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35 CENTS



Yearbook

Asst. Professor Clare Dalton

Bok Names New Dalton Panel

By David Snouffer

An ad hoc committee of experienced scholars and administrators from other law schools will meet next month to advise Harvard President Derek Bok '54 on whether to promote Assistant Professor Clare Dalton, LL.M. '73, to a tenured full professorship, Bok told the HLS faculty last month.

A majority of HLS full professors voted last May to recommend tenure for Dalton, but she failed to receive the two-thirds support needed for her promotion bid to be forwarded to Bok and Harvard's two Governing Boards for approval. Bok nevertheless agreed to review her case when over 20 HLS faculty members complained about the way some pro-

fessors had scrutinized her scholarship.

Dalton said she hopes the committee will recommend her promotion shortly after Bok convenes the group in February.

In the meantime, Dalton is mulling a job offer she received last fall from Northeastern University Law School in Boston. Northeastern Dean Daniel Givelber '64 has offered Dalton a two-year visiting professorship with the understanding that her scholarship already passes muster for a tenured post at that school.

If she takes the visiting appointment, the Northeastern faculty would recommend her for tenure if

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Faculty Opts For Anonymous Tenure Voting

By Jeffrey Gershowitz

The HLS faculty has approved a measure replacing the traditional open "show of hands" voting method with secret ballot voting for certain hiring and tenure decisions. The move is apparently in reaction to concerns about coercion and confidentiality stemming from public disclosures about the decision-making process in recent faculty votes, highlighted by the incidents surrounding the tenure vote on

Assistant Professor Clare Dalton, LL.M. '63 (see story above).

The new plan, according to Assistant Dean Stephen Bernardi '52, calls for a secret ballot in the cases of initial appointments of new assistant professors and any 'lateral' appointments to tenure for scholars from outside the law school, usually visiting professors. The secret ballot will not be used in cases of promotion to tenure of assistant professors on the faculty when this new procedure was adopted.

The secret ballot system also has a "sunset clause," explained Bernardi, such that "by its terms it expires July 1, 1990." At that time the faculty will reconsider the situation and may vote to continue or discontinue secret balloting. The voting decision was approved at a faculty meeting on December 2 and circulated in its final form to the faculty in a December 9 memo from Dean James Vorenberg '51.

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Academics And Ugly Hark Biggest Student Gripes



Yearbook

HLS students enjoy "LA Law" on the Hark's wide-screen TV as the Coffee Shop serves up treats.

By Greg Herbert

Having long since redeemed their \$1 DSAC coffee shop coupons, many HLS students may be wondering what additional rewards they can expect for dutifully completing their Quality of Life Surveys last spring.

Members of the Committee on Student Services and Quality of Life (the "Committee") cite more than 14 tangible improvements which are at least partially due to the survey. Work on the two biggest areas of student concern — lack of academic feedback and renovation of Harkness Commons — is, however, still in its early stages and actual results may be a long way off.

"I'm a little disappointed," said Neil Quinter, 3L, Law School Council representative on the Committee. "We should meet more often and be a little more active," he explained.

Seven hundred and fifty-eight surveys were completed last year, representing about 46 percent of all J.D. candidates, with an almost even distribution among the three classes. Assistant Director of Student Services Peter Kochenburger '86 said he was "very pleased" with the number returned. Kochenburger is handling the statistical analysis of the surveys.

Several Committee members said that they have read through most of the student responses once and have begun closely re-reading some answers. All student answers were numerically coded and the resulting data entered into a computer. The Committee is now in the process of compiling a report based on the data, which will be included as part of the Committee's overall report scheduled to be submitted to Dean James Vorenberg '51 by late February.

Completion of the final report is the Committee's primary goal for the spring semester, according to Committee member Vice Dean David Smith '58.

The two areas of greatest student concern, based on the review of the survey to date, appear to be academic alienation and dissatisfaction with the function and appearance of Harkness Commons. As a result, the Committee has split into two main sub-committees, with additional members, to address each of the issues thoroughly and separately.

Student complaints in the academic area fell into three basic categories, Smith, a member of the academic sub-committee, said. Lack of meaningful feedback on academic performance, large class sizes and

a seemingly arbitrary grading system were cited by most students as the worst aspects of their academic experience at HLS. "I feel that these three issues are all tied to the students' desire for recognition as individuals," Smith said, describing a theme he said pervaded many student answers in other areas as well.

In his September memorandum to students, Vorenberg expressed great concern over the feedback issue in particular. "[I]mproving feedback is of the highest priority and deserves close and early attention," he said. The academic sub-committee continues to study the problem, but Smith was unable to say when any real alternatives would be proposed or would begin to take effect.

The Committee has "much less control in the academic area," Kochenburger commented. "There we serve a more informational role," he explained.

Quinter, however, said he would like to see more progress in this area. "I hope to see movement on academic concerns by the end of this semester, especially on the feedback issue," he said.

It's So Ugly

Complaints about Harkness Commons centered on the building's aesthetics as well as its functional incapacity as a student center. Many students used derogatory adjectives to describe the Walter Gropius creation, some describing it as "ugly" or "disgusting," according to Kochenburger. One student even referred to the Gropius structures on campus as "architectural abortions."

Several students disliked the functionalist design of the Hark, which was perceived as geared more toward the efficient flow of students from dorm rooms to classrooms than toward providing a comfortable, common meeting area for students. One student described this aspect of the building as a metaphor for

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Vorenberg Imposes Moratorium On Journals

By Dorothy Mitchell

Dean James Vorenberg '51 announced Dec. 17 that he is declaring a moratorium on all new HLS journals pending evaluation of "the role of journals in the Law School's educational program." Such evaluation will be conducted by the already existing Committee on Student Journals, composed of Professor Detlev Vagts '51, Vice Dean David Smith '61, Dean of Students Sarah Wald, and Director of Publications Deborah Gallagher.

According to Smith, the decision to withhold approval of all new journals was made by the Committee as a whole at the end of a semester in which five proposals for new publications were imminent. These proposals were for journals on law and economics, American Indian law, sports and entertainment law, legal issues relating to Latinos, and those of relevance to foreign graduate students. The approval of these proposals would have amounted to a fifty percent increase in the number of journals in operation.

"When a proposal for a new journal comes along," stated Smith, "we are concerned about cost, but primarily in the context of the questions 'Is this a good educational use of money? Would the money be better spent on nonjournal work or, in the context of the journals, would it make more sense for people who are interested in, for example, constitutional law to work within the context of an existing journal?'"

In addition to concerns over the cost of journals, which amounts to approximately \$30,000 a year per journal at HLS, Smith also cited as a major problem the "space crunch" which currently plagues HLS and its Publications Center, which, according to Smith, is "bursting at the seams now." Smith explained, "Just as a practical matter, we are not going to be able to find the space or access to word processing without building new space and expanding the publications staff."

