



Harvard Law Record

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Calero Assailant Is Found Guilty

By David Snouffer

Joshua Laub, a Tufts University senior, was convicted late last month on charges stemming from his attack on Nicaraguan rebel leader Adolfo Calero Portocarrero at HLS last fall. Laub has announced that he will appeal the decision.

Laub was convicted in a bench trial in Middlesex County District Court on Jan. 28 of disorderly conduct and disrupting a school. Judge Wendie Gershengorn, who presided, fined Laub \$150 and ordered him to pay two smaller fees.

The judge made no finding on additional charges that Laub committed assault and battery against a Harvard police officer and that he assaulted Calero, a political leader of the U.S.-backed guerrillas based in Nicaragua and Honduras who oppose Nicaragua's governing Sandinista party, instead reserving the power to make a finding on these two charges later.

Gershengorn also ordered Laub to pay the HLS Republican Club, sponsors of the speech, \$221 as restitution for Calero's air fare from Miami to Boston and ordered Laub to stay away from Harvard's campus during a six-month probationary period.

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Patricia Lee

HLS Ripon Society guest Elizabeth Dole '65 campaigns for her husband.

Elizabeth Dole Stumps For Bob

By Chris Crain

The 1988 presidential campaign trail brought Elizabeth Dole '65 back to an old haunt last Friday, Feb. 5, just days before her husband faced the first real test of his run for the Republican nomination. The former Transportation Secretary spent little time reminiscing, choosing instead to tell a standing-room-only crowd why Sen. Robert Dole (R-Kan.) should be the next president.

Facing a huge banner proclaiming "Welcome Back, Liddy," she did pause to recount her first moments at HLS, in early September 1962.

Dole said she was approached in Langdell Hall by a male student who asked her why she was filling a slot in the first-year class when he knew "men who would give their right arm for that slot, men who would use their legal education." Dole said she has told that story a number of times in Washington, D.C., and added that several of her male classmates have asked her to "please tell me I wasn't the one who said that."

Another HLS memory still prominent in Dole's mind was the infamous "Professor Leach's Ladies

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Kahan Succeeds Marphatia As Review Chief

By Erick Hachenburg

The *Harvard Law Review* elected Dan Kahan, 2L, as president for its 102nd edition after a process which began 9 a.m. Sunday, Feb. 7, and was not concluded until 2 a.m. on Monday.

"I'm very honored. It's the biggest honor I've ever received. These are the people I respect the most, and it's the greatest honor I could receive," said Kahan, whose term will extend through the 1988-89 academic year.

There are 89 members of the *Law Review*, about half of whom are 2L editors. All of the 2L editors were eligible to run for the presidency, but Kahan said the exact number who ran for the position this year is an internal matter. "The elections here are just like any other organization's," Kahan said. "A lot of people are interested."

Raj Marphatia, outgoing *Law Review* president, provided more detail on the process. Calling it a "marathon session," Marphatia said that the election began with 15 candidates, about average in his experience with the publication. He said candidates were then ranked by members during a series of rounds, narrowing the field accordingly. Marphatia said Kahan emerged as the victor after about four rounds.

The *Law Review* is published eight times each academic year and includes articles from students, professors, and outside sources. The president is responsible for editorial and administrative tasks. Kahan explained, "I read everything that the *Law Review* will publish. I make sure that it is publishable and that it is as good as it can be."

There are two ways to join the publication, through a writing competition alone or through a combination of grades and the writing competition.

Major Time Commitment

The office of *Law Review* president is a time-consuming commitment, according to Kahan, who es-

timated that "it takes at least as much time as a full-time job." He said he thought it might take a little more time than he spent as an editor, but added that "even being an editor is a big time commitment."

Marphatia expressed greater concern about the time commitment, mentioning that Kahan is also a semi-finalist in the Ames Moot Court Competition. "It's going to be really hard to balance. It's an incredible conflict," Marphatia said. Kahan, however, said he did not anticipate a time conflict between the two activities.

Affirmative action for women and minorities emerged as an important issue in this year's election, ac-

cording to Marphatia, who identified "competency to do the editing, personality, and leadership" as other important factors.

Marphatia offered encouraging words for his successor: "Dan is a very bright, strong leader who is sensitive to minorities and women on the *Law Review*."

Kahan said he is looking forward to the upcoming year and added, "You have to feel you can commit yourself to the people" on the *Law Review*.

The other officers, including a treasurer and an array of editors, will be elected in the next two to three weeks.

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Winter Writers Travel Abroad

By Rick Genow

With the beginning of spring term, many 2L and 3L students have returned to Cambridge from around the globe where they have spent the last six weeks in intensive study as part of the Winter Writing Program. The program, which is open to fifty students each year, may be used to satisfy the written work requirement. It also offers two units of academic credit for individual research and writing projects done in Cambridge or abroad.

"The program is a tremendous opportunity for a student to carve out a large amount of time for intensive research," noted Professor Henry Steiner '55 who chairs the three-person committee overseeing the project. "HLS is very fortunate to have such a rare program since it is only made possible by the existence of the unique winter term," he noted. Steiner said students have shown an interest in a broad spectrum of areas that cover the full range of the HLS curricula. This year, projects covered everything from the duty to disclose under Rule 10(b)(5) to terrorism in Northern Ireland.

The program's popularity this year has been unparalleled, with 46 students participating, nine of

whom went abroad to research their projects. All projects proposed this year were approved, according to Dean of Students Sarah Wald, who sits on the committee along with Steiner and Assistant Dean Steve Bernardi '55. "The faculty feels strongly that this is something that we want students to do," Wald said, adding that "although we've advertised the program, not enough people know about it."

In order to qualify for the program, students must find a faculty member willing to supervise the project and grade the paper, which is usually turned in sometime in the spring. The project must then be approved by the three-person committee. These procedures are meant to ensure that the topic is appropriate for intensive study and, if the student requests, that it is necessary for the research to be done abroad.

According to Steiner, the committee was set up as a means of monitoring the projects to ensure the integrity of the program. The high quality of past work, however, has led the committee to defer to the judgment of the individual faculty supervisors.

Steiner also remarked that hu-

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Election Win Propels Reilly To The State House

By Earll Pott

While most third year students are winding up their Harvard education, struggling to complete papers, and signing up for bar review courses, Sean Reilly has instead returned to Louisiana to begin a career as a state representative. Reilly, 27, came to campus for January term still savoring the November electoral victory which secured him a seat as the Democratic representative for District 68 in Baton Rouge. Reilly garnered 54 percent of the ballots cast in defeating the Republican candidate, Toni Higgenbotham.

