



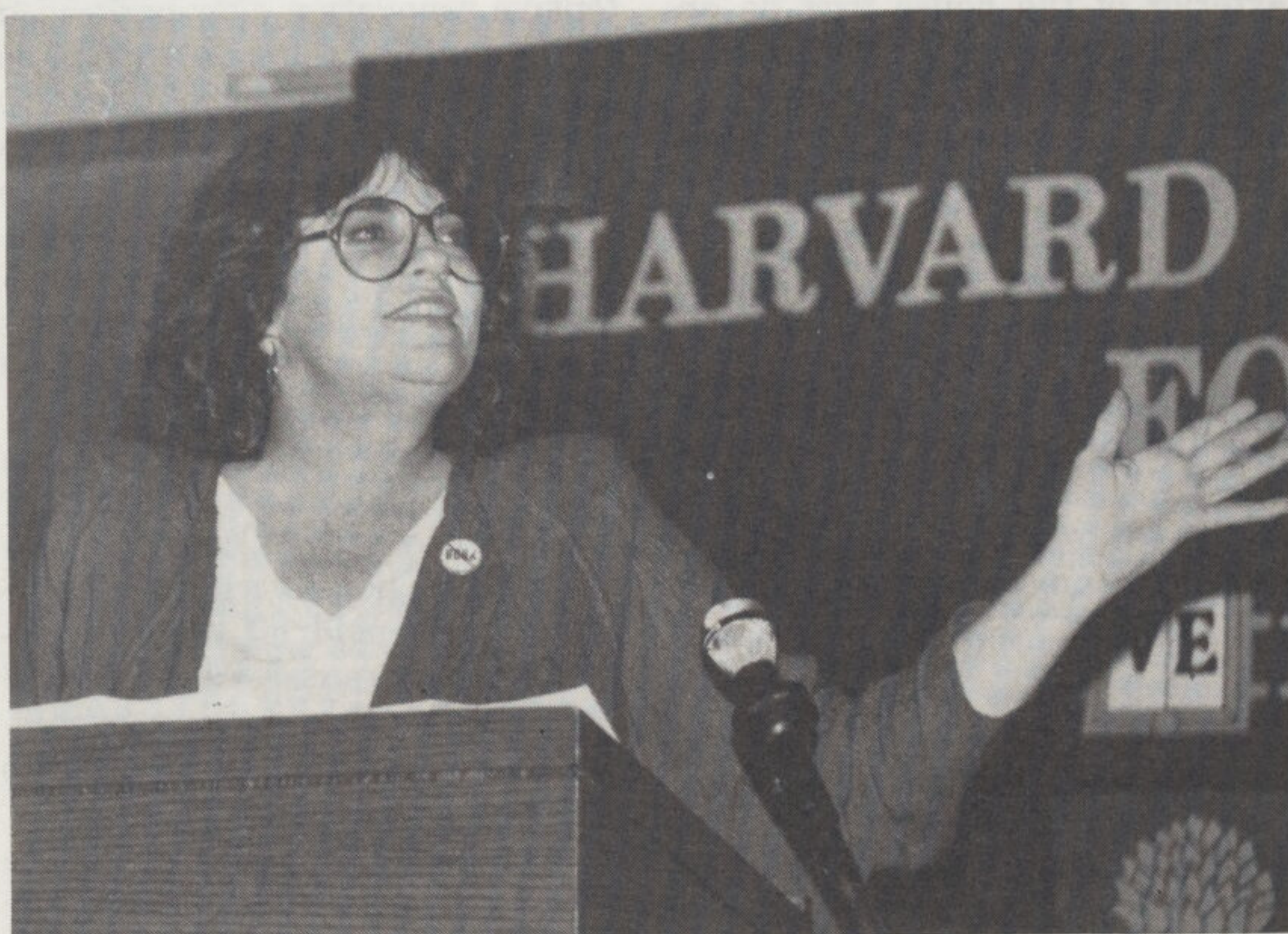
Harvard Law Record

America's Oldest Law School Newspaper

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SEPTEMBER 25, 1987

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Robert Gerber

"And so it goes," said Linda Ellerbee. Story on page 6.

Kraakman Accepts Tenured Post

By Jonas Bergstein

Reinier H. Kraakman, who served as a visiting professor last year, has been made a member of the tenured faculty of HLS. Kraakman, who had been teaching at Yale, is a specialist in corporate law and finance.

"I feel very good to be part of the family," said Kraakman. "It's an excellent law school with a lot of terrific colleagues and great students. There are a lot of people in my general area, and that's one of the great pleasures in being here."

Kraakman graduated from Harvard College, where he studied sociology, in 1971. Then he pursued a Fulbright Fellowship at the University of Frankfurt and a Ph.D. at Harvard in sociology before deciding upon a legal education.

He received his J.D. from Yale, where he was editor of the *Yale Law Journal* and won the Israel H. Peres Prize for best student note and the Carter, Ledyard & Milburn Prize for best student research pa-

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New Grants Take Shape

By Andy Schapiro

The HLS pilot public interest summer grant program, which was announced last spring, is beginning to take shape. A committee composed of students, faculty, and administrators met this week to formalize details of the program, which is intended to ease the financial burden of students seeking summer experience in public interest and public service law.

According to Vice Dean David N. Smith, HLS has agreed to contribute "between ten and fifteen thousand dollars" towards the program. Additional funding will come from a S.P.I.L./S.F.F. (Students for Public Interest Law/Student Funded Fellowships) phonathon held last April, which raised approximately \$10,000, and from a similar effort planned for this October.

Grant Size

The size of each grant has yet to be determined but both Smith and Director of Public Interest Ron Fox suggested a tentative figure of \$1,500. Assuming the October phonathon raises as much as its predecessor, this would mean that

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Lincoln's Inn: Building For The Future

By Rick Genow

The Lincoln's Inn Society, HLS' resident social organization, has completed an extensive restoration of its house at 44 Follen Street in Cambridge. Although the hordes of partygoers who packed the premises Saturday night for the Inn's first open party of the season may have been oblivious to the improvements, the Inn's members are pleased with the results.

Among the changes are a freshly painted interior, new carpeting, new curtains and a refinished ceiling designed to highlight the craftsmanship of the ornate woodwork. More mundane changes were also completed, including structural reinforcements, electrical and plumbing improvements and the installation of new windows.

The renovation is of particular significance since the house has recently been registered with the Cambridge Historical Commission (CHC), a local regulatory body formed to preserve the character of older Cambridge neighborhoods. The CHC's regulations require that the design for any alteration to the exterior of the house first be approved by the Commission and then be inspected during construction. As such, the modified windows were already subjected to the scrutiny of the CHC.

135 Years Old

The house was first built in 1862 at 13 Waterhouse Street in Boston, near the First Church of Christ Scientist. In 1923, the entire house was moved to its current location. The Lincoln's Inn Society, which was

founded in 1908 as one of HLS' many dinner clubs, purchased the house during the 1940's as a regular meeting place for its members. The organization was modeled after the original Lincoln's Inn Society, which still exists in England. According to Inn board member Mike Adele, 3L, this is probably the most extensive renovation ever performed on the building. "It's difficult to do such time-consuming and expensive work in an organization that is run by and for people who will only be around for a couple of years," he observed.

