



Harvard Law Record

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Profs To Choose Dean Choice Reps

By Chris Crain

The HLS faculty voted last week to assign to three professors the important and potentially divisive task of recommending the six professors who will make up the search committee to serve as the faculty voice in the selection of the new HLS dean.

Professors Todd Rakoff '75, David Shapiro '57, and Lewis Sargentich '70 will offer the slate of six professors who will assist President Derek Bok '54 in the process of replacing current Dean James Vorenberg '51, who announced April 25 his plans to resign effective next summer.

Rakoff and Shapiro refused to discuss the faculty meeting or the planned selection process, while Sargentich was unavailable for comment.

Vorenberg said there was "some discussion" at the April 27 faculty meeting about the proper faculty role in dean selection, but said that the meeting centered on "the procedure for selecting a search committee" of faculty members. The faculty ultimately agreed to allow an "attempt by three professors to come up with a slate that will be generally satisfactory to the faculty," he said.

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File Photo

Prof. Charles Nesson '63 will head the new Legal Writing Workshop for 1Ls.

'No-Ames' Section Set For '89

By Erick Hachenburg

One out of every four students in the class of 1991 will not be participating in the Ames Moot Court program. Nor will they be taking a first-year elective or a legal research training course. Instead, one of the four first-year sections will take the Legal Writing Workshop — a 14-week spring program in research, writing and advocacy directed by Professor Charles Nesson '63.

The new program, approved by all but two faculty members, is designed to "dramatically improve legal research, writing and advocacy"

among first-year students, said Nesson. "It's a big undertaking. I hope we can pull it off," he added.

The proposal was drafted by the Board of Student Advisers (BSA) after Nesson came to the group to ask for their assistance in reforming the legal research experience.

The expanded legal research and writing component was supported by Dean James Vorenberg '51, who said the impetus for the program was "that quite a few people have been unhappy with first-year Ames, feeling ... it fell short of a real appellate experience."

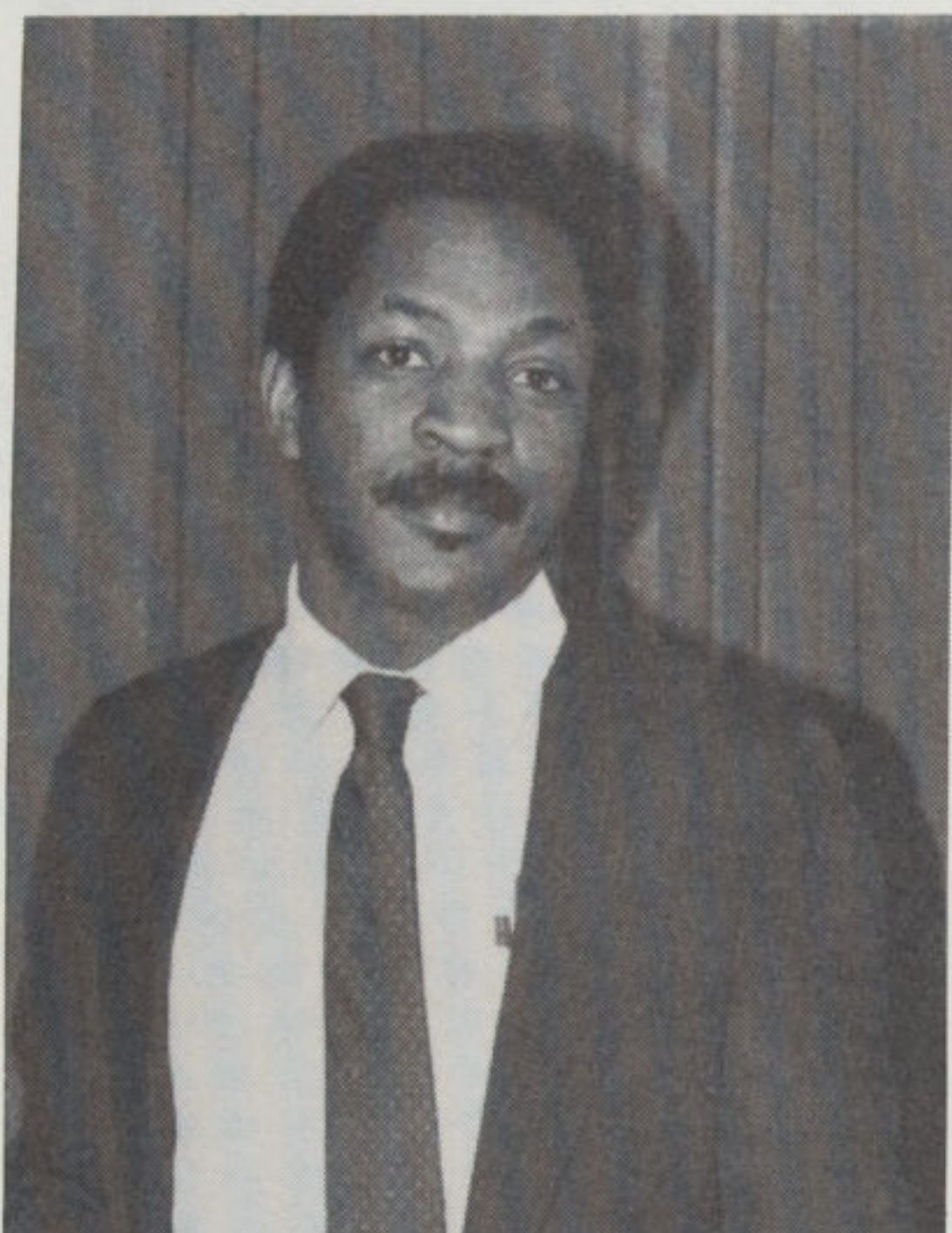
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Students Push For More Criminal Law



File Photo

Visiting Prof. Charles Ogletree

By Dan Kroll

Criminal law gets short shrift at HLS, according to a group of law students who are circulating a letter among the student body to be sent to the administration and to members of the criminal law faculty. The April 27th letter stated that HLS should make "a greater commitment to criminal law course work and clinical offerings."

The response from the students "has been incredible" so far, said Jackie Baillargeon, 3L, who, along with Scott Christie, 2L, Christopher Bacon, 1L, and David Wright, 1L, organized the effort to prompt HLS to broaden its criminal law program.

Christie said that over 300 students have already signed and returned the letters, and that responses are "still trickling in."

"The letter was motivated by what we see as a shocking disregard of the interest in criminal law at HLS," said Christie, adding that he thought the student interest had "never really been brought to [the administration's] attention through a concentrated effort. We want to show that there is strong student support" for expanded criminal law course offerings and clinical programs.

The letter also mentions that it was inspired in large part by the

"recent news that Charles Ogletree '78 will not be teaching at HLS next year." According to the letter, the departure of Ogletree, a visiting professor from practice who teaches courses in criminal law and trial advocacy, "is indicative of the school's lack of commitment towards promoting criminal practice."

Ogletree confirmed that he will be returning to his law firm in Washington, D.C. next year, although he said that he will be at HLS to conduct the Trial Advocacy Workshop in fall 1988. Ogletree's decision was not motivated by a lack of encouragement from the faculty or administration, he said. "Dean Vorenberg asked me to stay" and has been "in constant contact with me," he said, adding that he has also received a substantial amount of support from faculty urging him to consider remaining at HLS. He acknowledged, however, that he remains open to the possibility of returning to HLS at a later date.

Ogletree said he thinks the students' interest in an expanded criminal law program is a valid one, adding that HLS would benefit from developing a "Criminal Justice Institute" to enlarge elements of criminal practice. "If there is a program, I'm sure it would attract the best scholars and practitioners. Harvard knows this, and my sense is that they're about to take this step," he said. Ogletree also stated that he might be interested in playing a significant role in such a program if developed.

Vorenberg declined to speculate as to whether an expanded criminal program at HLS would attract Ogletree or other specialists from practice, but he said that a clinical analogue to the Legal Services Center to deal with criminal cases "would be a great idea. We've talked about it, and I would be very enthusiastic about it."

