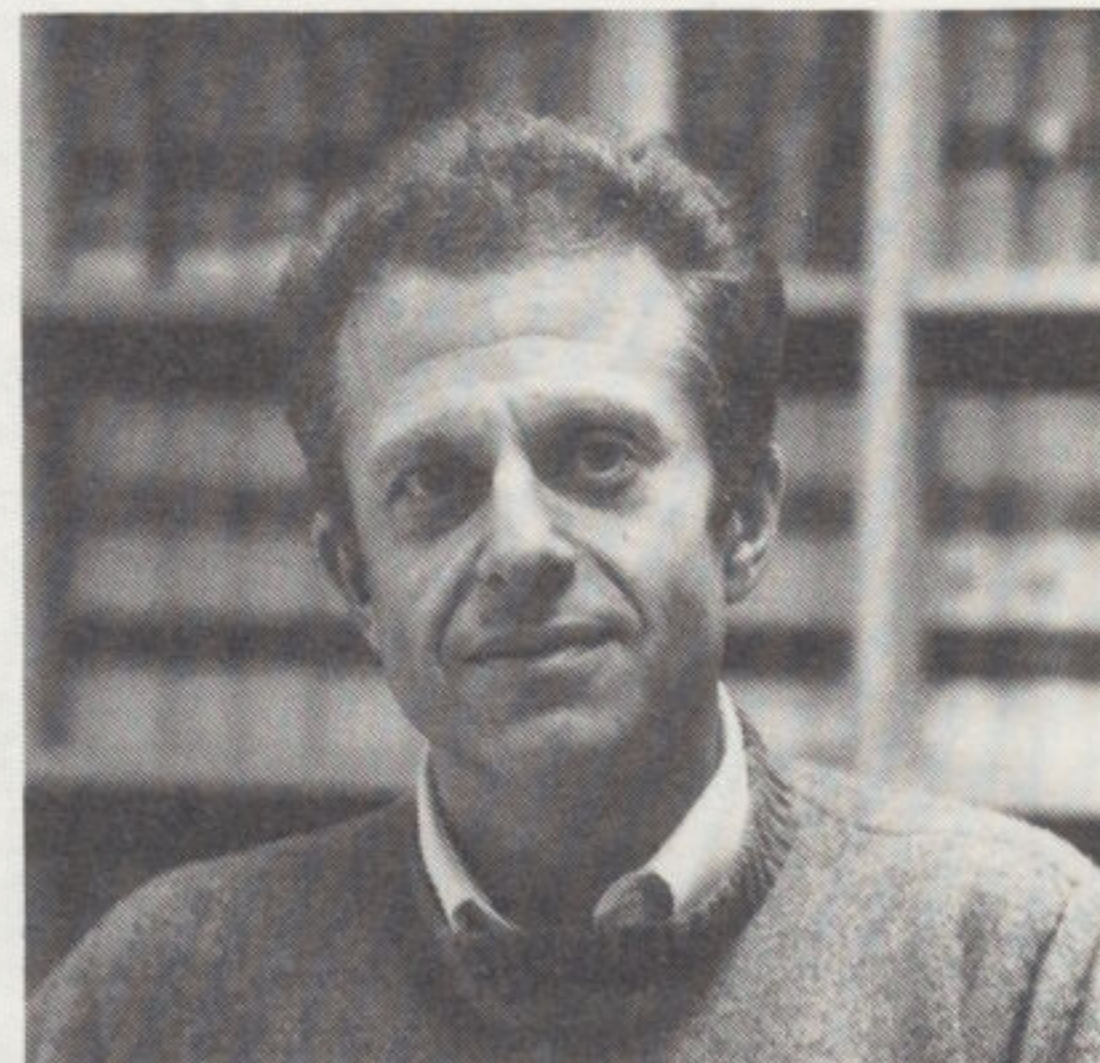
Where can those who support a woman's right to choose abortion in Massachusetts turn now? If Question 1 passes, the answer will be nowhere. If Question 1 is defeated, as it should be, the new criminal law could still be challenged in the state court system, all the way up to the Supreme Judicial Court, under the Constitution of Massachusetts and the state Declaration of Rights.

Question 1 amounts to a proposal to straitjacket the state courts. It would amend the State Constitution to say that, if the United States Supreme Court would not strike down state legislation prohibiting or regulating abortion, the state courts cannot strike that legislation down either.

