

Lang Ref Desk



Harvard Law Record

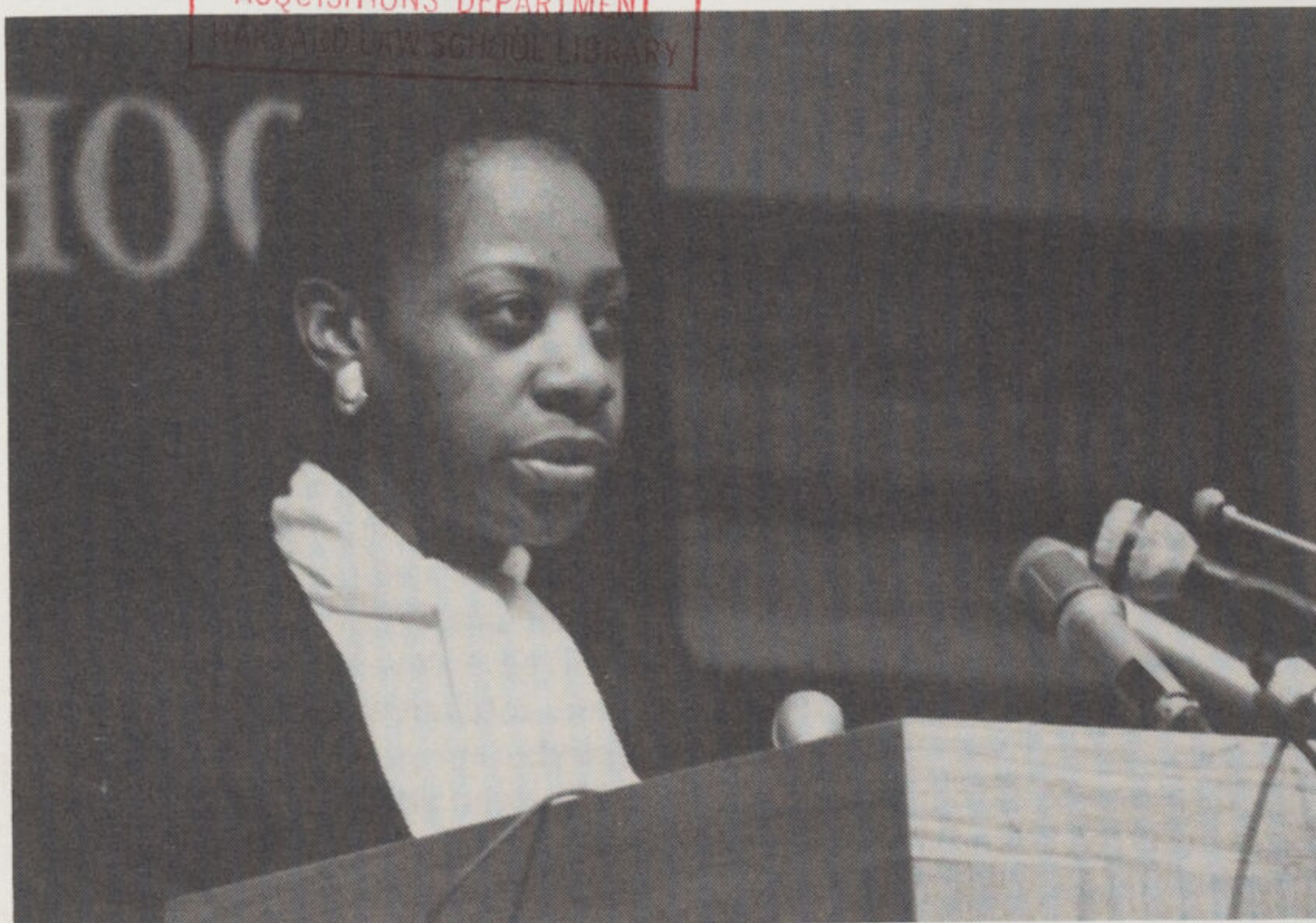
RECEIVED
America's Oldest Law School Newspaper

VOL. 86, NO. 3 **AUG 24 1990**

FEBRUARY 26, 1988

35 CENTS

ACQUISITIONS DEPARTMENT
HARVARD LAW SCHOOL LIBRARY



Kevin Reed

Formerly homeless NYC woman criticizes Mayor Koch's "Project Help."

Brown Blasts Homeless Scheme

By Erick Hachenburg

"It's a long way from 65th and 2nd Avenue in New York City [to Harvard Law School]," homeless advocate Joyce Brown (alias Billie Boggs) told an Ames Moot Courtroom audience last Thursday, Feb. 18. Brown's appearance, sponsored by the HLS Forum, focused on her struggle against New York City's policies toward the homeless, which resulted in her temporary institutionalization for mental problems.

Brown was accompanied by her attorneys, Norman Siegel and Robert Levy of the New York Civil Liberties Union, who presented the factual and legal history of Brown's story.

According to Levy, Brown had been living on the streets for 18 months before being picked up on Oct. 28, 1987 by "Project Help," a New York City program designed to help alleviate the homeless prob-

(Continued on Page 6)

Langdell Future Placed In Doubt

By Chris Crain

The Law School's first major internal review in a quarter-century has revealed deficiencies in the school's library and student dormitories that may require a major capital fund drive to rectify.

Reports from six different committees of HLS faculty and student representatives, expected this spring, may recommend a new wing to Langdell Library, or possibly an entirely new structure, while the shortage of student housing may require extensive renovation and construction. Any of these major projects would cost more money than is available in the school's annual budget, forcing HLS into its first capital campaign in more than two decades.

Associate Dean Frank E. Sander '52, co-chair of the steering committee coordinating the review, said that given the level of projects under consideration, there would "inevitably be a need for a funding drive, but you don't always act on needs. It could be the wrong time to ask for funds." That determination will be made by Dean James Vorenberg '51 after a careful review by the alumni office about the market for

(Continued on Page 12)

Inside the RECORD:

Feature:

*Legal Services in
San Antonio*
Page 4

News:

Surrogate Mother Speaks
Page 3

Off the Record:

Up With Nukes
Page 10

Rights Advocate Named Woman Of The Year

By Lauren Ruby

Has Sara Buel developed a cynical attitude toward HLS? "No! It's much better than I'd hoped it would be. I love it. There are a lot of interesting students. I'd assumed everyone would be arrogant and rich," she exclaimed. Buel, who had a decade of public service under her belt before she applied to law school, was named one of the Ten Outstanding Young Women of America for 1987 at an awards luncheon in Washington, D.C. in late January sponsored by the General Federation of Women's Clubs.

At age 12, Buel left home and got her first job as a migrant grape-picker in upstate New York. "It was then I first heard the term 'civil rights' from someone in Cesar Chavez's United Farm Workers Organization," she said.

With no formal training or education, Buel launched a legal career in 1977 when she landed a job as a paralegal at New Hampshire Legal Assistance. She had moved to New Hampshire from Harlem, leaving behind an abusive husband.

Buel's ten years of work in the public sector since that time attest to her commitment to the welfare of battered women and children. She has held an array of legal and civic service positions from coast to coast, including coordinator of community legal education in New Hampshire; coordinator of domestic violence, child abuse, and sexual assault policy and programs for the governor's office in Massachusetts; founder and chair of Colorado's statewide community legal education project; and court advocate for battered women and children for the Seattle city attorney's office.

HLS Opens Doors

What can HLS offer Sarah Buel? "In the past, I did all the investigative work, I interviewed the clients, I wrote briefs . . . but I couldn't walk into court," she said. "I'd been in their homes, I'd seen their kids and their struggles. It was hard to hand all that over to

someone else, who couldn't pursue it with the same energy. It's very frustrating not to be able to go into court when you want to be a trial lawyer."

"I love law school because it's one of my dreams to be here — it's still a miracle to me," Buel stated. "I think having gone to HLS *will* make a difference in my career."

Although she enjoys school, Buel does not endorse the view that the most valuable experiences happen in the classroom. "I got a lot done in some classes. I wrote letters, I wrote grants — we got a bunch of money from grants I wrote while sitting in one of my classes. I'd better not say which one."