Reilly credited his victory to nearly six months of "serious grassroots campaigning" during which the candidate often "knocked on a hundred doors a day." To reach the 23,000 voters in Baton Rouge, Reilly had to spend over \$75,000. Reilly thanked friends and supporters at HLS who provided time and emotional support, as well as \$1,500, to his campaign.

On the campaign trail, Reilly called for stronger environmental protection measures, a position which generated some resistance among petrochemical companies accustomed to business as usual in an area often referred to as "the Cancer Corridor." As a firm supporter of Louisiana's new governor, Buddy Roemer, Reilly has also joined in a movement to clean up the state's political image. A change in the state's reputation is essential, according to Reilly, "so that people know that it's okay to start a business in Louisiana."

Reilly won considerable support for his strong stand on education. He promised to help make Louisiana State University a prominent research institution to lure entrepreneurs and businesses to Baton Rouge. He also advocated increased funding for secondary and primary education in a state he described as "practically the worst in the nation in every educational category."

Questions concerning Reilly's age and experience dogged his campaign from the outset. In toughly worded

television advertisements, Higgenbotham attempted to portray Reilly as a college kid who had the Democratic endorsement handed to him by his father, Kevin Reilly, who had vacated the state representative's seat to run for state treasurer. An important early endorsement by the Baton Rouge Chamber of Commerce, however, lent vital credibility to Reilly's campaign, and the added endorsement of the local paper, *The Baton Rouge State Times*,

largely dissipated questions about Reilly's competence.

Reilly will complete his HLS education next year when the Louisiana legislature is not in session. He praised HLS for its flexibility in allowing him to earn ten credit hours at LSU toward his degree. Elected to a four year term, Reilly does not know whether in 1992 he will continue his political endeavors or pursue a full-time career in law.

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The RECORD's Gone South . . .

Next RECORD:

February 26, 1988

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Kennedy Confirmation Leaves Clerk In Limbo

By Steve Crawford

"Everything is still up in the air" is about all Michael Mollerus, 3L, can say right now. Mollerus was chosen last April to clerk for Anthony Kennedy '61, at that time an appellate judge for the Ninth Circuit. With the recent confirmation of Kennedy's appointment to the Supreme Court, however, Mollerus' future seems uncertain.

When asked if there is a standard procedure for dealing with this situation, Mollerus replied, "Absolutely not. There is no set policy for this problem. Each decision is left up to the individual judge."

Regarding his own situation, Mollerus noted that he has met with Kennedy face to face only once. That meeting, in June of 1987, was the last contact he has had with Kennedy. Mollerus sent a few letters of congratulations but has heard nothing regarding the status of his clerkship. Although admittedly a little nervous about the whole affair, Mollerus claimed that he is not too worried. Kennedy, he said, "will talk when he's ready."

Although some justices have felt no obligation to bring their Circuit Court clerks with them to Washington, the last addition to the Supreme Court, Justice Antonin Scalia '60, modified that pattern. Scalia found clerkships on various Circuit Courts for his prospective clerks for one year and then extended offers to them to clerk for him on the Supreme Court the second year.

Mollerus said that an arrangement like that used by Scalia would be perfectly satisfactory to him. He said he would be happy to do a year term on an appellate court or district court, noting that "there are just as many interesting clerkships at the district court level."

Kennedy was one of about a dozen judges at the appellate level with whom Mollerus applied for a clerkship. Not using any particular criteria, Mollerus said only that he knew he "wouldn't feel comfortable" clerking for an extremist judge from either side of the political spectrum. He had, however, heard from friends

that Kennedy was fairly well respected and a good judge to work with. Mollerus was further encouraged by Kennedy's record when he learned that working with Kennedy is considered to be a "productive clerkship" because Kennedy delegates more work to the clerks than does the average judge.

Mollerus noted that he was particularly pleased with the way Kennedy made his offer. Kennedy adheres to the rule stating that no offers shall be made to clerks before April 1st. On April 1, 1987, Mollerus was taking his spring break vacation at his grandparents' home in Florida. Kennedy called him there at 7:30 a.m., which is 4:30 a.m. Sacramento time. When asked if this influenced his decision to accept, Mollerus replied, "Well, it's nice to be wanted."

The Confirmation

Judge Kennedy graduated cum laude from HLS in 1961 with an LL.B. degree. He was admitted to the bar in California in 1962, and practiced in San Francisco. From 1963 to 1975, he practiced law in Sacramento, teaching at the McGeorge School of Law since 1964.

On May 30, 1975, he was appointed for life to the Ninth Circuit Court of Appeals by President Gerald R. Ford. Following his recent appointment to the Supreme Court by President Reagan, he was confirmed by the Senate by a vote of 97-0.

The Senate confirmation process, which Kennedy found so accommodating, was criticized by many during the previous hearings on Judges Robert Bork and Douglas Ginsburg as being both rushed and too politicized.

Professor Richard Fallon '80 disagreed with these generalizations, noting that in his opinion, the Senate had "shown no disposition to rush with Bork and Ginsburg." He said he believes that there might have been some political pressure on the Democrats not to delay the process unduly with the third nom-