The administration's decision represents an alteration of the

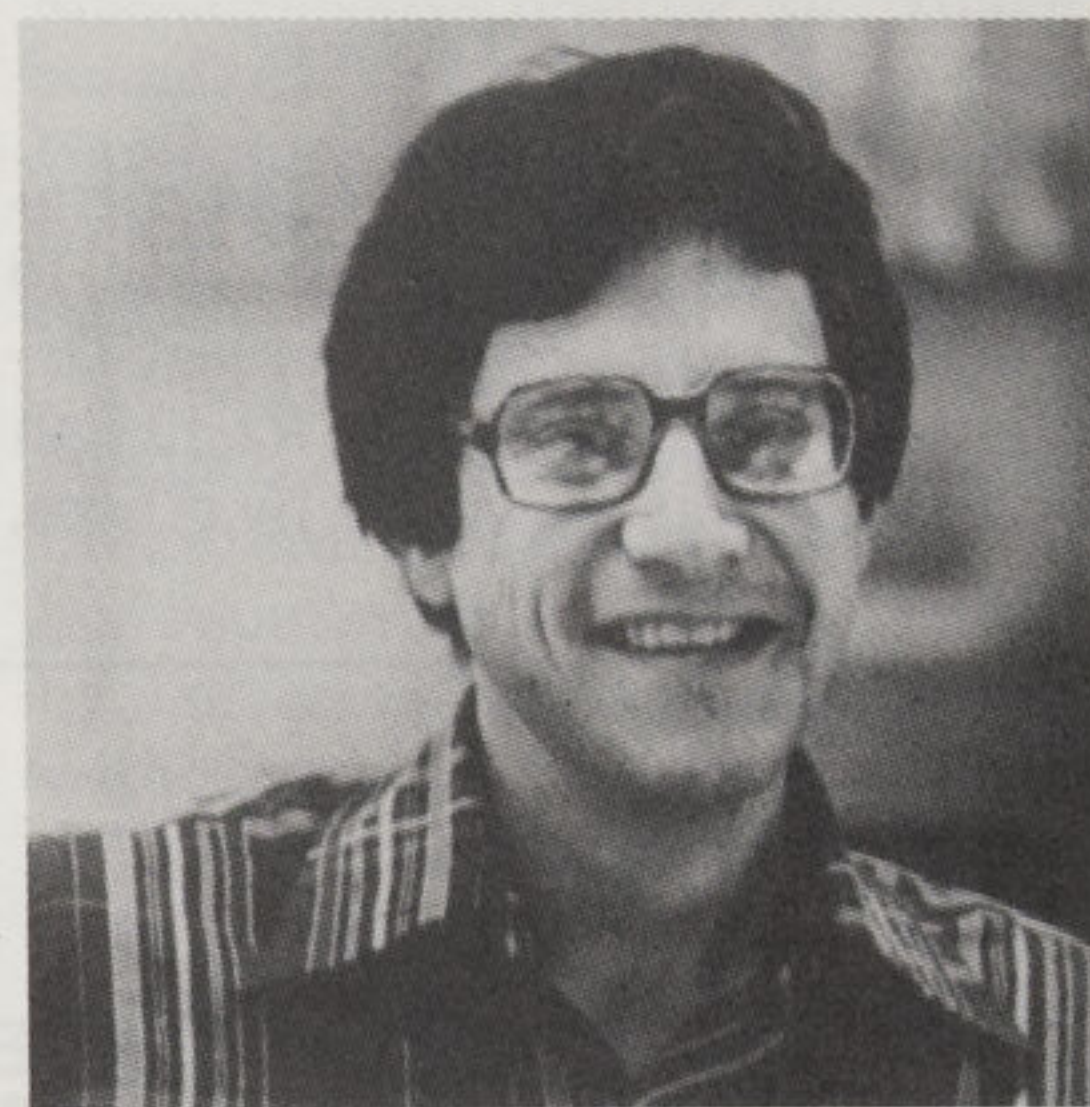
"journal policy" which has been in effect for the past eleven years. The HLS policy for the financing of journals had required that all new journals be supported primarily through outside funding. The revision, stated Vorenberg in his announcement, constitutes a "cap on all new journals irrespective of financing," at least for the present and near future. Other requirements for approval under the old policy were a showing of sufficient student support and "a body of articles and other materials to serve as a foundation for the journal for one or two years," said Smith.

Although acknowledging that "working on journals can make the law school experience very valuable and enjoyable," Smith stated that the Committee is "at a point where we have to evaluate more closely the educational impact of the journals . . . how experience is carried from one generation to the next, how the various journals institutionalize the conveying of writing and editing skills and the number of students who are involved in educationally valuable undertakings."

According to Smith, this evaluation will be carried out through discussions with students and past and present journal editors and through a general study of journal operations. The Committee anticipates that this process will take approximately 18 months and will begin in February.

The effort to establish a joint student-faculty journal on law and economics was headed by 2Ls Tom Barnett, James Lovett and David Weisbach, with the active support of Professors Steven Shavell, Louis Kaplow '81 and Assistant Professor Lucian Bebchuck, LL.M. '80. According to Lovett, as of December the journal was virtually assured of funding from a grant from the Olin Foundation for the purpose of furthering development of economic analysis of law at HLS.

"I don't believe that a concern over costs is the real reason for the moratorium on journals," stated Lovett. "The statement released by the administration explicitly barred



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Professor Steven Shavell

new journals which had adequate funding with which to go forward."

Lovett noted that the announcement came before the journal's proponents had submitted their formal proposal. "The moratorium arbitrarily blocks the development of a joint student-faculty journal without considering the degree of support actually required," he said.

Merit Basis

Shavell, who worked with the students on the proposal since its inception, commented that journal proposals should be evaluated in terms of "their merit and utility to the law school and to the world out there. . . . I think that the procedure for deciding what new journals should be supported by the law school, as well as how much support should be given to existing journals, should be based on merit."

Shavell explained that "the definition of merit should reflect the scholarly quality of the journal's content, the degree of student interest and the degree of faculty interest. The more faculty interest there is, the better the experience for the students, who will work with the faculty. Every journal that students propose should not be on equal footing."

Efforts of the American Indian Law Student Association to establish a journal were headed by 2L Steve Emory.

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'88 Divestment Slate Takes Six Of Eight Seats

By Julia Loewy

The election of six of eight members of a pro-divestment slate to the 1988 Class Committee last December is being viewed as a triumph by some but as a concern by others,

who say they fear the Committee will focus on a single issue.

Committee member Elizabeth Rolando said she is "ecstatic," and Peter Levine, 3L, said that the results were a "very strong symbol from the student body that we want

a responsible Harvard and that we're willing to put our money where our mouth is." However, Class Marshall Salvador Casente and Committee member Ronald Davenport, both of whom support divestment but were not members of the slate, said that students have come to them with concerns that the views of all third-year students would not be represented.

"That's my concern," said Davenport. "I think that divestment is very important and is something we should strive for, but I represent the class as a whole. There are a lot of people with various opinions that should be aired."

Casente said that "this [election] is the closest thing we'll have to an indication of the class' views on that point," and that he welcomed class members' comments — "constructive of course" — on divestment and other issues.

Class Secretary Amy Shapiro and Rolando, both members of the pro-divestment slate, stated that they were interested in a wide range of issues in addition to divestment.