"Question 1 amounts to a proposal to straitjacket the State courts."

In so tethering the Massachusetts courts to the United States Supreme Court, Question 1 would embody a radical departure from our dual constitutional system. The way things normally work, a state constitution may protect individual liberties more generously than the federal Constitution requires. And state courts, in interpreting state constitutions, may therefore differ with the United States Supreme Court.

In the abortion context, this room to differ has already given women important benefits. For example, the United States Supreme Court has read the federal Constitution to give poor women no right to have abortions paid for by Medicaid, even if Medicaid would fund the medical expenses these same women would incur for childbirth. The Massachusetts Supreme Judicial Court, in a 1981 decision, read the State



Yearbook Photo

Prof. Laurence Tribe

Constitution differently. That court struck down state legislation that would have provided Medicaid funds for carrying a fetus to term but not for abortion, holding that poor women may not be denied the choice between the two that better-off women are now guaranteed. State courts in California, New Jersey, Oregon, and Pennsylvania struck down similar legislation under their state constitutions, likewise differing with the United States Supreme Court.

These state court decisions are typical of how things usually work in our federal system. The United States Constitution places a floor of protection under women's right of access to abortion, just as it places a floor under other such rights, like free speech. But if there are holes in that floor that some might fall through, the state courts are free to find a safety net in their state constitutions.

Question 1 asks the voters to say "no such safety nets allowed" when the reproductive freedom of women is at stake. If poor women are denied abortion rights by the United States Constitution, the Massachusetts Constitution cannot save them. If the federal Constitution were someday interpreted by a more conservative United States Supreme Court to permit regulations telling women where abortions must be performed, how many doctors must be present,

Off the Record Eliminate Choice For State And Women

By Kathleen M. Sullivan and Laurence H. Tribe



File Photo

Prof. Kathleen Sullivan

what procedures must be used, and who must be notified, then the Massachusetts Constitution could not be read to bar such interference with the right to choose. And if women were someday denied abortion rights altogether under the United States Constitution, whether by judicial interpretation or through amendment, Question 1 would have cut all safety nets out of the State Constitution. In that event, Question 1 would place a hidden trap door in the State Constitution, opening so wide that all women who seek abortions would fall through.

As Justice William J. Brennan

has so eloquently reminded us during the decade since publication of his landmark Harvard Law Review article, *State Constitutions and the Protection of Individual Rights*, state constitutions are independent guarantors of individual freedom and equality, and may play their most crucial role when the federal judiciary narrows the scope of federal constitutional protection. Question 1 is a battleground not only for women's reproductive choice, but also for state courts' constitutional choice. To preserve both sorts of choice, Question 1 should be soundly defeated. ❦

Counter-Hegemonic Front "Militants" Paper HLS

By Hillary Richard

Intriguing fliers demanding an end to "loan slavery," advertising the rewards of flyouts ("See America On The Corporate Tab"), encouraging frequent flier bonuses and calling for a boycott of firms targeted as "union busters" have recently appeared all over the walls and doors of HLS. A group calling itself the Counter-Hegemonic Front (CHF) has claimed responsibility for the aforementioned campaigns.

The group's name was taken from a chapter of a Duncan Kennedy article entitled "Substantive Inanity of What We Teach" (the title of the chapter being "The Law School as a Counter-Hegemonic Enclave"), according to one CHF member who asked to be identified by the alias "A. Gromsci." Gromsci explained the idea behind the name as "one of contradiction: On the one hand we [HLS students] are trained for the pinnacle of capitalism, yet on the other hand we are a threat to the very institution."

According to a manifesto distributed by the CHF ("Toward A Counter-Hegemony For Law Students"), the unhappiness many students feel due to the compromising of their morality in law school

manifests itself in an "unorganized, poorly articulated form" in various student organizations. The manifesto cites student boycotts of firms offending students' consciences, the "Not One Penny Ever" campaign, the formation of student groups which "celebrate sexual, racial and ethnic diversity" and the Law School Anti-Apartheid Committee's call for total divestment of Harvard's stock in South Africa related companies as examples of student frustration.