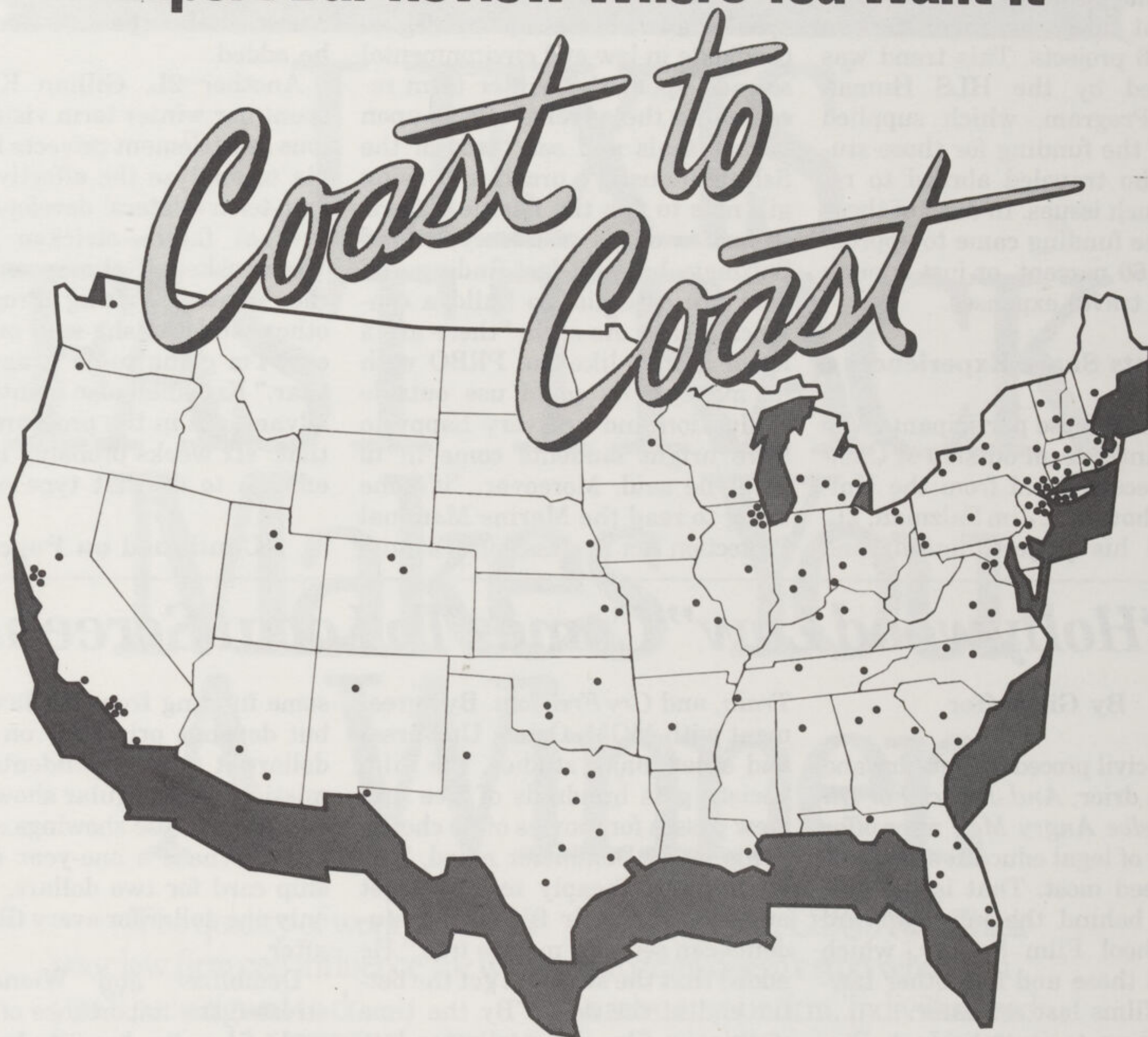
inee; otherwise, they would give the "appearance of playing politics."

Fallon said he believes that Kennedy was more politically acceptable to the Democrats and that this fact made for a smoother confirmation process. Exactly why he was considered more acceptable, however, is a tougher question. In Fallon's opinion, Kennedy is "definitely not as stridently conservative as Bork." But it is tougher to see the contrast between Ginsburg and Kennedy because, for a number of reasons, the public was unable to evaluate Ginsburg's constitutional ideology and so could not make an informed comparison, Fallon said.

Mollerus said he has mixed views on the process. In his opinion, with the third nominee, President Reagan had to "compromise and nominate someone with a reasonable chance of passing." Mollerus concurred with Fallon's view that the Kennedy confirmation was not rushed. He noted that there was a "good four to five week lag" before the vote, and "the record remained open for comment through January." He suggested, however, that the process was smoother with Kennedy because he was "part of the legal mainstream" the Senate wanted.

Professor Laurence H. Tribe '66 noted in a November 1987 interview with the RECORD that he viewed the Kennedy nomination as a "clear retreat" by the Reagan administration in its attempt to put appointees outside the "constitutional mainstream" on the Court. Tribe, however, added that "we all, including the Reagan administration, even though they may not realize it, have a lot to gain by a nominee who supports the constitutional advances made since World War II."

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Student Researchers Escape Cambridge Cold

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man rights issues were particularly prevalent this year, involving ten of the 46 projects. This trend was facilitated by the HLS Human Rights Program, which supplied much of the funding for those students who traveled abroad to research such issues. In most of these cases, the funding came to approximately 60 percent, or just enough to cover travel expenses.

Students Share Experiences

Not all of those participants who spent winter term outside of Cambridge received aid from the University, however. Jim Salzman, 2L, financed his project himself and

spent much of the six weeks on the Point Reyes Bird Observatory (PRBO) in California.

Salzman, who is a joint degree candidate in law and environmental science, spent the winter term researching the adverse effects upon harbor seals and sea birds of the fishing industry's practice of using gill nets to fish the Pacific waters.

Such work is necessary, stated Salzman, because fact-finding and data are essential to build a convincing case. As such, "there are a lot of groups like the PRBO with no money who could use outside evaluation and are very happy to have bright students come in to help" he said. Moreover, "it's one thing to read the Marine Mammal Protection Act in class, but it's quite

another to see how the law really works and to understand why the federal government has refused to enforce it for the last five years," he added.

Another 2L, Gillian Kettaneh, spent her winter term visiting various resettlement projects in Ethiopia to analyze the effectiveness of long-term bilateral development aid in that famine-stricken country. When asked if she recommended the Winter Writing Program to other students she said only, "If I can, I'm going to do it again next year." Kettaneh also identified disadvantages in the program, noting that "six weeks probably isn't long enough to do that type of work,"

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"Hollywood Law" Comes To Local Screens

By Gil Soffer

When civil procedure gets dry and tax even drier, *And Justice For All* and *Twelve Angry Men* may offer the kind of legal education law students need most. That is the philosophy behind the new Harvard Law School Film Society, which featured these and five other law-related films last semester.

According to its president, Stephen Dembitzer, 3L, "the Harvard Law School Film Society is an opportunity to provide cinematic enlightenment to law students." Toward that end the Film Society has screened several films with legal themes over the course of the year. According to its organizers, student reaction is enthusiastic. "We have a core group of 150-200 repeaters who show up at every film," Dembitzer said.

The Film Society does more than just enlighten, however. Dembitzer said that, on occasion, "we also provide cinematic entertainment, a well-deserved diversion. Not all the films that we sponsor concern the law."

Last semester, the Film Society arranged sneak previews for *Couch Trip*, *Throw Momma From the*

Train, and *Cry Freedom*. By agreement with MGM, Orion, Universal and other major studios, the Film Society gets hundreds of free preview passes for movies of its choice. "This way," Dembitzer noted, "the studios can cheaply test a target audience for their films, and students can see new movies free." He added that the students get the better end of the deal. "By the time we view a film, it's really too late for the studios to change it. But they don't seem to mind."

