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Yearbook Faces Persistent Pains

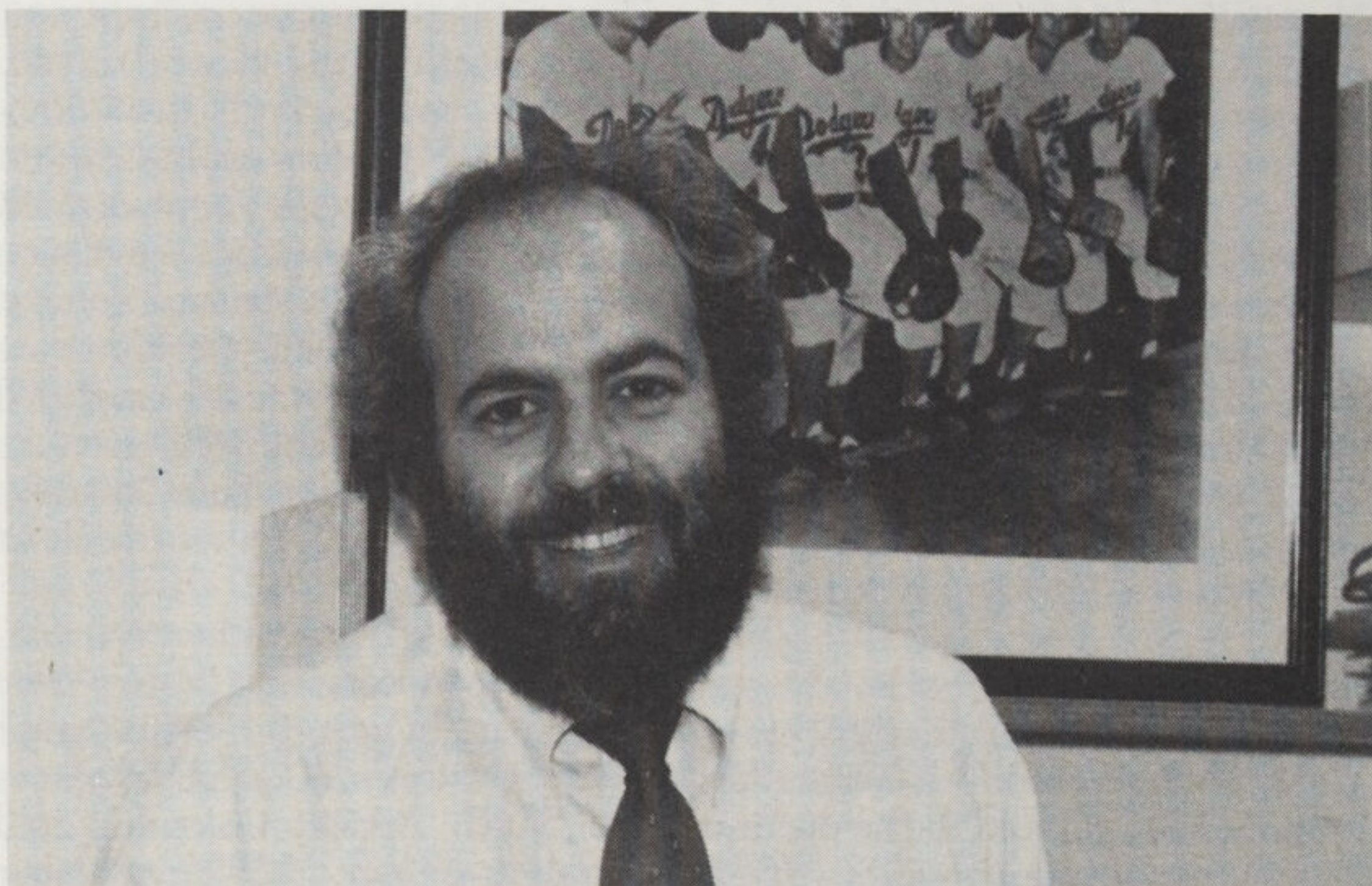
By Greg Herbert

In the last three years, the Harvard Law School yearbook has gone from being your average, run-of-the-mill yearbook, i.e., little more than an expanded face book, to become the center of various controversies, both financial and race-related.

In a nutshell, the yearbook situation is as follows: The 1985-1986 yearbook remains incomplete, but is scheduled to be published by January 1988. The 1986-1987 issue was completed on time in May 1987, but its editor, Robert Gerber, 3L, has since resigned, in part because of a financial dispute with HLS and in part due to student concerns of possible racial insensitivity contained in the 1986-1987 issue. Gerber is now considering legal action against HLS to receive \$5,000 he claims he is owed. To fill the void Gerber's departure created, the Law School Council has formed a yearbook committee and selected two co-editors for the 1987-1988 yearbook. The committee, however, is off to a late start and signed a contract with a publishing firm just last week.

"I don't expect to see it (the 1987-1988 issue) until fall 1988," Gerber said. Craig Sherman, 2L, co-editor of the 1987-1988 book, disagrees.

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Kevin Reed

Daniel L. Greenberg accepted the position of Director of Clinical Programs. Story on page 3.

Yachtsman Conner Praises Crew

By Lauren Ruby

Dennis Conner told his audience October 21 that speaking as the guest of the HLS Forum was the closest he had come to attending Harvard, unless he could count sailing on the Charles River. Conner, who has won the America's Cup four times, is best known as skipper of *Stars and Stripes*, the boat which won the sailing race in 1987 and brought the cup back up from Australia to the United States.

"Winning doesn't depend entirely on sailing, but on salesmanship," punned Conner, who attributed his

team's victory to commitment, planning, engineering and marketing. He had Merrill Lynch, Edsel Ford, Budweiser, Pepsi, Wrigley and U.S. Sprint backing him in the 1987 competition. Appealing directly to his audience, Conner said that in the future "We want all the smart people with all the good ideas behind us so that we can build a better boat. In 1983, we were a little complacent, and we didn't have good industrial espionage. If you'd told me that a boat with a winged keel [*Australia II*] would win the cup that

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Union Leaders Discuss Labor's Future

By Troy Morgan

Over one hundred people, about half of them law students, gathered in Austin Hall October 24 to hear union leaders and organizers, law professors and attorneys from across the country discuss "Labor in the New Economy" in a forum sponsored by HLS' Labor Law Project. Panels of three to five people each addressed a variety of issues during this day-long symposium, the underlying theme of which was labor's need to organize. According to John Tennant, 2L, the sponsors of the symposium sought discussion of the role of unions in the modern service-based economy.

Growth By Organizing

Steve Early, international representative of the Communication Workers of America (CWA), Arlington, MA, pointed to the decline in paid union membership in the industrial sector in the past seven years as evidence of the need to revitalize organizational efforts. Nevertheless, according to Early, not every attempt at organization is legitimate. He condemned the recent decision to allow the International Brotherhood of Teamsters (IBT) back into the AFL-CIO fold after being expelled for what he called racketeering and mob domination. He called the decision a "disgrace," and "a disaster for future union organizing."