"While divestment is the issue of the moment, I believe in a social responsibility platform generally," Shapiro said. Among the other areas in which members of the slate expressed interest are increased faculty and student body diversity.

Overcoming Apathy

Rolando said that she was surprised at the "incredibly strong negative feelings about the school," noting that a number of students told her they would not vote "because they did not want to do anything that would indicate they approved of the institution."

The Committee has not yet held a meeting, but one of the ideas slate members propose is the establishment of an endowment for divestment, similar to that which Harvard College alumni have established. Alumni could choose to contribute either to the new fund or through traditional channels. Money pledged

A MESSAGE TO HARVARD AND RADCLIFFE STUDENTS REGARDING NOMINATIONS FOR THE COOP BOARD OF DIRECTORS

If you, as a Coop Member and a degree candidate, are interested in serving as Director of the Harvard Cooperative Society for the next academic year, you should obtain an application from the President's Office in the Harvard Square store between the hours of 9:30AM-5:30PM, Monday through Friday. **Completed applications must be returned to that office by 5PM, Friday, February 12, 1988** for consideration by the Stockholders of the Harvard Cooperative Society.

The Coop's Board of Directors has a total of 23 members, 11 of whom are students from M.I.T. and Harvard, 11 are members of the faculty and staff or alumni of M.I.T. and Harvard, and the president of the Society. The Board oversees the operation of The Coop, a six store retail bookstore cooperative and sets the policy for The Coop's operation. The Board meets monthly during the academic year.

the
Coop

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HARVARD LAW RECORD

Creative Gourmets Bites Into The Pizza Market

By Michael Reilly

In an effort to accomodate wishes expressed in the Quality of Student Life Survey (see accompanying article), the HLS food service greeted returning students with several New Year's innovations in their Harkness Commons offerings. Creative Gourmets, the HLS food service contractor, announced that it had extended hours of operation, re-introduced all-you-can-eat dinners, and opened a pizza shop.

Walter Noons, the director of Creative Gourmets, explained that these changes are part of an effort "to attain our primary goal — to make dinner service successful."

The Harkness cafeteria is currently under-utilized at dinnertime, Noons said. The poor attendance, combined with the relatively high labor costs necessary to prepare a complete, quality dinner prompted Noons to conclude that "night business is terrible."

Pizza Pie

Accordingly, Noons and the Harkness Location Manager, Glenn Paciaroni, have devised several promotions designed to "bring people back to the Harkness." The new pizza shop is their primary innovation. Working with the Backbench Pub, Creative Gourmets will have pizza slices and pies available to Pub patrons. Additionally, the pizza shop will take phone-in orders from students. By dialing 495-9262, students will be able to order pizza until 11 p.m.

Noons stated that should there be requisite demand for a delivery service, he envisioned hiring students to make deliveries to the dormitories. Indeed, so determined is he to "make the pizza shop work," that Noons will experiment with different hours of operation, delivery and pick-up service, and may broaden the shop's selection to include sub sandwiches in order to satisfy student needs.

To this end, Creative Gourmets will work closely with student organizations, particularly the Dor-

mitory and Student Affairs Council (DSAC), which operates the Pub and the adjoining coffee shop. Stating that he enjoys a "good relationship with [DSAC President] Scott Jacobs, 3L, [Pub Manager] Brett Messing, 2L, and [Coffee Shop Manager] Brian Powers, 3L," Noons will strive to maintain a high quality of food and promote increased use of Harkness space, while remaining "fiscally responsible to the law school." The first manifestation of this cooperation between Creative Gourmets and the Pub occurred last Friday, when over a dozen donated pies were eagerly consumed by hungry (and thirsty) winter term students at DSAC's weekly T.G.I.F. party.

New Ice Cream

Earlier in the week, lunchtime patrons of the cafeteria were treated to free samples of new "designer" ice cream available there. The Harkness cafeteria is the exclusive

Massachusetts retailer of "Nuage" brand ice cream — made in New Hampshire from rich, high butterfat cream like that in other ice creams found throughout Harvard Square.

Creative Gourmets' choice of Nuage brand, said Noons, evidences the caterer's attempt to combat the bad reputation of institutional food by delivering a high quality product without charging restaurant-type prices. He continued by saying that such goals accord with student wishes stated in the Quality of Life survey. Other changes initiated this month in response to the survey are the monthly Sunday brunches and the return of the all-you-can-eat dinner.

Further changes which may be upcoming include the catering department's developing greater discounts for student functions and the development of a five-lunches-per-week food plan which would be chargeable to term bills.



Votes Result In Ostracism

(Continued from Page 1)

One major concern of the measure's proponents is the effect of public disclosure on those choosing to vote in unpopular ways.

"The purpose is to eliminate 'guilt tripping' as a form of argument in trying to coerce members of the faculty into voting the way you want them to vote, for the candidate you want," said Professor Charles Nesson '63. "We have seen people who spoke their mind and voted their conscience get trashed for doing it in ways that might well intimidate others from being so brave."

According to Professor Detlev Vagts '51, the purpose of the new rule is to "enable people to cast unpopular votes without generating certain kinds of pressures," both from the faculty and the outside world, including "demonstrations and placards inside the school" and "unpleasantness of relations outside the faculty, people who vote one way

for 'X' getting ostracized in the Boston/Cambridge community."

"The secret ballot measure itself I think is of enormous value," said Nesson. "It says in a way that's unmistakable and in a way that we hope people will see 'The coercive shit has got to stop!' It's a shame in a faculty of tenured people that anyone would lack the courage to speak his or her mind truly and vote his or her conscience truly because of coercion or intimidation."

"Quite a number of faculty members think of it as a significant problem, and it's all colored, too, by the pendency of the Dalton proceedings," Vagts stated. "In particular, after the Dalton vote, there were some demonstrations around offices of some faculty members who had been on the 'wrong' side."

A second argument for the new rule is a belief among some faculty that faculty discussions and votes

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Administration Questions Value Of Journal Work

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According to Emory, there is currently no forum at HLS, either through classes or scholarly publications, in which issues relating to American Indians may be ade-

quately addressed. "It seems to me," remarked Emory, "that this was a terrific opportunity for Harvard Law School to educate itself and the people in the U.S. and the world about American Indian law."

Emory stated that he was in the

process of "researching" the issue when he was told by the administration that no journals would be approved until new regulations were adopted by the Committee. "If there is a Blackletter Journal and a Women's Law Journal, it is a form of discrimination not to allow an American Indian journal," said Emory. "Why haven't they stopped the Law Review for 18 months while they do the study?"

Emory, who is from an Indian reservation in South Dakota, pointed out that, historically, few Indians from reservations have attended HLS. He suggested that as a result, the prospects for the establishment of a journal in the future are therefore bleak. "I am one of the very few people who cares enough to spend the time necessary to get a journal on American Indian law instigated," said Emory.

Emory rejected the idea that administrative concern over costs and space were valid in his case. "We were not going to ask for funding; there was no lack of interest, and we were going to work out of our office and whatever available space we could find," Emory stated. In essence, he commented, the journal needed only the Harvard name.