Dembitzer is no stranger to cinema. He had begun a film society of sorts at Andover and then at Columbia University, where he contacted film distributors and arranged previews as he has done here. After college Dembitzer worked as a camera assistant and production coordinator on *Room With a View*. Opting for law instead of film, he went on to Columbia Law School and is spending his third year at HLS.

Together with Paul Wiener, 3L, Dembitzer created the Harvard Law School Film Society last semester, with Professor Alan Dershowitz — "an avid fan of cinema," according to Dembitzer — acting as faculty advisor. The film society obtains

some funding from the law school, but depends primarily on the two dollars it charges students for admission to its regular showings. At any one of these showings a student can purchase a one-year membership card for two dollars, and pay only one dollar for every film thereafter.

Dembitzer and Wiener both stressed the importance of offering such films to law students, and Dembitzer in particular expressed some concern over the Film Society's future. "We presently have six active members, all of whom are 3Ls," he said. "We need 2Ls and 3Ls interested in running a film society to take over from here."

The Harvard Law School Film Society plans to show its next film, *Jagged Edge*, at 8:00 p.m. on Wednesday, Feb. 17, at the Science Center, where it will feature movies every Wednesday night throughout the year. Among those films scheduled are *Prince of the City*, *The Verdict*, *Judgment at Nuremberg*, and *Rashomon*. Dembitzer also said he hopes to involve law students as extras, or at least as observers, in a major motion picture to be filmed in Cambridge this March.



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"M" Stands For Missing Point

The New Jersey Supreme Court struck a blow to women's rights and the promotion of family in our society last Thursday in its decision in the *Baby M* case. In a 7-0 decision, the court invalidated a surrogacy contract because it "conflict[ed] with the law and public policy of this State." The court described the surrogate contract for payment as "illegal, perhaps criminal, and potentially degrading to women," while distinguishing it from surrogate arrangements made without payment.

Allow me to respectfully guide the court into the twentieth century.

The court seems to be worried that poor women will be taken advantage of by the rich in surrogate situations. The court, however, properly pointed out that Whitehead-Gould was not poor nor was Stern rich. And even if it *were* always the case, what gives the court the right to be so paternalistic in this world? If the court is worried about degrading women, please worry about men's magazines that depict women in some of the most degrading positions and situations. Surely poor women are more susceptible to the call of *Oui* or *Playboy* than wealthy women.

This is the case of a simple contract — Whitehead-Gould contracting her services to Stern. The court emphasized that a woman cannot enter into a surrogate contract without an element of coercion. The court argued that a mother surrenders her right to the child before birth and sometimes before conception so her decision is uninformed because she is unaware of the potential bond that might exist between mother and child. Yet, she is forced involuntarily to fulfill the terms of the contract because of the threat of a lawsuit. But what the court neglected to note here is that their fear is made moot by the fact that Whitehead-Gould had been a mother twice before. She knew two times over again what it was like to give birth. She knew two times over again what it was like to feel her child in her arms. Knowing this she still signed the contract.

The court is repulsed by the notion of a cash payment for the contract. Yet, do we not allow the sale of sperm? Consider this the sale of an egg. We do not have the technology to grow a child in an artificial environment. An egg without an available womb is a worthless commodity. It must be a package deal. It's a commodity just as much as a vial filled with sperm.

The court worried about the impact of surrogate contracts on the child who discovers "her life was bought, that she is the offspring of someone who gave birth to her only to obtain money." It seems meaningless to worry about this. The child is more hurt by the custodial mess the court has created. The court has, by restoring Whitehead-Gould's status as mother, quite simply made a mess of little Melissa's life. Where is the paternalism now? **T.M.F.**

HARVARD LAW RECORD

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Fenno

"Hi, this is Jim McKay at the Calgary Winter Olympics. We have just witnessed the most amazing upset in the history of the modern Olympiad. Today, a new world record was set in the men's downhill event. Barreling down the mountain and crossing the finish line in only half the time of the old record speed, a hitherto obscure American named Fenno seems destined to have forever fixed his name in the annals of sports fame. . . ."

The still dreaming Fenno strolled down Kirkland Street in the wee hours of a chilly Cambridge morning, heading toward campus and his departure on the DSAC ski trip. Two vintage skis were strapped to his back (left = 170 cm, right = 210 cm), bent poles dangled behind, and three flasks (two = Meister Brau, one = brandy) sloshed upon his waist.

"Ah, the thrill of victory, the agony of defeat," he said to a lady in front of Savenor's.

Soon he strolled onto campus and spotted two large buses in front of ILS. "Hmm. I didn't realize there were so many *skieurs* at HLS." He said to a blonde 1L, "Hey, honey, let's *schuss* together *après*."

Before she could respond, Fenno turned on his heel and followed two kegs onto the first bus. The darkened interior was filled with erstwhile students bobbing down the aisle toward the refreshments at the back. The air throbbed with Cajun tunes.

As the bus lurched into motion, Fenno smiled. "Now these people really know how to ski!" he thought. Positioning himself next to the tap, he nestled in for the trip. The endless flow of brew blurred his brain, and time slowed to an almost interminable crawl. The pitstops didn't resemble the quaint Vermont towns he had expected, but what the hell?

Finally, the sweaty, cramped movement stopped. Everyone surged out the door and into the air of . . . New Orleans.

"*New Orleans!*? But the slopes! Phil Mahre's waiting for me on the top of *Dead Man's Last Prayer*; you know, the double-diamond run," Fenno screamed at the eager fellow who had organized the trip.

"Weeeell, sorry big guy, but the ski trip was the other bus — we all are at Mardi Gras!"

Fenno was last spotted, days later, in a much happier state, crowned as King of Bourbon Street and carried by admirers upon a makeshift throne fashioned from his skis.

"Hello, this is Robin Leach, and I'm here interviewing this year's lucky winner of the *Mardi Gras' Million Dollar Costume Contest!* The unusual winning outfit featured skis that jingled with beer tabs and was designed by Fenno. . . ."

Fenno smiled to himself.



HLS, Inc.

TV GUIDE

AS THE WORLD TURNS AND THE DAYS OF OUR LIVES PASS BY, IT'S GREEN ACRES AT HLS...

THE SHOW WHERE HLS PROFESSORS MAKE THEIR MILLIONS BY BEING "ON RETAINER" TO HUGE CORPORATIONS:

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NEXT WEEK: HOW DOES THIS AFFECT WHAT THEY TEACH?