Buel expressed a strong desire to see HLS graduates form the vanguard of public interest law practice. "The message that HLS students who go into public interest law send is so strong. They lend so much credibility to the work, and their presence tells their clients that they'd rather be doing it than making a hundred grand a year. When judges and DA's see Harvard students doing public interest work, it makes a difference," she explained.

"My ultimate dream is to set up a legal action center for poverty law and devote part of it to a family violence project," said Buel. "I want to see that every battered woman, every abused kid, and every rape victim going through the system has a legal advocate." When asked what she would do with her degree, Buel replied, "I need to do public interest law. I need to give some of this back."

Writer, Teacher, Plapper

It is difficult to measure whether Buel is more active within or outside of school. "It's incredible to me, the things I can do here — the level of involvement, the opportunities." She recently finished an article for the *Women's Law Journal* on the subject of mandatory arrest, which will be printed in Spring, 1988. She is one of the few students who work with the Prison Legal Assistance Project at the women's

prison in Framingham, where she will soon begin teaching the inmates how to do legal research.

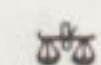
Buel will work for PLAP this summer, as well, although she expressed concern that "they pay only \$300 a week. It makes me angry that this school assumes everyone is 22, with no dependents." She's applying for a student-funded fellowship and other financial assistance to supplement her salary, which she will use to support herself and her 13-year-old son, Jacey.

Buel is involved in the Children's Rights Project at HLS, through which she founded the Guardian Ad Litem Reform Project. "I've been outraged for years when working on child abuse cases. Either the court fails to appoint an advocate for the child's interests, or when an attorney is assigned, he or she usually is not trained or supervised, receives a low salary, and rarely even interviews the child," she stated.

Nineteen students are helping her research the applicable laws in every state. The group will draft a questionnaire, which will be used to interview judges, prosecutors, present guardians ad litem, attorneys and foster families.

"Finally, we will put together a report, which will be very specific. It will contain a description of the problem, results of the survey, and a recommendation or proposal for reform measures for the Massachusetts legislature."

When she is not writing Federal Litigation briefs or agonizing over Ames, Buel teaches a public speaking class at Bentley College, serves as the president of the board of the Victim Resource Center, holds training sessions for non-profit agencies and corporations in anti-racism and cultural awareness and works for the Criminal Justice Training Council of Massachusetts, teaching police officers how to deal with family violence.



Whitehead-Gould Lauds 'Baby M' Ruling

By Jeffrey Gershowitz

Fresh from their victory in the New Jersey Supreme Court in the Baby M case, Mary Beth Whitehead-Gould and her attorney Harold Cassidy, kicked off the HLS Forum's spring schedule Wed., Feb. 10 with a discussion on their experiences and the future of surrogate motherhood.

"I'm glad it's not going to happen to anybody else and I hope it never will," said Whitehead-Gould of her fight to keep the child she bore as a surrogate mother for William and Elizabeth Stern. She stated that she was "very satisfied" with the recent New Jersey ruling holding paid surrogacy contracts illegal and granting Whitehead-Gould visitation rights to see Baby M (now known as Melissa, formerly called Sara by Whitehead-Gould), though allowing the Sterns custody.

Whitehead-Gould laid much of the blame for the entire episode with the New York fertility clinic that connected her with the Sterns. She accused the clinic of "brainwashing" her into accepting the surrogacy terms. "From day one they told me it was the couple's baby, not my baby," she explained, adding "they only told me the bad. I didn't hear any of the good."

"I thought it would be something good," she said. "As nine months passed, I realized it was something horrible." According to Whitehead-Gould, she came to believe the baby was hers at birth, as "the pain really made me realize it at that point."

Whitehead-Gould appeared very conciliatory after the prolonged and often acrimonious legal battle. She admitted that she had done some things she "wasn't proud of" and said of the Sterns, "I really don't hold any bad feeling toward them because they were desperate."

Questions from the audience helped shed more light on the circumstances surrounding the Baby M situation. Whitehead-Gould explained that the \$10,000 fee she was to have received "was not important to me. It was important to my ex-husband. After the birth it wasn't

important to him either." She said that her ex-husband, whom she recently divorced, would share in her recently won visitation rights, giving the child "five people loving her instead of two."

Baby Selling?

Cassidy's address summarized the court's decision and discussed some of its future implications. He equated surrogacy with baby selling as an "attempt to circumvent adoption . . . an attempt to induce a woman to give away her baby and shut her out of the baby's life forever."

He explained that the court held that "consents prior to birth as a matter of law are uninformed" because bonding between mother and child during pregnancy affects the woman's decision-making. In the future, he said, New Jersey will allow a surrogate mother to keep the child unless the father can prove the woman unfit.

Cassidy also lashed out at the legal profession. "It is one thing to tell a woman she has legal rights to keep her child and it's quite another to see she has a lawyer to enforce them," he argued.

"New Jersey does not provide paid lawyers. If you don't pay lawyers you're not getting legal representation," Cassidy explained, noting that there are "women desperately in need of representation" who will receive none because there are "not going to be lawyers who stand up in the next 5,000 cases for no money, no publicity and no chance to make law."

The Forum's presentation of Whitehead-Gould and Cassidy began a spring schedule laden with female speakers, including Joyce Brown (see related story), Eleanor Smeal, former N.O.W. president, and Erma Bombeck, syndicated columnist. Also appearing will be pollster Louis Harris, lawyer-novelist Scott Turow '78 and journalist Bob Woodward.



Ms. Letitia Baldrige
America's leading expert on manners.

People In The Best Circles Stay In The Square.

Guests of The Charles—including many of Boston's most illustrious visitors—concur that the vigor and character of Cambridge's Harvard Square provides a perfect setting for the luxury they've found at this fine, independent hotel.

Home of "Nationally Outstanding" Rarities Restaurant, the Regattabar (winner of Boston Magazine's "Best Jazz Bar" award) and Le Pli Health Spa, The Charles is famous for genuine warmth, comfort and service. All in all, a new, more gratifying option for your next visit to Boston. **That's on the Square!**



AT HARVARD SQUARE

One Bennett at Eliot Street, Cambridge, Massachusetts 02138 (617) 864-1200

Member of Distinguished Hotels and Golden Tulip Worldwide. A *Condé Nast* HOTEL.

Student Duo To Help San Antonio Poor

By Paul Tsuchiya

While the majority of the Harvard Law School class of 1988 will go off to large corporate firms or clerkships upon graduation, 3Ls William Dooling and David Lopez will return to Texas to establish Legal Services of San Antonio (LSSA), a privately funded legal aid service for those who are politically and economically disadvantaged.

In addition to providing individual representation for clients in "traditional" areas of legal aid services, such as family law, immigration cases and housing matters, Lopez and Dooling hope to perform other functions through LSSA, such as exposing and sensitizing future attorneys to the needs of the poor, developing lay advocacy programs and strengthening community organizations by providing them with counsel. As co-founders and directors of Legal Services of San Antonio, Dooling and Lopez will follow in the tradition of Reginald Heber Smith '40, an HLS graduate who first established legal aid services for the indigent in the United States.

What makes LSSA an innovative legal aid service, said Lopez, is that it will be funded at the start by the Catholic Church in San Antonio. By not seeking government funding, Legal Services of San Antonio can reach the working poor, who are often excluded from legal aid due to the prevailing eligibility limits set on federally funded services.

In addition, the federally funded legal aid society cannot provide services to unauthorized aliens, a group that constitutes a significant portion of San Antonio's poor. As a privately funded organization, explained Lopez, Legal Services of San Antonio will not be prevented from servicing this constituency.

LSSA will also have an important role as a referral service. Recognizing that LSSA will initially be limited in its resources and experience, Dooling pointed out that LSSA will serve a valuable function by connecting clients with lawyers in the private sector willing to do



Kévin Reed

David Lopez, William Dooling, and Dean James Vorenberg discuss the LSSA.

pro bono work. In these ways, Legal Services of San Antonio will seem to be, as the project proposal describes, "a unique effort to coordinate and maximize the resources of the private sector and the religious community to fill the existing gap between legal services provided by the private bar and the public sector."

Among those who have pledged their support to the project are Patrick Flores, Archbishop of the Archdiocese of San Antonio, Henry Cisneros, Mayor of San Antonio, and Dean James Vorenberg '51.

Why San Antonio?