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Year!**

Next RECORD:

February 12, 1988

Bok Seeks Renewed Scrutiny Of Dalton's Work

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it approves of her teaching and decides she "fits" into the school community, Dalton said last week.

Bok's Review

The appointment of an ad hoc committee is the second step in Bok's review of Dalton's tenure case. The first was completed in late November when HLS Professors Detlev Vagts '51 and Paul Weiler, LL.M. '65, reported on their interviews and written correspondence with 14 legal scholars from other universities. These scholars had evaluated Dalton's forthcoming book on tort history last spring as part of the HLS faculty's review of her scholarship. The outside professors' initial evaluations generally were positive, HLS professors have said. Vagts and Weiler asked the scholars to re-evaluate Dalton's work in light of written criticism and praise she received from HLS professors during their review of her work last spring.

The new evaluations of Dalton's work were "very varied," Vagts said last week. *The Boston Globe* reported last month that the professors had found Dalton's work "impeccable," but Vagts called that characterization "a drastic oversimplification."

Vagts said the new evaluations had enough in common for him and Weiler to identify certain trends in a summary they compiled, but he said "a careful reader would have to look behind the summary."

"You couldn't expect a dozen law professors to say the same thing," he added. "There were trends but also differences."

The professors Vagts and Weiler contacted did not compare the way Dalton's scholarship had been evaluated with the way other tenure candidates at HLS have been judged, Vagts said. Some HLS professors who support Dalton have charged that because of gender and ideological discrimination, her work was held to a higher standard than that of other assistant professors being considered for promotion.

Dalton has threatened to sue Harvard, and last fall she filed a complaint with a state anti-discrimination board. A major issue in such a suit would be whether the faculty handled her tenure bid differently from other cases. But Dalton said she has not decided whether to go through with a suit if Bok declines to promote her. Her decision may depend on how favorable the second round of outside reviews are, she said.

Dalton said the fact that Bok appointed a committee suggested that the new outside reviews might have been positive, because Harvard Vice President and General Counsel Daniel Steiner '58 had indicated that Bok might reject Dalton's tenure bid without appointing a committee if the reviews were unfavorable. Steiner was out of town this week and was unavailable for comment.

Bok has declined to release the reviews to the HLS faculty in order to protect their authors' confidentiality. Only Bok, Vagts, Weiler, HLS Dean James Vorenberg '51 and Steiner have seen them, Dalton said.

Steiner has indicated that the committee would be named by now, Dalton said, but Bok and Steiner may not disclose who is on it until it meets. Bok asked the faculty late last year for recommendations to the panel. The committee will consist of scholars "senior in the fields in which I've written," Dalton said, as well as officials from other law schools who are experienced in tenure matters. No HLS faculty members will be included, she added.

Controversial Precedent

The makeup of Bok's only previous ad hoc committee to study a tenure matter at the law school proved controversial. That committee, which included HLS Lecturer and former Professor Stephen Breyer '64, a judge on the U.S. First Circuit, and Yale Law Professor Geoffrey Hazard, met last May and recommended that Bok not tenure then-Visiting Professor David Tru-

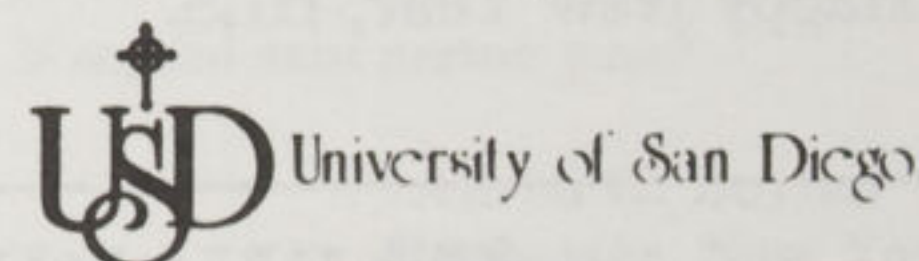
bek. The HLS faculty had recommended in a divided vote to offer a tenured professorship to Trubek. After hearing from the committee, Bok rejected the faculty's recommendation.

Trubek's supporters on the faculty criticized Bok for failing to include any scholars affiliated with two academic movements with which Trubek was associated, Critical Legal Studies and the Law and Society Movement. They also questioned the inclusion of Hazard on the committee, because Hazard opposed Trubek's tenure bid at Yale.

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Happy New Year, Afghanistan

As many Americans watched the traditional Tournament of Roses parade on television New Year's morning, they also watched New Year's Day greetings made by President Ronald W. Reagan and Mikhail S. Gorbachev.

"[H]uman life is equally priceless whether in the Soviet Union, the United States or in any other country. So let us spare no effort to affirm peace on earth." So said Mr. Gorbachev in his New Year's Day greetings to the American people. Stinger anti-aircraft missiles could almost be heard flying over the heart of Afghanistan, even as he spoke.

Happy New Year to you too, Mr. Gorbachev, as the world prepares to enter its ninth year of a Soviet occupied Afghanistan. And Happy New Year also to the families of the 30,000 Soviet soldiers and estimated 1.1 million Afghan natives who have died in this bloodbath.

This week, the Soviet Union announced that it will withdraw its troops from Afghanistan within twelve months regardless of the survival of the Soviet-backed Najibullah regime. The primary condition for this withdrawal is the complete halt of U.S. military aid to the rebel mujahedeen.

"It is the duty of Soviet and American political leaders to keep in mind the sentiment of the people in their countries and to reflect their will in political decisions," said Mr. Gorbachev. A wonderful sentiment, but actions speak louder than words. The western press reports that the Soviet people are expressing dissatisfaction with the situation and that the Soviet media has openly criticized it. Should this not lead Mr. Gorbachev *immediately* to withdraw his troops in order to reflect the will of his people? Is it simply a matter of pride? A need to save face?

And what of the Soviet troops? Does the Soviet Union intend to discontinue arming its troops during this twelve month period while the mujahedeen is disarmed? Probably not. Why, then, should one side, the side which has suffered casualties far greater in number than the Soviets, be prepared to be disarmed? This seems suspect.

Why can something along the lines of a cease fire not be declared? A simple solution which requires a great deal of trust. But, at this point, both sides stand only to gain from such an agreement — to gain in the very real numbers of human lives. Mr. Gorbachev spoke of making "progress in insuring human rights," on New Year's Day. Let us hope that he is sincere. Let us hope that he means it when he says the Soviets will leave Afghanistan, no matter what, within the year. And let us dream that it may happen tomorrow instead.

Happy New Year, HLS.

T. M. F.

Fenno

"Time is growing short," Fenno whispered to his hamster. Indeed, the gray diminished days of January were taken by the HLS veteran to be an omen of THE END; Jeanne Dixon had confirmed his fears at the Somerville Star Market.

"I must cherish these final hours of my earthly existence and accomplish some lasting project which will serve as testimony to my efforts at bettering the lot of humanity," he said. Frenzily glancing about, he seized upon his goal: "I shall get a Harvard Law diploma!"

Renewed in his efforts to attain the long-sought parchment, Fenno jaunted to HLS and viewed the grim buildings with new joy and insight.