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Eight is Enough



WHEEL OF FORTUNE

Students play for high stakes in the "Grades are Random" lottery, with professors spinning the wheel...



STAR TREK

STARDATE 1987: THE CREW OF THE HLS ENTERPRISE PROTECTS ITS ALUMNI FUNDING BASE...



CHALLENGE TO STATUS GLO
INTELLECTUAL STIMULATION
DIVERSITY
CLC

7) LEAVE BEAVER: It's a tense week in the Cleaver household when Wally won't share his Con Law outline with his brother because of a "secret pact" with his law review buddies. Beaver gets a B, but Wally has to live with himself (Repeat)

8) NBA BASKETBALL

12) PRO-AM GOLF

13) ENTERTAINMENT TONIGHT

21) FILM: Blue Skies at Midnight (1946), an awful classic

17) MIAMI VICE

13) JEOPARDY! Assistant profs get the word: tow the right line at HLS or that's what you'll be in (Repeat)

20) NOVA

27) FALCON CREST

29) LIFESTYLES OF THE RICH AND FAMOUS: Alan Dershowitz shows off his office remodeling job; Duncan Kennedy on life Andover with Brad Reynolds

41) MR. ED

56) SECRET AGENT

6) LINES Y VIERNES

by KA

JUST ONE EQUATION MADE ME A "REASONABLE" MAN!

ONE DAY AT HYPO BEACH...

HEY!! QUIT KICKING SAND IN OUR FACES! YOU'RE SUBJECTING US TO A NON-RECIPROCAL RISK!

HE'S THE BULLY OF THE BEACH!

GULP

UH... I DIDN'T SAY ANYTHING...

AW... RISK, SCHMISK! HEY PAL, IF $B < P-L$, MY B IS BIGGER THAN YOUR $P-L$, ERGO NO BREACH OF DUTY HERE!

WANNA ARGUE?

U.S. V. CARROLL TRAINING CO. 159 F. 2d 169 173 (2d Cir. 1947)

OH! YOU'RE SO "REASONABLE"? I'M SO SICK OF HIS MURKY HIT CHAT AND WIMPY VAGUENESS!

WHY DON'T YOU COME WITH ME? I JUST HAD A "REASONABLE" IDEA! LET'S GO DO SOME SUBCITING AT THE LAW REVIEW!!

BAH! I'M SICK OF ALL THIS INDETERMINACY AND MURKY ASSESSMENTS ON A SLIDING SPECTRUM! HOW COME I ALWAYS GET THE SHORT END OF THE STICK IN A COST BENEFIT ANALYSIS?

SO LONG SUCKER!

DAMN! THERE MUST BE SOMETHING TO THESE "DYNAMIC EQUATIONS" I'VE BEEN HEARING ABOUT! UNSEEN HAND SAYS HE CAN MAKE ME INTO A "REASONABLE" MAN! ALL RIGHT! I'LL GIVE IT A TRY...

KANT

LATER THAT SEMESTER

BOY!! IT DIDN'T TAKE LONG FOR JUDGE HAND'S "DYNAMIC EQUATIONS" TO MAKE ME INTO A "REASONABLE" MAN!!

PLUS I CAN CALCULATE THE ACTIVITY LEVEL EFFECTS, TOO!

OOOH! YOU ARE A "REASONABLE" MAN "AFTER ALL!"

THERE'S THAT WISE GUY WHO KICKED SAND IN MY FACE! I'LL SHOW HIM WHO'S THE "REASONABLE" MAN "AROUND HERE!"

BLAH BLAH BLAH...

UH, EXCUSE ME, BUT I BELIEVE A PRELIMINARY INJUNCTION IS APPROPRIATE HERE, BECAUSE $P \times H_p > (1-P) \times H_d$!! IN OTHER WORDS, YOU BEAR THE RESIDUAL LOSS!!

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Letters to the Editor of the Record

I Liked Upton

To the Editor:

Your article on the Quality of Life Committee provided a useful view of the Committee's activities. I would, however, like to correct certain remarks attributed to me. I told your reporter that the open hearings and the surveys provided evidence and "ammunition" in moving the School toward certain changes, such as renovating Harkness Commons. I did not make this reference in connection with the Dean of Students Office. The dissatisfaction expressed by students, to which I referred in the interview, did not relate to Dean Upton but to the School's conception of the goals and mandate of the Office.

Dean Upton served the School with energy and skill in her nine years as Registrar and seven years as Dean of Students — two of the most difficult and demanding jobs in the Law School — as many students and those of us who worked with her will attest.

David Smith '58
Vice Dean

So Did We

To the Editor:

The "Quality of Life" article in the last issue included misleading implications about Mary Upton's service as Dean of Students.

Over the years Mary Upton was one of the best administrative staff members at the Law School. She did more for more students than any other — as hundreds of alumni/ae will attest.

Phillip Areeda, Victor Brudney,
Clark Byse, Robert Clark,
Martha Field, David Herwitz,
Morton Horwitz, Louis Kaplow,
Daniel Meltzer, Arthur Miller,
Martha Minow, Charles Nesson,
Richard Parker, Todd Rakoff,
Lewis Sargentich, Hal Scott,
Henry Steiner, Laurence Tribe

Dole Discusses Iowa And New Hampshire

(Continued from Page 1)

Day." Dole said it was custom then that she and the several other females in Leach's contracts class would not speak, except for one day when the females each delivered a poem to the class and then responded to questions from the professor.

Not all her memories were thus colored, she added. "I love this law school. It brings back some wonderful memories, and some tough exams, especially in here."

Dole's visit, sponsored by the Harvard Ripon Society, included the HLS speech and a subsequent send-off for several van-loads of Dole supporters headed to New Hampshire, where she planned to meet them again after flying on ahead.

"We're gathered here on very serious business," she told the Ames Courtroom audience, exulting the crowd of students to support the candidate "with a record, not a resume. Bob Dole has been there, making a difference."

Dole, who left her position as Transportation Secretary last Oct. 1 to campaign for her husband, said the federal deficit would be "the number one item on the Dole agenda as president. If we don't get this deficit under control, you will be the ones who literally will have it in your laps." The Kansas senator

has proposed a federal spending freeze in all areas of the budget except those affecting the underprivileged.

Dole claimed that if the House had only passed the 1985 Deficit Reduction Plan that her husband pushed through the Senate, "this whole thing would be off the table today."