Lopez, a native San Antonian, and Dooling, who has been an educator and active in the affairs of San Antonio's Hispanic community for over 18 years, chose the nation's tenth largest city for a variety of reasons, the primary one being the great need that currently exists there for legal services among the poor.

According to the project proposal, in 1980 a full 14.4 percent of all families in San Antonio lived below the poverty line, with an average

annual per capita income of \$6,164. The Legal Aid Society of Bexar County is currently the only entity that delivers legal services and counsel to the poor in a city with 1,236,000 inhabitants. However, according to Dooling, the Society has been so overwhelmed by the caseload that it has been closed and will remain so indefinitely. When the Society shut down its intake six months ago, the ten staff attorneys were handling approximately 975 cases each.

Despite these efforts, Bill McKee, deputy director of the Society, estimated that the agency cannot reach between 80 to 90 percent of the San Antonians who cannot afford legal services. According to McKee, this is due primarily to the federally imposed eligibility guidelines, which in reality limit the scope of San Antonio's current government funded legal aid service to single women with large families on A.F.D.C., the elderly, and the disabled. In terms of access to legal services, this situation creates a large gap through which the working poor fall, since they are neither

(Continued on Page 16)

HARVARD LAW RECORD

**THE #1 REASON SO MANY
PEOPLE CHOOSE PIEPER:**

**PIEPER
PEOPLE
PASS**

**Isn't that what a
Bar Review Course
is all about?**

PIEPER NEW YORK-MULTISTATE BAR REVIEW, LTD.

90 WILLIS AVENUE, MINEOLA, NEW YORK 11520

PHONE: (516) 747-4311

The Bar Course That Cares.

Former Street Dweller Protests Police Brutality

(Continued from Page 1)

lem by involuntarily institutionalizing those homeless people determined to have significant mental problems. Levy said that Brown was the first person picked up as part of the effort and thus became "the unwitting symbol of this program."

Some commentators have criticized what they see as the exploitation of Brown, whose appearance at HLS was mentioned in a *CBS Evening News* report on the "commercialization" of Joyce Brown, and during the "Evening News" sketch on *Saturday Night Live*.

Levy said Brown was taken to Bellevue Hospital and detained there for 84 days for mental evaluation and treatment. She petitioned for release, but the city went to court and won.

According to Levy, the next conflict arose when the state attempted to administer medication to Brown, who successfully blocked the effort in court. Levy claimed Brown was released last month because all the patients at Bellevue were drugged, and if she could not be drugged they did not want her in the hospital.

Denied Access To Press

Levy said that Brown's mental condition was evaluated by one hospital psychiatrist to be "the same when she left as when she was admitted." He added that Brown was prohibited from speaking with the press while in the hospital because the city feared "it would exacerbate her delusional belief that she was being unfairly incarcerated." It was not until after her release that she was able to tell her story.

Upon taking the podium herself, Brown decried the homeless problem as "a national disgrace," supporting her position with the claim that there are 58,000 homeless in New York City alone.

Brown claimed the city had violated many of her rights, saying that "they bring you to the hospital against your will. It is my choice to live on the street. It is my right to live on the street." She described

New York City Mayor Edward Koch's solution, Project Help, as requiring a sacrifice of dignity.

Brown blamed New York City for her homeless status in the first place, saying that "it is the city's fault I don't have housing."

Siegel elaborated on that allegation later, saying that "luxury development in downtown areas may displace homes." He said the city, in encouraging development, has destroyed much of the low income housing without constructing any new housing, calling the problem "secondary displacement."

Siegel added that 100,000 single room occupancy (SRO) units in Manhattan have been lost from the mid-1970s to the mid-1980s. "Tenants are forced to leave their homes," he said. "One-third of the homeless list SROs as their last living place."

Homeless shelters, which New York City has used as a partial solution to the problem, were another target of Brown's scorn. "My experience with shelters is not good at all," she said. "I'd rather be on the streets. [Shelters are] an ugly place to live. . . . Shelters are not homes. Shelters are not safe."

Brown also criticized the police and said that the police "had a policy of brutality." During the question and answer session, she described incidents in which she claimed the police kicked her in the leg with heavy boots. "They did everything but spit on me," she said. Punctuating her feelings toward the police, she repeated slowly three times, "I hate the police."

Describing her protracted fight against New York City government, Brown said, "I was my own best witness. I won for myself," adding that "my being here proves that I should not have been picked up."

Brown also vowed not to stop her efforts. "I have been scarred mentally. I will never, ever, ever, ever forget what happened to me," she said. "I will work to help end the homeless crisis," adding to the audience, "maybe you can too."

Siegel compared the fight against the homeless problem to the civil

rights movement. "We did it with civil rights. Now, we need to do the same for economic equality. Let's address constitutionally, legally, realistically the problem of the homeless in America," he said. "The due process of the 90s must extend into the arena of economic justice," he added, including creating a new right to counsel whenever a person is at risk of losing their home.

Siegel also said he felt government had a lack of compassion for the homeless. "I've never seen a city or state official get out on the streets to talk with the homeless people," he said. "Many things you can't learn, even in the halls of Harvard." He concluded that politicians "misunderstand this simple message," but "we won't let them forget it. We must have economic fairness and justice for all."

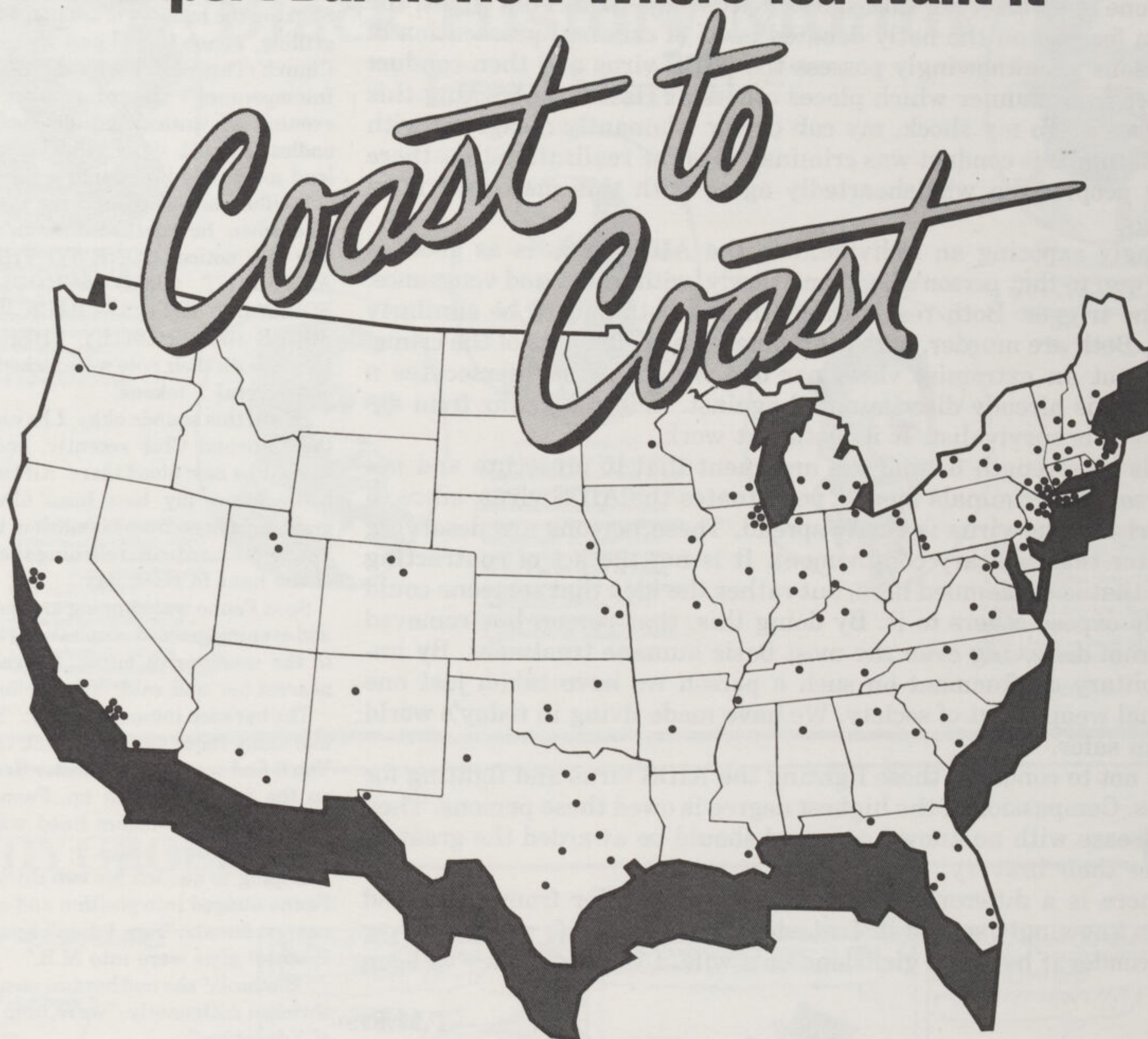


Next RECORD:

March 4, 1988
Happy Leap Year!