"Hmm. Now where's my interesting winter term class — 'Terrorism.' It's being taught by Prof. Heymann. I think I had him for Crim back in '79 and '82." Fenno ambled into Pound and took a seat in front of the room. The hall was packed with 3Ls who had signed up hoping for a gut, and instead were saddled with 500 pages of reading per night.

The new Fenno said: "I can't wait to start!"

Soon, Heymann and two henchman instructors sauntered in, attired in fatigues and camouflage paint.

"Okay you radicals, you chf-ers and crits," the shorter, unrecognized uniform bellowed. "Your first lesson today will be to create a Molotov cocktail. My assistants have aligned wine bottles of gasoline at the back of the room."

"Now, the initial step," his comrade picked up, "is to grab the bottle with your left hand, and insert some soakable material such as cloth, or (taking packet 1 of the syllabus into his hand) paper into the neck of the bottle. After that, simply light and throw."

His demonstration drew polite, appreciative applause.

Seizing the initiative, several chf members grabbed their own bottles and lunged into the corridor. One pack ran into Ad Law and began stoning a former Supreme Court nominee. "The damn liberal media will never leave me alone. Go bother Tony Kennedy — he had a beard once himself," he whined.

Others raced to the library but were denied entry as they had forgotten their I.D. cards. Still more wreaked havoc in a 1L Torts exam in Austin. At least three 1Ls began convulsing. Finally, two old blue-haired proctors beat them out. . . .

As for Fenno, his good intentions were dashed. Disillusioned with the state of HLS education, he walked into the glaring sun and muttered, "the only cocktail I'm gonna make is the Meister, not the Molotov kind."



HARVARD LAW RECORD

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Letters to the Editor of the Record

Is Only Yachting Safe?

To the Editor:

I had pretty well decided I had nothing to add to the discussion of security and free speech at student-sponsored events until I saw your coverage of the Forum appearance of Dennis Conner, skipper of the Stars and Stripes.

That article revived my need to make a humbler - though more curricular - point than many already made on your pages: There are many outstanding law schools in the United States and their course offerings are not so very different from Harvard's. My guess is that Torts and Contracts are taught about as well elsewhere.

But you can't wander a couple hundred yards and hear the leader of a nation or a rebel seeking to lead a nation at many of them.

And I'm not sure who the good guys and bad guys are in Nicaragua. But I'd have a lot more basis for an opinion if I heard both Ortega and Calero.

Were I still at Harvard Law School, I'd probably drop in to hear Mr. Conner, too. But if the day has come when only a yachtsman can speak on campus in safety, some of what made the place terribly exciting has sailed over the horizon.

**Judge Eric E. Younger '68,
Superior Court
Los Angeles, California**

Free Speech?

To the Editor:

Based on your coverage of recent events, one can only conclude that invitations to some speakers are being issued principally as a political gesture on the part of those extending the invitations, and not because the speakers in question are likely to enlarge anyone's understanding of issues. The invitation, the sophistic "balancing" of different parties' free speech "rights" and the predictable upheaval seem all to be parts of a charade that would be amusing if it were not such a sad waste of time and energy.

Most public figures can and do make themselves heard far more effectively than by making speeches at HLS. Students at HLS can exercise their political rights to influence world events far more effectively than by inviting speakers who are less likely to provide entertainment or enlightenment than their presence is to provoke violence. And outsiders have little place disrupting campus activities and should not be given convenient opportunities and excuses to do so.

The main purpose of speeches at HLS should be to inform the law school community

of ideas not readily available in other forms or forums. By all means, don't feel constrained to avoid controversy, and don't suppress ideas. But be realistic, and make political statements in a more effective and less cumbersome and embarrassing way.

**Robert I. Kantowitz '79
Lawrence, New York**

Calero And Speech

To the Editor:

Permit me to focus on a side issue in the matter of Dr. Adolfo Calero, the storm trooper, and the sad state of freedom of speech at Harvard Law School. The HLS Republicans, as quoted in the October 9 issue, did a fine job of addressing the main point, and, doubtless, others will dwell on the fact that only the left is entirely free to speak out these days.

The side issue concerns the right of a group at HLS to hand out tickets to its friends and sympathizers for an event the group is sponsoring on campus. It's rather amazing that your October 9 issue gives the left so much space (about 1 1/3 pages) to cloud the real issue of freedom of speech by denouncing the HLS Republicans for engaging in this quite common practice. Come, come. The leftists in the Harvard community are masters at packing a meeting. In point of fact, all sorts of groups do it regularly. When I was secretary of the Harvard Young Democrats in the early '50s, we and the Law School Democrats, co-sponsored a widely advertised speech by Massachusetts Gov. Paul Dever, and we saw to it that all the tickets went to the faithful or the press. We were kidded about the stacked meeting, but no one squawked about free speech being suppressed, for the simple reason that free speech wasn't suppressed.

Assuring a friendly audience through the judicious distribution of tickets may not be very commendable but it hardly constitutes an assault on the First Amendment. Yet that's exactly what the left charges in the October 9 issue, both in a full page Readers Forum, and in a sputtering indignation letter to the editor. Obviously, the left is blowing smoke, accusing its principal victims (Dr. Calero and the HLS Republicans) of the very outrage one of its own has committed. Had hoodlums from the right successfully silenced a speaker, I doubt that you would have given its spokespersons so much space to air the ridiculous charge that reserving 300 of 350 tickets constitutes "the other attack on free speech . . . an organized conscious, concerted effort by the Harvard Republicans to infringe up the free speech rights of the majority of HLS students . . ."

If the left wants to hear Dr. Calero, why not invite him to speak and take responsibility for security?

**William O. Sumner '59
San Mateo, California**

Luke Nominated

To the Editor:

Sandinista secret police chief Tomas Borge has expressed deep gratitude for the strong external support received by the Sandinistas from "our army of useful idiots." Borge should be especially grateful for Luke Cole's recent cartoon. Cole succumbs to big-lie logic in linking Nicaraguan Resistance leader Adolfo Calero, the Republican Party and President Reagan to two of the twentieth century's most notorious practitioners of genocide: Adolf Hitler and Pol Pot, both of whom, like the Sandinistas, were socialists and Soviet allies.

I nominate Cole for comandante-in-chief of the HLS Brigade of the Sandinista Army of Useful Idiots.

**Robert B. Macaulay '83
Miami, Florida**

To Rob Or Not To Rob?

To the Editor:

To satisfy my curiosity and settle a bet, would you please advise:

1. Who composed the headline "Harkness Coffee Shop Robbed" in the October 2nd issue?
2. Did said person ever take basic Criminal Law?
3. If so, did said person pass?

**Alfred G. Boylan '42
Rochester, New York**

Dersh's Privilege

To the Editor:

The headline on your November 13th report of the Second Circuit's recent grant of a petition of mandamus in the Auersperg-Von Bulow case, "Appeal Restores Dershowitz's Privilege", was misleading. The attorney-client privilege belongs to the client, not the attorney. Alan Dershowitz had no choice but to refuse to disclose confidential communications between himself and Claus Von Bulow, barring a waiver by Mr. Von

(Continued on Page 14)

Roe v. Wade Anniversary: Time To Reconsider

Ruth V. K. Pakaluk is president of Massachusetts Citizens for Life. She graduated from Harvard College in 1979 and is the mother of four children. January 22, 1988 marks the fifteenth anniversary of the Court's decision in Roe v. Wade.