Calling Maggie

On the foreign agenda, Dole defended the Senator's hesitant support of the recently signed INF treaty, eliminating medium-range strategic missiles from Europe. Vice President George Bush, the Republican front-runner, has assailed the Senate Minority Leader for not aggressively supporting the treaty more quickly after the Reagan-Gorbachev summit.

"Bob, as the Republican leader, wanted to read the treaty first, and I think that's reasonable," she said, adding Dole received input on the treaty from a number of experts here and abroad, including British Prime Minister Margaret Thatcher. Dole said she remembered her husband placing a call to Number 10 Downing Street, and then telling her, "Elizabeth, I think she's seen the polls in Iowa because she took the call."

Addressing that all-important

first caucus state, where her husband subsequently came in first with 38 percent of the vote, Dole said the race there "tightened up after the Rather interview, but that makes us run all the harder." Of New Hampshire, the next major test and a state where Dole trails Bush in the polls, Mrs. Dole said "we're behind, but I see movement and it's looking good."

Dole said her husband is leading in Minnesota and South Dakota, two early primary states, and that the Senator is "clearly the more electable Republican, and I certainly hope the party will nominate the most electable person."

While some have criticized Dole for leaving office to campaign for her husband while he retains his position as a leader in the Senate, she responded by pointing out that another member of the Reagan cabinet, Labor Secretary Bill Brock, also left his post to work full-time as Dole campaign manager.

Dole stayed in the courtroom after her speech to meet personally with every person in attendance and to ask for his or her support in the campaign. Asked by one well-wisher why she was not running for the presidency, Dole laughed, paused, and said, "I'm not running because he's far more experienced and qualified and ready for the job than I am."

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New Free Trade Treaty Will Improve Relations

by L. H. Legault

Last month, President Reagan and Prime Minister Mulroney signed the Canada-U.S. Free Trade Agreement. That treaty must now be ratified by both governments.

L. H. Legault currently serves as the Economic Minister and Deputy Head of Mission at the Canadian Embassy. The following is an abbreviated version of a speech he delivered at the 16th Annual Conference of the Canadian Council on International Law.

The recently negotiated Canada-U.S. Free Trade Agreement represents a significant and substantial advance for the rule of law in a vital area of the relationship between Canada and the United States.

There are four reasons why the free trade agreement makes an important contribution to the rule of law as between Canada and the United States.

First, it curbs the erosion of discipline in the trading rules that apply to the two countries.

Second, it adds new disciplines in the areas of services and investment.

Third, it transforms a trading relationship into a treaty relationship, taking us from a patchwork of *ad hoc* arrangements that mingles elements of the multilateral and the unilateral, to a comprehensive treaty regime founded in bilaterally agreed rules and common objectives.

Fourth, in this context, the dispute-settlement provisions of the agreement afford a unique and effective means to protect and promote the new relationship.

In concluding a free trade agreement with the United States we have returned to a constant theme of Canadian trade policy. The objective is access. Whether we secure access bilaterally or multilaterally is a question of opportunity and not one of profound principle.

In the context of Canada-U.S. trade relations, it is important to have a clear understanding of the

terms multilateralism and bilateralism. Canada and the United States over the past 40 years have promoted first the establishment and then the preservation of a strong and stable multilateral trading order. The rights and obligations set out in multilateral and bilateral agreements are not mutually exclusive but complementary and mutually reinforcing. The enemy is *unilateralism*, not *bilateralism*.

Against this perspective, the test of international trading rules is whether they improve market access and provide adequate defence against unfairly traded goods on the basis of stable and freely negotiated rules. Traders, producers, farmers and investors need to be confident that their market access is secure and that foreign governments will not unilaterally and arbitrarily change the rules of the game.

What we have tried to do in the free trade agreement is to bilateralize the rules and in so doing restore discipline and predictability. We have done so by bringing their application within a bilateral balance of rights and obligations affecting virtually the whole of Canada-U.S. trade. Our two countries should no longer be subject to trade laws designed for others, intended to deal with unfair trade practices in which neither of us engages, and in which the court of redress is a multilateral body structured and governed by consensus among over 90 disparate countries and disparate economic and trade interests.

In the field of investment, the agreement provides for liberalized treatment with respect to the establishment of new firms, the acquisition of existing firms, and the conduct, operation and sale of existing firms. Canada will retain the right to review the acquisition of firms in Canada by U.S. investors but has agreed to phase in higher threshold levels for direct acquisitions. Existing restrictions main-

tained in certain sectors by both countries will continue.

In the field of services, the new disciplines cover many sectors and are based on the principle of national treatment and the right of commercial presence. Annexes to the agreement will apply these obligations to a number of precise sectors, such as transportation and computer services.

Trade in services does not take place in a vacuum, without rules and regulations. What has been lacking is a general framework of rules incorporating principles of general application. While there are bilateral and multilateral conventions and agreements covering international aviation, for example, neither [most favored nation] nor national treatment applies.

The international debate on whether and how trade in services should be made subject to a general international framework of binding rights and obligations has been rendered more complicated by a basic misconception: namely, that services are fundamentally different from goods because close contact between the buyer and seller is a condition of sale. This has led to the erroneous conclusion that the principle of non-discrimination as applied to trade in goods cannot and should not apply to trade in services.

There is in fact no real economic difference between trade in goods and trade in services. Both flow from the application of inputs to produce outputs. If the rules for trade in services fail to reflect this essential sameness, the result is lost efficiency, lost output and lost income.

The challenge in the bilateral free trade negotiations was to develop general rules of non-discrimination. The newness of these disciplines lies in their incorporation within a trade agreement and their establishment upon the principle of non-discrimination. The agreement has thus

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Bilateralism Enhances International Trading

(Continued from Page 11)

secured an important measure of security of access for the service industries. This should constitute a helpful precedent for the GATT negotiations.

More important than any refinement of existing disciplines, and more important even than the development of totally new rules to regulate trade in areas not previously subject to international disciplines, is the simple *fact* of a Canada-United States free trade agreement — the sea-change represented by the transformation of a trading relationship into a treaty relationship.

For the first time, Canada and the United States are entering into a trade agreement that is *comprehensive* in scope, that covers goods and services and investment, and that involves federal, state and provincial measures.

The two governments have given formal, legal recognition to the basic reality of North American trade — the reality of interdependent markets in which competition, comparative advantage and dynamic efficiencies are rewarded.

The rules governing trade between the two countries are mutually agreed — whether defined in the agreement itself or by explicit acknowledgement of the applicability of national laws.