The students' letter urges HLS to increase its criminal law course offerings and faculty as well as its clinical programs. According to Christie, there are "not enough tenured faculty members teaching upper level courses. Many of the

current faculty are not here full-time, and many have outside interests." Christie said he thinks HLS needs a "continual stream of new professors" who could bring practical and courtroom experience to the criminal law program.

Vorenberg agreed that HLS would benefit from additional professors with practical experience. "I think one of the really important needs of the school is hiring people who have worked in the profession," he said.

Responding to the perceived scarcity of criminal law courses offered next year, Vorenberg said "there are quite a few" courses being offered, citing as examples seminars led by Professors Alan Dershowitz and Philip Heymann '60, Ogletree's Trial Advocacy Workshop, a Law Enforcement course taught by lecturer Nick Littlefield and an Advanced Criminal Law course taught by lecturer Max Stern.

Vorenberg said that due to a "coincidence," he and Professor Lloyd Weinreb '62, who usually teaches a course in Criminal Process, would not be teaching criminal courses next year, but explained that the actual number of courses offered in a given year depends on who is on sabbatical and other factors. Vorenberg added, however, that as a criminal law specialist he would "be happy to see more work in that field. . . . If there is a heavy student demand for a particular course, I would certainly try to offer it."

Weinreb said he thought that in some years there is a shortage of criminal law courses, although "it varies from year to year." He remarked that the interest in his Criminal Process course is usually high enough that it might justify similar course offerings, but that the interest in some other courses is often quite small. "There has been a fairly regular request for other criminal law courses — some years we fill the interest well, others not as well," he said.



SMDJLs Graduate With 3-Year Losing Streak

With a record rivaling the Baltimore Orioles and the Columbia football Lions, the SMDJLs intramural sports team has completed three perfect years of competition. Formed by men living on the fourth floor of Story Hall in 1985-86, the SMDJLs (an acronym for the floor's motto) are the only known team in HLS history to have played three years of intramural sports — football in the fall and softball in the spring — without ever having won a single game. Coach Kent "the Reverend" Wicker, 3L, assessed the squad's achievement: "We had a lot of fun and didn't make any of the other teams feel inferior."

Besides Wicker, other SMDJL diehards include 3Ls Peter "Dick" Csathy, Nick "Potsie" Potter, Scott "Rock Star" Jacobs, Howard "Flowa" Ellin, Allen "Batboy" Hubsch, Joe "Crazy Legs" Dapello, Gregg "Grandpa" Brelsford, Mike "Intense Guy" Reilly, Eric "Marathon Man" Gouliau, and Dave "the Snouffs" Snouffer. Non-Story 4 members are Dayne Myers, Dave Fiol and Val DiViacchi, all 3Ls, and Alan Salle '87, SMDJL pitcher *emeritus*. The team plans to keep training in hopes of starting anew in the alumni reunion league.



Well Hung Jury Beats B-School

By Brett Messing

Some called it the "Battle of Egos." Others called it the "Battle of Future Earning Potential." But whatever you call it, the first annual touch football game between HLS and the Harvard Business School was a blowout.

With a keg on the line, a group of over-the-hill college athletes took to the field hoping to relive past glories. However, 30 seconds into the game, it became clear that the boys from the B-School were in for their worst day since Black Monday.

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MAY 6, 1988



Peter Csathy

1987 SMDJLs: Front row — Scott Jacobs, Allen Hubsch, Eric Gouliau, Joe Dapello. Back row — Alan Salle, Kent Wicker, Nick Potter, Peter Csathy, Mike Reilly, Howard Ellin. (All 3Ls except Salle, '87.)

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Student Coalition Presses for Minority Hiring

By Steve Crawford

Campus minority groups have joined together to meet with Dean James Vorenberg '51 to discuss concrete long-term programs to increase the presence of women and minority faculty members at HLS. Committee members represent La Alianza, the American Indian Law Students Association (AILSAs), the Asian American Law Students Association (AALSA), the Black Law Students Association (BLSA), the Committee on Gay and Lesbian Legal Issues (COGLLI), and the Women's Law Association (WLA).

According to Sung-Hee Suh, 1L and member of AALSA, the groups all have similar goals, but it is "silly to be redundant, silly to be doing separately what we could be doing together." She said that with a representative coalition, "the different groups' efforts can be coordinated" as needed, though it is "definitely understood that each organization can act independently. In fact, it is encouraged."

Currently, HLS has seven women professors, five of whom are tenured, as well as four minority professors, two tenured black males and two untenured black males. Out of the 51 visiting lecturers for 1987-88, there are nine women and five minority group members.

The coalition has undertaken a number of other projects. Letters have been written to Professors David Shapiro '57, David Wilkins '80 and Martha Minow, as leaders of the first year legal methods program, to encourage them to hire more women and minorities as instructors as one step toward increasing the number of women and minorities pursuing careers in legal education.

Furthermore, the coalition has solicited the student body for the names of qualified women and minority faculty candidates so that these names may be passed on to the hiring committee. Suh noted that the students have already relayed some names to the coalition.

In a letter to the dean, the coalition asked for a meeting with him

and members of the Faculty Hiring Committee to discuss ideas and proposals to improve faculty diversity.

The letter included two specific preliminary proposals: "[t]o employ more women/minority practicing attorneys to teach courses, such as Federal Litigation and Trial Advocacy" and "[t]o ensure that the Faculty Hiring Committee includes, at all times, at least one female faculty member and one minority faculty member." The letter, sent to the dean over a week and a half ago, has not yet been answered.

Professor Derrick Bell described the coalition as a "worthwhile effort." Bell, a former member of the minority sub-committee of the faculty appointments committee, said that insistence by students has been the root of all progressive change at Harvard. He noted that the "history of minority hiring is that without that kind of pressure" nothing much happens.

Suh noted that the coalition is hard-pressed to develop more concrete proposals without further information on how the selection process works. Because the administration seldom discloses the actual procedures and criteria used to choose faculty members, "we're so in the dark we can't come up with truly viable programs," she explained.

In Suh's opinion, the coalition will provide the "concrete basis for participation" that the students need to learn about the selection process and to improve it. Suh said that in her opinion the coalition's top priority should be to get the administration to "agree to meet with the coalition on a regular basis throughout the year." Once the hiring procedures are learned, "then we'll know if there is any room for criticism."

Much of the agenda of the coalition depends on the reaction of the administration. "If we don't hear from the dean by the end of the week," Suh stated, "we'll have to figure out what to do then." Suh stressed, however, that the coalition does not wish to be confrontational.

"We want to do all that we can by using a constructive manner. We want a proven track record of not being antagonistic."

Suh denies that the coalition was formed in response to the handling by President Derek Bok '54 of the tenure decision of Asst. Professor Clare Dalton LL.M.'73, but noted that the events surrounding the Dalton incident are characteristic of a larger problem. "The perception is that the students are in the dark," said Suh.

Students become disturbed by a certain administrative decision with a resulting short-term furor, she explained, but as the emotion wanes, "energy dissipates and everyone gets cynical," so that this "continuous spot-by-spot handling doesn't get us anywhere." The student groups involved with the letter "got tired of the emotion and wanted it to be channeled towards something constructive."

Bell said that he thought the faculty appointments committee traditionally fails to recruit enough minorities and women because it adheres too strictly to a "very narrow view of what the school needs are and what the standards for hiring and promotion should be." It wants every candidate to be the editor of the Law Review of Harvard, Yale or Columbia, Bell noted, so that there are "excellent black women that certainly deserved a visit here that have not received a visit."