Fifteen years after the Supreme Court settled the abortion issue, there are about a half dozen national organizations devoted to preserving *Roe v. Wade*, an equal number devoted to reversing it, and no let up in abortion-related cases going up to the Court (nineteen to date). Fifteen years — and twenty million abortions — later, pro-lifers and pro-choicers alike admit that *Roe v. Wade* may be one vote away from reversal.

Some people believe that abortion-on-demand should remain, no matter what the legal consequences are. Anyone whose concerns extend beyond this rigid position should regard *Roe's* reversal as desirable because it is an inherently unworkable solution, the Supreme Court was not the legitimate arbiter of the question, and the ruling has created intolerable inconsistencies in the law.

Roe v. Wade is based on principles that preclude its acceptance as settled law. A significant portion of the population continues to regard conception as the beginning of human life. From their viewpoint, 4,000 fellow human beings are killed each day and the law requires that they do nothing about it.

These citizens cannot accept this state of affairs. They are obliged by their convictions to attempt to protect unborn persons, hence to overturn *Roe*. Justice Stevens missed the implication of this tension in his concurring opinion to *Thornburgh v. American College of Obstetricians and Gynecologists*, where he states that opponents of abortion are "free to preach the evils of . . . abortion and to persuade others to make correct decisions." This professedly *laissez-faire* attitude toward the question of fetal identity cannot

be a satisfactory solution until the vast majority of citizens actually adopt the view that personhood begins at birth. In fact, as state legislatures continue the attempt to regulate abortion, it becomes increasingly clear that the Supreme Court alone maintains the *status quo*, imposing its value preference with a disputed constitutional mandate.

Despite Blackmun's disclaimer, the Court did resolve the question of when life begins: *Roe* determines that life begins at birth. To place the abortion decision within the boundaries of the right to privacy already assumes that there isn't another human person whose life is at stake.

This is clear in Stevens' statement, again in *Thornburgh*, "I fail to see how a decision on child-bearing becomes less important the day after conception than the day before." The reason he fails to see this distinction is he already assumes that the pregnant woman is *not bearing* a child — *a person*. If a person is already present, then abortion is no more private than infanticide.

Many critics of *Roe* are personally in favor of legalized abortion, yet they decry the ruling as blatantly unconstitutional or, as John Ely Hart put it, non-constitutional. They contend that the Supreme Court had no warrant to find a right to an abortion within the right to privacy.

In the past, legal rights of unborn children expanded as knowledge of fetal development advanced. Legal tradition has long recognized the humanity of the unborn for purposes of inheritance. In tort law, the child was viewed as merely a part of his mother until more recently. California first established the right of a child to sue for injuries sustained before birth. The statutory recognition of fetal personhood was labelled a legal fiction, to which the court replied "that assumption of our statute is not a fiction, but . . . an established and recognized fact

by science and everyone of understanding."

That laws have long existed prohibiting abortion is not sufficient to discount *Roe*. After all, racially discriminatory laws existed at the nation's founding. Yet we interpreted the development of constitutional law in this area as the working out of an inconsistency where a more fundamental value ultimately prevailed over an initial aberration. Can the right to an abortion be viewed in the same way?

Clearly privacy is a value that concerned the authors and ratifiers of the Constitution. So, too, is the right to make decisions regarding one's own destiny. And our legal tradition has always upheld the individual's right to control his/her own body.

But a more fundamental value recognized by our Constitution and legal tradition is the equality of all human beings and the right of all, even the poorest and weakest members of society, to the equal protection of the law. Did the framers of the Constitution regard abortion as a personal liberty? There is no evidence to indicate that they did. Post-quickening abortions had been prosecuted under common law for over a century. Some cases can be interpreted to indicate that abortion was not viewed as homicide, but a more accurate historical interpretation sees in these cases the limitations of biological knowledge and technical difficulties in producing a corpse and establishing a cause of death.

An important development in abortion law occurred during the 19th century. In 1821, Connecticut passed the first statutory prohibition of abortion. In the following decades, members of the American Medical Association lobbied their state legislators to reform the abortion laws. Scientific advances, they argued, demonstrated that human life begins at conception and should be protected equally throughout pregnancy. Largely as a result of

The Status Of The Fetus In The United States

by Ruth V. K. Pakaluk

this lobbying effort, all state legislatures passed laws prohibiting abortion. It is clear from the written record that the purpose was to protect human lives.

Were past legislators wrong to regard abortion as a species of homicide? Has modern science brought to light some new information that demonstrates the inhumanity of the unborn? Anyone who pays serious attention to this issue knows the suggestion is ludicrous. We now know that during the first trimester the fetus has a heartbeat, brain waves, and is capable of movement, facts that would have astounded a 19th century jury in an abortion trial.

A desirable characteristic of Supreme Court rulings is clear, logical development of the implications so legislators can avoid enacting laws that will be struck down. *Roe* has failed to provide that kind of predictability; indeed, the Court has contradicted its own prior rulings. For instance, if the State truly has a compelling interest in preserving viable fetal life (as stated in *Roe*) and may even prohibit such abortions (except for life and health considerations) then one would think it would be acceptable for the state to require that a post-viability abortion be done using the method least likely to kill the fetus, as long as that method did not itself pose a threat to the woman's life or health. Yet in *Thornburgh*, the Court apparently forbids any requirement that causes even a measurable increase in risk to the woman's health. Justice White points out that this clearly contradicts the holding in *Roe* and concludes "This cannot be the law."

Thornburgh also prompted an important dissenting opinion from former Chief Justice Burger. Burger read *Roe* to say that the state may not erect an absolute barrier to a woman's choice of abortion, but claimed that the decision did not establish abortion on demand. In *Thornburgh*, the Supreme Court

struck down a law requiring an abortionist to offer his patient a medically accurate description of the fetus, the part of her body he is about to remove. The Court found the law unconstitutional because the information was not "always relevant to the woman's decision" and "may serve to only to confuse and punish her and heighten her anxiety." Justice Burger writes with incredulity "Can it possibly be that the Court is saying that the Constitution *forbids* the communication of such critical information to a woman? We have apparently already passed the point at which abortion is available merely on demand. If the statute here is to be invalidated, the 'demand' will not even have to be the result of an informed choice." Though he had joined the *Roe* majority, Justice Burger called for a re-examination of that decision.

Laws regarding the unborn are reaching inconsistencies of alarming proportions. At present, the law seems to operate on the principle that if the mother wants to give birth, the fetus is a human being. If she doesn't, it isn't. This criteria for human rights lacks persuasiveness.

In a case where a man reached inside his pregnant girlfriend and killed the seven-month fetus, the defense argued the charges of homicide must be dropped on the grounds that the fetus is not a person. The actual physical injuries sustained by the woman may not be severe. Everyone knows that the greatest injury is the murder of her child.