Canada and the United States have brought together the various strands of their trading relationship under a single framework, dedicated to a common object and purpose, embodied in a joint statement of objectives, and based on equality of partnership. By giving this trading relationship a "local habitation and a name," so to speak, the two governments have given it a new mutuality and a new value, and they have given themselves a new incentive to make it work. This is not mere moonshine. It is simply another way of describing what lawyers refer to as normative standards and institution-building.

It is only in this context — as an integral part of the pursuit of a

genuine free trade area, as spelled out in the objectives of the agreement — that the significance of the dispute settlement provisions can properly be understood. Indeed, among the objectives themselves is a commitment by both countries "... to establish effective procedures and institutions for the joint administration of the agreement and the resolution of disputes."

The agreement creates a Canada-United States Trade Commission composed of cabinet-level officials or their designees, and other officials as necessary. This body is made responsible not only for the implementation of the agreement but also for overseeing its further elaboration and resolving disputes that may arise. The Commission may hold consultations respecting any matter that may affect the operation of the

agreement, at the instance of either party.

The agreement commits both governments to work towards establishing a new regime to govern North American trade remedy law within five to seven years. The successful implementation of the agreement during that period should encourage the two countries to pursue this further work to a successful conclusion.

Taken together the provisions ensure that virtually all national actions — whether legislative, executive or quasi-judicial — are properly the subject of notification, consultation, and, if necessary, dispute settlement, according to the agreed standards and common object and purpose established in the agreement.

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Laub To Appeal Conviction

(Continued from Page 1)

The prosecutor in the case, Middlesex County Assistant District Attorney Gregg Pasquale, had sought convictions on all four counts and a year-long probation period.

Laub's attorney, Boston lawyer Ronald Locke, said at the end of last month's trial that Laub would appeal his two convictions. If Laub proceeds with the appeal, the case will move to a full trial with a six-member jury. A pre-trial conference is set for March 4.

HLS administrators cancelled Calero's planned speech on Oct. 2 after Laub jumped up from an audience of about 300 persons and rushed the podium where Calero was about to start speaking.

Laub agreed for the most part with Pasquale's version of events, which was based on a report prepared by Harvard Police Officer Patrick Griffin. Pasquale quoted Griffin as saying Laub "charged" the podium and shouted, "Kill them! Kill them!" before police interposed.

When Pasquale had finished reading the police report, Laub de-

nied shouting the word "kill" and told Judge Gershengorn he had actually denounced Calero with an epithet. About a dozen persons observing the proceedings applauded after Laub described what he had shouted. In response, Judge Gershengorn sternly warned observers that she would send anyone responsible for any further interruptions to the court's dock. No further incidents marked the proceedings.

Inhibiting Free Speech

In asking for Laub's conviction, the prosecutor, Pasquale, said Laub had "inhibited" free speech. "No matter how popular or unpopular Mr. Calero happens to be," Pasquale told Judge Gershengorn, "Mr. Calero has a right to make his views known in a forum."

Laub's attorney, Locke, said Laub had not planned to act as he did but had become "upset" when HLS Republican Club president Joe Anderson, 2L, introduced Calero to the audience.

(Continued on Page 14)

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Calero Appearance Prompts New Security Policy

(Continued from Page 12)

After Judge Gershengorn announced her decision, Locke told her that Laub could not afford to pay the HLS Republicans for Calero's air fare. But Gershengorn said a financial statement Laub filed with the court indicated otherwise. Laub listed a savings account of \$2,500 on the form. Locke said the money was from Laub's parents and was not available to pay the Republicans.

Anderson expressed disappointment that Laub had not been sentenced to jail. "For deterrence to be realized, some sort of incarceration period is necessary," he said.

Two students who attended Laub's trial, Peter Levine and Wilson McLeod, 3Ls, praised Laub for causing Calero's speech to be cancelled. "We'd like to see Laub freed, the *contras* shut down and the responsible parties put before an international tribunal for crimes against the Nicaraguan people," McLeod said before the trial began. "Joe Anderson and the Republicans are fully implicated."

Anderson and five other Republican club members also attended Laub's trial.

Calero himself cancelled a second planned address, scheduled for last Nov. 24, amid a flurry of peace negotiations in Central America. The day before the planned appearance, HLS administrators said they were braced to protect Calero's ability to speak on campus, but he denied them the chance when he telephoned the event's sponsors, the HLS Republicans, to bow out of the engagement.

Anderson said after the cancellation that Calero had to remain in Central America to help hammer out a common position among rebel factions for indirect peace negotiations with the Nicaraguan government.

Calero's second address was to be the second event governed by temporary regulations for speeches that HLS administrators had announced earlier in the month, Dean of Students Sarah Wald said on the eve

of the scheduled speech. Administrators first invoked the new procedures for an address by former Nicaraguan rebel leader Arturo Cruz on Nov. 19, which the HLS Forum sponsored, she added.

HLS administrators "are deeply committed to the right of people to speak," Vice Dean David Smith '61 said the day before Calero's planned second appearance. The school "spent an extensive amount of time and energy preparing" for both of Calero's scheduled speeches, Wald said.

Calero's previous appearance was marred not only by Laub's attack but also by a bomb threat that led administrators to move the event from the Ames Courtroom to Langdell Hall.

Harvard deployed 29 police officers at Calero's first appearance and would have supplied at least as many if he had appeared again, according to Smith. Police "intercepted" Laub, he added, and "would be prepared to do the same" if another attack occurred. The police also intended to sweep Austin Hall for explosive devices before Calero arrived the second time, Smith said.

Laub's attack on Calero "was not in any way expected and would have been difficult to anticipate," Wald said.

Security Criticized

Anderson, the Republicans' president, criticized security preparations, however, and said HLS administrators had shown a "hostility to conservative speakers."

"Conservative speakers have been disrupted time and time again because [Harvard] has seen fit to cultivate a lynch mob mentality," Anderson said. "We really have had to wrangle over very small details in order to guarantee some measure of security to Dr. Calero."

Wald said administrators had worked closely with the Republican club in planning security arrangements for the second speech. "The Republicans haven't agreed with all the guidelines, but the point is not to get absolute agreement from one

group," she said. "The point is to come up with guidelines which are workable and fair to the whole law school community while still providing adequate security for the speaker."

The interim procedures, which are to govern speeches while an ad hoc committee chaired by former HLS Dean Albert Sacks '48 drafts permanent new rules, warn that students may be removed from events and disciplined by the HLS Administrative Board if they make so much noise that an audience has trouble hearing a speaker, or if they intimidate a speaker or another member of an audience by blocking the person's view or by destroying a sign.