Wanted:
Baseball Memorabilia &
Baseball Cards
Autographs of Presidents
and Famous People
Political Pins, Ribbons,
and Banners
Old Stocks & Bonds
High Prices Paid
PAUL J. LONGO, BOX 490-HL,
SOUTH ORLEANS, MASSACHUSETTS
02662
(617) 255-5482

Expert Bar Review Where You Want It



**Over 100 Centers Nationwide Offering
Proven Preparation For The Bar Exams Of:**

California
Colorado
Connecticut
Dist. of Columbia

Florida
Illinois
Maine
Maryland

Massachusetts
Michigan
New Hampshire
New Jersey

New Mexico
New York
Pennsylvania
Rhode Island

Texas
Vermont
Virginia



(800) 343-9188 outside MA (800) 453-2266 within MA
(617) 742-3900 in Boston (202) 429-9774 in D.C.

© 1987 Kaplan - SMH

AIDS & Criminal Law

A cab ride in any town is often a time for a quick conversation between a driver and his fare. On a recent Boston cab ride, the taxi's radio was tuned to one of a variety of talk shows discussing AIDS. That night, the discussion focused on the hotly debated issue of criminal prosecution of those persons who knowingly possess the AIDS virus and then conduct themselves in a manner which places others at risk of contracting this deadly disease. To my shock, my cab driver adamantly disagreed with the notion that this conduct was criminal. It is the realization that there are more people who wholeheartedly agree with this man that is so horrifying.

Knowingly exposing an individual to the AIDS virus is as good as putting a gun to that person's head and slowly, with intent and vengeance, pulling the trigger. Both result in death and both should be similarly punished. Both are murder, with all the necessary elements of the crime.

This is not an extremist view, nor one which further persecutes a group which is already discriminated against. Indeed it is far from extremist — it is survivalist. It is justice at work.

There is no strength behind the argument that to prosecute and jail these persons as criminals merely perpetuates the AIDS virus, since in today's prisons the virus is easily spread. These persons are deserving of no better than solitary confinement. It is not the act of contracting the virus that is condemned here, but rather the idea that someone could knowingly expose others to it. By doing this, that person has removed himself from deserving even the most basic humane treatment. By imposing solitary confinement on such a person we have taken just one more lethal weapon out of society. We have made living in today's world that much safer.

This is not to condemn those fighting the AIDS virus and fighting for their lives. Compassion of the highest degree is owed these persons. They fight a disease with no known cure and should be awarded the greatest respect for their bravery.

But, there is a difference between those who suffer from AIDS and those who knowingly spread it. I wonder what sort of life my cab driver leads. I wonder if he has a girlfriend or a wife. I wonder if they've been tested.

—T.M.F.

Fenno

Follen Street was gonna be rocking again. Shaking the memory of another Phil Areeda grilling, Fenno jogged past the Scientology Church (This week's sermon: "Gluttony and Intemperance") toward another Saturday evening of anticipated debauchery with endless alcohol, ditzy Wheaton chicks and loud music. He broke into a sprint.

Disillusionment crossed the law student's face when he reached Lincoln's Inn and saw the notice: GONE TO THE "JOINT ARROGANT GRAD SCHOOLS SEMI-FORMAL FORMAL" — BACK WHEN WE SCORE (OR SHORTLY THEREAFTER)! Underneath their note were tacked directions and several T tokens.

"Well, this sounds okay. I haven't been to the Hahvahd Club recently, and anyway, there'll be new blood there. All the cute law babes know my best lines already." So, grabbing a brew from his stash in the bushes, Fenno ventured out, relishing the challenge of the hunt in Back Bay.

Soon Fenno was slipping around tuxedoed and evening-gowned couples swaying politely to the unoffensive music. He raced to the nearest bar and said, "Gimme an M.B."

The barkeep intoned nasally: "We haven't had many requests for top shelf tonight, sir. You'll find our cache of Meister Brau upstairs on the left." Glancing up, Fenno saw the staircase — bannisters lined with thirsty-looking Crimson belles.

Hoping to quench his two thirsts at once, Fenno nudged into position and queried the nearest female: "Say, I didn't know that you B-school girls were into M.B."

"B-school!," she and her two nearest cohorts shrieked indignantly, "we're from the School of Education."

Hearing the E-word, Fenno recoiled in terror, slipped on the step, and then tumbled to the landing below. The women rushed to his side, and in true Florence Nightingale tradition, tended to the fallen idol. The future schoolmarm knelt by Fenno's bruised body. "Cute . . . but clumsy," she murmured while swathing his perspiring brow. "And so much more virile than these other penguin clones. I bet his teachers can't get enough of him!" The tall blonde gasped to her friend, "Quick, get him some brew."

Upon tasting the amber liquid, Fenno revived. "Sweet angel of mercy, I must be in Valhalla. I never knew that I'd be spending all of eternity with aspiring teachers."

"Silly Fenno," she chortled. And then, with a come-hither look, whispered, "But I can teach you how to get to heaven."

Fenno thought, "with education like this, it's enough to make a guy not want to graduate."

HARVARD LAW RECORD

EDITOR IN CHIEF Tegan M. Flynn
MANAGING EDITORS Jeff Gershowitz, Greg Herbert
NEWS EDITORS Dorothy Mitchell, Chris Crain
FEATURE EDITOR Rick Genow
BUSINESS MANAGER Marla Becker
COMMENTARY EDITOR Mike Reilly
MANAGING EDITOR EMERITUS Jonathan Grunzweig
STAFF: Aoki, Tom Bilello, Luke Cole, Fenno, Erick Hachenburg,
Karyn Langhorne, Julia A. Loewy, Troy Morgan, Andrew Pollis,
Earll Pott, Lauren Ruby, David Snouffer
PHOTO EDITORS Sal Casente, Kevin Reed
PHOTO STAFF Bob Gerber, Patricia Lee, Pauline Scalvino

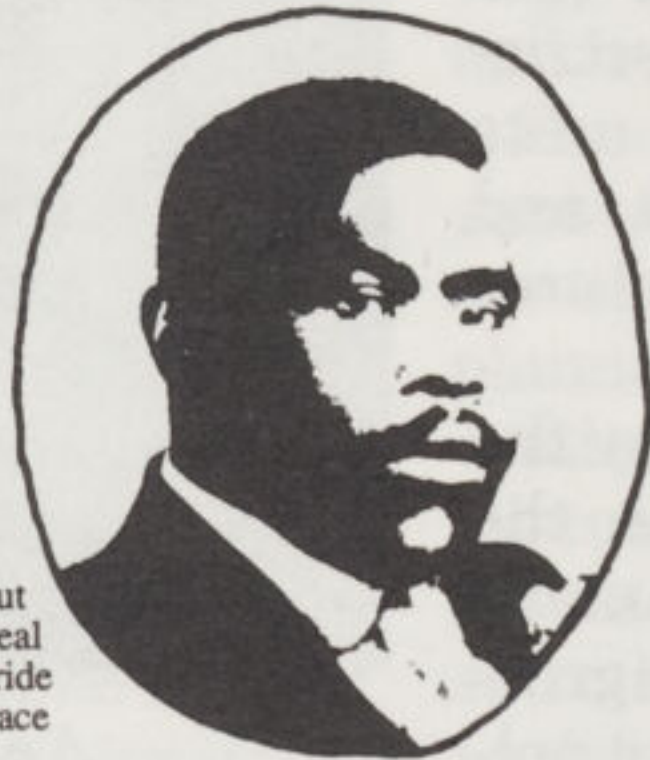


Celebrate Black History Month Every Month!