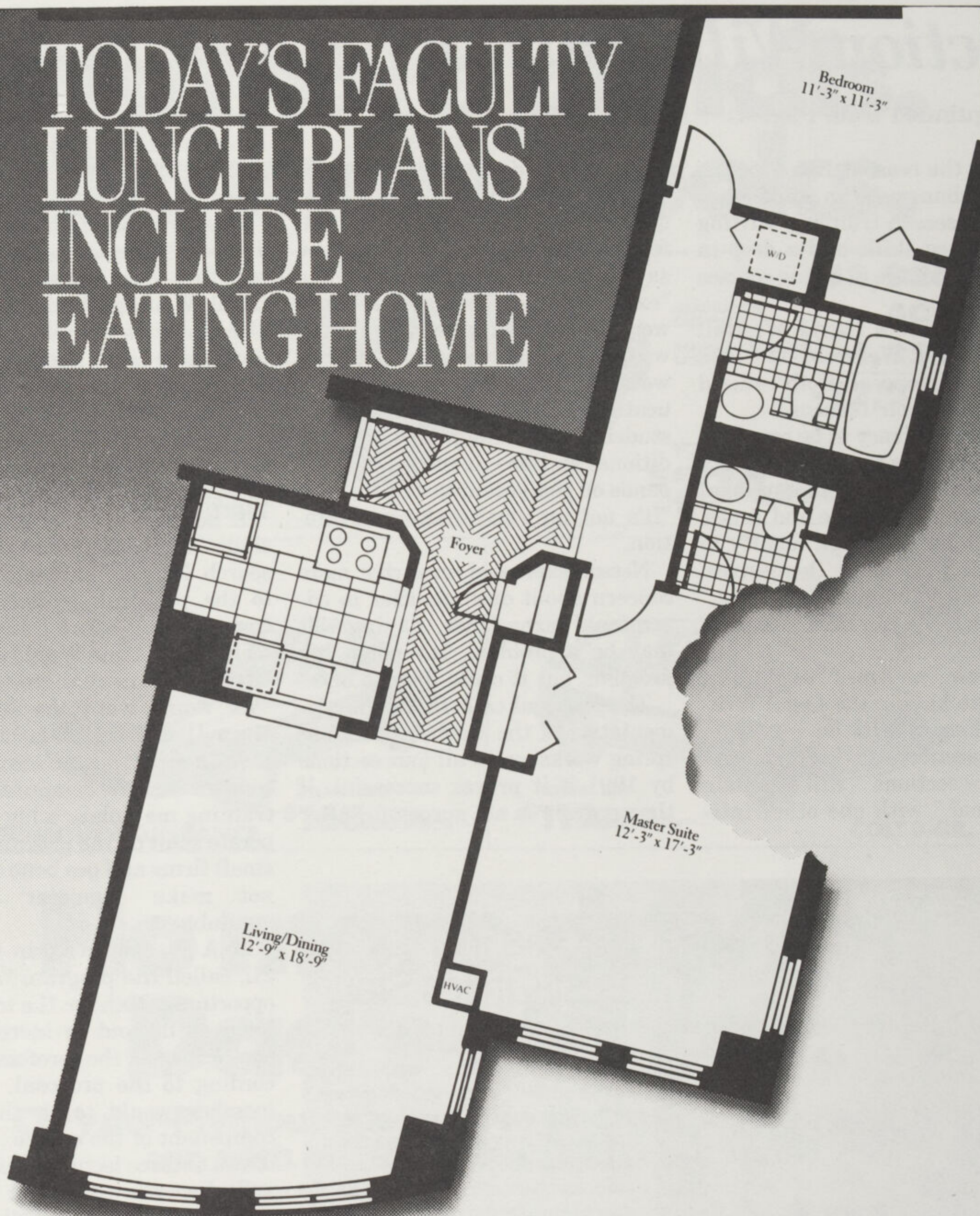
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Section Will Omit LRT, Ames, Elective

(Continued from Page 1)

Among the reasons listed for the proposed change are an inadequacy in legal research training, writing and advocacy skills and a drop in student attendance in spring courses during Ames.

Only Professors David Westfall '50 and Lloyd Weinreb '62 voted against the proposal. Both refused comment on their reasons.

Another deficiency to be corrected by the proposal is the lack of faculty involvement in the current legal research training course and Ames. "We don't have enough faculty to run small workshops themselves. So this is a valuable alternative," said Marc Levy, 2L, BSA vice president.

This new "no-Ames" section, in addition to having the Legal Writing Workshop, will be an "integrated" section. Two of the remaining sections will remain "traditional," with one other inte-

grated section rounding out the first year format for 1988-89.

Vorenberg downplayed concerns about students receiving different quality educations due to the different approaches of each section, saying the same issue arose when "experimental" integrated sections were first implemented. "Our worry was that the student would feel they wouldn't be getting as good an education . . . but, in talking with students from integrated and traditional sections, it turns out it depends on individual taste," he said. "It's not an earthshaking revolution."

Nesson expressed somewhat more concern about discrepancies in educational experience, saying, "It may be a problem. It's not a big problem, but it could become one."

The proposal calls for full implementation of the faculty-supervised spring workshop in all four sections by 1991 if it proves successful. If the program is not successful after

two years, the current first-year Ames and Legal Research Training (LRT) will be reinstated and a new proposal will be drafted.

The proposal indicates a much different experience than the current first-year Ames and LRT. The Legal Writing Workshop will replace the first-year elective and will cover three credit hours. In addition, the program will have a modified type of student evaluation process. "It's not graded," Nesson said. "We don't want people with deficiencies in writing to feel pressure."

A portion of the course will include "computer assisted legal research lessons" as well, according to the proposal. Nesson said the computerized effort could possibly include Lexis and Westlaw training. "Attitudes are changing," he said. "We would want the students to learn [Lexis and Westlaw] before the summer." Yet, he also expressed concern that the computer research training may place a big firm, corporate slant on the program because small firms and pro bono work may not make computer programs available.

BSA President Kerin Cantwell, 2L, called the program "a positive opportunity both for 1Ls to get more legal skills and to increase their contact with the professors." According to the proposal, a faculty member would teach the lecture component of the course, to consist of two to three lecture hours weekly.

While the proposed changes might someday affect the role of the BSA in first-year education (BSA currently runs both the LRT and first-year Ames programs), Cantwell said it will cause no immediate changes in BSA operations or selections. "The faculty might want to discuss it," she said, "but we are interested in keeping the criteria [for BSA membership] the same. We have more functions than teaching, like preventing alienation of 1Ls when they get here."