Although much of the work was completed by members of the Inn who had previous construction experience, the work still rang up a total bill in the thousands. In order to fund the project the Inn refinanced the house, which had recently been paid off. Alumni donations and rental fees collected from law firms conducting on-campus interviews at the Inn will also help pay for the project.

The physical changes to the house reflect the board's desire to change the Inn's image and broaden its membership, according to board member Joel Waltzer, 3L. "We would like to diversify by attracting more female and minority members in order to change from an organization with a conservative reputation to one that reflects our apolitical nature," he said.

In line with its desire to expand the membership, the Inn would like to dispel rumors that it buses women in from neighboring schools for their bi-monthly parties. "These stories of busing are false," Adele said. Although the board members did confess that the Inn has a mailing list for invitations, they insisted that the list includes both men and women. "It is, after all, a good thing to socialize with non-law students every now and then," Waltzer remarked.

In order to attract a more diversified membership, the Inn has steered away from the traditional jacket and tie affairs to more casual

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HARVARD LAW RECORD

Experimental Sections Move Into Hyperspace

By Chris Crain

First-year students may soon be enrolling in revolutionary "hyperspace sections," relying on practical experience, computer technology and dramatically different course requirements which will change the face of legal education. "We are in the business of writing the curriculum for the next century," said Professor Martha Minow of the educational innovations planned for the first-year curriculum at HLS.

"The changes represent a quantum leap in legal education — a radically different approach" that, Minow added, may match the 19th century transition to the case method of teaching in significance.

The transition from "traditional" to "experimental" sections, which began five years ago, is by no means complete, Minow said, and future changes may make recent alterations appear minor by comparison.

From Integration to Hyperspace

Professor Morton Horwitz, one of several developers of the "hyperspace section" idea, said the innovations will be natural outgrowths of the current "integrated" approach. While these sections will incorporate bridge sessions, team-teaching and other recent changes, students will see several dramatic differences.

"The basic idea of the hyperspace section is to provide much more overlap than now, much more integration, and a lot of playing around with course segments," Horwitz said.

The most unusual innovation may well be the use of computers as a teaching aid, with software programs developed for each course, which would take students beyond the traditional Socratic teaching method of professor-student interaction.

An increase in practical, or "hands-on," experience would also be part of the hyperspace approach. This "practice component" would involve "learning in simulation

settings," Horwitz said, including negotiations, arguments before mock courts and commissions, and actual lawyer-client clinical work in the first year.

Students in "hyperspace sections," like students now enrolled in integrated sections, can also expect more "stand-up lectures" from professors, again moving away from the more traditional Socratic approach.

The Future of Exams

The only limit to these innovations is a rigid examination schedule, and it is in that area that students and professors alike may notice the greatest change, Horwitz said.

Because the hyperspace sections will be approaching legal material in a way that incorporates every basic first-year course, professors would be free to give tests and other

graded assignments throughout the year, rather than relying on one examination to grade students on an entire year's work.

Minow and Horwitz emphasized that none of the ideas have reached concrete form, but they said some major change is inevitable.

"We all agree that we will be altering dramatically the exam schedule and grading methods," Horwitz said. "We need more small exercises rather than one exam at the end of the year. It's time we alter the exam schedule to meet our educational goals rather than the other way around."

The pace of change may prove as controversial as the form the innovations will take, and backers of the integrated approach suffered a setback of sorts this fall. Horwitz said he has heard that although HLS schedulers had gained com-

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Bork Nomination Splits Students

By Jeffrey Gershowitz

As the Senate Judiciary Committee hearings on Judge Robert Bork continue, so does student activity, both pro and con, relating to Bork's nomination to the Supreme Court.

The "Ad Hoc HLS Anti-Bork Coalition" has completed its petition drive with, according to Alan Jenkins, 2L, the support of over fifty percent of the HLS student body.

The anti-Bork forces have now turned their attention to a "Teach-In" to be held September 29. Students and members of the media will gather and hear professors and others comment on Bork's judicial philosophy.

According to organizer Kevin Thurm, 2L, the goal of the session will be "to elevate, to some extent, the student discussion about Robert Bork. The event itself will attract people opposed to Judge Bork and people who are undecided about him who would want to hear why some professors oppose him."

While the speaker list is still being formed, a number of people have announced that they will try to appear, including HLS Professors Frank Michelman '57 and Alan Dershowitz and Assistant Professor Randall Kennedy.

Dershowitz Objects

"What I'd like to talk about is what the appropriate test is for a Supreme Court justice," said Dershowitz. "I don't care if Bork agrees with me or disagrees with me; I have to know deep down that the insurance policy of liberty is intact. As for Bork, I don't think he sees any limit on government power. I feel strongly about this matter and I'd like to do everything in my power to oppose his nomination. I've written articles about this, I've spoken about this, and I see no reason why I shouldn't discuss this at Harvard Law School. This is where I work — this is where I live."

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Thefts And Assault Are Fall Dorm Fare

By Alicia Ramos

A number of incidents of theft have recently occurred at the Graduate Center dorms.

According to Frank Lamentea, director of Building Operations, this year's problems began the weekend of September 5 with several reports of theft from dormitory rooms and one instance of an assault. The victim of the assault apparently surprised the thief while he was still in the victim's room. The victim slapped and hit the assailant in the chest.

Deputy Police Chief Jack Morse described the theft problem as "cyclical," noting that the new year's strange faces and the overwhelming temptation to prop doors open while moving in make the dorms attractive to thieves, particularly Hastings Hall, with its proximity to Mass. Ave. The administration suggested that the best way to combat theft in the dorms is to lock all room doors and to resist the urge to prop outside doors open.

Peter Kochenburger '86, of the Dean of Students' Office, said that the administration worked to im-

prove security on campus in general last spring by adding a third security guard, installing eight new emergency phones, and improving lighting. The Dean of Students' Office, Kochenburger said, should be alerted to any safety concerns.

In response to the specific problem of theft, the Harvard Police have increased their surveillance of the dorms, and urge people to report any suspicious activity.



Hark Diners Take A Creative Gourmet Step

By Lauren Ruby

Those of you who haven't been up the ramp to the Harkness cafeteria since you were a 1L with a half-hour lunch period sandwiched between two 90-minute classes might not know that HLS has hired a new dining service. That information alone might not shake a real law student's devotion to the culinary "delights" of Nick's and the Three Aces, but a glimpse of the revamped Hark menu just might.

REVIEW

When HLS put the food service contract out to bid at the end of the last school year, Creative Gourmets got the job. Creative Gourmets will be paid a set fee by HLS for its services. HLS's previous food service company, DAKA, operated independently of the school, netting whatever profit or loss it made throughout the course of the year. Perhaps this difference in funding explains the change of attitude. Since Creative Gourmets does not have to worry about making a profit, its employees can expend their energies on improving the quality of the food and service. Walter Noons, manager of Creative Gourmets at the Hark, said, "The company's top priority is to improve the

food — and hopefully the quality of life — for students." Noons attributes the impetus for the changes in the cafeteria directly to suggestions made by the HLS administration and student representative groups, such as the Law School Council, who, he said, give him strong support.

Creative Gourmets has run the food services at the Graduate School of Design and the Kennedy School of Government for seven and ten years, respectively. The company also has a storefront in Boston at Faneuil Hall Marketplace. Whereas DAKA had only one manager for all of Harkness Commons, Creative Gourmets has a management staff. Additionally, each of the chefs has had training as such at cooking schools.