Some rather complicated scenarios are now possible. A woman on fertility drugs conceives triplets. She doesn't feel up to raising three children and plans to abort all three. The doctor says he can abort two, leaving her with the one child she wants.

En route to the abortion, a drunk driver hits her. One fetus dies as a result of the collision. The doctor

proceeds to abort the second fetus and the third fetus is carried to term. It turns out he has spina bifida, a handicap that can be discovered by amniocentesis. He is also blind in one eye, the result of an injury sustained while the doctor aborted his sibling.

At this point, the state can prosecute the drunk driver for vehicular homicide, the woman can sue the doctor for the "wrongful birth" of a handicapped child she would have aborted had she known of his condition. The child can sue for "wrongful life," a strange post-*Roe* innovation where the child claims his life is a burden to himself and the doctor should have aborted him. One wonders whether a handicapped child whose mother refused to abort him could sue her for forcing him to live a burdensome life. Luckily, most courts have rejected this line of reasoning.

In any event, the surviving triplet in this hypothetical case can sue for the damage done to his eye while the doctor was aborting his sibling. The successful abortion is the only action for which no prosecution is possible. Had that fetus survived the abortion attempt, could he have charged the doctor with attempted murder? Assault and battery? Malpractice?

The abortion controversy involves interpretations of medical and historical facts, differing theories of constitutional law, and conflicting value systems. The Supreme Court's attempt to resolve the issue in *Roe v. Wade* resulted in a decision that lacks coherence, legitimacy, and consistent development. The imposition by judicial fiat of abortion on demand has stifled the free and open debate necessary to reach an acceptable resolution of the controversy. If only to promote a shared understanding of what is truly at stake, the return of this issue to the states would be a tremendous improvement. Ultimately, it may

(Continued on Page 16)

Secret Balloting Viewed As Mainly Symbolic

(Continued from Page 5)

are confidential and should be discussed solely among those participating.

"I think one of the problems over the past few years is that we've been unable to adhere to any fully shared and operative standards of confidentiality," said Professor David Shapiro '57.

Vagts explained that in the recent past, faculty promises of confidentiality "turned out to be meaningless. We're a very talkative, media-happy faculty. This step is about the only thing one can think of. The basic problem is the unrestricted babbling that goes on in faculty meetings, [and there is] nothing one can do about it. So one does this instead."

Faculty Leaks

Vagts explained that some members of the faculty have been upset by recent public disclosures. "Leaks are seldom accurate. [There have been] several episodes around here where something considered confidential by the faculty was leaked with a twist that made someone look bad," he explained.

The faculty decision on the proposal was by no means unanimous. Bernardi described it as "a close vote," while Vagts said it "was in fact fairly close." Divisions among younger and older faculty and between certain ideological factions within the faculty were clear in the voting.

Opponents of the secret ballot raised a number of issues in favor of open, declared positions. "There's some virtue in declaring oneself, stating where you stand," explained Bernardi.

"Going to a secret ballot in some way symbolizes a departure from the ideal. No question the ideal is an open forum. Even among those who support this measure, everyone hopes that this is a short-term compromise, just a step along the way to openness," Nesson admitted.

Calling a policy of complete openness to outsiders "really hor-

rendous," Vagts stated, "I would much rather keep up a tradition of open debate within the faculty, but not involving the outside. But if we can't have that, this is probably an improvement on the actual situation."

There exists doubt about the actual effectiveness and effects of the measure. Nesson stated that the act is "almost completely symbolic," while Shapiro added that "the problem (of confidentiality) will continue to be with us."

"One of the points one must really bear in mind is that it doesn't really get to many important aspects," said Vagts. "You can't speak in faculty meetings without it becoming apparent (where you stand). The worst nightmare, which I consider very improbable, is that all will talk positively and then vote negatively."

Chilling Effect?

Another possible result of the new system could be a stifling of debate among faculty members. Failure to discuss votes openly, coupled with the secret ballot, would assure privacy for faculty members' opinions, but a resulting loss in free exchange of ideas. But according to Vagts, "that tactical choice would be rare."

He argued that the faculty is "a group with such a high view of their personal persuasiveness" that they would always attempt to influence their colleagues' votes.

Vagts also discounted the impact of this move on those considering a teaching post at HLS. "I can see people deterred because we're a cantankerous, divided faculty, but the incremental effect of this would be minor."

The suggestion that the faculty change its voting method to a more secret procedure "has been made over a number of years by a number of people" and "discussed sporadically," said Bernardi. According to him, the change was never considered earlier because "in prior years when the matter came up, it came up in the middle of a year when one or more cases were pending, so there was a reluctance to vote or even debate at any great length. This fall there were no specific cases on the faculty horizon, so they could debate with no looming case."

"Secret voting is rare in comparable institutions. Not unknown, but definitely the exception," said Vagts.



Officers Cite Varied Goals

(Continued from Page 4)

to the new divestment fund would be held in trust for a designated period of time, after which, if Harvard has not yet divested, it would be given to a worthy Harvard-affiliated organization.

"It's important for people to be able to let their money speak for them, but it shows that people support the institution," Shapiro said. "It speaks the language Harvard understands — and that's money," she added.

In addition to carrying student opinions to the HLS administration and maintaining contact among

class members after graduation, the Class Committee is responsible for planning activities for the class this spring. Casente said that he is "looking forward to working with the Committee in furthering our goals. . . . A primary goal is a nice graduation year." Activities in the works include section reunions beginning in March and the traditional 3L party.

Other members of the 1988 Class Committee are Jocelyn Frye, Peggy Kuo, Hillary Richard and Verna Williams.



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Letters to the Editor (Continued)

(Continued from Page 9)

Bulow or a court order. The Court of Appeals' ruling sustained Mr. Von Bulow's assertion of *his* privilege, despite the revelations in Professor Dershowitz's book. I am an admirer of Professor Dershowitz and have been since my years at Harvard Law School. Professor Dershowitz's emphasis on creative thinking, combined with his dogged determination, were an excellent foundation for the practice of litigation.

Gerald G. Paul '69
New York, NY

Deli Inspiration

To the Editor:

The article in the October 30, 1987 issue of the RECORD on page 3, referred to Kornblau's and The Jem in Atlantic City as the inspiration for Dersh's Deli.

Neither Kornblau's or The Jem dealt with Kosher Delights.

Neither was under rabbinical supervision also Kornblau's and The Jem have been out of business a number of years.

I only hope that they don't have to say "Olav Hashalum" to Dersh's Deli some day.

Bertram M. Saxe '35
Atlantic City, New Jersey

Ex-Cameraman

To the Editor:

As Photography Editor of the *Harvard Law Record* during three very lively years (1970-73), I responded from the gut to your November 6 editorial and Mr. Mitchell's November 13 response. The callous disregard and subsequent rationalization by Mr. Mitchell does not obscure the fact that his employer, the Harvard Law School Association, is fundamentally interested in fundraising rather than servicing either alumni or students.