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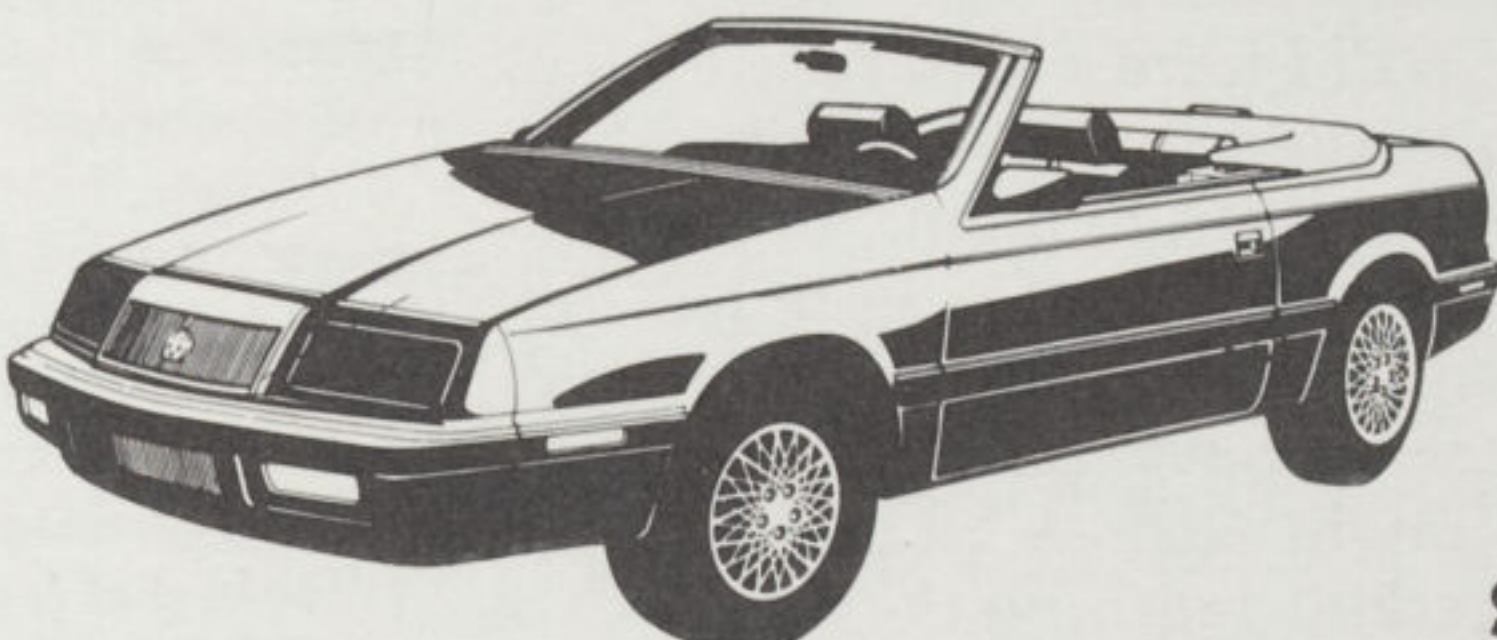
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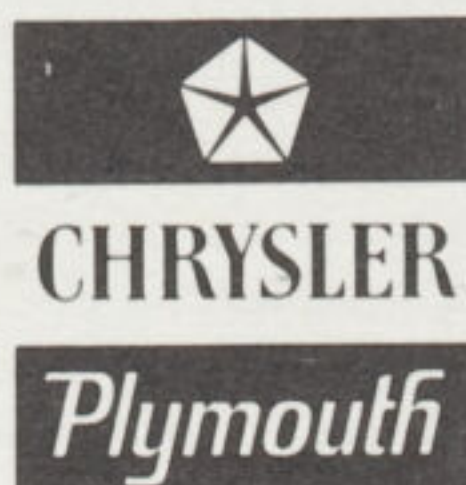
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HLS: An Exit Review

In a little over a month, approximately 575 J.D. students and 100 LL.M. and S.J.D. students will be awarded degrees bearing the Harvard Law School name. After three years of studying the law, the Class of 1988 will be leaving these hallowed halls of simulated justice to start something new to most — a life not at all involved with school. For those of us who have been on the continuous education trail for some twenty odd years, this idea is not entirely anxiety free. Aside from wondering about the simple things like "Will I have a social life without DSAC," more complex and bothersome questions like "What have I been doing for the past three years and why," boggle the mind.

Three years ago, after receiving my acceptance letter from this law school, based no doubt on my fine essay relating my intent to study international law from which department I have taken not a single course, I had my own ideas of what I might find at HLS. Visions of professors with graying hair and tweed jackets teaching *the law* in dark wood panelled rooms danced in my head. All the while, Mozart played in the background. I had obviously seen one too many episodes of *The Paper Chase*. Instead, I was told by a BSA member that I was an "experiment" and looking around the green interior of the Pound Hall classroom, I did not doubt it. This was made all the more frightening by my experience of moving into the Grad Center the previous day.

This was the beginning of many dispelled beliefs. Harvard is an institution even at its finest moments, where filling out forms with an eight digit identification number is second nature. We may carry the memory of this number and our Coop numbers with us always, but what will certainly remain of Harvard after the degree will not be the memory of a *Harvard education*, but rather the memories of the fascinating, eclectic group of people that attend this school. From different parts of the globe, from different backgrounds, and from different political viewpoints — for three years as an HLS student you had the distinct honor of walking through the halls and tunnels with perhaps some of the most interesting people you may ever meet. A moment at the Talent Show told us that: from Hans und Franz, to Joan Armatrading, to the Munchkins from Oz, all these people have been classmates.

What will remain also is the memory of freedom — three years of freedom to do whatever we want with our time is one which we might never again have. And what of this degree that these years produced? What will become of it? How many of us really *want* to be lawyers? Only the years to come will tell. But one thing is certain. None of us need do something we do not want to do. Whatever this place has meant or not meant to us, it has given us one thing: the luxury to choose a lifestyle we want. We already possess the intelligence to know what we want.

T.M.F.

Fenno

April showers brought May showers. Yet weather was the least important cause of the chills running up Fenno's spine. For the first time in over two decades, he had not received the reassuring note from the Registrar warning him of deficient credits for graduation.

Fenno feared leaving HLS for a number of reasons, not the least of which was his recently-signed 10-year lease renewal for his Somerville duplex.

Checking his transcript, he feverishly counted credits, and realized that by having cleverly avoided all but one final, a passing grade in that course would leave Fenno vulnerable to graduation. That course was *Janitors as CEOs: An Economic Analysis of the Crit Corporation*, co-taught by Bob Clark and Duncan Kennedy. Fortunately, Fenno had the solution: not only wouldn't he study, but he resolved to write his exam only in incoherent verse, such as that of his drinking buddy, Dr. Seuss.

Exam day arrived, and Fenno strutted out of Pound 102 with a sense of great relief. He had written, in only 10 minutes, even more bizarrely than he had thought possible; the thought of an impending diploma inspired him. He had concluded his blue book, writing: "Profit maximizing, sham I am, I do not like green mail and ham."

Confidently, Fenno awaited G-day. He had already purchased a case of Meister Brau (which he always showered on his graduating pals) when he went to the Registrar to confirm his triumphant failure. Horror of horrors, however, met Fenno when he saw next to his ID number an A-plus! Fenno burst into pitiful tears. The prospect of no more Craigie Street beerfests, Wellesley women, and Studley's \$2/pitcher nights reduced him to a blithering mess.

"Oh, Fenno. . .," screeched a voice from a nearby office, "the Ad Board has convened an emergency meeting just for you." Fenno's professors' high acclaim (Clark had already written accompanying music, and Dunc had cited it in his upcoming manifesto), had caught the Ad Board's eye. They quickly concluded that Fenno had cheated.

Never had an Ad Board accusation come as such a relief. In the pentagonal chamber, Fenno feigned fear as he knelt before the hooded adjudicators. The pre-ordained judgment came down: "As much as we wouldn't miss you, Mr. Fenno, by the authority vested in us by the almighty alumni, who don't want to see you join their ranks, we are compelled to withhold these credits from you. Bok save this honorable court!"

The rejoicing Fenno burst from the chamber and sprinted to his post high above the procession of graduates. "See you at your tenth reunion," he called out between dousings. "Don't forget to fly me out!!!"