Fresh Food Service

Nothing is served frozen; it is all made in-house. Even the vegetables are cut right in the kitchen. Creative Gourmets plans to cook one special meal each month; this month look for a football and tailgate theme. Noons said that in the future there might be one big Sunday brunch a month, or perhaps a Friday night dinner with table linens and candles. Noons remarked, "I would like to see the Hark cleaned up so that the atmosphere is not so depressing," and he looks forward to

next year, when the upstairs dining rooms and the kitchen will be renovated.

Creative Gourmets is committed to better service. In the past, lack of ice, trays, silverware and other items often occurred, but now the service area remains clean and well-stocked. Two lines for the cash register are open throughout the entire lunch period, and new cash register stands, which will handle two customers at once, have been ordered. In addition, the Hark has made the upscale switch to china plates.

Sample Meal

The Texas barbecue lunch served by Creative Gourmets consisted of two ribs, a chicken breast, half an ear of corn, cole slaw, and a roll, for \$4.00. The Hark's a la carte lunch prices are roughly \$.50 higher than last year. Dinner now costs the same as lunch (there is not all-you-can-eat), so that complete meals cost about what they did in the past. The kitchen currently offers two entrees every day, the same two at dinner as they serve at lunch.

Noons challenged students to come up and try the entrees. "I would be amazed if they did not think them better than they were in the past," he asserted.



Computers And Clients Await Future First Years

(Continued from Page 3)

mitments from enough professors to form three integrated sections for the class of 1990, the plan was scrapped over concerns that the one remaining traditional section would be stigmatized by students and faculty alike. Professor Phillip Heyman, former Associate Dean of HLS, declined to comment.

Varying Faculty Support

Horwitz said the transition toward the elimination of traditional sections may be a slow one, but "eventually they will all agree reluctantly" that the integrated approach should be followed. The acceptance of integrated sections may be helped by the adoption of "bridge sessions" by a number of other law schools, including the University of Michigan, Minow said.

Not all HLS professors, to be sure, are as confident as Horwitz and Minow that the integrated approach

will soon replace the traditional one. While some faculty members now participating in traditional sections declined comment on the issue, Professor Albert Sacks said serious issues about the integrated approach remain to be addressed.

Sacks said that while there is "little doubt they have made some accomplishments" in the integrated sections, no one has articulated just what those advances are and whether they are significant. That question will remain difficult to answer if the program continues to change at such a rapid pace, he said.

A second problem, and one which Minow and Horwitz admit is the major obstacle to the integrated program's success, is the additional time constraints placed upon professors in the coordination of their classes.

"The item most troubling to otherwise sympathetic professors is whether those burdens will be too great," Sacks said.

Minow admitted that the time

involved in curriculum coordination, team-teaching and the other aspects of integrated sections has made it logistically impossible for schedulers to break down classes into the smaller sizes that students enjoy in traditional sections.

The problem of time commitment will be most troublesome to the hyperspace section in its innovative grading approach, which Horwitz said will require the use of teaching assistants and other graders besides the professor.

While Horwitz and others struggle to overcome these obstacles, questions are arising over the advisability of randomly placing first-year students in increasingly different educational settings, as currently occurs.

Do Students Gain?

While Minow and Horwitz eagerly advance the educational ad-

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And So It Goes: Ellerbee Discusses Career

By Lauren Ruby

Linda Ellerbee's first words to her audience, which was gathered under the auspices of the HLS Forum on Monday, September 21, were: "I come bearing no major message." Nevertheless, she presented herself in her talk as a fighter for integrity in television journalism.

Sporting what she described as a "cancel Bork" button, Ellerbee addressed a full house in the sassy and upbeat tone which has become her trademark and which elicited frequent laughs from listeners. She spent most of her hour-long speech telling humorous "war" stories from her recent book *And So It Goes*, but added some political thoughts to the beginning and the end of her speech. She also commented extensively and seriously on the quality of network television.

From Koppel to Pauley

"The people who run television are to blame for poor programming," Ellerbee asserted. "Those in charge of the networks believe they offer shows that people want to see. Most television is bad," she said, "because the programs talk down to their audiences. Although networks like to say that television is democratic, it is not. It's paternalism at its slickest. People deserve better."

Ellerbee told the RECORD that her favorite newscaster is Ted Koppel, who she thinks has a great interview style. She also said she admires Charles Kuralt, Garrick Utley, Andrea Mitchell, Lesley Stahl and Jane Pauley. In her opinion, a good reporter is someone who is nosy, refuses to take "no" for an answer, knows how to discover things that people want to conceal, and can disregard rules and laws when need be. "These are also the qualities that make up an anti-social human being," she admonished.

In 1972, when Ellerbee decided to become a journalist, she was living in a commune in Juneau, Alaska. "That year, my husband ran off with the editor of the underground newspaper and left me with



Robert Gerber

Ellerbee reflects on her circuitous route through network television.

two toddlers. I wrote to the Associated Press in Dallas, Texas [her home state], and they responded that if I would come to Dallas and pass some tests, I could become a reporter."

Backing Into TV

She got the AP job in Texas, but was fired when an irate letter about work that she had written on the word processor to a friend was sent over the AP wire in four states. As a result of this debacle, however, she received a lot of calls. One man said, "You write funny. How would you like to work in TV?" At first, Ellerbee said, she was not too excited about the prospect, but when he told her that it paid twice what her AP job had, she went.

Ellerbee has worked on several television shows during the 15 years she has been in the business, including "TGIF," "Summer Sunday, USA" and "Weekend." She pinpointed "NBC News Overnight" as her favorite. "It was the most fun I ever had." Upon mention of the show, her audience broke into spontaneous applause. Ellerbee attributed the quality of "Overnight" in part to the fact that staff members were left alone to do their work.

Also, she and Lloyd Dobyns, the other anchorperson, refused to make small talk with each other during the broadcasts.

"Overnight" was cancelled after about a year and a half, a fate that "Our World," Ellerbee's ABC show of last season, also suffered. "We were drawing 12 million viewers, but we were scheduled opposite *The Cosby Show*. These days, the financial stakes in prime-time television are just too high for there to be much experimentation. Now you have to have 20 million viewers in order for a show to be considered a success. News shows are never successful in the beginning, with one exception — *Nightline*. But that started in a crisis situation."

Ellerbee recently negotiated her way out of her contract with ABC, and she now spends some of her time promoting her book, which she unabashedly admits she wrote "not to change the nature of the business, but for money."

"I have left network television," she explained, "because it seems that it's no longer the time for the experiments I want to try. PBS, Fox and even HBO are the places to be today. WNET and my company will put "Our World" on PBS next spring."

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Bork v. Framers

The two-hundredth birthday celebration of our Constitution is accompanied by a fanfare this country last saw in the bicentennial festivities of 1976. Yet, even as we prepare to light the candles on the cake, a strong gust from Washington blows out the match. The pending appointment of Judge Robert K. Bork to the United States Supreme Court may rock the very core of the document which is the center of this celebration.

The Framers of our Constitution may have been men of foresight and intellect, but as mere mortals, they were far from omnipotent. Little could they predict those two centuries ago the great strides America would make in science and technology. Little could they know the changes that would occur in the mores of our society. They were living in a society very different from today's. One where Blacks were owned as slaves, indeed by some of the Framers themselves, and women were servile. They could not be expected to predict these changes nor could any document written by men of that society be expected to provide a just measure of rule if strictly interpreted two hundred years later. And, as evidenced by the Ninth Amendment, it was not the intent of the Framers that it be strictly construed. It is with amendments and judicial interpretation that the Constitution survives.