With some regret and embarrassment, I confess that I have not received the RECORD for a few years. That hiatus only increased my delight, however, in reading the most recent issues. Its content — news, photography, editorial, and especially Luke Cole and KA's cartoons — was of high quality.

I noticed that the price of each issue is only twenty-five cents. The 1970-73 RECORD sold for twenty cents! And, as you can see from the enclosed page of the 1973 yearbook, the RECORD did not make money even then. I would assume that demand for the RECORD is price inelastic, and that a substantial price increase is warranted. Perhaps this would

help solve its problems.

In the meantime, good luck!

Charles A. Soberman '73
Detroit, Michigan

Ed. Note: The editor would like to point out her decision and that of the Board of Directors to raise the newsstand price. We hope you continue to enjoy your RECORD subscription. If you're still interested in taking photos, please let us know.

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.

Quality Of Life Report Due In February

(Continued from Page 2)

the way the school treated students in general, Smith said.

Administrative Dean Simone Reagor, who heads the administrative facilities sub-committee, said that two pre-survey measures have helped significantly to combat the Hark's functional deficiencies. Moving the student mailboxes from the upper to lower levels and the addition of the DSAC coffee shop have seriously improved student attitudes toward and use of the building, she said.

Changes in the physical structure itself will begin by the summer of 1989 "if all goes smoothly," Reagor said. This first round of renovations would involve only the first floor.

An architect chosen by the Committee has completed a model of

the renovated Hark based on input from students and Committee members. The Committee will display the model to students in early February, and follow with open meetings and suggestion boxes to gain further student input.

Funding for the project may prove a sizable obstacle to speedy completion. The Committee is considering recommending a capital funding campaign which would largely finance the renovations, estimated by Smith to cost over \$2 million. A decision on the funding campaign is not likely until next fall, Reagor said.

New Dean of Students

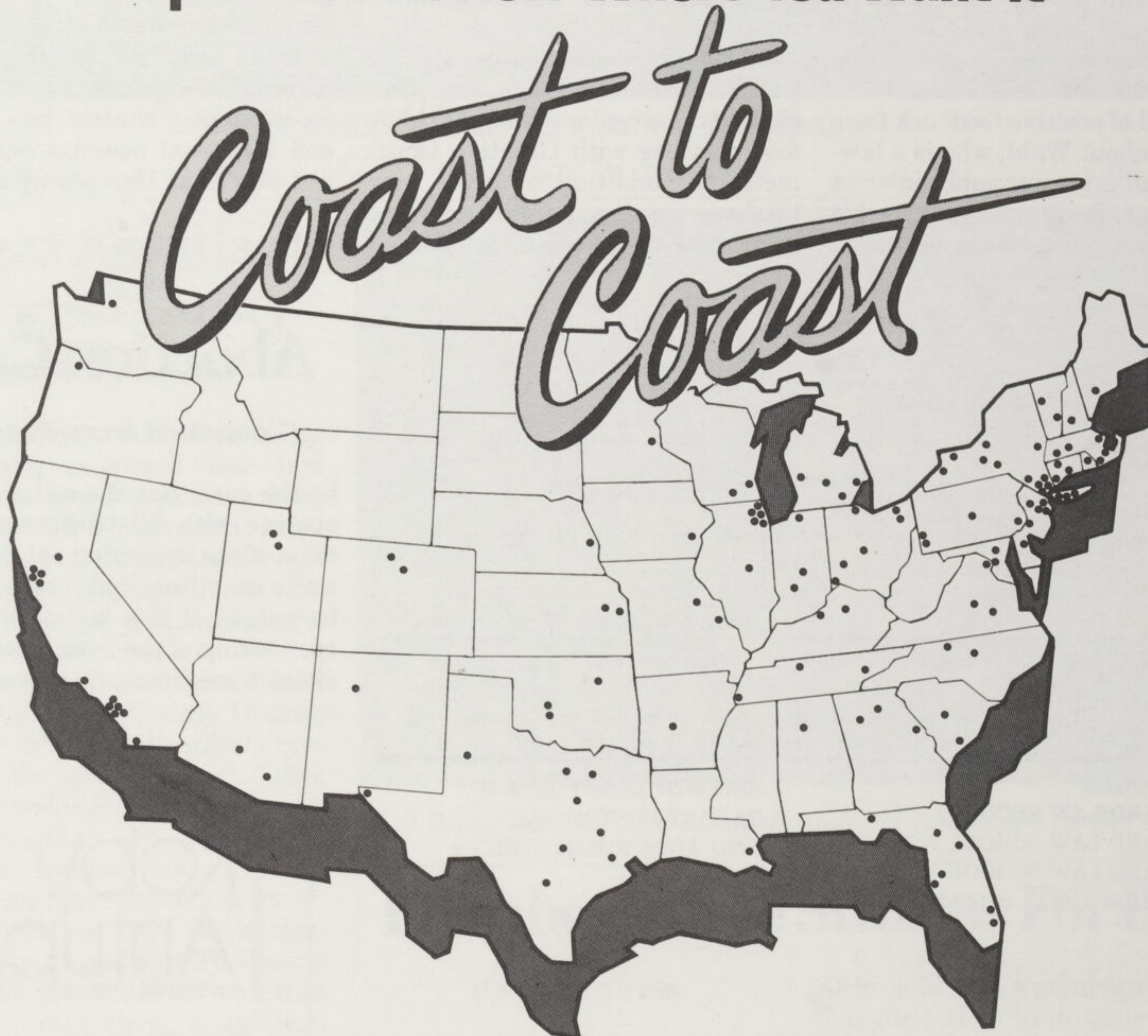
As the single most important achievement of the Quality of Life Committee, Smith cited the ap-

pointment of Sarah Wald as the new Dean of Students. According to Smith, Wald's appointment displays how the survey and the Committee can effectively serve to channel student concerns to administrators and bring about needed changes.

Several students expressed dissatisfaction with the performance of the dean of students office under former Dean Mary Upton, Smith said. "Students wanted a dean of students who was a lawyer, someone they could relate to and who would understand their career-related concerns," he said. Many administrators had felt the same way for some time, Smith said, and the surveys gave those officials the "ammunition" to bring about a positive change.

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Survey Says: Food & Feedback (Good Answer!)

(Continued from Page 14)

The result is an office that is "more active than reactive, with more career-oriented programs," he said. Smith said he has received a great deal of positive feedback from students about Wald, who is a lawyer with an extensive public interest background. Smith said he sees this change as one more example of the

administration's increased responsiveness to student needs due to the survey and its role in HLS decision making.

The Committee also takes at least partial credit for the following other changes: the replacement of DAKA food services with Creative Gourmets; the addition of three new kitchens in the graduate center dorms and the renovation of the ex-

isting four; the addition of a new women's restroom in the tunnels under Langdell North; improved campus security, including an additional security guard, better lighting, emergency telephones and an expanded shuttle bus service; and improved exercise equipment and access at Hemenway gym.



Abortion Case

(Continued from Page 11)

be the case that the nation cannot operate with fifty different definitions of the beginning of human life and a constitutional resolution will be sought. It is to be hoped that an open airing of the issue would bring about a more satisfactory solution.



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