HARVARD LAW RECORD

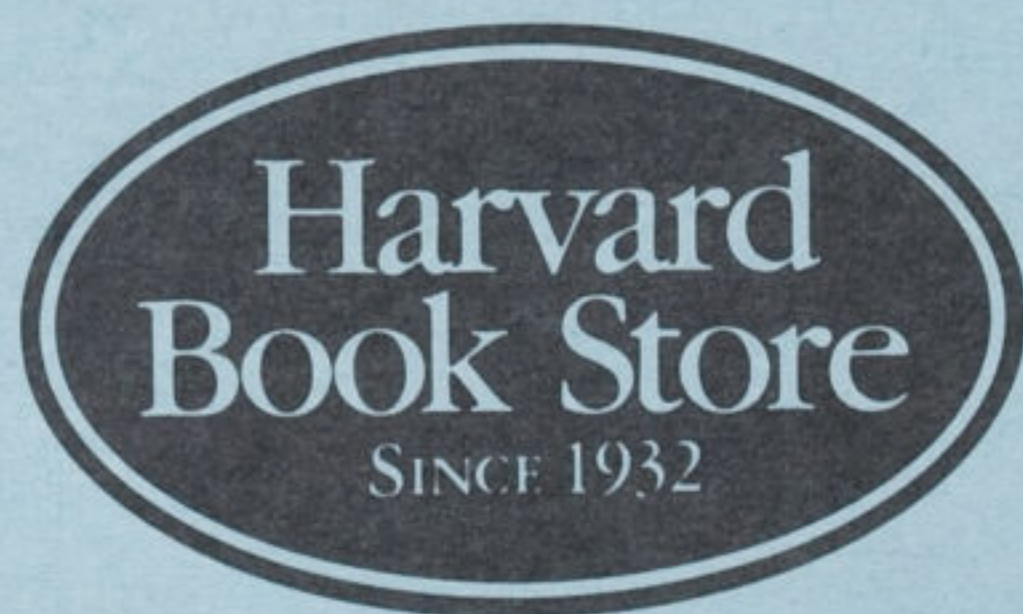
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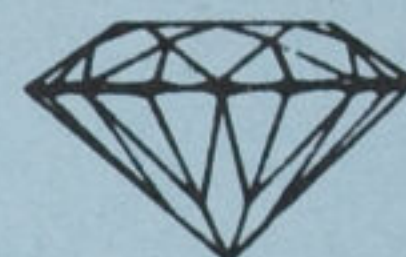
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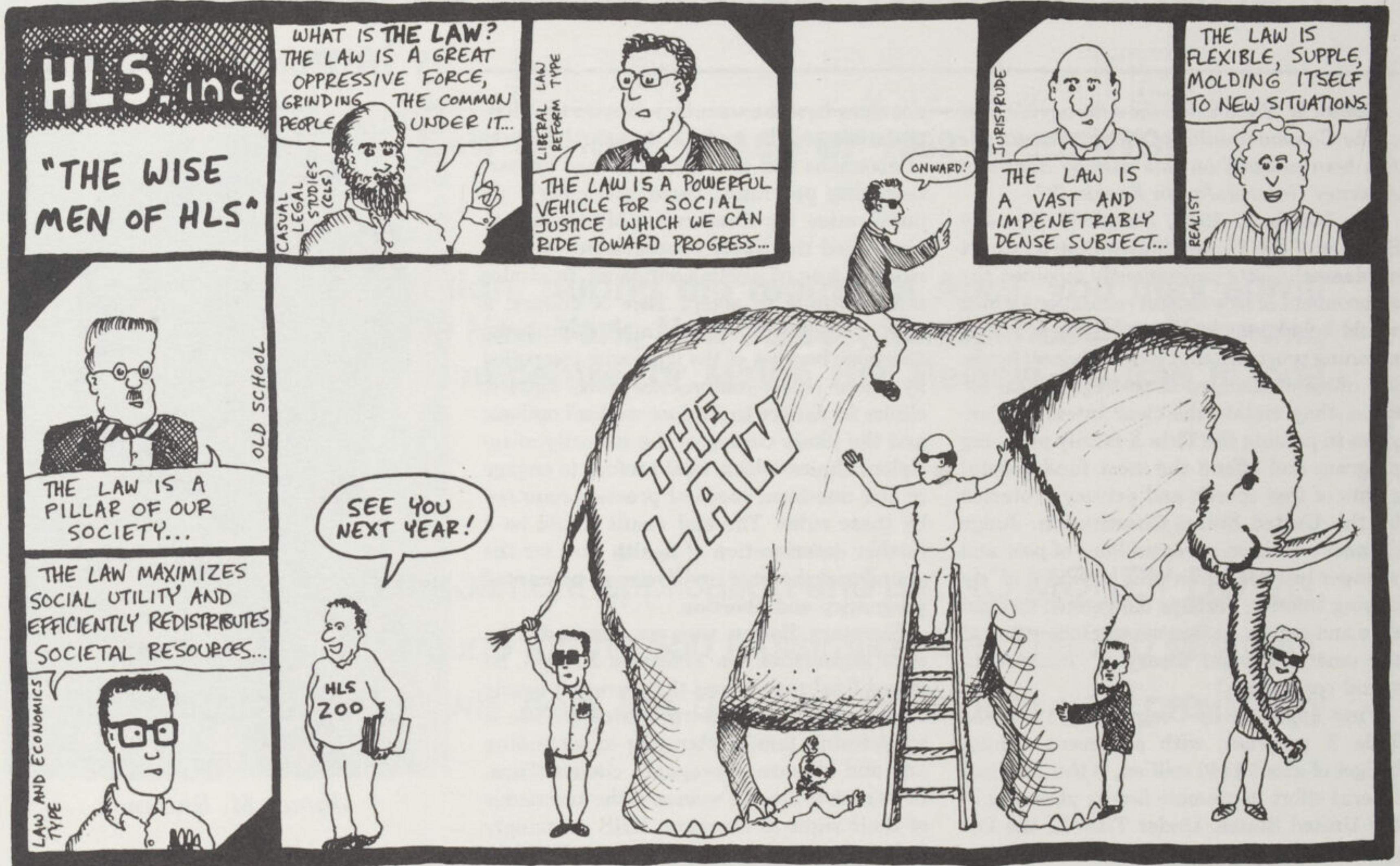
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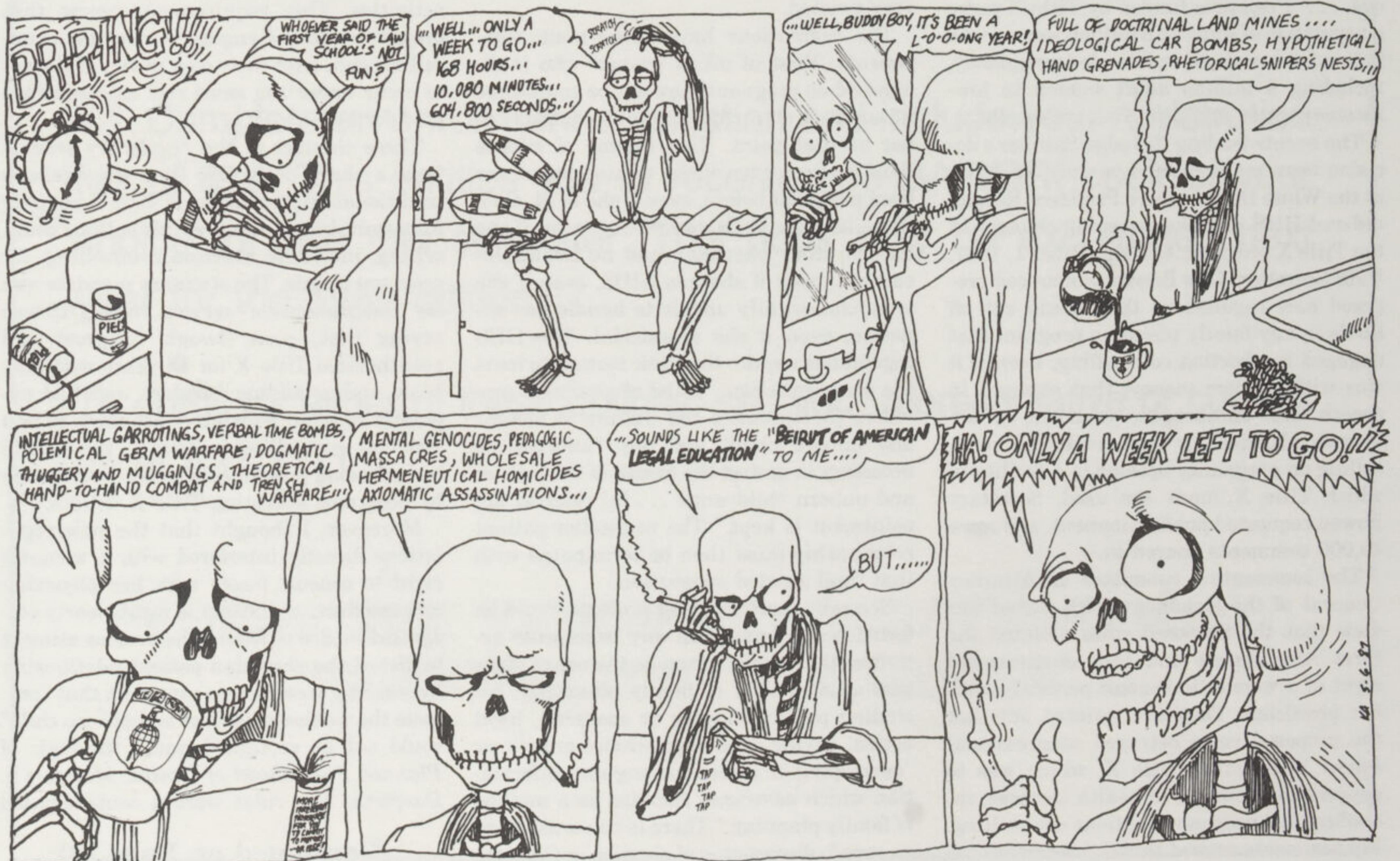
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Mass. A.G. Challenges Family Planning Regs

by James M. Shannon

James M. Shannon is the Attorney General of the Commonwealth of Massachusetts. He has been assisted on this case by Assistant Attorney General Jamin Raskin '87.