Bork would have us strictly interpret the Constitution. He would have us read it with the narrowest of constructions. Even in an effort to protect the minority, Bork would disallow a "gentrification of the Constitution" by judicial interpretation. He views it as inappropriate for Supreme Court justices to be influenced by personal preferences or ideals of fairness unless these notions have a specific basis within the text of the Constitution. But is it not through judicial interpretation that our Constitution has survived and continues to be a basis for justice in our society?

With the coming of Bork, a collection of laws we value as a part of our society and whose constitutional basis results from this very form of judicial interpretation he so condemns lies threatened — abortion, separation of church and state, freedom of nonpolitical speech, affirmative action, the distribution of contraceptives, and the extension of due process protection to women and nonracial minorities.

In the Senate Judiciary Committee hearings last week, Bork, to the disappointment of many conservatives, appeared to be more moderate. He noted that certain precedents had so become a part of our society that to change them now would be "unthinkable." While he attempted to differentiate between his previous role as a legal theorist and his role as a judge, the primary question remains: Can he consciously separate the ideas he has for years so ardently presented in his writings from that which he will find himself confronted with on the Court? While in the most optimistic sense this may seem plausible, realistically I fear the risk that it may be impossible is too great.

T.M.F.

HARVARD LAW RECORD

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Fenno

Fenno awoke with a start. Without even prying open his beer-glazed eyes he realized that there was another animal form sharing his bed. Reaching over, he was reassured that the body was human — underneath the polyester sheets was the quivering body of a 1L woman. "Finally," he thought, "all those years of signing over my GSL checks to Lincoln's Inn paid off!"

His mind drifted back to the night before where Cupid's arrow had pierced his heart. While standing in line for his eighth rum and vodka, he had seen her guzzling a 16 oz. cup of Meisterbrau. Instantly, he knew that she was everything he ever wanted in a woman. He loved the way the brew reflected in her pale blue eyes, the small foam bubble gathering in the corner of her pursed mouth, and the endearing belch she released afterward.

Their eyes met across the crowded floor. As they staggered toward each other, the crowd of Wellesley, Pine Manor and Lesley women parted and hushed. "There is true love," they whispered to each other in every guttural noise imaginable. Clutching at each other, the amorous couple swayed past the throngs of desperate men and aloof females and descended to the sweaty dance area. The pounding music reverberated in Fenno's ears: "Ooh baby I need your lovin', got to have all your lovin'. . . ." He could feel the jealous eyes of the longing 1L men and the tired looks of their resigned 3L counterparts. After an interminable time, Fenno and his love left a trail of beer bottles from Follen Street to his apartment — where they both passed out immediately. . . .

"Hi," she muttered.

"How intelligent," Fenno thought to himself. "Umm," he responded, "I've got some Black Label in the fridge. Perhaps we could go to 'The Brewery' for brunch?"

"Oh Fenno," she laughed throatily, "you know I should get back and do my JOL sub-cite."

Suddenly the image of marital bliss began to crumble in Fenno's mind. Even then, Fenno found this vision of beauty mesmerizing. Dazed by love, Fenno said, "Listen honey, I'll help find your way through Langdell and we can head down to the Hong Kong later."

"Look Fenno," the woman said, "I like you and all, but it's better that we're just friends. After all, I do have my study group."

Crushed, Fenno slumped down in his bed. As the rain spattered on his window, he thought of the next shuttle to Wellesley.



Letters to the Editor

Insane Cases

To the Editor:

I would urge Dr. Michael Norko to reread the Supreme Court's *O'Connor v. Donaldson* decision which he quotes and discusses in his *Off The Record* piece, "You've Gotta Fight for Your Right to Be Crazy - A Psychiatrist Talks about Fred" (September 8, 1987). Dr. Norko writes that "[p]eople have a right to be quietly crazy" and that therefore psychiatrists cannot involuntarily confine the non-dangerous homeless mentally ill even if they could be helped by treatment. He claims that this "Right To Be Crazy" is the law of the land decided in the *O'Connor* decision. "Justice Stewart's opinion was clear, the law was clear. . . ."

Fred may indeed have a "right to be crazy" but not because of what the Supreme Court decided in *O'Connor*. Justice Stewart's 1975 opinion stated, "[t]here is no reason now to decide . . . whether the State may compulsorily confine a non-dangerous mentally ill individual for the purpose of treatment." 422 U.S. at 573. Further "we need not decide . . . on any of the grounds . . . which, under contemporary statutes, are generally advanced to justify involuntary confinement . . . to prevent injury to the public, to ensure his own survival or safety, or to alleviate or cure his illness. For the jury found that none of the above grounds for continued confinement was present in Donaldson's case." 422 U.S. at 574.

A narrower and, I think, the correct reading of *O'Connor* is that it rejected "custodial confinement" of the non-dangerous mentally ill and not the confinement for treatment of such persons.

Dr. Norko is certainly not alone in his sweeping interpretation of *O'Connor*. But I believe a careful rereading of the entire decision should at least create some doubts about what he and many others seem to take for granted.

Alan A. Stone, M.D.
Professor of Law and Psychiatry

Oakes' Acorn

To the Editor:

Your biographical summary of Judge James L. Oakes '47 (RECORD Mar. 20) neglected to note that for the year preceding his appointment to the Second Circuit, Judge Oakes was a U.S. District Judge for the District of Vermont.

That point is memorable to me because in the Spring of my third year at HLS I attended a reception for the school's Visiting Committee, where I introduced myself to a gentleman wearing the name-tag "James

SEPTEMBER 25, 1987

HLS, inc.

TALES FROM THE

EXPERIMENTAL SECTION

by Luke Cole

THIS WEEK, WE BRIDGE THE GAP BETWEEN REALITY AND

LAW AND ECONOMICS

WITH THE EVER-LUCID LOUIS KAPLOW

Under the rule of strict liability, the driver will be for the pedestrian's accident losses regardless of care. Thus, for each action, the driver's benefit net of liability payments is the same as the last column. The driver therefore will choose to drive moderately efficient behavior because it forces the insurer — the driver — to take into account all of the driver's behavior on the road.



AND THE EVER COMPLAINT SEC. II.

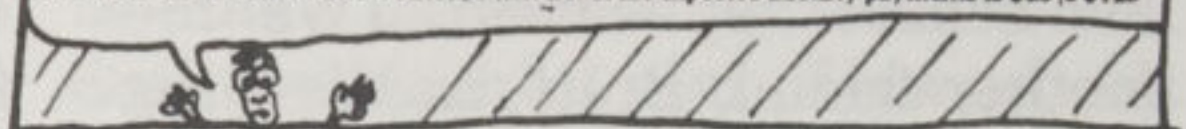
SIR, I'M NOT SURE I GET IT. CAN YOU EXPLAIN IT AGAIN?