While those unions which have recently increased membership have done so "artificially" by merger, thus "organizing the organized," Early claimed that the CWA has grown through diversification and creative attempts at organizing labor at the grassroots level. He noted that even the CWA made most of its gains in the public sector, because of powerful employer opposition and employee isolation in the private sector. Early said that by efforts such as their "jobs for justice campaign" the CWA is attempting to "make a public issue about the destruction of workers'

rights in this country. Educating the people about what's at stake."

Cecil Roberts, vice-president of the United Mine Workers (UMW), Washington, DC, elaborated on what is "at stake" in labor's struggles in the new economy. He compared the U.S. system with that of South Africa. "In this country when you go on strike you get 'replaced' — in South Africa they fire you. Isn't this system a lot better?" Roberts queried. Roberts explained that companies ask the replacement workers to vote while the union workers are out on strike. The next day's headlines read "workers vote out union." Another tactic employed in the auto and coal industries, he said, is to lay off workers for three years and then hire them back at minimum wage.

Roberts criticized the multinational corporations that borrow from the Export/Import Bank (supported by U. S. taxpayers) to go to places like South Africa, Colombia and China to exploit the cheap labor there. He mentioned that Exxon, and soon Drummond, is doing just that in Colombia, where coal miners earn \$300 per month. Noting that black coal miners in South Africa receive the same low wage, Roberts called for the abolishment of apartheid. In contrast to the "I've got mine" mentality of many Americans, Roberts insisted that "a wrong to one is a wrong to all, regardless of where that person lives."

Bill Patterson, National Field Director, American Clothing and Textile Workers Union (ACTWU), Washington, described a "corporate campaign" that applied the kind of innovative approaches about which Roberts spoke. Patterson told the story of an investment banking firm, Drexel Burnham Lambert, that required a clothing company to renege on some employee pensions as one of the terms of a loan. Rather than strike against the clothing company, the union waged a publicity campaign to expose the bank's practices to public scrutiny. The group of textile workers journeyed to Washington to sit in corporate offices and hallways drawing

the attention of the television media and putting the union in a stronger bargaining position.

Bill Pastreich, director of Hospital Workers Local 767 of the Service Employees International Union (SEIU), Cape Cod, MA, gave another example of labor's new strategies and style in the "Good-bye Columbia Campaign." According to Pastreich, the SEIU put a Cape Cod nursing home out of business after the Columbia Corporation swore that they would "never negotiate" with the union. Instead of striking, he said, SEIU publicized true "horror stories" about such things as diapering the elderly with garbage bags. The union encouraged private (paying) patients to move elsewhere. Although seeking to drive Columbia out of business constituted an illegal tactic, the union claimed victory because it forced the closure of the facilities before Columbia's case moved in court.

Early and Judy Scott, attorney for Youngstown Legal Services, Youngstown, OH, debated the role of "concessionary contracts" in labor tactics. Scott objected to Early's blanket rejection of concessions, but Early partly attributed the success of Canadian workers to their anti-concession policy. Professor Bennett Harrison, Department of Urban Studies at MIT, suggested that concessions are "subsumed under the democratic process" of the union.

Government's Role

On the national scale, many speakers expressed dissatisfaction with America's abandonment of heavy industry, especially steel, in favor of a service economy. Roberts pointed out that the billions of dollars allocated to tanks and planes will not provide the steel with which to build them. Harrison stated that steel works and machinists are at "the center of economic growth," and that metallurgy is central to high technology. He stressed that the concept of "growth industries of the future and dying industries of the

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Dersh's Deli To Deal In Kosher Delights

By Earll M. Pott

The first authentic Jewish delicatessen ever to locate amid the terminal trendiness of Harvard Square will at last open its doors to the public next January. For the beleaguered HLS student, saturated with the standard Hark fare and unwilling to try yet another Chinese restaurant for the fourth time in a week, relief is on the way. The as yet unnamed deli, the brainchild of Professors Alan Dershowitz, David Rosenberg and several other local luminaries, will be located on Winthrop Street, next door to Grendel's.

According to attorney Marcus Weiss, a partner in the endeavor, the restaurant will serve up a standard Kosher deli cuisine, but will also include rare Eastern European specialties such as chulent and hoskavi knedlicki (a doughy, beefy, gravied dumpling). Each new entree will have the approval of a Board of Mavens (Yiddish for "experts") which will purportedly include such notables as Red Auerbach, Elliot Gould, and Ithzak Perlman, as well as mothers of all the partners. Prospective head chef, Tsan Merrill-Poree, formerly of DAKA food service, could not be reached for comment, as she is busily apprenticing at a New York delicatessen.

Weiss took his inspiration from several delis located in Atlantic City, including Kornblau's, The Jem, and, not uncoincidentally, Weiss'. He also speaks fondly of Pastrami King in Queens, New York, where the wayward traveler can feast on a "delectable pile" of pastrami generating "an explosive sensation" otherwise unattainable in the "era of safe sex." While Weiss could not promise that the Harvard Square deli would deliver such a potent product, he did express his somewhat tamer hope that the deli "would be a fun place to spend time." In addition, Weiss anticipates a brisk take-out business.

Latacarta To Close

The opening of the deli will represent the culmination of an idea

born seven years ago on a stretch of beach on Martha's Vineyard. Unfortunately, the start of the delicatessen closely follows the end of Latacarta, a health food restaurant which has served Harvard Square customers for some twelve years.

Hiroshi Hayashi, the owner of Latacarta, posted an announcement outside the restaurant stating, "We have recently discovered . . . that dreams without capital soon fade in the business world. We have been forced out by a landlord who chose to give the lease to people with more money and prestige."

Unlike most of the delis so revered by the Harvard Square Mavens, their deli will enjoy substantial financial backing from the start. In addition to Dershowitz, Rosenberg, and Weiss, the partners include local attorney and Phoenix columnist

Harvey Silverglate, LOTUS software wizard Mitch Kapur, investment banker Ivan Krasner and investment counselor Harold Oshima. Weiss insists, however, that the partners are simply "true deli aficionados" who just happen to be investment bankers, computer software developers and the like.

On behalf of the deli, Weiss insisted that he and his partners did not encourage the displacement of another restaurateur and that the landlord, Elliot Street Associates, refused to renew Latacarta's lease for reasons unrelated to the arrival of the deli. Weiss expressed regret over the demise of Latacarta and any bad feelings which might have ensued. Latacarta, which will move to Peterborough, New Hampshire, declined to comment further on its displacement.

Greenberg Joins Clinical Staff

By Jeffrey Gershowitz

Daniel L. Greenberg has taken the post of Director of Clinical Programs at HLS with a firm commitment to the value of clinicals, gathered from his own personal experiences as a practicing legal services attorney.

"You can't be a competent attorney if you haven't been exposed to skills that now are available only through clinical courses," said Greenberg. He explained that "clinical education should not be perceived as a fringe to the rest of teaching legal education. The case law is a very important means of teaching legal skills, but there are a lot of skills it cannot teach."