The flier campaigns of the CHF were orchestrated by the "militant tendency" within the CHF, according to Gromsci. The manifesto states that these campaigns were conducted in an attempt to coherently articulate the critique of legal indoctrination.

Another CHF member, also requesting anonymity, commented that the call to "Fly Out Everywhere" was intended to illustrate

the hypocrisy and waste of the interviewing process.

The CHF lists as some of its demands a universally-available loan forgiveness program for all students taking low-paying jobs after graduation and the elimination of the "non-experimental" sections. "With genuine transformation as the goal," the manifesto proclaims, "we must maintain vigilance in assuring that our demands remain substantive and oppositional."

When asked for a description of the CHF's members, Gromsci offered the following: "Every time you raise your hand in class and question your professor's assumptions; every time you think twice about signing up for an interview; every time you speak up against being discriminated against; and every time you think about not giving a penny ever to Harvard, you've committed a counter-hegemonic act." ❦

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Poverty Conferees Warn Of Nation's Failure

(Continued from Page 7)

striking impoverishment. The average annual income for a family of four farmworkers is \$4,000, well below the federal poverty level. With a mean educational preparation of fifth grade or lower, migrants lack the economic power and technical means to argue effectively for change. Huddled 12 to 15 to a room in squalid quarters, few migrants have access to sanitary drinking water or adequate waste disposal systems.

Patino outlined the two federal statutes of principal relevance to legal advocates for migrant laborers — the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

Although these laws mandate a minimum wage for all migrant labor and require that conditions of work, housing and transportation be pro-

vided in advance of work, subminimum wage scales and large-scale deception are the rule. The few lawyers who represent migrants have to contend not only with the disproportionate resources of growers and packers, but also the pronounced hostility of their financial source, the Legal Services Corporation.

Avoid "Resegregation"

Julius Chambers, Director-Counsel of the NAACP Legal Defense and Education Fund, delivered an impassioned address, decrying the nation's failure to provide adequate education to the poor and minority sectors of society. Chambers noted that schools serving students from such communities often fail to meet minimum educational standards, and warned that meritocratic concerns must not be used as an excuse to resegregate the nation's youth. Chambers cited an overuse of standardized tests and emphasized the need to use legislative reform and creative litigation to establish a fundamental right to education.

Following his talk, Chambers fielded questions from the audience. HLS Assistant Professor Randall Kennedy asked whether attempts at educational reform should focus on racial or economic distinctions. Chambers suggested that while black and other minority children are not the exclusive victims of educational deprivation, the Supreme Court's refusal to make poverty a suspect class meriting heightened judicial scrutiny has made it more expedient to use race rather than class as a basis for such a right to education.

Professor Sylvia Law of New York University Law School next focused the afternoon's discussion on the feminization of poverty, noting that the deindustrialization of American society has resulted in a rupture of the social contract within the family unit.

Law described a project aimed at helping women to secure non-traditional employment. Law

stressed that the problems of poverty are systematically more acute and desperate for women, citing the "bureaucratic sexism" which plagues many sectors of the economy, as well as the deterioration of welfare grants such as AFDC (Aid to Families with Dependent Children).

The final panelist of the session was Robert Hayes, who left his lucrative Sullivan & Cromwell practice to found the coalition for the Homeless in 1982. Hayes has brought groundbreaking litigation to obtain adequate shelter for the poor, nationally and in New York State.

Right To Shelter

According to Hayes, there are between two and three million homeless people in the United States. The problem is fast worsening: most American cities have experienced a 25 percent increase in the number of homeless over the past three years. Hayes attributed this situation of "unprecedented mass homelessness" to increased competition for an ever-dwindling number of available housing units. One tragic component of the housing shortage, Hayes suggested, was the effort to deinstitutionalize psychiatric patients through community-based group housing just as the housing market dried up, thus forcing mentally disabled persons into the streets to fend for themselves.

In the early 1980's, Hayes mounted a massive litigation attempt in New York City, persuading the state court to recognize a right to shelter, guaranteeing certain minimum standards of habitability in housing for the homeless.

Hayes pointed out, however, that the nationwide process of litigating homelessness in the courts is slow and laborious, and that ultimate success depends upon legislatures' willingness to provide the necessary financial and statutory support for judicial rulings. Hayes emphasized, however, that litigation plays a positive role in focusing public scrutiny and press attention on the condition of the homeless.