OF COURSE.

to their consumption decision, the premium for first-party accident insurance would have to be based on the amount purchased. For example, since the expected accident loss from drinking soda in cans rises proportionally with the number of cans purchased, the insurance premium would also have to rise proportionally with the quantity purchased. If the premium paid does not depend on the number of cans purchased, then consumers will buy too much soda. In general, it is obviously 'cult, if not impossible, for insurance companies to monitor consumers' purchases. This would certainly be the case, for



first-party accident insurance, the optimum victim's damages. To see why, suppose in the example liability and negligence in terms of risk. Courts maximize damages to be one-half of the victim's relative risk aversion of p. strict liability, producers will be liable for the liability payment. Under free of liability (assuming the consumers will bear some risk accident insurance coverage. T are more risk averse than producers, the driver would choose to drive slowly. The moral hazard problem with no slow relative to desired driving behavior. In order to focus purchase decision may not arise in other considerations, it will be assumed hereafter that the many consumer products — such as accurate information about the victim's damages lawnmowers, and toaster ovens — it. Under the rule of negligence, the driver will be made liable that each consumer needs only one unit pedestrian's accident losses only if the driver does not assuming that the consumer cannot all some standard of care. Suppose this standard is determined losses by taking care, there would be care that would be taken if the driver acted efficiently. In hazard problem with respect to this example, this corresponds to driving moderately. Thus, the first-party accident insurance policies "would be liable for the pedestrian's accident losses only if age. Negligence would then be superior choices to drive rapidly. Therefore, if he drives rapidly terms of risk allocation. Under strict liability net of his expected liability payments is \$20 (a \$120



Oakes - Brattleboro, Vermont" by asking, "So what do you do in Brattleboro, Vermont?" He replied, "Right now I'm just waiting for the Senate to confirm me as a District Judge." Still feeling pangs of unrequited yearning for a federal clerkship, I responded, "Need a clerk?"

There followed a scenic drive to Brattleboro for a more formal interview. I didn't get the job, and soon Judge Oakes was on to a higher one. But it turned out OK. Yet another U.S. District Judge — who also now is on his Circuit, and hires clerks over a year in advance — did select me, two months before the job began, in Los Angeles. But that's another story — the story of my life, since HLS.

Laurence F. Jay, '70
Los Angeles, CA

Self-insurance

To the Editor:

Some comment should be made on Ms. Bobba's article that recently appeared in your publication. I wonder where she has been

since she graduated from law school? On the one hand, she condemns prepaid insurance sold by companies like Montgomery Ward. However, on the other hand, she, by rep-

(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 not 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.

Dickens And The Law: Liberating Thoughts On A

Jim Voge is a third year student at HLS.

"Why does a student take a leave of absence from law school?" the RECORD asked me. After giving some thought to that question, I've decided that "Dickens and the Law" was the *provocateur*. The very course that attracted me to Harvard Law School, prompted my leave of absence.

In the summer of 1983, my friend Hunter S. and I made a road trip from Montana to the East Coast. While it wasn't exactly "fear and loathing," we were commandeering Hunter's Pinto Wagon. Among other sordid tasks, I would be obtaining law school applications. We met another friend, Brett, in Washington D.C. Brett was to begin studies at Penn in the fall in American Civilization, "all of American culture," he liked to say. Because Brett and I had studied English Literature together at Montana State University, the imminent divergence of our education was a topic of discussion. I had chosen, for once, a practical and careerist route.

As we headed north from Washington, we began to look at law schools. I couldn't imagine myself in Philadelphia, as a "fighting Quaker," and in New York City our Pinto Wagon was towed, and then lost, by the City police. After spending a day in the 59th Precinct, I began to wonder whether the East Coast really was the place for me. In New Haven, we mistook the gymnasium for a cathedral.

Inspiration in Cambridge

When we finally reached Cambridge, I picked up an HLS application and a course catalogue. Browsing through the latter that evening, I saw it: *Dickens and the Law*. This, I thought, was the law school for me. Here one could experience a humanistic legal education. Or at least it was recognized that a humanistic perspective on the law might be desirable. Maybe

I wouldn't be imbibing "all of American culture," but I would be engaging in a learned profession. Just then Hunter S. said, "Hey, look at this. Our car." There it was, in a special *Life* magazine pictorial — the Pinto Wagon. Right alongside the Studebaker, the Pinto Wagon had been selected as one of the "Ten Worst Cars Ever Built." "Known for its propensity to rust on the showroom floor," the article said.

Although the Pinto Wagon was retired after that trip, I did find my way back to Harvard Law School. Unfortunately my studies at the law school turned out to be less inspiring than I might have imagined. All courses but one are required in the first year, and the readings are often heavy going. Seeking respite that

Eventually, I sought relief in law-related literature . . . Kafka, The Brothers Karamazov, The Return of Martin Guerre.

first year, I sometimes wandered through the stacks of Langdell Library. I browsed in the *Oil and Gas Reporter* and the Supreme Court decisions of Jamaica, 1774-1923. I skimmed *Fraud on the Widow's Share*, and *Fifty Years of Suretyship and Insurance*. Eventually I sought relief in law-related literature — found myself reading books about trials, Kafka, *The Brothers Karamazov*, *The Return of Martin Guerre*.

I also began to compile a list during my first year of law school, of writers who had received formal legal training. I knew that before making Sam Johnson's acquaintance, James Boswell had been trained in the law. But I didn't remember that Franz Kafka the writer was also Franz Kafka the lawyer. Nor had I known that Nikos Kazantzakis received his Doctor of

Law degree from the University of Athens. I learned that the Brazilian writer Anibal Monteiro Machado received a law degree, and that Edgar Lee Masters was a successful lawyer in Chicago when *Spoon River Anthology* was published. Marguerite Duras went to law school, as did Wallace Stevens, Louis Auchincloss, and George V. Higgins. Archibald MacLeish led his class at HLS. Among more recent HLS graduates, Scott Turow, with *Presumed Innocent*, and Brad Leithauser, with poetry and prose, have been highly successful. Henry James, of course, left Harvard Law School after two years, exclaiming, "Never — nevermore."

A Summer Off

Despite my lists and literary diversions as a 1L, the necessity of mastering an immensity of black letter law gradually circumscribed my reading. After spring exams, realizing I needed space, I took most of that summer off. Twenty years ago only 15% of law students took a legal job after their first year, but today only about 15% do not. Certainly I could have used some income, but inspiration was even more precious. So I spent the summer outdoors, reading and writing. Faulkner, Kundera, and Dylan Thomas nurtured my spirit. I wrote some poetry and seemed to find increasing inspiration with distance from the law.

By September, I felt ready for another year. Dickens and the Law was oversubscribed, so I took Legal History, Comparative Soviet Law, and American Indian Law. I also cross-registered in a T.S. Eliot and Ezra Pound seminar. I convinced Professor Herwitz, after several visits to his office, that the course was sufficiently "law-related" to merit law school credit. "I think it was Holmes who said that poetry was the only proper reading for lawyers," said Professor Freund, in the most recent *Harvard Law Bul-*

Humanistic Legal Education And Leaves Of Absence

Off the Record

by Jim Voge

letin. Indeed, it turned out that the most frequent citation in my seminar paper on Ezra Pound's *Cantos*, was *The Crisis of Democratic Theory*, by Edward Purcell, Jr., a book assigned by Professor Morton Horwitz in Legal History that semester.