"I don't see it as different from educating lawyers," Greenberg added. "It's not an adjunct to 'real' courses. People don't have neatly categorized problems. People's problems aren't always resolved through litigation." According to Greenberg, other skills, such as negotiating, listening and giving direction to clients "without taking over their lives" cannot be learned through traditional classes, though

"these are all second nature to people who have practiced."

Greenberg comes to HLS from New York City, where he was managing attorney of MFY Legal Services on the Lower East Side of Manhattan. He is a past president of the New York chapter of the National Lawyer's Guild and taught an undergraduate course entitled "Law and Urban Problems" at New York University. He is also the co-editor of "Tales of Hoffman," a transcript of the "Chicago Seven" trial.

"I applied with the idea that I wanted this job if the law school wanted me, as somebody who has really done law in the community and with the groups that Legal Services relates to," said Greenberg. His role as a full-time director, replacing Marc Lauritsen, who previously served in the role part-time, reflects the school's "enormous commitment to clinical programs," according to Greenberg.

"Harvard is not on the cutting edge of clinical programs," admitted Greenberg, but he noted that HLS

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Students Scrutinize Interviewing Season

By Andrew Pollis

Members of the Alliance for Public Interest Alternatives (APIA) and the Facilities and Services Committee of the Law School Council (LSC) are joining forces in an effort to improve the placement process for students interested in careers in public interest law.

Most of their effort centers around two proposals, both "in the fledgling stages," according to APIA member Deborah Schachter, 3L. One idea is to postpone the commercial firm interviewing season to allow public interest employers to compete for students. Another proposal would "tax" private firms interviewing on campus in order to subsidize the recruitment efforts of public interest employers.

Bill Sarraille, 2L, chairman of the Facilities and Services Committee, explained that the underlying goal is to place "public and private firms . . . much more on the same footing." Sarraille said that his committee worked with APIA in the past on subsidizing summer salaries for public interest jobs. The current joint effort, he indicated, is a con-

tinuation of the attempt "to make public interest work more of an alternative and also to make the placement office interviewing season easier for students."

Questionnaires

Sarraille's committee and the APIA recently sent some 2000 questionnaires to public interest organizations in order to determine whether subsidizing their costs would make on-campus recruitment more viable for them. Schachter explained that "what we hope to glean is a sense of which employers are in fact hindered from coming to campus by financial concerns. [We want to see] how much of the problem would be solved if we could make travel costs available to people."

The results of the survey, which was funded by the placement office, are not yet available, but the possibility of a subsidy is already under consideration.

The placement office already charges a flat fee of \$300 to any employer interviewing on campus; the tax could simply be added to

that fee. Schachter added that surveys of students' interests and needs would be used to help structure any subsidy proposal.

Spring Interviews?

The other area under review is the timing of the interview season. While private firms interview in the fall, public interest organizations often wait until spring, when their funding and hiring needs are more certain. Sarraille first proposed that students sign up for fall interviews over the summer; his rationale was that it would "allow people during the first month of school to get out of the interviewing quagmire," so that they would not be automatically oriented to private firms. Schachter countered that "that would further increase the discrepancy between the mainstream commercial firm interview season and interviews with public interest groups." The possibility of conducting all interviewing in the spring is now being explored as well.

N. June Thompson, Director of

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Old Salt Sails For Work, Not Pleasure

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year, I would've told you that you were nuts. Shows you how much I know!"

In order to win in 1987, Conner and his teammates "decided that the first thing we needed was a fast boat, and we were going to get it through technology." A team composed of three engineers was hired to design the winning boat. Conner said that the crew members were devoted as well as committed to the race, explaining that they "were the guys with tunnel vision. They worked their fannies off for seventeen months. . . 24 hours a day, 31 days a month. . . . We were racing for America."

In the question and answer session that followed his speech, Con-

ner opted for a humorous tack. When a member of the audience asked him if he liked to sail, Conner first noted that his father was a fisherman and he himself had been sailing since he was four. Added Conner, "I don't like sailing (for pleasure); I've been sailing for 40 years. You think Mario Andretti likes driving to the store for a loaf of bread?"

One listener questioned Conner as to who really owned the rights to the winged keel, the Australians or the New York Yacht Club. A second person in a suit and tie interrupted Conner's response in order to comment on some of the finer legal points in the controversy. This man then introduced himself as Reid Ashinoff, the lawyer for Alan Bond, who skippered *Australia II*.

"I'm here interviewing for my firm!" Ashinoff exclaimed. "Believe it or not, it's pure fortuity that Dennis Conner and I are both here on October 21, 1987."

The next America's Cup race, which Conner predicted will be a "spectacular sporting event," will be held in 1991 in San Diego, Conner's home town. Although he said he believes that the America's Cup is "far more than a sailboat race," Conner admitted he was shocked at the American public's response to *Stars and Stripes'* victory. "We had no idea that people in America were going to care about [the race] like they did," he reflected. "We didn't know we were going to come home to a ticker-tape parade."



"New Economy" Imperils Labor Unions

(Continued from Page 2)

past" was a "bankrupt" and even "suicidal" idea.

Staughton Lynd of Youngstown Legal Services suggested that the needs of the steel industry and perhaps of the entire American economy could best be served by "socialism or a more acceptable rhetorical slogan for the same thing." He reasoned that steel companies are going out of business because their business requires them to invest disproportionately in fixed rather than in variable capital. The low rate of profits for such investments, he asserted, prompts American steel to invest in things outside the steel industry that yield higher rates of return. Lynd suggested the socialist approach of allowing the government to decide which plants to shut down, "leaving their actual operation in the hands of regional operating authorities" like the Steel Valley Authority. Lynd rejected "all forms of worker stock ownership," such as is common in Britain, which he said fostered the "small-property owner mentality" of "I've got mine." "Give job security instead," he stated.

According to Dorine Levasseur, president of Local 925, District 925, SEIU, Boston, MA, one of the biggest challenges for organizing labor in the new economy is reaching out to "the lonely worker." She stated that service jobs, temporary employment and part time employment pay less and offer fewer benefits, if any, than other employment arrangements. Levasseur said she regrets that our "culture of individualism" discourages "collective action." She called for a culture of organizing "to empower workers," not to be "insurers," but "to take control of your own lives."

In this spirit of "worker self help," as Professor Paul Weiler LL.M. '65, described it, Roberto de la Cruz, national representative of the United Farm Workers pointed out that historically California farm "workers had to build their own unions." De la Cruz mentioned that under the union constitution vio-



Kevin Reed

The Labor Law Project sponsored the symposium entitled "Labor Law In The New Economy." Staughton Lynd (left) and Jay Hornack (right) shown.

lence meant expulsion. He stressed "volunteerism," saying that "money happens if you do the right thing."

Professor Stanley Aronowitz, Department of Sociology, CUNY, Graduate Center, hailed the "proletariatization of the professions." He said that big unions have ignored the plight of those in the back offices of banks because of the potential powerful opposition of such employers in the private sector. Nevertheless, he asserted that "middle managers and professionals, social workers and teachers are the most willing to organize and the most potent when they do."