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"BETTER BUYS AT BRINE'S"

Lower Interest Rates Drive Up Insurance Costs

(Continued from Page 7)

writing began to pile up. These costs of nearsightedness were passed on to the consumer in the form of higher premiums.

Disagreement centers on the extent of these costs, as reflected in the industry's profit-and-loss statistics. Insurers say underwriting and investment losses led to their industry's overall pretax loss of \$3.8 billion in 1984, which grew to \$5.5 billion in 1985. Yet consumer advocates and the General Accounting Office responded that the industry has in part manufactured these figures through manipulative accounting practices.

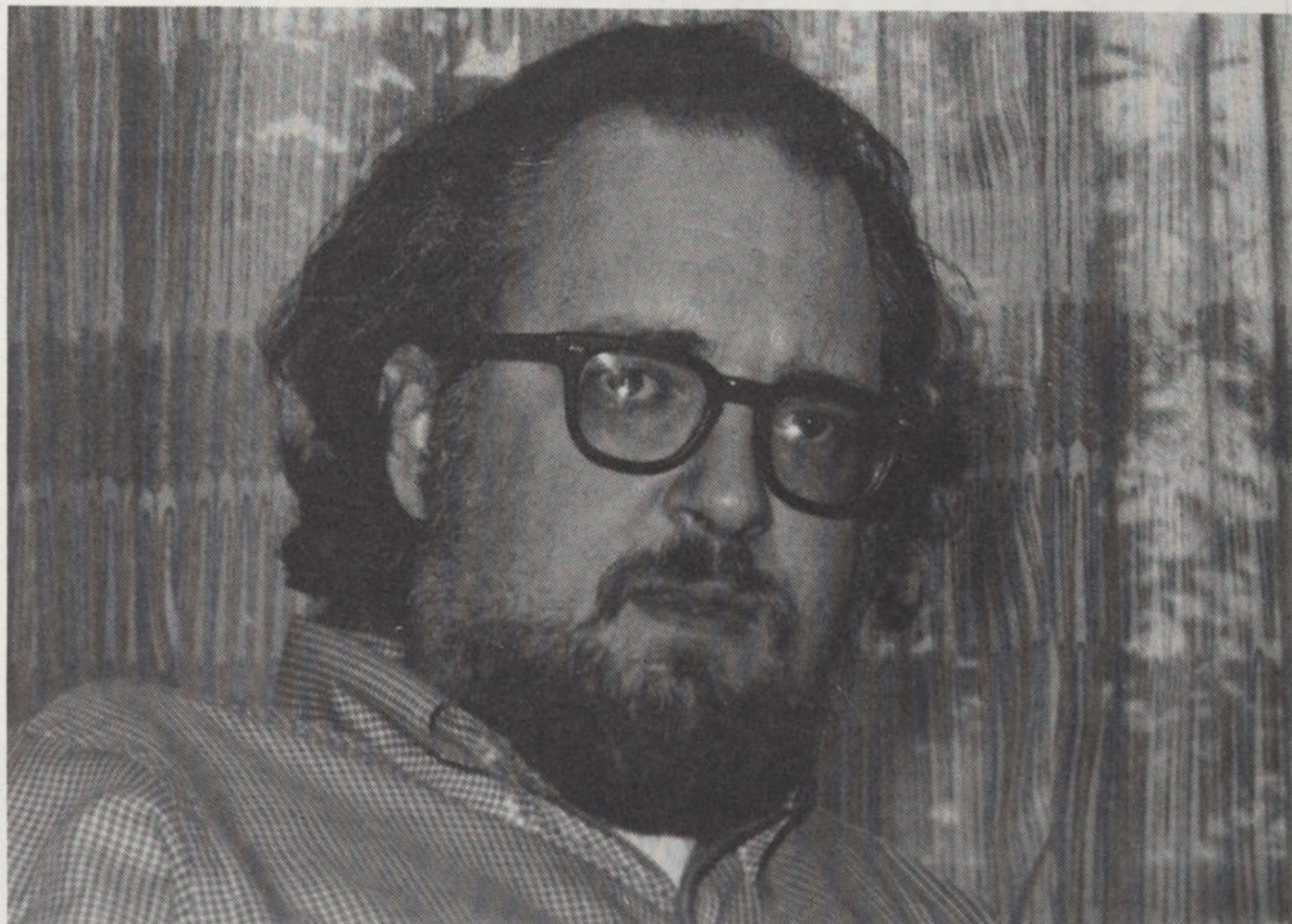
The Insurance Information Institute concedes after-tax profits of \$1.7 billion in 1984, but describes this figure as a poor return. The GAO's findings are more dramatic. One study reports that between 1975 and 1984 the industry recorded a net gain of \$72 billion — all of it tax free.