On March 3, 1988, Judge Walter Jay Skinner of the United States District Court of Massachusetts permanently enjoined the enforcement of new federal regulations which would forbid pregnancy counselling in family planning programs that receive federal funds. My office challenged these regulations because they violate the clear intent of Congress in passing the Title X family planning program and offend the most fundamental rights of free speech and privacy protected by the United States Constitution. Judge Skinner's decision saves millions of poor and younger women from the prospect of receiving inferior, perhaps dangerous, medical care and marks an important elaboration of the emerging legal theory of "unconstitutional conditions."

First approved by Congress in 1970, the Title X program, with a current annual budget of about \$140 million, is the principal federal effort to promote family planning in the United States. Under Title X, the Department of Health and Human Services (HHS) makes grants to public agencies and private non-profits in order to provide "a broad range of acceptable and effective medically approved family planning methods. . . ." Programs funded by Title X serve a population of some 14.5 million women who face a high risk of unintended pregnancy, including 9 million adult women in low-income groups and 5 million teen-agers.

The events leading to Judge Skinner's decision were set in motion on July 30, 1987, at the White House, where President Reagan ordered HHS to make sweeping changes in the Title X program. On September 1, 1987, HHS Secretary Otis Bowen announced proposed new regulations that would cut off funds to any family planning program that engaged in abortion counselling, even if it was with its own money; that engaged in speech that encourages, promotes, or advocates abortion; or that conducted counselling on pregnancy options in a facility in which Title X funds are used. Secretary Bowen requested public comment, and some 75,000 comments poured in.

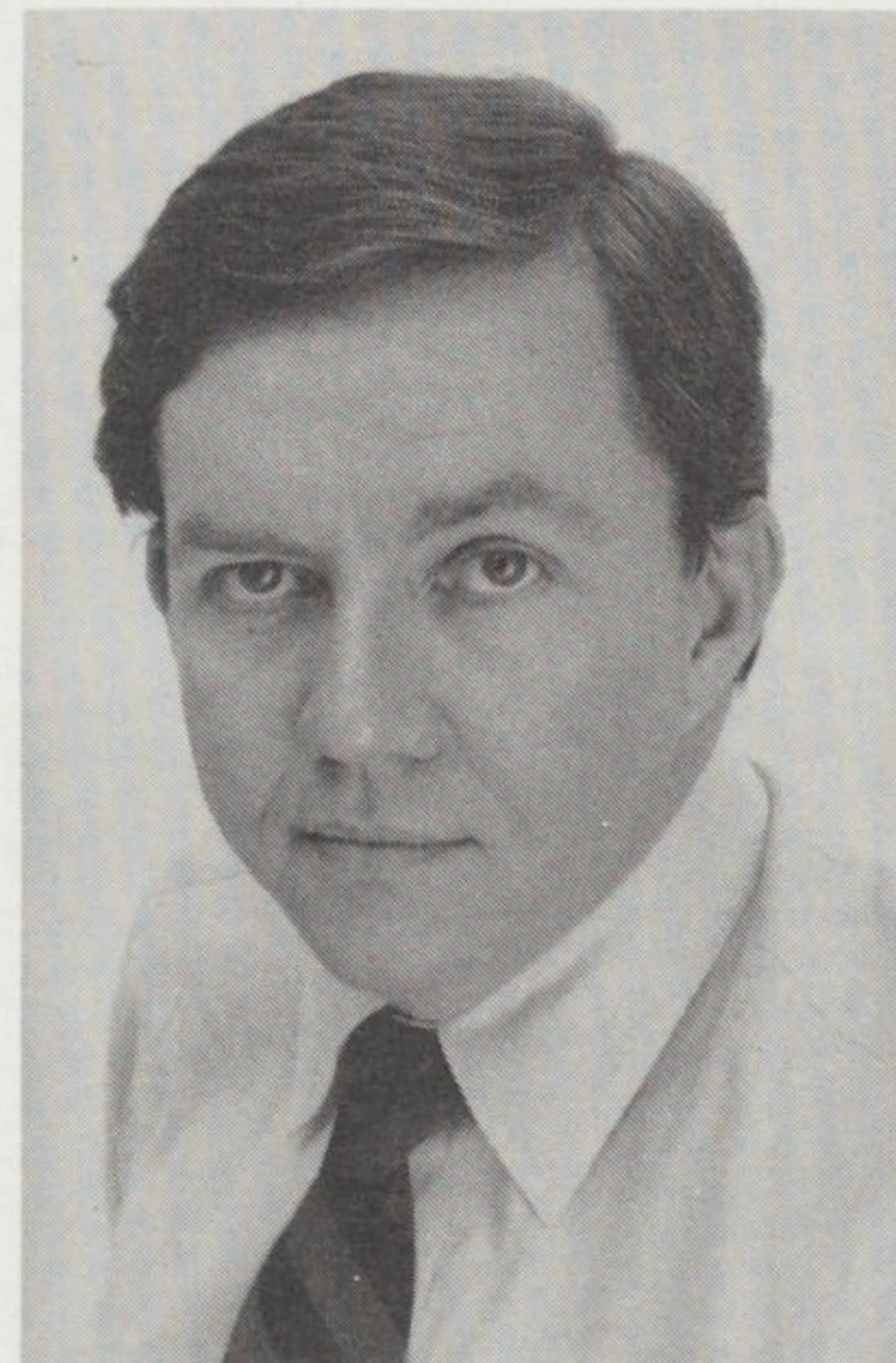
The comments I submitted as Attorney General of the Commonwealth stated our view that the proposed rules violated the First Amendment and the constitutional right of a woman to consult privately with her physician. They also pointed out that the proposed rules betrayed congressional intent in enacting Title X, which was to support comprehensive health services, including full pregnancy options counselling. My comments argued that the Secretary did

not show how the statutory proviso that federal money not be spent on the actual delivery of abortions had ever been violated by participating programs; there was clearly no justification for these rules. My comments also noted the likely consequences of such rules: a loss of public confidence in clinics that continue to accept Title X dollars; a rise in late (and therefore more dangerous) abortions because of the ignorance compelled by these rules; malpractice suits against clinics for failure to disclose medical options; and the likely closing of the majority of recipient clinics, which would refuse to engage in the unethical medical practice required by these rules. The end result would be a further deterioration of health care for the young and the poor and a rise in unwanted pregnancy and abortion.

Secretary Bowen was not persuaded by such arguments. On February 2, 1988, he issued final regulations that reversed nearly 18 years of agency interpretation of Title X by defining family planning as excluding any and all care of pregnant clients. Thus, in its rush to deprive women of the knowledge of their right to abortion, HHS amazingly forbade family planning clinics — in many cases, the only health provider women patients see — to advise young mothers on medical practices necessary for a healthy pregnancy. The priorities of HHS thus seem very twisted.

The regulations have three main components. First of all, a woman who is diagnosed as pregnant may not be counselled in any way on medical options available to her at that point. This regime of silence must be kept even if the woman has never been pregnant before, even if she is 14, even if she asks for such counselling, even if she has no other physician and no health insurance, even if she has AIDS, even if she is psychologically unable to handle her situation, even if she is suicidal. The HHS regulations require the clinic instead to hand the pregnant client "a list of available providers that promote the welfare of mother and unborn child" and any "information necessary to protect the health of the mother and unborn child until . . . [a] referral appointment is kept." The counsellor-patient relationship must then be terminated with that final slanted suggestion.