In my second year at HLS, I also discovered a book by James B. White called *The Legal Imagination*, which draws fine connections among literature, writing, and the law. I found the *ALSA Forum: An Interdisciplinary Journal of Legal Studies*, which publishes articles such as "The Law of the State in Kafka's *The Trial*," "Literary Perspectives on Murder," and "Lawyers in Chaucer's Time." In short, I was learning that a humanistic perspective on law and legal studies has been sought by many. In the early 1970's, the National Endowment for the Humanities funded the HLS program in Law and the Humanities. As Drew Kershen, a fellow in the initial program, said, "One basic assumption of the fellowships was that legal education is now too concerned with immediate problem solving and professional training to the exclusion of broader questions of values, traditions, and ethics."

In the middle of my second year, I quietly rejoiced when Jerry Frug published an article in the *New York Times* Book Review entitled "Henry James, Lee Marvin and the Law." While I found encouragement in such discoveries, none satisfied a basic problem — there is simply little *time* during law school for outside reading and creative writing. There is always a vague concern that one is neglecting important areas of substantive law. If I was going to be a lawyer, I had always thought, I would be a practitioner — despite an obvious propensity for dreaming. And wasn't this "law as a humanity" business really only useful to *Law Review* students those destined to become teachers and scholars?

Finally, in the spring of my second year, it happened — pre-registration

yielded Dickens and the Law. Happily, I went off to Alaska for the summer to clerk for a judge. As that summer progressed, however, I began to worry about what my third year of law school might be like: fellow students allegedly alienated by the institution, fulfilling academic requirements (See, e.g., *RECORD* Vol. 81, No. 2, "Why then do many — or most — of us go unchallenged?")

I realized that I didn't *have* to finish law school in three years. A resilient capacity for illogical reasoning suggested that if law school dragged on interminably for most students — should perhaps be limited to two years — why shouldn't I make it a four year experience?

Suddenly, I realized I was free to go camping in Denali National Park . . .

I might be sufficiently out of step with the program to avoid the third year alienation syndrome. I would miss my friends, but they would understand. I decided to take the year off. The official response from HLS: "Have a good time." Suddenly, I realized that I was free to go camping in Denali National Park and could take a leisurely four thousand mile road trip from Anchorage to San Francisco. I could read whatever and write.

In practically every sense, my year away from HLS was satisfying. I gained experience in a previously unexplored field of law. By fortuity, I moved into an apartment building that included among its tenants a poet, painters, photographers, an actress and an actor. I wrote short stories and poetry. I read Jorge Luis Borges, Mario Vargas Llosa and other Latin American writers, as well as John Fowles, Louise Erdrich, Rainer Maria Rilke, and Malcolm Lowry.

Ninety-nine percent of the people I talked to about my leave of absence, including prospective employers, thought it was a good idea. Although I was interrupting my formal education, I wrote nearly four hundred pages of legal memoranda on thirty different subjects during my leave of absence. I also had worked for a year and a half with a law firm in Montana before law school, so I really wasn't neglecting "the law."

One drawback to a leave of absence for students on financial aid — you may have to begin making payments on some of your loans during a year off, and you may have to make payments on some loans during your third year of law school — depending on various grace periods and deferment policies. But whatever financial maneuvering may be necessary is well worth the effort.

After a year of studying on my own terms, the academic atmosphere at HLS is welcome enough. I didn't even attempt to get into Dickens and the Law this year, but I remain convinced that it must be one of the best courses at Harvard Law School.

Inn Rebuilds

(Continued from Page 2)

parties that include combat and beach motifs. In addition, the Society still provides for its members a dinner service, cable television, an open bar and a variety of annual events such as a Christmas party and formal.

"Whether the improvements to the house will endure to be appreciated by new members will depend on the success of our parties," joked Waltzer. The Lincoln's Inn Society, however, is more than the members and the parties, according to Adele. "A large part of what I think of when I think of the Inn is the physical structure itself."

Corporate Expert From Yale Joins Faculty

(Continued from Page 1)

per, in 1979. He then clerked for one year for Judge Henry J. Friendly in the U.S. Court of Appeals.

Kraakman's interests include the workings of the securities market, corporate management and third party liability strategies. He has authored several articles, the most recent being "Gatekeepers: The Anatomy of a Third Party Enforcement Strategy," appearing in the *Journal of Law Economics and Organization*, 1986.

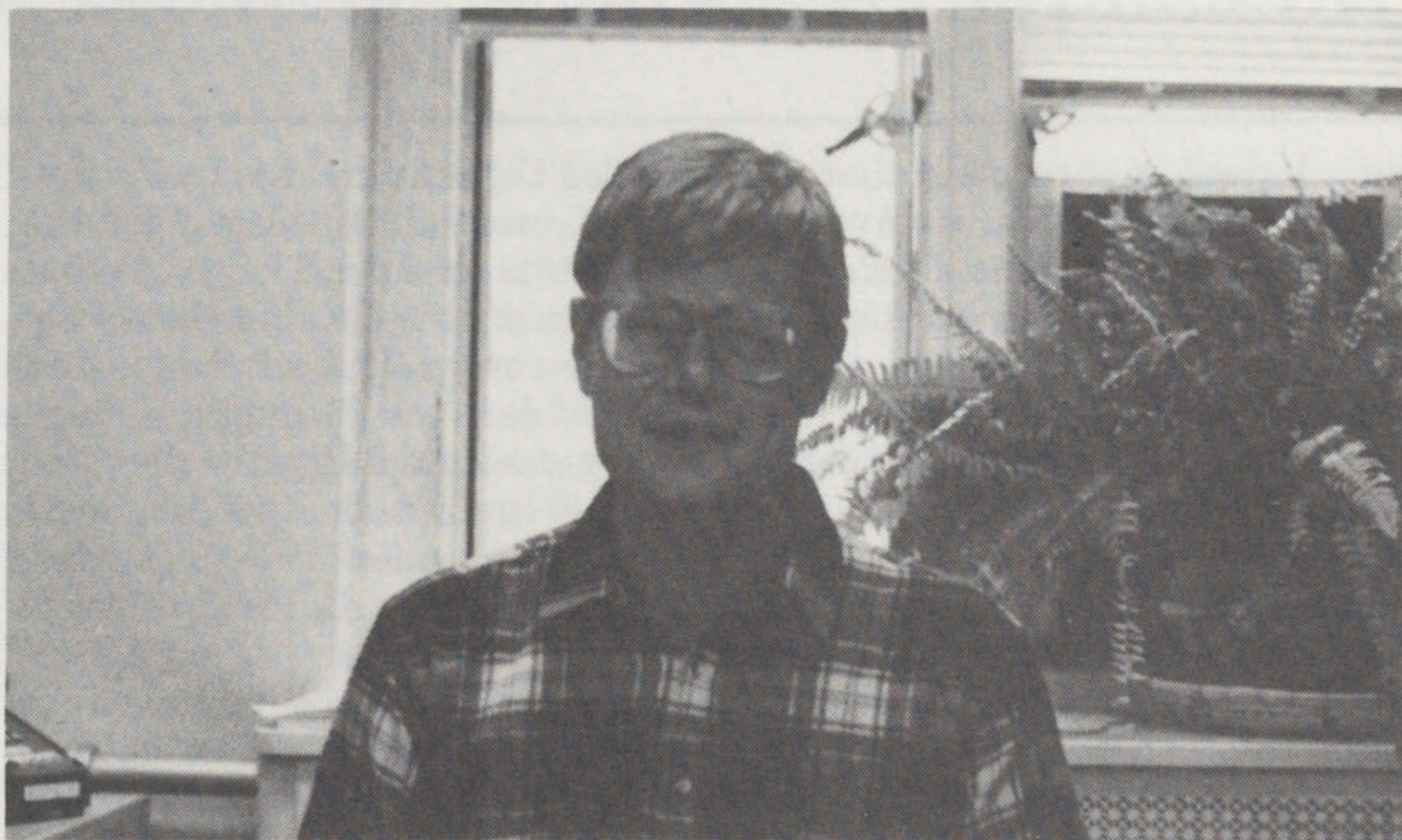
Gatekeepers and Whistleblowers

Gatekeepers, according to Kraakman are parties "who don't stand to benefit from wrongdoing but can be conscripted as policemen" to control these acts. Kraakman's emphasis is on "when that strategy makes sense and doesn't make sense," and he intends to do work on whistleblowing "both from a law and economics perspective and a broader normative perspective."