Pickets Planned

The symposium coincided with other activities on the part of the Labor Law Project, including actively protesting "union busting" law firms allegedly engaged in underhanded tactics to prevent workers from organizing and hindering fair labor negotiations. Specific allegations include frivolous litigation brought against unions, management attorneys posing as workers to spy on private union activities and intimidation through written

propaganda. Ten national law firms have been identified as "Union-Busters." In a petition drive held in the Harkness Commons this month, over 200 signatures were garnered condemning the anti-labor strategies of the various firms.



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Next RECORD:
November 6

Advertisers Wary Of Spending On Troubled Book

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"It will definitely be complete by the end of next semester," he said.

Will the 1987-1988 yearbook make it out on time, or will the class of '88, like the class of '86, wait with bated breath to see their smiling faces in print? A look back at the trials and tribulations of the HLS yearbook over the past two years might help answer the question.

Past Problems Persist

Two years ago, the 1985-1986 HLS yearbook was under the almost complete control of editor Theresa Miller '86. It seems that, in retrospect, Miller bit off more than she could chew. The end result is that the 1985-1986 book will not be published until at least January 1988, 19 months late, according to HLS Publications Director Debbie Gallagher. Gallagher, who has been in close contact with Miller this semester, has had to work several weekends in order to complete the 1985-1986 book.

Needless to say, Miller's poor management aggravated students, alumni and law firms who had already paid for their books, advertisers who had already paid for their ads and HLS administrators who, according to Gerber, may have to pay up to \$10,000 for a private company to finish the book. Despite this, Miller paid herself her entire salary for the year, \$7,500, Gerber said.

Miller's lack of management created widespread skepticism and mistrust among all parties involved with the 1985-1986 yearbook — mistrust that hindered the smooth completion of the 1986-1987 issue, according to Gerber.

"Advertisers were very reluctant to pay for ads without ever seeing last year's issue. Others would tell us to use last year's ad, which we didn't have. Some were reluctant to make up a whole new ad," said Gerber, explaining some of the problems he had in financing the 1986-1987 issue. In addition, the

students' attitude seemed to be "I'll buy it when I see it," which compounded the problems of obtaining financing, Gerber said.

Salary Dispute Suit

Although the 1986-1987 yearbook did meet all its basic costs, with some subsidization by HLS, Gerber says he never received his full salary. He said he put in 35-40 hours a week on the project and in the end was shorted approximately \$5,000.

"We have a written, legal contract that guarantees me my \$8,000 salary," Gerber said. He claims he received only \$3,000 last year. Despite several meetings with Dean of Students Sarah Wald, Gerber and Wald continue to disagree fundamentally about the nature of HLS's obligation.

"It is our understanding that the yearbook has always operated as a financially independent organization with salaries dependent on the financial success of the book," read a statement issued by Wald's office October 27. The statement continued, "We believe we have no obligation for the editor's salary in this case, but we are continuing to review the situation."

Gerber considers this view a "serious misconception" of the agreement. "They (HLS) are trying to make me bear the burden of their mistake," he said, referring to the problems HLS experienced with Miller.

The 1986-1987 staff eventually managed to overcome the financial difficulties remaining from Miller's tenure. The book came out in May of last year and sold about 1000 copies, Gerber said. But the 1986-1987 yearbook problems were not at an end.

Overall, the 1986-1987 issue was colorful, attractive and error-free. The faculty section, however, was lacking in many respects.

First, only about half the faculty was pictured. Some professors' photographs were missing an accompanying biographical sketch. The error that came back to haunt Ger-

ber, however, involved a mix-up between two professors, both of whom were black. Visiting Professor Robert Belton's photo appeared on page 96. The photo was identified as that of Assistant Professor Randall Kennedy.

The error, according to Gerber, was due to "a number of unrelated administrative errors, including a faulty faculty list that was provided to me, and a number of professors who didn't return the faculty information forms we gave them."

The 1986-87 yearbook staff had serious problems getting photographs and biographical information from several professors. "They are not great people to schedule boring administrative-type events for," Gerber said. As a result, "a lot of non-black professors got their photos and bios mixed up as well," Gerber explained.

"You'd never expect to see Phil Areeda's picture under Arthur Miller's name," countered BLSA President Verna Williams, 3L. "Someone at the yearbook should have been checking to make sure Randy Kennedy's photo was under Randy Kennedy's name."

Gerber said he never received the short biography form from Belton, but did get one from Kennedy and thus had scheduled to take Kennedy's photograph. "Kennedy's office was one floor down from Belton's, and their office numbers are similar," Gerber said. Kennedy's office number is 235 Langdell West. Belton, a visiting professor from Vanderbilt Law School, occupied 327 Langdell West last year.

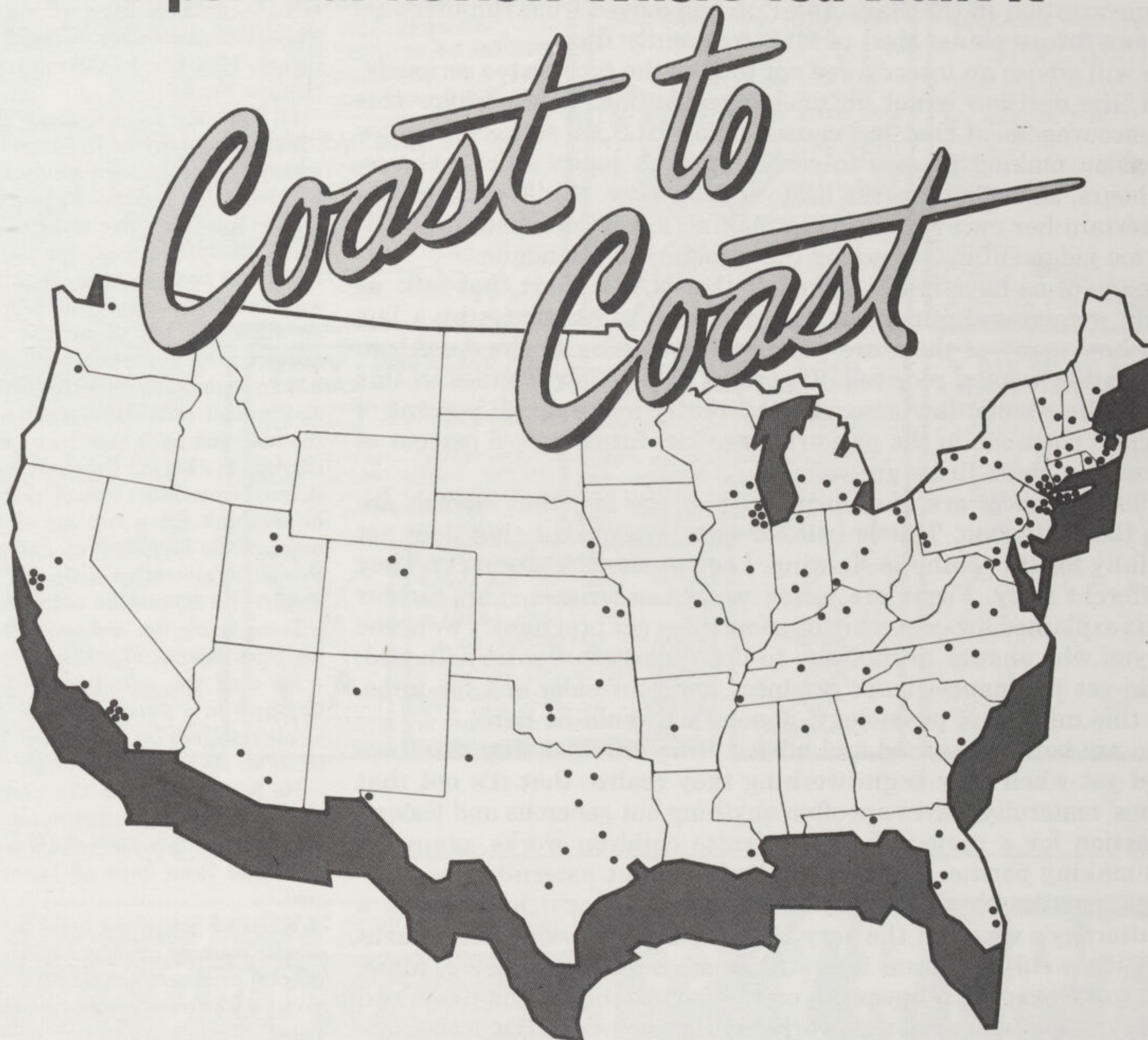
Gerber says he never took a class with either of the professors and was unfamiliar with them until after this incident. "I ended up taking Belton's photo but never got any information on him. He could have been Chinese as far as I knew," Gerber said.