Secondly, participating projects would be forbidden to engage in any expressive activities that might "promote the use of abortion as a method of family planning," including public lobbying or speaking, legal action, paying dues to pro-choice groups, or "developing or disseminating any information which advocates abortion as a method of family planning." There is no parallel ban on speech disparaging of abortion or the right



James M. Shannon

of choice.

Finally, the regulations require projects accepting Title X funds to be "physically and financially separate" from all prohibited activities. This requirement means that projects could not engage in abortion counselling *even with their own money* if it were to occur under the same roof as operations paid for by Title X.

These changes in the regulatory scheme were a sharp departure from the agency's traditional interpretation of Title X not only to permit, but to *require*, full options counselling, including abortion counselling, for pregnant clients. The statutory mandate was for "comprehensive" service. Now HHS was saying that, even though Congress had reauthorized Title X for 18 years with this basic understanding in place and had explicitly rejected legislative attempts to ban abortion counselling in Title X, the statute had all along proscribed abortion counselling by programs accepting Title X dollars.

Moreover, I thought that the new regulations directly interfered with a woman's right to consult freely with her physician on reproductive matters, a right clearly recognized in *Roe v. Wade*. The obvious attempt to distort the physician-patient relationship by steering women into providers that "promote the welfare of mother and unborn child" could not be sustained under the logic of *Planned Parenthood of Central Missouri v. Danforth*. The rules were a content-based

(Continued on Page 12)

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Withholding Grants Violates Congress' Intent

(Continued from Page 10)

and viewpoint-specific violation of the First Amendment; they were aimed at the suppression of one particular kind of speech and penalized those engaging in it.

The rules threatened in the real world to create two standards of care for pregnant women: one for the poor and the young, and one for those who could afford to pay for their constitutional rights not to be violated. If implemented, tens of thousands of women in the Commonwealth, and millions nationwide, would lose access to information that is vital to the ability to make an informed pregnancy decision.

Invoking my power as Attorney General to sue *parents patriae* on behalf of the people of the Commonwealth, I joined with a coalition of Title X providers and the American Public Health Association to challenge these regulations in Federal District Court in Massachusetts. Judge Skinner ruled that the regulations "as a whole violate both congressional intent and rights protected by the Constitution," and enjoined their implementation as to our co-plaintiffs nationwide.

The heart of Judge Skinner's opinion, interestingly, lies in his constitutional discussion. Judge Skinner held first that the refusal to fund programs that counsel on abortion was "an unconstitutional penalty for the exercise of First Amendment rights." He also found that this unconstitutional condition was "content-based" since it has "the purpose and effect of severely limiting speech by Title X recipients on one topic: abortion as a method of family planning." Next, Judge Skinner decided that the ban on political speech by Title X projects was a content-based First Amendment violation. Finally, he held that the regulation forbidding abortion counselling constitutes an impermissible interference with the right of privacy protected by *Roe v. Wade*.

Judge Skinner also held that the new separation requirement and the government's redefinition of project funds to include non-federal money violate congressional intent. With regard to the government's ban on reproductive counselling, he held that the government transgressed the "doctrine . . . that when an agency decides to change the course of longstanding administrative interpretation, it must justify its action to a greater degree. . . ." Judge Skinner found that "[a]ll the evidence before the defendant indicated that Title X programs were substantially complying with program requirements" that proscribed the actual delivery of abortion on Title X premises.

In his constitutional analysis, Judge Skinner relied heavily on the emerging law of "unconstitutional conditions," which is premised on the idea that the government "may not deny a benefit to a person on a basis that infringes his constitutionally pro-

tected interests. . . ." (*Perry v. Sindermann*). He applied this line of authority to the government's attempt to ban political speech by Title X projects. The federal government had argued that this regulation was valid under the logic of *Regan v. Taxation with Representation*. In that case, the Supreme Court upheld a statute denying organizations that lobby the right to receive tax-deductible contributions. The Court noted that a lobbying organization could establish a separate corporate structure for its non-lobbying activities that would be eligible to receive tax-deductible contributions.

But Judge Skinner rejected the federal government's reliance on *Regan*. He stated that "the regulations impose an additional requirement of physical separation which . . . is unduly burdensome and not narrowly tailored to meet the government's goal of not subsidizing advocacy activity." Moreover, he found that "this case is distinguishable because the lobbying restriction in the HHS regulations is content-based. The Supreme Court in *Taxation with Representation* specifically said: 'The case would be different if Congress were to discriminate invidiously on its subsidies in such a way as to aim at the suppression of dangerous ideas.'" Here, Judge Skinner held, "the HHS regulations are clearly designed to suppress a certain idea. . . ."

We also argued that the requirement that clinics cannot counsel on abortion but must provide pregnant women with "a list of available providers that promote the welfare of mother and unborn child" is an unconstitutional condition. Women who accept the benefit of the Title X program must surrender, knowingly or not, their right to a fully informed decision about their preg-

nancy; indeed, they must choose between exercising their constitutional rights to counsel clients on the abortion decision and losing access to federal funding, or accepting federal funding and losing their right to counsel women on all of their reproductive choices.

Rejecting the government's argument that this ban was a mere decision not to subsidize a protected activity, within the meaning of *Harris v. McRae*, Judge Skinner found that it crossed the line drawn in *Harris* because "a Title X project could be denied a grant for which it would otherwise be eligible, solely because its non-federally funded activities include abortion referral and counselling." (emphasis added) Thus, a clinic could be punished with loss of a government benefit for spending its own money on abortion counselling.

The federal government has appealed Judge Skinner's decision to the First Circuit Court of Appeals, where it will be argued sometime in June. I am committed to pursuing this case all the way through to the Supreme Court, if necessary. The government is not — and should not be — allowed to accomplish indirectly what it may not do directly. In real life terms, that means that the government should not be permitted to attach unconstitutional conditions to programs that the poor and the vulnerable are dependent upon when it would never dream of getting away with directly legislating such restrictions for the whole society. One nation, one law: that is the promise of the American constitution, and we must all work to protect it.



Gridders Grind Business Foes

(Continued from Page 3)

On the first play from scrimmage, HLS quarterback Brent Woods, 3L, hit wide receiver Ken Higgins, 1L, in the end zone for an easy six. Higgins' diving one-handed grab underscored the disparity in talent between the two squads.

The HLS defense was not to be outdone by the offense. Led by defensive backs Al Garcia, 2L, Joel Goldman, 1L, Brett Messing, 2L, and Brian Bergstrom, 3L, the law school boys left the business schoolers convinced that a Chapter 11 proceeding would be a good time. With Rob Steinberg, 2L, pinning the B-schoolers inside the 10 yard

line with his kicking after every law school touchdown, the business boys began to claim moral victory when they were able to move the ball to midfield.

While the exact score of the game is unknown because a calculator was not available, the outcome of the game may be improved relations between the two graduate schools. But as the victorious HLS team left the field, all they could hear were business schoolers yelling "We'll take you guys in basketball, no, how about volleyball, or softball . . . maybe Trivial Pursuit?"



LEGAL COMPETITION

Proposition

"May marijuana legally be rescheduled to Schedule 2 of the Controlled Substances Act to facilitate the extraction of pharmaceutical THC under currently extant C.S.A. provisions providing for the extraction of pharmaceutical cocaine in the United States from coca leaf under Schedule 2?"

Background

THC (tetrahydrocannabinol), the active drug in marijuana, was placed in Schedule 2 in 1986. The 95% pure THC is used to counteract nausea in cancer patients and is considered a safe, efficacious, and non-toxic drug. Cannabis, containing less than 4% THC, remains prohibited, in Schedule 1 with heroin. Any possession at all, except for research, is illegal.

Cannabis Corporation of America, holder of the sole patent for the processing of cannabis (marijuana) into pharmaceutical THC, has submitted its final brief to Judge Francis L. Young. Judge Young is the Administrative Law Judge appointed by the Drug Enforcement Administration to issue his opinion after the close of the "medical marijuana" hearings in Washington, D.C.