That submission on the part of the slave has ceased to be a virtue is very evident... every slavehunter who meets a bloody death in his infernal business, is an argument in favor of the manhood of our race.

-- Frederick Douglass



...the Negro should without compromise or apology appeal to the same spirit of racial pride and love as the great white race is doing for its own preservation, so that while others are raising the cry of a white America, a white Canada, a white Australia, we also without reservation raise the cry of a "Black Africa."

-- Marcus Garvey



... we do not remember nor try to learn that in back of the industrial revolution, out of the experiences of which classical economics arose, lay African slavery, and that it was through the purchase of slaves in the open market, where there was no floor to the price of labor, that the conception of labor as a commodity, and not as the effort of human beings, arose and became an axiom in modern industry.

-- W.E.B. DuBois



The American Negro has the great advantage of having never believed that collection of myths to which white Americans cling: that their ancestors were all freedom-loving heroes, that they were born in the greatest country the world has ever seen... Negroes know far more about white Americans than that ...

-- James Baldwin

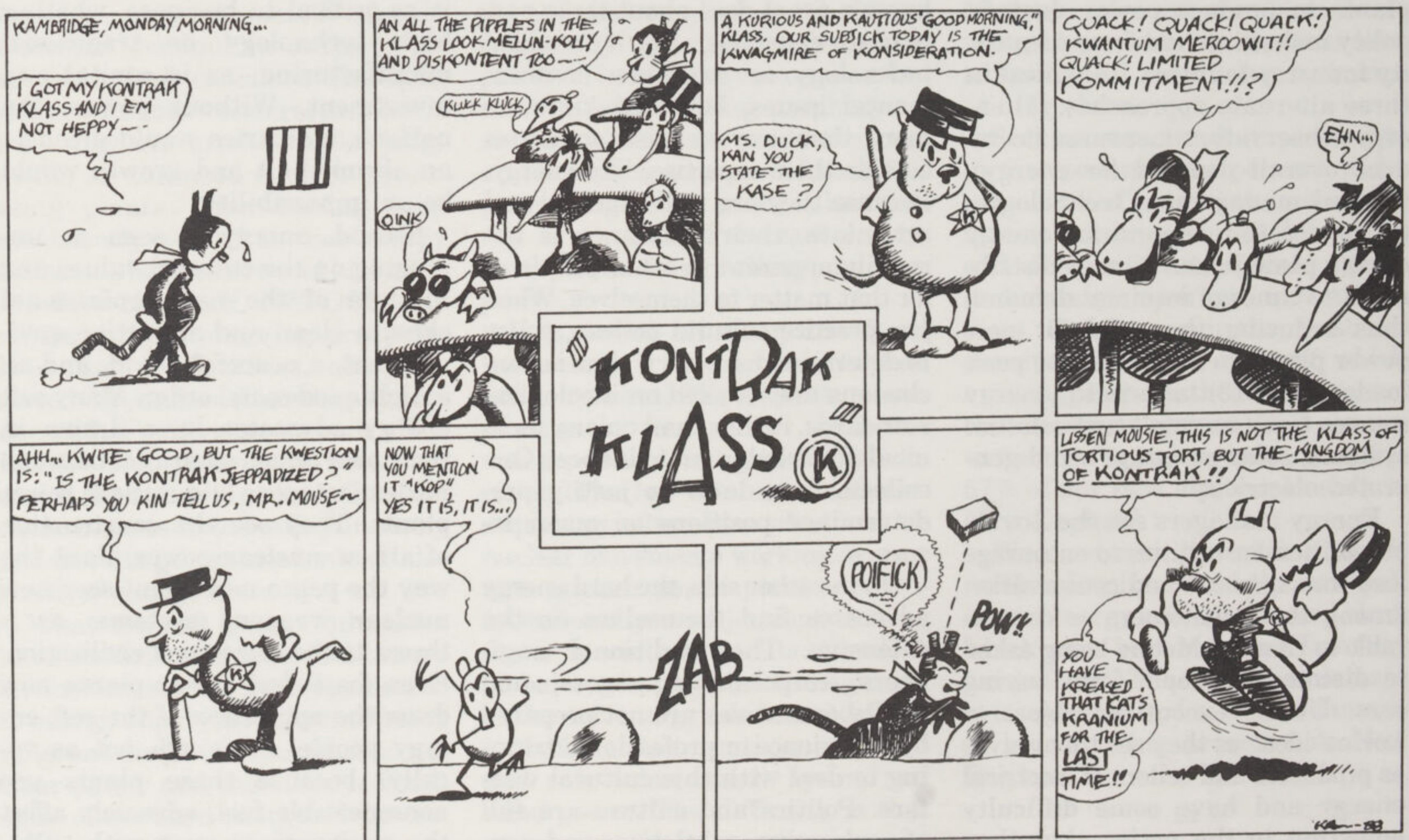


You don't stick a knife in a man's back nine inches and then pull it out six inches and say you're making progress.

-- Malcolm X

STUDY GROUP

by KA



Future Electricity Shortages Can Be Avoided

Andrew Natsios is the Executive Director of the Northeast Public Power Association (NEPPA)

Before the rise in oil prices early in the 1970s, the energy business was left to business, and staffs of economists and engineers who made decisions with little regard for politics. In the aftermath of the oil price-shock, however, energy has become a political issue, making compromise and accommodation more and more difficult. On this ideological background, cultural and political values which have little to do with energy are now applied to energy decision-making, frequently with undesirable consequences.

Ten years ago, in a now celebrated article in *Foreign Affairs*, British writer Amory Lovins lobbed an intellectual bomb at the energy industry when he divided policy makers into two contending factions — the hard vs. soft energy advocates. Lovins, the guru of the soft energy position, believed that we did not need to build new generating plants to produce power. Instead policy makers should force the utility industry to invest its capital in three alternate approaches: (1) energy conservation measures (to reduce overall demand for energy), (2) load management technologies (to reduce the demand for energy during peak demand and redistribute it to times of minimal demand, thus reducing the need for new power plants to accommodate peak loads), and (3) alternate energy sources (such as small hydroelectric systems, solar power, or wind-generated electricity).

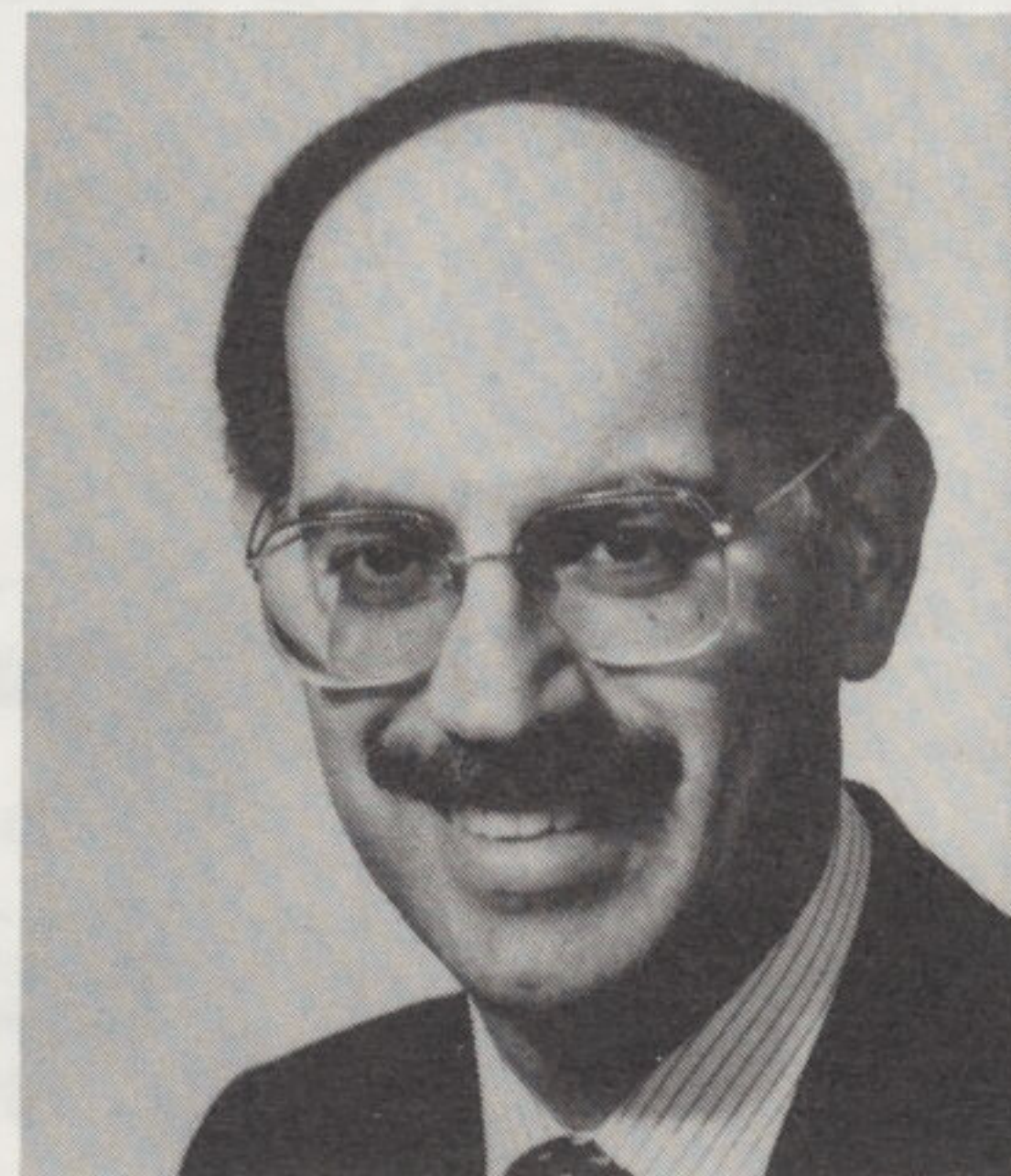
Energy managers see the Lovins proposition for utilities to encourage load management and conservation among their customers as comparable to General Motors being asked to discourage people from buying cars. Utility executives object to Lovins' ideas as they see themselves as producers and sellers of electrical energy and have some difficulty adjusting to the notion that they