Racial Insensitivity?

The Belton/Kennedy mix-up drew comments from several students.

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Whose Legal World?

It's interview time at HLS. The campus' colors have been magically transformed into blue and grey — with an occasional pinstripe. The casual conversation in the Hark and Pub has moved from summertime activities to future plans. Most of HLS frequently flies.

People will advise an interviewee not to take the process too seriously. After all, the decision is not an unchangeable one. It is perhaps this kind of encouragement that has caused many HLS job seekers to allow their decision making process to center on such topics as city choice, billable hours, salary, and perks like vacation time. While each person must entertain her own priorities in making a final decision, it is not, I think, too judgmental to describe these factors as mundane.

How many of us have really looked at that NALP chart that tells us how many women and minorities are employed as associates by a law firm and how many of them are partners? According to the American Bar Association women received 40 percent of new law degrees in this country. While women law associates currently make up 30 percent of the associate positions in the nation's large law firms, only 6 percent of the partners in these firms are women.

These low numbers are often explained by the fact that women are "new" to the profession. This is true, to some extent, but that does not account fully for this pathetic showing. Look at the NALP charts. They tell a different story. Firms are losing women associates. This serious problem is explained away quickly by some: they get pregnant. I welcome those of you who answer in this way to the Twentieth Century. Indeed, women do get pregnant. Thank goodness, for your sake and for mine. Without this miracle of physiology, none of us would be here.

Women are being penalized and misled. They are told they can have it all and yet when they begin working they realize that it's not that easy. Firms' maternity leaves are often anything but generous and leaving the profession for a period of time to raise children works against a woman's making partner later on. And what about paternity leave?

But it is not the physical condition of pregnancy which stands in a woman attorney's way, but the very basis for the profession's treatment of this — it's a subtle sexism that still exists in our profession. Many woman attorneys agree that sexism on the part of clients and firms still exists today. It is this sexism that works against women in the profession.

So while you are looking at your firm's salary and billable hours, let your eyes wander down the page. Look at the whole picture. Would you feel comfortable working in a single sex world? Just one more factor to consider.

T.M.F.

HARVARD LAW RECORD

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 PHOTO STAFF ... Bob Gerber, Patricia Lee, Kevin Reed, Pauline Scalvino

Fenno

"Free beer at the Charles for those interested in Sleazum, Shyster," the invite read. These late firms were trying the direct approach. Now they're talking my language, thought Fenno.

I'll probably have to wear one of those things around my neck, Fenno thought. He briefly considered using Rusty, his pet black boa, but didn't feel like digging through the crusty, spit-laden pile of Fritos in the rug which Rusty had made his humble abode. Rusty was about to shed his skin soon anyway, and Fenno didn't want to chance losing an attractive, not to mention economical, addition to his knick-knack collection. (Fenno had an impressive collection of dead human and animal cells. He had been saving all the hair and nails that had been cut from his body in a big jar. Guinness wouldn't take it, but Fenno didn't care since he found out he wouldn't get a free six of stout for it anyway.) So he spiffed up and tied a black shoe string around his turtle-neck Mr. Bubble T-shirt. He figured he could pass it off as a Texas string tie, and besides, it matched his black leather Flip Flops.

He eyed the reflection of his imposing physique in a piece of tin foil scraped out of his refrigerator. "Lean and Thirsty," he thought. He was ready to roll.

He headed down to the Charles, on his skateboard trying to figure out if the invitation meant the river or the hotel. He flipped a Meister Brau twist off top for lack of a coin.

When he got to the hotel he was immediately pounced upon by a talking suit. "We got 60% corporate 40% litigation, how's that grab ya for diversity and uniqueness, young fella?" the suit said, hand extended. "Give a guy a chance to strap his wheels to his back, will ya?" Fenno grunted. "Don't you even offer a guy a drink before you start pumping him?" Fenno asked, eyeing the green-bottled brewskis on ice in the corner.

"Certainly, certainly," the suit said, handing Fenno a cold one. "Now what about toxic waste defense in Newark?" the suit said.

Fenno gulped the yuppie brew in a motion and retorted, "Uh . . . how far are you guys from Hoboken? They got a great hardcore bar there you know. One time me and my squeeze were hanging there and —"

"Well," interrupted the suit nervously, "what credentials do you have that would add to our diverse, motivated, early responsibility, big-firm-benefits-with-small-firm-collegiality, client-contact filled firm?"

Fenno stalled for awhile as he slipped a few brews into his secret skateboard compartment. "Uh, I can do the Bluto trick with a slab of lime jello — you got any?"



LAZY 2LS TAKE NOTE!
HLS, inc. "CLS" STUDY TIPS
BONUS! NOT FOUND IN GILBERT'S OR EMMANUEL'S!

A NEW INTELLECTUAL MOVEMENT HAS SWEEPED THROUGH THE HARVARD LAW STUDENT BODY: **CLS. CLS - CASUAL LEGAL STUDIES.** HOLDS THAT ALL THE INDETERMINATE DOCTRINE AND GAPS, CONFLICTS AND AMBIGUITIES IN THE LAW CAN BE SUMMARIZED IN A FEW CONCRETE RULES. THIS WEEK: **RULE #1.**

RULE #1: THE RAILROAD RULE. THE RAILROAD RULE IS SIMPLE: IN FIRST YEAR CASES, THE RAILROAD ALWAYS WINS...