"The stuff I've published has a law and economics flavor to it," he said. "An interesting analog to my area is the extent to which law and economics and financial economics are entering into the mainstream judicial thinking. There is a change in rhetoric. The vocabulary is changing a bit. What lawyers have to learn about the way they speak is changing."

Kraakman is currently working on two papers, one concerning pre-commitment contracts and the other, with Professor Detlev Vagts, dealing with secured debt. With respect to each he is in that stage he calls "the happiest point in writing a paper — before you have written anything. In effect, at that stage you've got a wonderful idea. But when you begin to develop it, you find out how limited it is and the romance just drains out."

By the time the piece is published, said Kraakman, "you know everything is wrong in the article. Your only protection will be that other



File Photo

Professor Reinier Kraakman ponders the complexities of corporate law.

people will not read it closely enough."

According to Kraakman, "the single most important issue in corporate law now is takeovers. How costly or how cheap are we going

to make it to take over a publicly held corporation? And I think people's views on that issue depend very much on what they think drives the transaction. Is this just paper shuffling driven blindly?"

Money Goes To Public Interest

(Continued from Page 1)

approximately twenty to twenty-five grants will be available.

Although HLS has provided loans to students taking summer jobs in public interest work in the past, this will be the first program to offer outright grants. Part of the rationale behind the plan, according to Smith, is that many students who would be unable to take on additional debt over the summer "may nevertheless be willing to break even."

The pilot program's organizers said that they hope that the grants will be seen as a complement to other sources of summer funding, such as the Federal Work Study Program, the Human Rights Program, the Summer Loan Program, and Student Funded Fellowships.

There is some concern among those involved, however, that the new project might undermine support for S.F.F. contributions. So that the new program will not be seen as a substitute for S.F.F., it has

been proposed that HLS match, rather than just add to, the sum raised by S.F.F. This recommendation was rejected because of the difficulties involved in estimating the figures for the first year. Representatives of S.F.F. and S.P.I.L. will be closely involved in overseeing the project.

Specific information about the application process is expected to be available within the next few weeks. Fox stressed the importance of getting the program under way quickly. A process which gives applicants early notification of whether or not they will receive grants will make it easier for students considering summer public interest jobs to plan ahead, he noted.

"We hope that many of these students will go into full time public interest and public service work," said Smith "But in any case, it is important to give students who want this kind of experience at least an opportunity to be exposed to public interest work," he concluded.

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Supreme Court Hearings Divide Campus Opinion

(Continued from Page 3)

According to Michelman, the Teach-In "can and will serve an educational purpose, or I'd have no reason to be involved in it." While he is uncertain about what his topic will be, due to the changing circumstances in the Bork affair, Michelman said he is considering a talk "from a standpoint of someone who's taken a position opposed to Bork before the confirmation hearings" and who now faces a situation where Bork's "stated positions have appeared to have shifted, evolved and changed."

"We want to involve as many students as possible," said Thurm. "At the end there will be a rally/press conference where we will present the petitions we signed and

have the people who organized the petition speak to the media and whoever else is there."

Supporters Seek Debate

Meanwhile, the ad-hoc pro-Bork forces have also swung into action. On September 14, the same day the anti-Bork petition drive was begun, the "Committee to Nurture Open-Mindedness on Bork" (NO-MOB) distributed approximately 200 copies of an open memorandum explaining their views. They invited the pro-Bork forces to a public debate on the issue. According to Danny Eaton, 2L, the debate offer has not been accepted by the anti-Bork forces despite numerous attempts by the pro-Bork students to arrange the meeting.

The memorandum urged students to withhold their signatures from the anti-Bork petition until after listening to Bork's testimony to the Senate. It accused the anti-Bork forces of "asking [the students] to prejudge the nominee . . . thereby corrupting the very process they are ostensibly seeking to protect," in order to "advance [the anti-Bork students'] hidden agenda." Instead, the memorandum suggested that students wait and "then make an informed decision on *all the facts*."

Eaton, who also authored a commentary for the newsletter of the HLS Democrats supporting Bork's nomination, recognized that his view is in the minority at HLS, and explained that "our effectiveness only exists in trying to raise points, not to sway a majority." ❧

HLS Years Ago . . .

August 28, 1946

Have you been to class lately? Does your schedule call for lectures in different rooms on successive hours? If not, come along, as we show what the average Harvard Law student must undergo at least once daily.

You kiss your wife goodbye, sling your green bag over your shoulder, and head toward school. Cambridge is peaceful in the summertime, you notice, as you saunter toward your first class, scheduled for Langdell South.

At the southern entry, you are confronted by a Macedonian phalanx, a solid mass of morning-smokers and sun-worshippers, drawn up in battle array, blocking the stairway. Perceiving no unused battering-ram nearby, you realize the fool-hardiness of a frontal assault. So, you island-hop to the rear door, narrowly avoiding being run down by a Buick, Ford and Pontiac in succession.

Although buffeted by a gale (the wake created by the dash of hasty Hastings), you succeed in entering the building, and by adept use of gridiron tactics, you bully your way into the classroom and to your seat.

All too soon, the professor has tossed his last hypo at you. Knowing that your next class is to be in Langdell North Middle, you check your green bag to make sure your K-rations and first aid kit are both okay, and slowly move out into the aisle. With luck, you should be within ten feet of the doorway before the opposition begins the battle with a blitzkrieg.

They can't retreat because a huge crowd is flowing down the steps from the library;

you can't retreat because there is no other exit.

Grunting, squeezing, and kicking shins, you reach the classroom doorway. You push on, and finally, feeling like the Ninth Armored when it crossed the Remagen bridge, you enter the hallway. All you have, however, is a small bridge-head. You are still in grave danger of being swept back into Langdell South, as the enemy redoubles its attack, and the situation deteriorates into complete confusion.

From all directions come struggling students, pouring in both doors of the entry, sluggishly moving out of the other classroom, dropping paratroop fashion from the reading room vestibule. And, there you are, in the midst of the maelstrom.

Inexorably, time ticks away. And the at-

tack has a schedule to maintain. So, you and your allies buckle down for the all-out offensive. Knees are brought into play, green bags are whirled about . . . and, over a resilient carpet of the wounded, you stagger wearily to the doorway.