should be telling their customers to use less of what the industry produces, namely electricity.

The hard energy proponents, as conceived by Lovins, advocate the building of more large power plants — fossil fuel, nuclear and hydroelectric as the only way to deal with the increasing demand for electricity. These large generating units require massive investment and complex organizational structures to build and run.

Cultural politics practiced by the soft energy advocates make the traditional mechanisms in American politics for resolving disagreements difficult to employ. The politics of compromise, accommodation, and incremental improvements are out of style: one does not compromise on the issues of world peace, human rights, and the global environment. Mark Twain once remarked that there is nothing worse than an expert off his subject. The soft professionals, in our new information-based economy, may know a great deal about their particular expertise, be it medical technology or case law environmental issues, but they know no more than anyone else on issues outside their expertise, like energy. Because they are well-educated and articulate, their ignorance is not readily apparent to other people or for that matter to themselves. When you practice cultural politics, policy is determined *a priori*, that is conclusions are reached on ideological standards, rather than on any technical knowledge or evidence. One collects facts later to justify predetermined positions on major issues.

On the other side, the hard energy advocates find themselves on the defensive. The traditional engineers, corporate managers, and utility executives are not prepared by experience or professional training to deal with this cultural warfare. Politics and culture are full of ambiguity, subtleties, and con-



Andrew Natsios

traditions. Politicians accept this as part of their business, but the hard energy sector finds it confusing and frustrating.

Energy has been drawn into this cultural war between the soft professional class and the hard corporate and entrepreneurial class for two reasons. First, electric energy is as critical to business, whether high technology or traditional manufacturing, as is capital and investment. Without power, the nation's industries would grind to an abrupt halt and growth would be an impossibility.

Second, energy is seen as impinging on the cultural values and lifestyle of the new professional class: a clean and attractive environment, a peaceful world, and an enlightened social order. Many soft energy advocates have drawn in their own minds a parallel between nuclear weapons and nuclear power plants. They see the construction of a new nuclear power plant the way the peace movement sees new nuclear weapons systems: as a threat to the survival of civilization. Even fossil-fuel power plants now draw the opposition of the soft energy people, (although not as vocally) because these plants use nonrenewable fuel, adversely affect the environment even with pollu-

Off the Record

Only By Construction Of Nuclear Plants Now

by Andrew Natsios

tion control equipment, and they symbolically represent the corporate America the soft professionals so distrust.

The consequences of this new politics of energy will soon become clear as excess electrical generating capacity in the United States is used up near the end of the century and new power plants will have to be built. The past six months of energy shortages in New England have been a foreshadowing of what will happen nationally in another decade. The warfare between hard and soft energy positions has caused a lengthening of the lead time to build new plants and increased construction costs. At the same time, the regulatory process grows more complex, the environmental protection rules more voluminous, politics of energy more emotional, and legal battles more frequent.

And energy planners in the utility industry have become so shell-shocked from criticism of the soft energy advocates, they have deliberately underestimated future electrical demand in order to respond to their criticism. The difficulty with these underestimates is that they are used to make judgments on the need for new generating plants. After having been consistently too high in their energy estimates both before and just after the first oil shock, NEPOOL, the central utility planning group for New England utilities, over corrected by underestimating future demand. For five years now, NEPOOL's projections have been well under the actual figures lulling decision makers in the utility industry and in state government into a false sense of energy security.

What the soft energy advocates have overlooked in their zeal to save civilization is that their approaches to energy supply have just as many inherent disadvantages as does nuclear power and the other technologies of the hard energy advocates. All energy technologies have in-

herent weaknesses and strengths; none are adequate by themselves.

A balanced energy policy looks to both hard and soft solutions. But the debate over alternate energy strategies has been infused with an element of emotionalism and ideology which makes for bad decision-making and bad policy.

Reacting once again to the organized opposition of the soft energy movement to nuclear power, utility planners a decade ago began investing in more fossil fuel plants. Virtually no new nuclear power plants have been approved for construction for some years now. Scientists now warn that the widespread use of fossil fuel has several undesirable side effects: damage to the ozone layer, the greenhouse effect, an increase in respiratory illnesses and acid rain. And, while many in the soft energy movement say nuclear plants aren't being built because of their excessive costs, they don't explain that one of the major costs of building these plants are the regulatory and legal delays caused by opponents of nuclear power. Their observation has become a self-fulfilling prophecy. A strong case can be made that the accelerated construction of fossil fuel generating plants over the last decade is a result of the soft energy movement stonewalling nuclear power.

It is not at all clear that fossil fuel energy is cleaner or safer than nuclear power. The decision to emphasize the former over the latter was a political, not a technical, decision. The law of unintended consequences is here at work: the anti-nuclear movements working against new nuclear power plants are unintentionally a major contributing factor to acid rain and its attendant global environmental damage.

The soft energy advocates' defense is that their alternatives are clean and safe solar, small hydro, and wind power. The difficulty is that no responsible energy economist

believes that a major proportion of the country's energy can come from these sources, certainly not enough to take the place of fossil fuel. Alternate technologies are not economical to build, given the declining price of oil, and even under the most optimistic scenario were oil prices higher, they could not produce more than 10% of the nation's energy supply.

This leaves conservation and load management as the only other alternatives. They are indeed attractive alternatives: entirely safe environmentally and some are even cost-effective. However, both conservation and load management, like all other simple energy solutions, display serious disadvantages. Federal and state regulatory policy make it very difficult for utilities to recover the cost of this solution in their rate base, so they are less than enthused about promoting load management. While this may change, it hasn't as yet. There are studies which show that consumers, after several years of inconvenience using these conservation and load technologies, stop using or maintaining them.

Serious structural impediments in the economy also prevent widespread use of conservation and load management, e.g. rental housing and offices without separate meters and heavy up-front investment costs. Finally, even the most expansive estimates, most of which are exaggerations themselves, agree that load management and conservation can't produce more than 25-57% of our new electrical needs in New England.

We need new generating plants in New England, and the new politics of energy are a major road block which must be overcome before they can be built. The current stalemate is intolerable and a serious damage to our thriving economy in New England.



Study Reveals Library & Student Dorm Problems

(Continued from Page 1)

such a drive and other funding options, Sander said.