LESTER LAW REVIEW

TEST THE RAILROAD RULE IN CIVIL PROCEDURE:

ERIE RAILROAD v. TOMPKINS
304 U.S. 64, 58 S. Ct. 817 (1938)
TOMPKINS IS HIT BY A FREIGHT CAR DOOR ON A PASSING TRAIN. THE JURY AWARDS \$30,000. THIS IS AFFIRMED BY THE CIRCUIT COURT OF APPEALS. IN THE SUPREME COURT, BRANDEIS USES SOME SILLY PROCEDURE TO OVERTURN ALL THE LOWER COURTS, AS WELL AS SWIFT v. TYSON, TO FIND FOR THE RAILROAD.

CRUZAN v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD
227 Mass. 594, 116 N.E. 879 (1917)
PLAINTIFF'S DECEASED WAS STRUCK BY A TRAIN TRAVELLING AT 60 MILES PER HOUR. THE JURY RULES FOR THE PLAINTIFF, WIDOW CRUZAN.
USING A NEAT PROCEDURAL TRICK, THE MASSACHUSETTS SUPREME COURT RULES FOR THE RAILROAD.

TRY THE RULE IN **TORTS AND CONTRACTS, TOO!**

PALSGRAF v. LONG ISLAND RAILROAD
248 N.Y. 339 (1928)
MRS. PALSGRAF IS HIT ON THE HEAD BY SOME SCALES WHILE STANDING ON THE RAILWAY PLATFORM. THE JURY FINDS NEGLIGENCE. CARDOZO, OF ALL PEOPLE, SEES NEGLIGENCE - NOT THE SCALES - IN THE AIR. HE RULES FOR - YOU GUESSED IT - THE RAILROAD.

TORTS: BALTIMORE & OHIO RAILROAD v. GOODMAN
275 U.S. 66 (1927)
GOODMAN IS DRIVING HIS TRUCK ACROSS THE TRAIN TRACK WHEN HE MEETS AN ONRUSHING LOCOMOTIVE. HIS DISTRAUGHT HEIRS SUE, AND WIN. THE COURT OF APPEALS AFFIRMED. WISE OLD HOLMES, "FRIEND OF THE PEOPLE," REVERSES.

CONTRACTS: ILLINOIS CENTRAL RAILROAD v. CRAIL
291 U.S. 57 (1934)
ILLINOIS CENTRAL FAILS TO DELIVER 5,500 POUNDS OF COAL TO CRAIL, WHO SUES. APPEALS COURT GRANTS CRAIL THE RETAIL VALUE OF THE COAL. THE SUPREME COURT OVERTURNS.

THE RULE BREAKS DOWN, THOUGH, WHEN YOU TAKE MORE COMPLEX, SOPHISTICATED 2L AND 3L CLASSES...
MR. SPUD, WHAT WAS THE HOLDING IN AMTRAK v. PENN CENTRAL?
HELP!

LESTER SAYS: CHECK THESE EXCITING CIV PRO CASES TOO!
→ CHESAPEAKE & OHIO RAILWAY v. MARTIN
283 U.S. 209, 51 Sup. Ct. 453 (1931)
→ ARKANSAS MIDLAND RAILWAY v. CANMAN
52 Ark. 517, 13 S.W. 280 (1890)

STUDY GROUP

by KA

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JOLTING TALES OF LIABILITY IN THE HLS TRADITION!

WHAT DO YOU MEAN YOU DON'T LIKE YOUR NEW HAND, MISTER HAWKINS?!!
HEH HEH HEH HEH HEH HEH

B...B...B...BUT IT'S H-HAIRY!!!

GET MY LAWYER ON THE HORN! SOMEBODY'S GONNA PAY!!!

Letters to the Editor of the Record

Southern Discomfort

To the Editor:

I am writing in response to the Oct. 23rd Fenno column mischaracterizing the newly formed HLS Southern Union.

Fenno's stereotyping of Southerners represents in its grossest and most blatant form the sort of bigotry our organization deplores.

The 78-member Southern Union is an ethnically and racially diverse group open to all HLS students with an interest in the South. Among our benign purposes is that of inclusion. We know how we are perceived. The frustration of that knowledge not only gives us the desire to share our common experiences; it also makes us sensitive to other groups who are similarly misunderstood.

We will not be made to defend the antebellum South. No one but Fenno has mentioned the Civil War or would care to reopen those long-settled issues. Nor will we belittle the problems that continue to confront the South. What we will do is talk about those problems over brown bag lunches, bring in speakers, and work with other organizations, Southern firms, and Southern public interest groups. And yes, we will have parties.

If Fenno really did attend our 1L welcome party, s/he must have been disappointed at our openness and diversity. Among our goals, we hope to continue to disappoint ignorant expectations about who we are. In the meantime, we will try to put behind us the occasional slurs in a tour de force with which

our fellow cultural groups will no doubt sympathize.

Louann McWhorter, 3L

Like The Dickens

To the Editor:

I was so delighted by Jim Vogele's article on "Dickens and the Law" that you must indulge my sending this brief account of my own adventure with the same subject.

I graduated from HLS in 1932, and was sent by Felix Frankfurter to clerk for Judge Augustus N. Hand (cousin to Learned) during the 1932-33 term. At Williams College I had majored in political science, and that plus three years of law had left me abysmally unread.

To alleviate this weakness, my parents had given me a fine complete set of Dickens' works (Riverside Edition, 1868). Reading these volumes soon became a pleasant evening occupation, and I soon noticed the author's frequent introduction of lawyers and legal affairs into his narrations.

I was entranced, and at once started to record in the back of each volume the page numbers of all such references and passages, with the purpose of completing the reading and then writing a monograph which I planned to entitle "Dickens and the Law."

All went well, and by June of 1933 I had read all but two of Dickens' works. At that point my younger brother graduated from Cornell, and I went to Ithaca to be present

at the graduation ceremonies. I had never before been there, and soon after my arrival my brother took me on a tour of the premises.

In the course of this overview, I was taken through the college library. Wandering through the shelves and glancing casually at the titles, my eyes lit on a trim little volume entitled *Dickens and the Law*.

I did not remove the book from the shelf; I simply surrendered. And that is why I have never read *Barnaby Rudge* or *Little Dorrit*.

Telford Taylor '32
New York, New York

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.

Public Interest Placement Examined

(Continued from Page 4)

Time Exceeds Money

Placement, said she feels that the Placement Office has "an obligation to look into proposals" but sees little hope for the two plans now being discussed. The timing of public interest interviews and the lower salary structure are the reasons more students choose private firms, said Thompson, and according to her, "We can never make it equal. If any of us could wave the magic wand, we'd be more than happy to do it."

Thompson also stated that any changes in interview scheduling would have to be approved by the Placement Committee. Any increase in the fee charged to interviewers would have to be approved by Dean James Vorenberg '51.