The great offensive has succeeded, and you are racing across the great, open plain of the yard. The necessarily rapid pace of the advance, coupled with the damaging blows inflicted by the enemy, continue to take a heavy toll. Buddies, men who have been with you through equally rough campaigns many times, fall by the wayside. You prop them up, under the cool green trees, bind their wounds, comfort them, and then hurry on, nodding silently as they weakly gasp, "I'll get the notes from you after class." ❧

Horwitz and Minow Explain Changes

(Continued from Page 5)

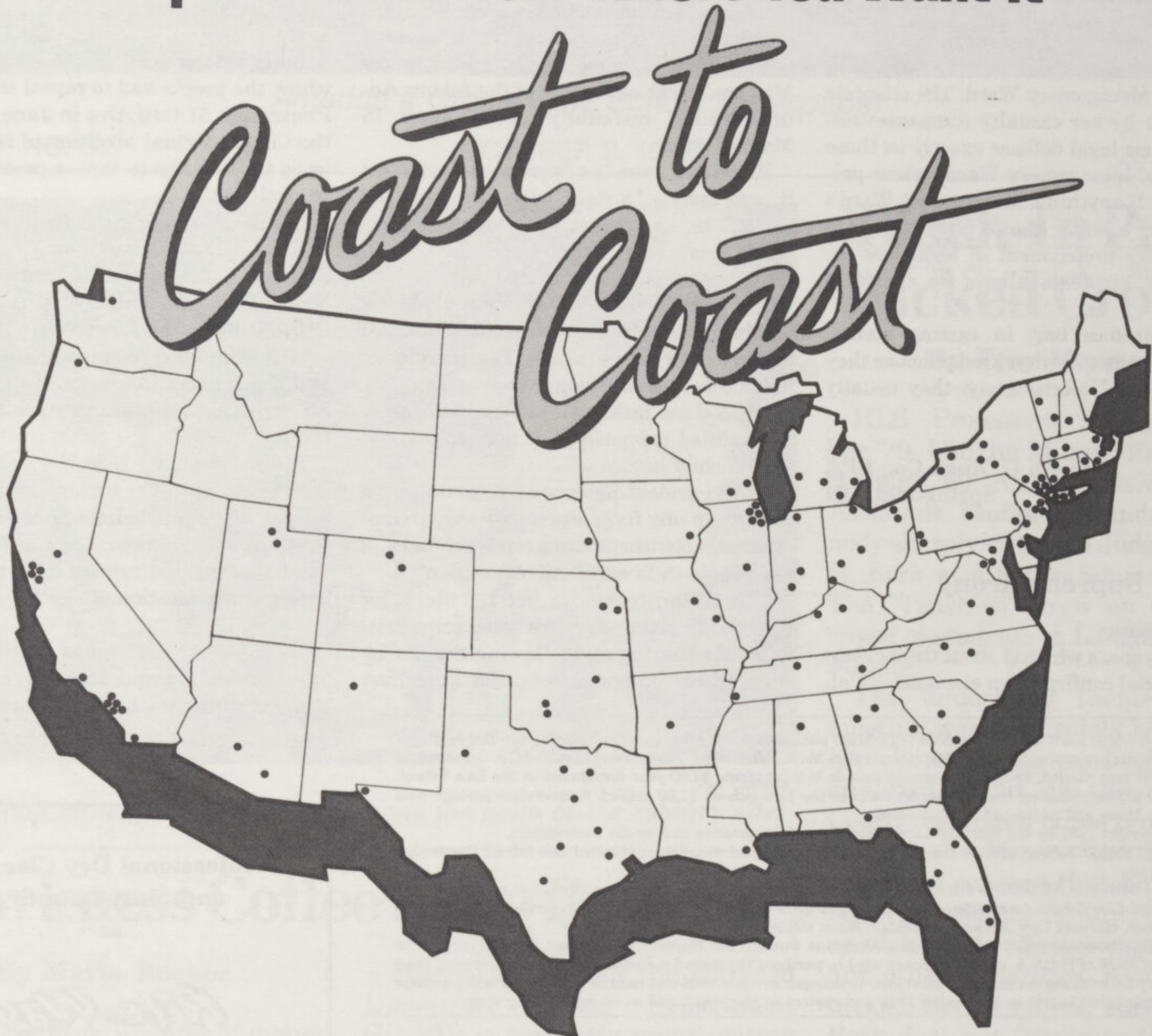
vantages of the integrated method over the traditional one, they stop short of claiming their students receive a better legal education.

"My own view is that the level of discussion and analysis in an experimental section is so high that it certainly is of benefit to the students," Minow said. "But I'd be happy to enroll in any of the sections, and I certainly wouldn't say students in sections two and four

are getting a better education than students in sections one and three."

The eventual success of the program and the degree to which it will revolutionize first-year curriculum may well rest on the shoulders of several younger professors, who Horwitz said have "taken the ball from the founding fathers" of the integrated approach. He listed Professors Todd Rakoff and William "Terry" Fisher as those most energetically pursuing curriculum innovations. ❧

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Letters to the Editor (Continued)

(Continued from Page 9)

resenting insurance companies, is a part of a prepaid insurance scheme such as that offered by Montgomery Ward. The clientele sent to her by her casualty companies has prepaid their legal defense exactly as those members of Montgomery Ward's plans prepay theirs. If anything, Montgomery Ward's plan allows a wider choice of lawyers. On Nationwide's prepayment of legal fees for automobile accidents allows *no* choice of lawyer.

The insurance bar, in casting stones, should first observe what kind of house they are living in. Unfortunately, they usually do not.

**Kenneth G. Rush Co., LPA
Springfield, OH**

Supreme Irony

To the Editor:

Cruz Reynoso's whining about the outcome of the judicial confirmation elections in Cal-

ifornia last November (RECORD March 20) reminds one of the reaction of those midnight appointees of John Adams whose judicial commissions lay undelivered on Secretary Madison's desk as the life of the Adams Administration mercifully ebbed away in March, 1801.

If "the real issue," as Reynoso characterized it, was merely "a right wing attack on the Court," he and his two ousted colleagues would have been handily reconfirmed. In fact, there was no *single* "real issue" in the reconfirmation election, but rather a number of issues which the Bird Court had generated against itself over a decade of extraordinary judicial activism. Among these were:

1. Good old fashioned judicial arrogance, exemplified primarily, but not exclusively, by the chief justice.

2. An unrelenting opposition to the death penalty in any form and under any circumstances, notwithstanding repeated votes of the people in favor of its restoration.

It is disingenuous, to put it mildly, for Reynoso to claim that "we were being criticized for obeying and following the law by some whose economic interests were hurt

by those laws." In fact, the court had for a decade been making up the law whole cloth as it went along, adopting joint and several liability among non-joint tortfeasors, a rule which the people had to repeal through the Proposition 51 initiative in June 1986, and the Court's virtual abolition of fault as the basis for liability in tort, a problem yet to be dealt with.

The Bird Court fit perfectly the description of United States courts by West Virginia Supreme Court Justice Richard Neely in his book, *Judicial Jeopardy, When Business Collides With The Courts*:

"The Supreme Court of the United States and the highest Courts of the fifty states, are like so many loose cannons sliding around the legal deck."

Before November 1986, the California Supreme Court was the loosest cannon of them all. By their overwhelming rejection of Bird, Grodning and Reynoso, the California electorate lashed that cannon back to the deck where it constitutionally belongs.

**Thomas A. Skornia '61
President and Executive Director,
California Legal Reform Project,
San Jose, California**

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