Even once recommended, a proposed fund drive would have to win faculty support, according to Associate Dean Andrew Kaufman '54, who said that "a fund drive is within everyone's contemplation." The six committees involved with the process are scheduled to make preliminary long-range planning recommendations by the end of the school year, Kaufman said.

The most pressing need identified yet by the study, and likely the most expensive to correct, is the space problem in Langdell Library, according to Professor Charles Donahue, chairman of the library committee. The committee will be considering four major options for the library, based on projections that future demand will require space for approximately 1.7 million volumes and 1,200 reader stations.

The space limitations and technical problems of the current library are so complex that "some people think the problems are never going to be solved with Langdell as the structure" and they advocate the construction of a whole new library, according to Donahue. That option, he said, has huge shortcomings, including where to build a new library, how to pay the enormous price tag, and what to do with Langdell, now an historic landmark.

Because of these weaknesses, the committee is devoting its most serious consideration to three less extravagant alternatives, Donahue said.

Architects At Work

The least ambitious of the three options is a proposal that Donahue said would remedy just those areas where "we all agree something has to be done." This option would include the installation of a modern heating, air-conditioning, and ventilation system "for the books and the people," a renovated reading room, a new electric substation to deal with increased power demands,

and a new microform room. These projects are so basic, Donahue suggested, that any recommendation from his committee would include them.

Another option would call for the addition of a connection between Langdell and the International Legal Studies (ILS) building, which would consist of underground book storage space and the creation of an above-ground floor of staff space. Donahue said architects are working on drafts of such a proposal and will present them to the committee, probably by mid-March.

The most significant of the three options under serious consideration entails the construction of an entirely new wing to Langdell. Donahue said that to accomplish this architecturally, the ILS building would probably be razed (due to incompatible floor levels) and a new wing would be built to connect Langdell North with Langdell West.

Tentative architectural sketches accomplishing this final option have already been completed and "a lot of people have seen them," according to Donahue, who would not release the documents for publication. "Nothing about the concept is secret," he added, "in fact I would love to get some reaction. It's just that the drawings do things that are too tentative to publish."

Donahue said he had "no sense yet" on which option would be recommended by the library committee, but added that "if the library's only need was space, or bricks and mortar, and if I could be sure the more ambitious plan will work properly — and I'm not sure it would — then I would be prepared to support [the construction of a new wing]."

"I'm just not sure we can get by without doing something pretty major," he cautioned, adding that "something is going to have to be done about library space very soon. Whether it's possible to oil the squeakiest wheels and limp along for another ten years, I don't know."

All of the options under serious consideration would likely require a capital campaign to meet costs,

Donahue said, adding that if the new wing were the project of choice, the construction would probably consume all the money available to the library from even a major funding effort. "There is, at some point, a maximum amount you are able to raise in a fund drive," he said, "and library needs, however real, are not terribly sexy."

"Even if we don't go ahead with a capital campaign, this [review] is worth doing, just to lay the groundwork for what gets done piecemeal," he said.

Student Dorm Problems

The limited availability of student housing, another major concern of the internal review, has transcended its importance as a quality of life issue and now threatens the school's attractiveness to potential students, according to Kaufman.

"One big problem is the impact on the school of the growing, tight, expensive housing market within the area students typically live," Kaufman said.

Kaufman, who chairs the building committee, is considering a number of approaches to the housing problem, including construction of new dormitories, and major renovation of the Graduate Student Complex and Wyeth dormitories.

In addition to the library and student dormitories, the shortage of classroom space is another major concern under study, Kaufman said.

A number of small classes are now being taught in large classrooms, and the committee is considering the possibility of building an addition of several new smaller classrooms or fitting them within existing buildings.

Some of the pressure on existing classroom space could be reduced, according to Kaufman, if it were not for the "lack of inclination on the part of some faculty and students to hold class at times formally in the schedule but which are regarded as undesirable times to teach." Early morning and late-

(Continued on Page 14)

SPRING SEMESTER DISCOUNT

**ATTENTION:
CLASSES OF 1988, 1989 & 1990**

SAVE \$100

**WHEN YOU REGISTER EARLY FOR
BAR/BRI'S 1988, 1989 OR 1990
NEW YORK, NEW JERSEY, MASSACHUSETTS,
CONNECTICUT, NEW HAMPSHIRE, MAINE
OR VERMONT BAR REVIEW.**

**YOU GET THE NATION'S LARGEST
AND MOST PERSONALIZED BAR REVIEW
AND YOU SAVE \$100 OFF THE CURRENT TUITION.**

**• PLEASE NOTE: ANTICIPATED 1989 TUITION IS \$1075 IN NEW YORK,
\$950 IN NEW ENGLAND AND \$825 IN NEW JERSEY.**

**A \$50 REGISTRATION FEE SECURES THE CURRENT DISCOUNT TUITION
OF \$875 IN NEW YORK, \$750 IN NEW ENGLAND AND \$650 IN NEW JERSEY.**

BAR/BRI

BAR REVIEW

THE BAR REVIEW THAT CARES ABOUT YOU.™

**415 SEVENTH AVENUE, SUITE 62
NEW YORK, N.Y. 10001
(212) 594-3696 (201) 623-3363**

**160 COMMONWEALTH AVENUE
BOSTON, MASS. 02116
(617) 437-1171 (203) 724-3910**

© 1988 BAR/BRI

Nader Criticizes Law Students' Choices

By Troy Morgan

Ralph Nader '58 addressed a standing room only crowd on Tues., Feb. 9. Sponsored by the HLS Graduate Program, Nader addressed the HLS audience after finishing a speech on the other side of the river at the Harvard Business School.

Nader critiqued the HLS program as well as its mythology, complaining that the one thing HLS students are not encouraged to question is "the role of the corporate law firm in our legal system. What is the purpose of Harvard Law School, individual success or the needs of society?"

Nader claimed the job market shapes the law school curriculum, with the exception of a few "left-overs" from the 1960s.

Throughout his address, Nader compared his years at HLS with the law school experience today. In his day, Nader said, there was no "poverty law course." Instead, students were taught "creditors' rights," he said. "In a class called 'Landlord and Tenant,' he quipped, 'I kept waiting for the tenant.'"

Nader emphasized that criminal law is "in the streets, not in the suites." A Harvard law major in "corporate crime" would not prove too successful in a job interview, he noted.

"We weren't told that Delaware was a 'corporate Reno.' We weren't told that General Motors could buy Delaware in a weekend, if DuPont was willing to sell it," Nader said.

Nader described the Socratic method of teaching as "professional intellectual arrogance" turned in-

to an "educational device," and claimed HLS students were victims of "empirical starvation," in spite of case studies.

Apathy Decried

Nader expressed concern that there are no civil rights demonstrations or social movements, but instead that there exists a campus tranquility in spite of the heightened risk in the world today from "grave injustices and abuses of law that raise challenges against the rule of law."

Nader claimed that students go into corporate practice because "people are willing to trivialize their talents" in modest endeavors. He said that one must "love to advance justice so much that no other alternative temptations" will dissuade one from that purpose.

"You are being transformed into trade school students by an accident that happens to be purposeful," Nader said. He suggested that students put aside salary considerations, decide what kind of work they want to do, and then add money back into their economic reality.

He offered several areas for legal entrepreneurship, including group buyer operations, whose members get low prices for insurance and health care through lawyers; legal assistance in the effort to save the Amazon; and fighting corporate crime and regulating corporate chartering.

The more one gets involved with public interest work, Nader said, "the less significant your personal problems and anxieties become, and some of them even disappear."