Thompson noted that the idea of subsidizing public interest firms was rejected four years ago when it was proposed by the Law School Guild. "I personally am not in favor of it," she added. "I don't think anybody here would be in favor of it." More important than financial constraints, according to Thompson, is the problem that public interest employers simply do not have the time to do on-campus recruiting.

Thompson said she felt that HLS could not change the timing of the interview season without causing similar changes at other law schools. Many employers come to HLS before recruiting at so-called "second-tier" schools, she explained, and postponing the HLS interview season

could prejudice students at those schools.

While acknowledging that "you have to work harder" to find a public interest job, Thompson said she believes that "anybody who is really committed" can do it. Thompson stated that the difficulty in finding public interest employment "can't be used as an excuse" by a student to take a job with a private firm and then blame the Placement Office for being too oriented toward private firms.

Sarraille and Dave Fiol, 3L, of the Facilities and Services Committee held an open meeting October 26 to discuss these and other issues. Thompson, Dr. Mark Byers and Ron Fox, all from the Placement Office,

(Continued on Page 12)

Constitution's Life Triumphs Over Flawed Birth

by Justice Thurgood Marshall

The following is an abridged version of a speech delivered by U.S. Supreme Court Justice Thurgood Marshall to the San Francisco Patent and Trademark Law Association in May, 1987.

Like many anniversary celebrations, the plan for [the Constitution's 200th anniversary in] 1987 takes particular events and holds them up as the source of all the very best that has followed. Patriotic feelings will surely swell, prompting proud proclamations of the wisdom, foresight, and sense of justice shared by the Framers and reflected in a written document now yellowed with age. This is unfortunate — not the patriotism itself, but the tendency for the celebration to oversimplify, and overlook the many other events that have been instrumental to our achievements as a nation. The focus of this celebration invites a complacent belief that the vision of those who debated and compromised in Philadelphia yielded the "more perfect Union" it is said we now enjoy.

I cannot accept this invitation, for I do not believe that the meaning of the Constitution was forever "fixed" at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold as fundamental today. When contemporary Americans cite "The Constitution," they invoke a concept that is vastly different from what the Framers barely began to construct two centuries ago.

For a sense of the evolving nature of the Constitution we need look no further than the first three words of the document's preamble: "We the People." When the Founding

Fathers used this phrase in 1787, they did not have in mind the majority of America's citizens. "We the People" included, in the words of the Framers, "the whole Number of free Persons." On a matter so basic as the right to vote, for example, Negro slaves were excluded, although they were counted for representational purposes — at three-fifths each. Women did not gain the right to vote for over a hundred and thirty years.

These omissions were intentional. The record of the Framers' debates on the slave question is especially clear: The Southern States acceded to the demands of the New England States for giving Congress broad power to regulate commerce, in exchange for the right to continue the slave trade. The economic interests of the regions coalesced: New Englanders engaged in the "carrying trade" would profit from transporting slaves from Africa as well as goods produced in America by slave labor. The perpetuation of slavery ensured the primary source of wealth in the Southern States.

Despite this clear understanding of the role slavery would play in the new republic, use of the words "slaves" and "slavery" was carefully avoided in the original document. Political representation in the lower House of Congress was to be based on the population of "free Persons" in each State, plus three-fifths of all "other Persons." Moral principles against slavery, for those who had them, were compromised, with no explanation of the conflicting principles for which the American Revolutionary War had ostensibly been fought: the self-evident truths "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

It was not the first such compromise. Even these ringing phrases from the Declaration of Independence are filled with irony, for an

early draft of what became that Declaration assailed the King of England for suppressing legislative attempts to end the slave trade and for encouraging slave rebellions. The final draft adopted in 1776 did not contain this criticism. And so again at the Constitutional Convention eloquent objections to the institution of slavery went unheeded, and its opponents eventually consented to a document which laid a foundation for the tragic events that were to follow.

As a result of compromise, the right of the Southern States to continue importing slaves was extended, officially, at least until 1808. We know that it actually lasted a good deal longer, as the Framers possessed no monopoly on the ability to trade moral principles for self-interest. But they nevertheless set an unfortunate example. Slaves could be imported, if the commercial interests of the North were protected. To make the compromise even more palatable, customs duties would be imposed at up to ten dollars per slave as a means of raising public revenues.

No doubt it will be said, when the unpleasant truth of the history of slavery in America is mentioned during this bicentennial year, that the Constitution was a product of its times, and embodied a compromise which, under other circumstances, would not have been made. But the effects of the Framers' compromise have remained for generations. They arose from the contradiction between guaranteeing liberty and justice to all, and denying both to Negroes.

The original intent of the phrase, "We the People," was far too clear for any ameliorating construction. Writing for the Supreme Court in 1857, Chief Justice Taney penned the following passage in the *Dred Scott* case, on the issue whether, in the eyes of the Framers, slaves were

(Continued on Next Page)

"We The People's" Meaning Evolved Past 1787

(Continued from Page 11)

"constituent members of the sovereignty," and were to be included among "We the People": "We think they are not, and that they are not included, and were not intended to be included. . . . They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race . . .; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. . . . [A]ccordingly, a negro of the African race was regarded . . . as an article of property, and held, and bought and sold as such. . . . [N]o one seems to have doubted the correctness of the prevailing opinion of the time."

And so, nearly seven decades after the Constitutional Convention, the Supreme Court reaffirmed the prevailing opinion of the Framers regarding the rights of Negroes in America. It took a bloody civil war before the 13th Amendment could be adopted to abolish slavery, though not the consequences slavery would have for future Americans.

While the Union survived the civil war, the Constitution did not. In its place arose a new, more promising basis for justice and equality, the 14th Amendment, ensuring protection of the life, liberty, and property of *all* persons against deprivations without due process, and guaranteeing equal protection of the laws. And yet almost another century would pass before any significant recognition was obtained of the rights of black Americans to share equally even in such basic opportunities as education, housing, and employment, and to have their votes counted, and counted equally. In the meantime, blacks joined America's military to fight its wars and invested untold hours working in its factories and on its farms, contributing to the development of this country's magnificent wealth

and waiting to share in its prosperity.

What is striking is the role legal principles have played throughout America's history in determining the condition of Negroes. They were enslaved by law, emancipated by law, disenfranchised and segregated by law; and finally, they have begun to win equality by law. Along the way, new constitutional principles have emerged to meet the challenges of a changing society. The progress has been dramatic, and it will continue.

The men who gathered in Philadelphia in 1787 could not have envisioned these changes. They could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendent of an African slave. "We the People" no longer enslave, but the credit does not belong to the Framers. It belongs to those who refused to acquiesce in outdated notions of "liberty," "justice," and "equality," and who strived to better them.