Proposed Solutions

Proposed solutions to the insurance problem are naturally as hotly disputed as its alleged causes. Among the more controversial of these recommendations is the attempt to limit the amount of non-economic damages, specifically pain and suffering and punitive damages, that juries can award in liability suits. Nineteen states have enacted some form of damage limitation law.

Horwitz questions the correlation some observers perceive between high jury awards and rising premiums, and calls the cap on damages "simply a pro-defendant rule."

HLS Professor Lewis Sargentich also opposes the measure. "A damage cap would substantially hurt poorer plaintiffs, and it's hard enough for them to bring suit as it is," Sargentich said. He pointed out that less than 5 percent of medical malpractice claimants receive any form of compensation. Many trial lawyers share the concerns Horwitz and



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Prof. Lewis Sargentich



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Byse Assists Prospective Law Professors

By Jeff Gershowitz

HLS students and alumni have a new place to turn for assistance in entering the field of legal education. Dean James Vorenberg has named Professor Emeritus Clark Byse as Senior Faculty Adviser to those interested in law school teaching careers.

"Clark presents us with really a wonderful opportunity," Vorenberg said this week. "He knows as much as anyone in the country about the whole law school world. He's enormously respected. It's a wonderful fit."

Byse's job will be two-fold, explained Vorenberg.

"The purpose of the appointment is to try to provide more support and service to our students interested in teaching and to people from other schools, deans and chairmen of appointment committees, looking at our graduates and students as possible teachers," he said.

Byse will counsel alumni and students on both the J.D. and advanced degree levels and will meet appointment representatives visiting HLS. He will also represent HLS at the Association of American Law Schools' Placement Conference in Chicago Nov. 20-22, and will handle correspondence and inquiries concerning HLS students and alumni under consideration for posts at other schools. Administrative placement matters will continue to be handled by Margaret Tuitt of the Placement Office.

"I'm a facilitator," Byse said. "I'll help check places where to look. I'll look at resumes and give a sense of what I think and what people are looking for. It's not any great enterprise. I'm probably not going to get people jobs they wouldn't have gotten, but it may be of some use."

So far, Byse has had few opportunities to advise, and is making an effort to involve more of those interested by placing notices in *The Advisor* and the alumni bulletin.

Byse sees his role as especially helpful for advanced degree students and alumni.

"I'm not so worried about J.D.s,"

he said. "Harvard is a little more forbidding for graduate students, and knowing someone is here for them makes life a little more pleasant."

As for alumni, Byse points out that "someone out three or four years, with no close friend on the faculty, can now write me a letter."

"It's my perception that it is a very tight market," said Byse. "Demand is constricting. Many schools, so I'm told, are reducing the size of their faculty. There are a great number of very able resumes for a lesser number of jobs. I'm told they've never seen so many applications from good people as they've seen this year."

"It raises the question, 'Why?' Is practice less attractive? Is it that students interested in academics four, five years ago, were told there

was less of a chance of jobs in political science and sociology, so they went to law school and still have a yen? I don't know, I don't know if anyone does know."

According to Byse, the three factors looked at most closely in teaching applications are academic record, faculty opinions, and student experience in writing and judicial clerkships.

Thus, Byse suggests, "If I want to teach, and have a choice of working for a professor or a law firm for the summer, it makes sense to work with the professor." Byse advises first and second year students that the most important thing they can do is to become involved and "start getting yourself known by some of the professors."

(Continued on Page 16)

Professors Attack Tort Change

(Continued from Page 13)

Sargentich expressed. They view insurers' proposals as attempts to limit the rights of the injured to seek justice, while allowing wrongdoers and negligent parties to go unpunished.