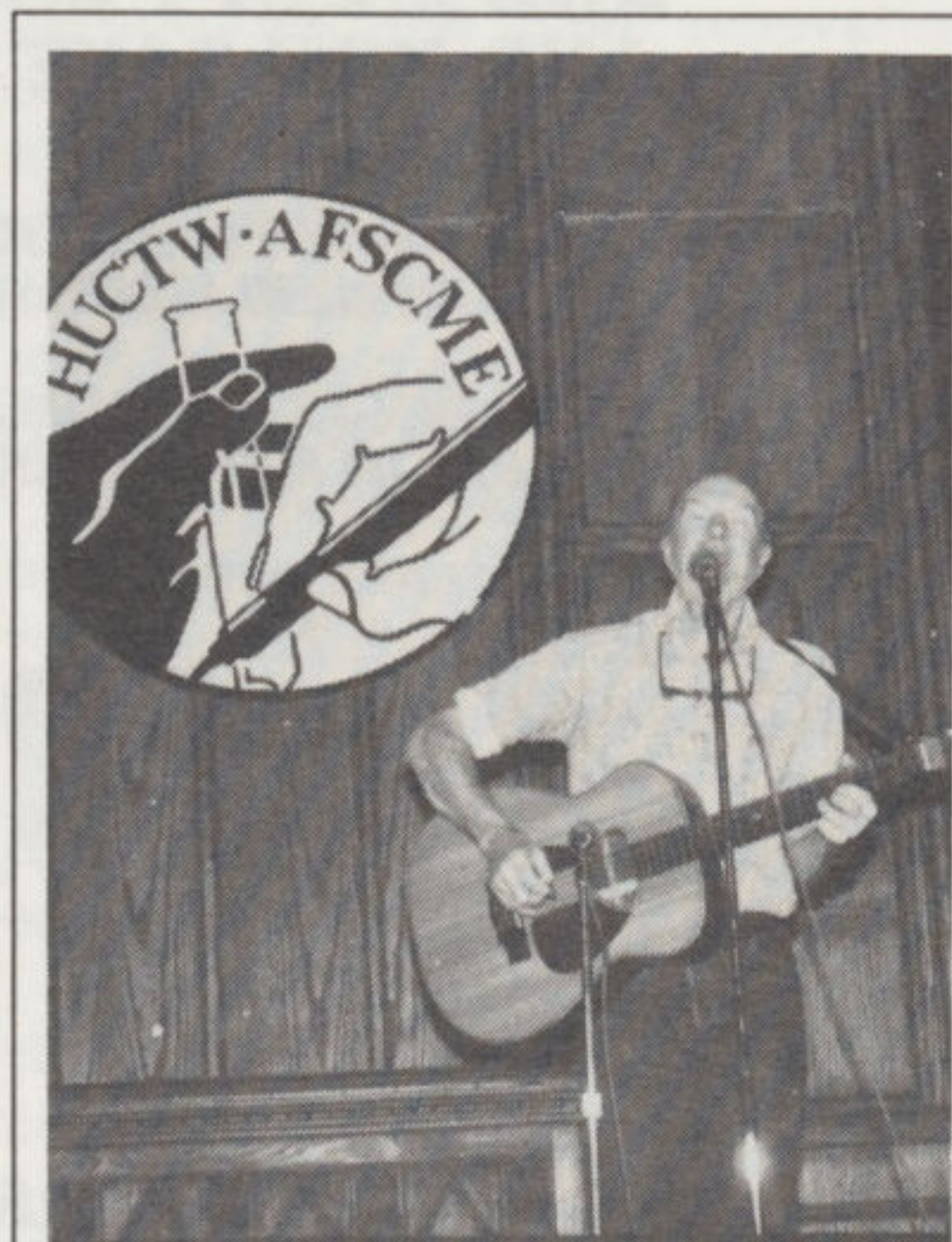


Luke Cole

Ralph Nader '58 returns with advice.

Nader offered some practical advice for the interviewing students, telling them to interview with firms that they do not want to work for and "give them a go." He suggested students "ask provocative questions," such as, "Is it soup kitchen pro bono, or can I get corporate crime? It will be good for them, and you will feel better when you go out."

✽



Kevin Reed

Pete Seeger played for a crowd of 800 at a rally for HUCTW (Harvard Union of Clerical and Technical Workers) on February 22.

Capital Fund Drive Is Possible

(Continued from Page 12)

afternoon blocks remain relatively unused now, he said.

As for faculty office space, the need for new accommodations depends on "assumptions about whether the faculty is going to grow or not," Kaufman said, adding that such an

assumption depends in turn on whether the size of the student body is to be reduced.

Decisions on the size of the student body and the proper student/faculty ratio are being considered by the Educational Planning Committee, headed by Sander.

✽

Attention Summer Associates.

LEXIS[®] Fast Track[™] Makes You A Winner.

The quality of work you do for your law firm can influence the work you'll be assigned to do.

That's why the LEXIS[®] Fast Track[™] program goes beyond most courses offered in law school.

Taught by a LEXIS representative, the program concentrates on areas of legal research that will prove invaluable to your firm. And to you.

If you've never used the LEXIS service, Fast Track training can get you "up-to-speed" before you report to your firm. If you already have advanced LEXIS research skills, the new techniques you learn will help you move ahead even faster.

And the LEXIS Fast Track program doesn't stop when you arrive at your firm. Individualized sessions will fine-tune your skills to specific areas of law you'll be researching.

The sessions are free and begin in March. To sign up for a basic or advanced session, call 1-800-227-4908. It could be the start of a winning career.

**LEXIS[®]
Fast Track[™]
'88 Program.**

LEXIS is a registered trademark and service mark of Mead Data Central, Inc., and registered with the U.S. Patent and Trademark Office. FAST TRACK is a registered trademark of Mead Data Central, Inc.

Catholic Church Finances Nascent Legal Clinic

(Continued from Page 4)

able to qualify for federally funded legal aid, nor to afford to pay for an attorney on their own. LSSA hopes to bridge this gap.

In addition to their ties to San Antonio, Dooling and Lopez also chose the city out of a desire to serve the Hispanic community. According to the 1980 census, 64 percent of all San Antonians are Hispanic. Dooling, a Brother in the Congregation of Holy Cross for the past 28 years, estimated that 95 percent of San Antonio's Hispanic population are Catholic.

This makes LSSA's affiliation with the Catholic Church invaluable in terms of outreach and gaining trust from the Hispanic community, as the culture emphasizes trust in the Church, according to

Dooling. In addition to the initial seed money and the use of Church facilities for office space, LSSA will also be able to gain non-profit status through its affiliation with the Church.

LSSA Promises Independence

While the Catholic Church is providing the initial financial support for LSSA, both Dooling and Lopez have been assured by Archbishop Flores that his organization will not attempt to exercise any substantive control over the LSSA attorneys. Lopez commented that in dealing with their clients, LSSA attorneys will be held accountable only to the Code of Professional Responsibility, and not to the Catholic Church.

Dooling noted that Legal Services

of San Antonio will have an elected board of directors, comprised primarily of attorneys, to make all of LSSA's policy decisions, thereby assuring autonomy from the church in that respect.

The Archdiocese of San Antonio has committed \$75,000 over a two year period to help establish LSSA, while the Congregation of Holy Cross will provide an additional \$50,000. Lopez and Dooling hope to secure funding from various private sources in the future, but also plan to utilize a "sliding scale" fee schedule based on the client's ability to pay in order to make LSSA more self-sufficient.

While admitting they are currently uncertain, both envision the Church playing less of a role, at least financially, in the long run. Lopez is confident that with enough support, Legal Services of San Antonio will "expand to become a significant legal institution in the city."

HARVARD LAW RECORD (ISSN 0017-8101) published weekly during school year by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617) 495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$6.00 year distributed at the Law School. Individual copies including back issues: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass. and additional mailing offices.

Copyright 1988 by the Harvard Law School Record Corporation and by the contributors.

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

Each alumnus/a receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$5.80 of H.L.S.A. annual dues are used to purchase the Record subscription he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began in April 1986 and ends in March 1987 will purchase a subscription that begins in September 1986 and expires in May 1987, and so on in following years.

Address changes for Alumni subscribers (all subscribers with computer-printed address labels) should be sent directly to the Harvard Law School Association, Cambridge, MA 02138. Prompt notification will save the RECORD the postage which is charged for returning incorrectly addressed issues. Thank you.

RETURN ADDRESS

HARVARD LAW RECORD
HARVARD LAW SCHOOL ASSOCIATION
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138-9984

SECOND-CLASS POSTAGE

PAID AT BOSTON, MA
AND ADDITIONAL OFFICES

Professional Dry Cleaning and Shirt Laundry

at

Rite-Way
DRY CLEANERS

547-8008

4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

Koby
Antupit
PHOTOGRAPHERS

Creative Portraits
Resume & Publicity
Photographs
Instant Color Passports

Harvard Square
8 John F. Kennedy St.,
(formerly Boylston St.)
Cambridge

547-7552