And so we must be careful, when focusing on the events which took place in Philadelphia two centuries ago, that we not overlook the momentous events which followed, and thereby lose our proper sense of

perspective. Otherwise, the odds are that for many Americans the bicentennial celebration will be little more than a blind pilgrimage to the shrine of the original document now stored in a vault in the National Archives. If we seek, instead, a sensitive understanding of the Constitution's inherent defects, and its promising evolution through 200 years of history, the celebration of the "Miracle at Philadelphia" will, in my view, be a far more meaningful and humbling experience. We will see that the true miracle was not the birth of the Constitution, but its life, a life nurtured through two turbulent centuries of our own making, and a life embodying much good fortune that was not.

Thus, in this bicentennial year, we may not all participate in the festivities with flag-waving fervor. Some may more quietly commemorate the suffering, struggle, and sacrifice that has triumphed over much of what was wrong with the original document, and observe the anniversary with hopes not realized and promises not fulfilled. I plan to celebrate the bicentennial of the Constitution as a living document, including the Bill of Rights and the other amendments protecting individual freedoms and human rights.

☪

Public Interest Concerned

(Continued from Page 10)

attended the meeting. Although the meeting did not result in any final decisions, a number of students indicated that the Placement Office should take a more active role in promoting public interest opportunities, especially for first year students.

Fiol and Sarraile indicated after the meeting that they would use the meeting as a starting point for their proposals, which will be

drafted by an ad hoc committee of LSC and APIA members. Fiol called the meeting "a rallying point" and affirmed his concern that HLS students, though they tend to be politically liberal, "have this vast migration to law firms that aren't really progressive forces in society."

☪

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Black Students And Editor Clash Over Mix-Ups

(Continued from Page 6)

According to Williams, some members of BLSA were particularly disturbed, not only at that mistake, but also at what they perceived as a possible insensitivity toward black professors and students demonstrated throughout the yearbook. "We were concerned that people who worked on the yearbook may not have given black professors the same respect as other professors," said Williams, who said she was reluctant to talk because she felt the issue had "already been blown out of proportion."

In addition to the Belton/Kennedy mistake, Williams said some students questioned the appropriateness of a headline that appeared above two candid photographs on page 65. The page was laid out after a segment bearing the headline "In the Hark," which featured informal shots of students in Harkness Com-

mons. Page 65 featured photos of students in the tunnels, one of which pictured a black student in the Forum office. The headline for the page read "In the Dark."

"Someone should have been looking at [the headlines] and thinking, this could offend someone, maybe we should think of something different," Williams commented.

"I never in my wildest dreams thought someone would interpret it that way," Gerber responded.

The 1986-1987 issue also listed Christopher Edley, Jr. '78, a black professor who was tenured last spring, as an assistant professor. Gerber explained that the 1986-87 yearbook was laid out long before HLS announced its spring tenure decisions. As a result, the same mistake occurred with Professors Louis Kaplow '81, and Richard Fallon.

In May 1987, BLSA wrote Gerber a letter regarding the 1986-87

yearbook. "BLSA was not calling Bob or anyone a racist," Williams said. "We were only pointing out that there were some serious problems with the yearbook that upset a lot of black students on campus and that we would like an explanation. That was simply all it was," Williams said.

"BLSA was very upset and wanted an explanation. I was upset by the tone of the letter," Gerber said. He would not comment further on the letter. "It was just one of those mistakes that happen every year in a yearbook," he said.

Frustrating Process

The whole yearbook project left Gerber frustrated and somewhat resentful. "I worked so hard, and I got it done where the people before me didn't, and when it was all

(Continued on Page 16)

Clinical Programs Serve Dual Purpose

(Continued from Page 3)

has huge resources and commitment" to clinicals. "The future direction (of the clinicals) is something everyone is trying to look at and struggle through," he said, and he viewed his role as "ultimately help[ing] the school figure out the long-term role of the clinical programs."

HLS clinical programs now involve some 500 to 600 students per year, participating in diverse activities "from Trial Advocacy Workshop to courses run by faculty to student organizations," explained Greenberg.

"The people involved with us, in the Legal Aid Bureau, the Harvard Defenders, SPIL, PLAP, are enormously talented and vibrant people. They have something to say to the HLS community by who they are. Attempting to integrate that into the larger law school community is a greater goal," he said.

Greenberg emphasized the dual nature of clinicals, serving both as

a training ground for students and a recognition of the law school's role in the greater community.

"Traditionally, clinics have been rooted in public defender work and legal services work, training students and fulfilling pro bono obligations to the community in which they exist. I believe in both concepts and I wouldn't want it to lose that passion and commitment to being used as a service provider," he noted.

Clinics Growing

"But clinical programs have grown over the last years," Greenberg added. "I don't think that that should be the only type [of clinical opportunity]." According to Greenberg, some students might not enjoy or be adept at this kind of activity and should not be "denied the opportunity" to experience a clinical. He pointed to HLS' business clinic and work in the Attorney General's office as examples of such alternate clinical programs.

Greenberg said he hopes that his

own diverse past, which includes two years of teaching elementary school in Harlem ("as an alternative to the draft," he said), can play a role in educating law students about the options that are available to them upon their graduations from HLS.

"There are not a lot of people in the law school community who have been Legal Services workers for as long as I have," he said, "and I want to say that for some people, this is a wonderful way to live, wonderful, diverse, dynamic."

Greenberg said he is "excited" by what he calls a new "commitment to diversity" at HLS, noting that there is now "a group of us who have something to say by the lives we have chosen before coming here." He included in this group Sarah Wald, dean of students, Joyce Curll, assistant dean of admissions and financial aid, Ron Fox, in placement, and Dan Burnstein, in interactive video.



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New Editors Foresee Certain Success

(Continued from Page 14)

through, I got some pretty harsh criticisms from my fellow students and got shafted out of my salary," he said.

Gerber never formally apologized for the errors, but said he explained the mistake to BLSA. Williams, however, disagreed. "I really don't think we ever got an adequate explanation," she said.

As a result of last year's yearbook woes, financial and otherwise, Gerber has declined to continue as editor for the 1987-88 issue. To replace Gerber, the Law School Council (LSC) selected co-editors Sherman and Ted Reed, both 2Ls with substantial prior yearbook experience.

The 1987-88 edition is scheduled to be available May 5, 1988. "There's no doubt, it will be out on time this year," Sherman said. "This completion date is explicitly spelled out in the contract," he added, which

was signed last week with Hunter Publishing Company. They plan to begin taking student photographs in late November. "We've got a lot of catching up to do, but I'm confident the book will be out on time," Sherman said.

Sherman says he does not expect to run into the financial problems that plagued the 1986-87 edition. "Unlike Bob (Gerber), we have last year's issue to show advertisers and should be able to bring in a lot more ad money this year," he said. In addition, LSC has formed a budget oversight committee to monitor the yearbook's financial situation throughout the year. The committee will require Sherman and Reed to submit monthly financial reports to LSC, the dean of students' office and the HLS publications office.

The 1987-88 committee has also taken measures to ensure a high level of accuracy for this year's book. "We have more oversight this year

- more people working on the book with yearbook experience," Sherman said. Gallagher also expects things to run much smoother this year. "We've got two editors-in-chief for this issue, and that's twice as many as last year," she commented.

Happy
Halloween!!

The
RECORD
Staff

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