Cannabis Corporation manufactures only legal THC capsules; it has no interest in issues concerned with marijuana itself, for either medical or recreational purposes. However, among those arguments filed on April 15th, we feel that their argument is the strongest *legal* case for rescheduling of cannabis into a legal control category similar to that of coca leaf. THC, currently made only synthetically, has been legally manufactured and sold since 1986.

Judge Young will hear final oral arguments of the three moving parties in the first week of June, 1988; he will then issue his opinion. John Lawn, the Administrator of the Drug Enforcement Administration, does not have to follow the recommendation of the Judge, and in fact has disregarded Judge Young's opinion in similar hearings in the past. No final decision may occur until after the presidential election. Appeals may be expected.

Copies of this brief are available at the address below; the law student with the best argument *refuting* our presentation will be provided with transportation to and from Washington, D.C. along with overnight accommodations, to assist C.C.A.'s attorney at the final oral presentation. In addition, each law student requesting a brief will also be sent a copy of William (Iacocca) Novak's recently republished **HIGH CULTURE, Marijuana in the Lives of Americans**, as a source book. Arguments will be due May 22; the winner will be notified by May 27. Should the winner elect not to attend the Washington hearings, there will be a cash award of \$350.00. Any further questions may be addressed to the undersigned, agents and consultants to Cannabis Corporation.

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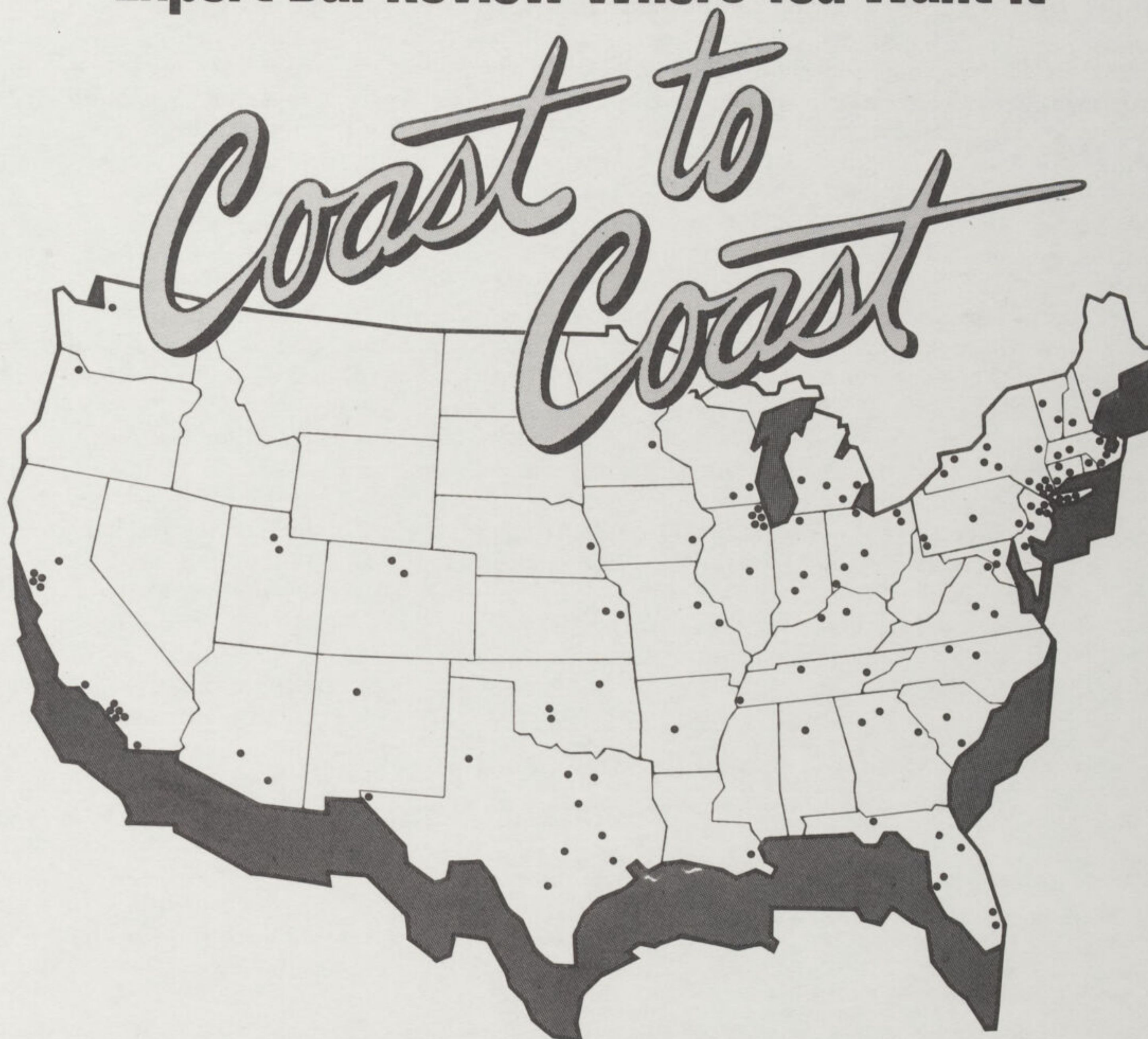
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Vorenberg Timed Resignation To Fund Drive

(Continued from Page 1)

The faculty passed a resolution in 1984, after Vorenberg's appointment, calling for an expanded and more organized role in the dean selection process. The resolution, which formed the basis of faculty action last week, called for a secret ballot election for membership to the committee, with each professor listing preferences.

Professor Richard Parker '70 said the decision to ask three professors to offer the committee slate was not intended as a subversion of the 1984 resolution, but simply as "an experiment." He added that the three were given wide latitude in what they suggest to the faculty.

"It's entirely up to them what they're trying to do," Parker said, adding that while no deadline has been set for their report, "time is obviously of the essence." He said he

expects more discussion of the situation at the May 4 faculty meeting.

At the same time as the faculty was considering the best way to ensure its influence in the selection of a new dean, Vorenberg shed more light on the timing of his decision to step down.

While reemphasizing that his decision to resign was based solely on his desire to return to research, Vorenberg said in an interview this week that the likelihood of a major fund-raising drive "had something to do with my feeling that next year was a good year to step down."

Bok told the *Harvard Crimson* that such a capital campaign, should the school decide to launch one, would require continuous supervision until 1995, making now "a natural time [for Vorenberg] to leave."

A fundraising drive may prove necessary to implement the rec-

ommendations of a major internal review conducted by a number of faculty committees this year. The committees, which will issue their reports next year, are considering the future needs of HLS in such areas as library and dormitory renovation, and academic and curricular changes.

"My sense is that without losing pace, the new dean will find decisions and planning in a sufficiently fluid state so that she or he can step in without losing much momentum," Vorenberg said.

Vorenberg reiterated that his reason for resigning was limited to a wish to return to research and teaching. Reacting to a *RECORD* story which quoted professors who claimed there was conservative pressure on Vorenberg to leave, he said: "It is absolutely not true that anybody on the right, left or middle urged me to resign. Nobody did."

The heightened faculty involvement in the HLS dean selection is unprecedented for Harvard, several professors said. In past dean selections, a faculty selection committee has made recommendations to the president, but the committees themselves were chosen by the outgoing dean rather than by the faculty itself.

Bok has made no formal indication about what influence such a committee will have on his ultimate appointment decision but told the *Crimson*, "I can understand that this faculty wants to elect its own committee, particularly because they have various factions, and they may feel that this will ensure a representative committee. If this gives them greater confidence in the committee, that's fine with me." Bok was unavailable for comment to the *RECORD*, according to his secretary.

Rakoff, Sargentich and Shapiro were given the opportunity to come up with a slate because they are the three remaining members of the Committee on Procedure for Participation in Dean Selection that recommended the 1984 resolution, according to Assoc. Dean Andrew Kaufman '54.

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