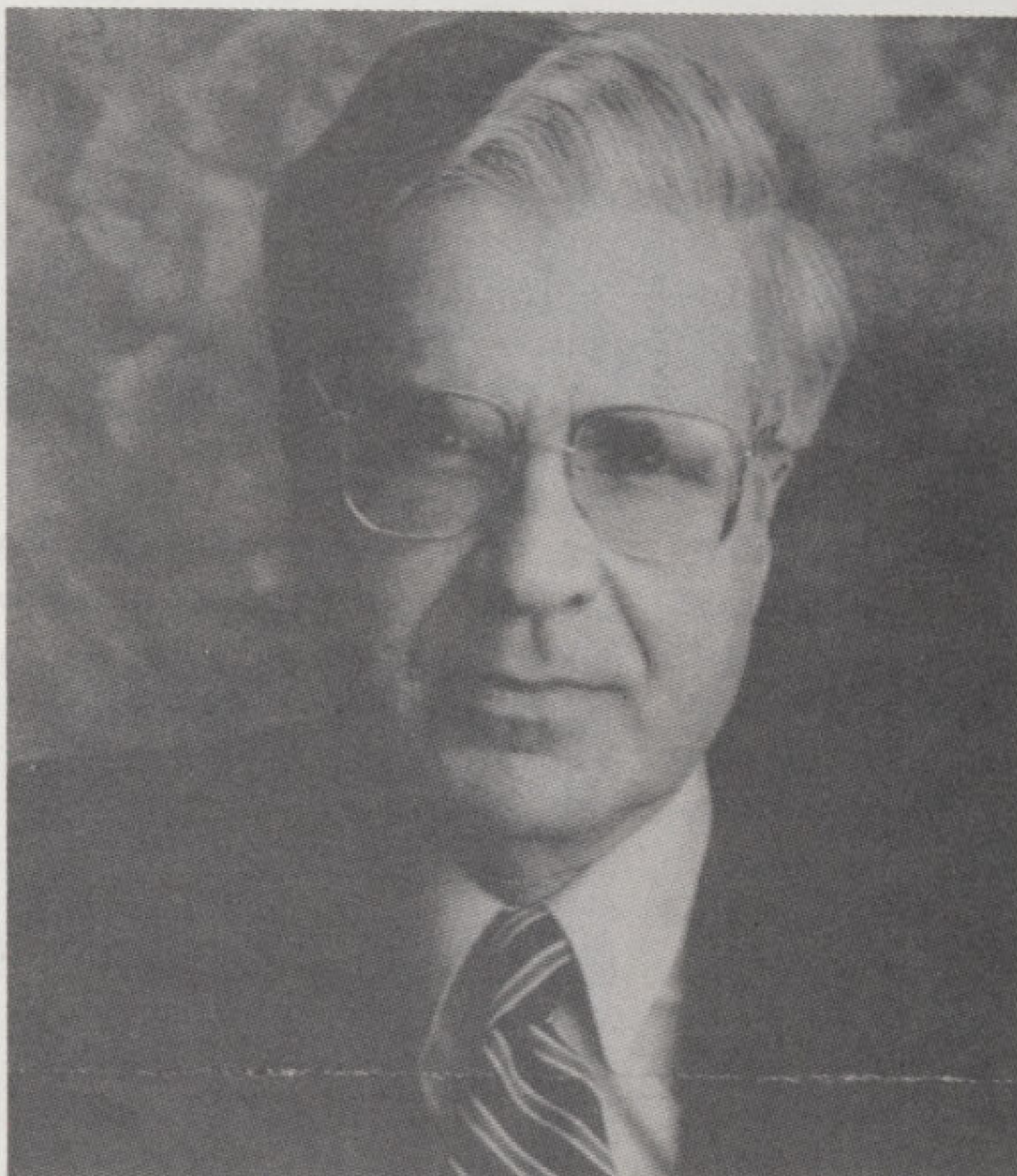
At the same time, the rules allow picketing, "occasional booing" and silent standing in the back of a speech hall. Members of an audience may also bring small paper signs. The rules give security personnel the option of searching bags or coats that spectators want to bring into a speech hall. Spectators may avoid having coats or bags searched by checking them outside the room.

The Republicans, who drew criticism from some students for selling only 60 tickets to the public for Calero's first appearance, offered about 150 for the planned November speech, Wald and Anderson said. Another 100 tickets were reserved for club members and their guests, including about 40 earmarked for Harvard undergraduates and students from other area colleges.

Anderson said Calero had agreed "in principle" to return to HLS, but he said the prospect depended on the progress of "off and on cease fire talks."



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BAR REVIEW

Travelers Avoid A Winter Of Discontent

(Continued from Page 6)

and observing that it is difficult to get the necessary funding because the Human Rights Program finances summer work more generously.

Many of those who ventured abroad during the winter returned to continue work they had begun during summer internships. Hillary Richard, 3L, returned to El Salvador to work with the Human Rights Institute of the Central American University where she analyzed the new general amnesty law under the Arias Peace Plan.

Richard, who characterized her winter term as "a great experience," commented on the downside of the program by recognizing that the "bureaucracy at HLS is so rigid that I encountered a lot of obstacles, in-

cluding missed deadlines and incompletes in classes that were supposed to be dropped." She also acknowledged, "I worked a lot harder than I would have had I been here taking a class since I left right after fall semester, worked eight to ten hours per day and weekends and had no break before the beginning of spring term."

Similarly, Jeff Selbin, 2L, also used the program to follow up on his summer internship. Selbin spent the winter at the Legal Resources Center in Durban, South Africa, researching the role of that state's security forces in the recent violence sweeping the townships outside of Pietermaritzberg. He voiced similar complaints about how the "school makes you jump through a lot of bureaucratic hurdles" and about the reduced funding available for such

winter research. Selbin added, however, that he was glad to have the opportunity to go somewhere and analyze something in depth for that length of time. "What I have valued most at HLS academically has been the clinical and writing experiences like this program," he said, adding, "I learned more this winter than in an entire year of classes."

Although the faculty has set an annual limit of 50 students that can participate in the program, Steiner said he felt that it would be willing to increase that number if the demand existed. Such a change may require an alteration in the approval procedure, he cautioned. Steiner commented on the committee's position that "students are ingenious at working out ways to do things they want to do, and brilliant at finding ways of funding those projects. And where these things make sense, we will help them out wherever we can."

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