Other proposals, such as one passed in Connecticut, would limit lawyers' contingency fees. The Connecticut law restricts lawyers to 33 percent of the first \$300,000 awarded and drops to 10 percent for amounts over \$1.2 million. Some observers say efforts to limit contingency fees may be due in part to a growing resentment of lawyers. But defenders of the contingency fee system feel it may be the only way a working class client can afford to seek legal redress for an injury.

Some states have combined tort reform with strong rate regulations for insurance companies. One state has taken a radically anti-insurance industry stance; Florida's novel law caps noneconomic damage awards at \$450,000, but also requires insurance rate cuts of 40 percent by

next year. New Jersey Insurance Commissioner Hazel Gluck drew criticism earlier this year for a restraining order that bars insurance companies from raising rates or canceling policies without her office's approval. The American Insurance Association has filed suit to lift the order.

In many states insurers are experiencing growing success in their efforts to combat the "deep pocket" principle, under which a wealthy defendant can be forced to pay all of a victim's damages, even if the defendant is only 1 percent negligent, if other injurers cannot bear the portion of liability a court has assigned to them.

A new California law requires defendants to pay pain and suffering awards only in proportion to their blame. But critics question whether these measures on insurance rates are effective. While Kansas and Iowa effectively repealed the joint and several liability principle several years ago, both states continue to face soaring liability insurance rates.



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Note: As of September 1, 1986, New York, New Jersey, Massachusetts, Maine, New Hampshire, Connecticut and Vermont have decided to require the MPRE for Bar Candidates. (Rhode Island has not yet adopted the MPRE.)

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Letters to the Editor (Continued)

(Continued from Page 9)

Record Attains Nadir

To the Editor:

Your issue of September 26, 1986 (which I received on October 17) has attained the nadir in the article by Jamie B. Raskin, apparently a third-year student. The only consolation I have is that he is going to have to read many more opinions by the great new Chief Justice.

You compounded matters by devoting two full pages to the diatribe by Senator Biden. If, by some chance, he gets the 1988 Democratic Nomination for President, I believe that he will do at least as badly as Mondale did.

The best thing in the issue was the story about David J. Roberts, who is apparently a sound thinker.

Bernard D. Broeker, '33
Bethlehem, Penn.

Nope To NOPE

To the Editor:

I have just finished reading your September 26th issue which through the good offices of the U.S. Mails reached my desk October 20th. As one who has contributed time and substance to the Law School for over 25 years, I was nauseated by the immature selfishness of Messrs. Garfield and Christian and their associates in N.O.P.E. Whatever I may have achieved in life, I credit in large measure to my three years at the Law School, to having experienced a small part of a tradition

which includes such towering yet disparate legal scholars and advocates as Erwin Griswold, Archibald Cox, David Herwitz, Abe Chayes, Robert Keeton, Laurence Tribe and Alan Dershowitz.

I could not have attended the Law School without financial aid, aid directly flowing from the contributions of earlier graduates. One hopes that Garfield and Christian et al might yet demonstrate appreciation to the Law School and generosity to those who come after them. In the meantime, I assume that they and those with whom they join will, in a spirit of meaningful protest, refuse to accept any further financial aid from the Law School as they live out their self-proclaimed purgatory in Cambridge.

John M. Freyer, '60
Albany, NY

HLS Grads Can Be Cool

To the Editor:

In view of your praise in an editorial in the September 26th RECORD of the position of Federal District Court Judge H. Lee Sarokin on surprise drug testing, I thought you'd be interested to learn he is a 1953 HLS graduate. Such information, if provided in the RECORD, might influence those in the student body and among the recent alumni who think all HLS grads of those days are conservative misanthropes whose values were distorted by their HLS education, to do some reassessment.

Nathan Hershey
Professor of Health Law
University of Pittsburgh
Pittsburgh, Pennsylvania

Byse: HLS Degree Helps

(Continued from Page 14)

Byse explained that an advanced degree is not a prerequisite to an academic post.

"It's useful, but not indispensable. The method now is to go to school, then take a clerkship with the Court of Appeals, then a clerkship with the Supreme Court, then practice a while or go into government, and then teach.

"The advanced graduate degree has its primary usefulness to someone who went to another, smaller school with less opportunities and

did very well."

"No doubt to be a graduate of this school is an advantage," Byse noted. Harvard has a reputation, and a person with a first-rate education and a first-rate average will do well."

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