

HARVARD LAW RECORD

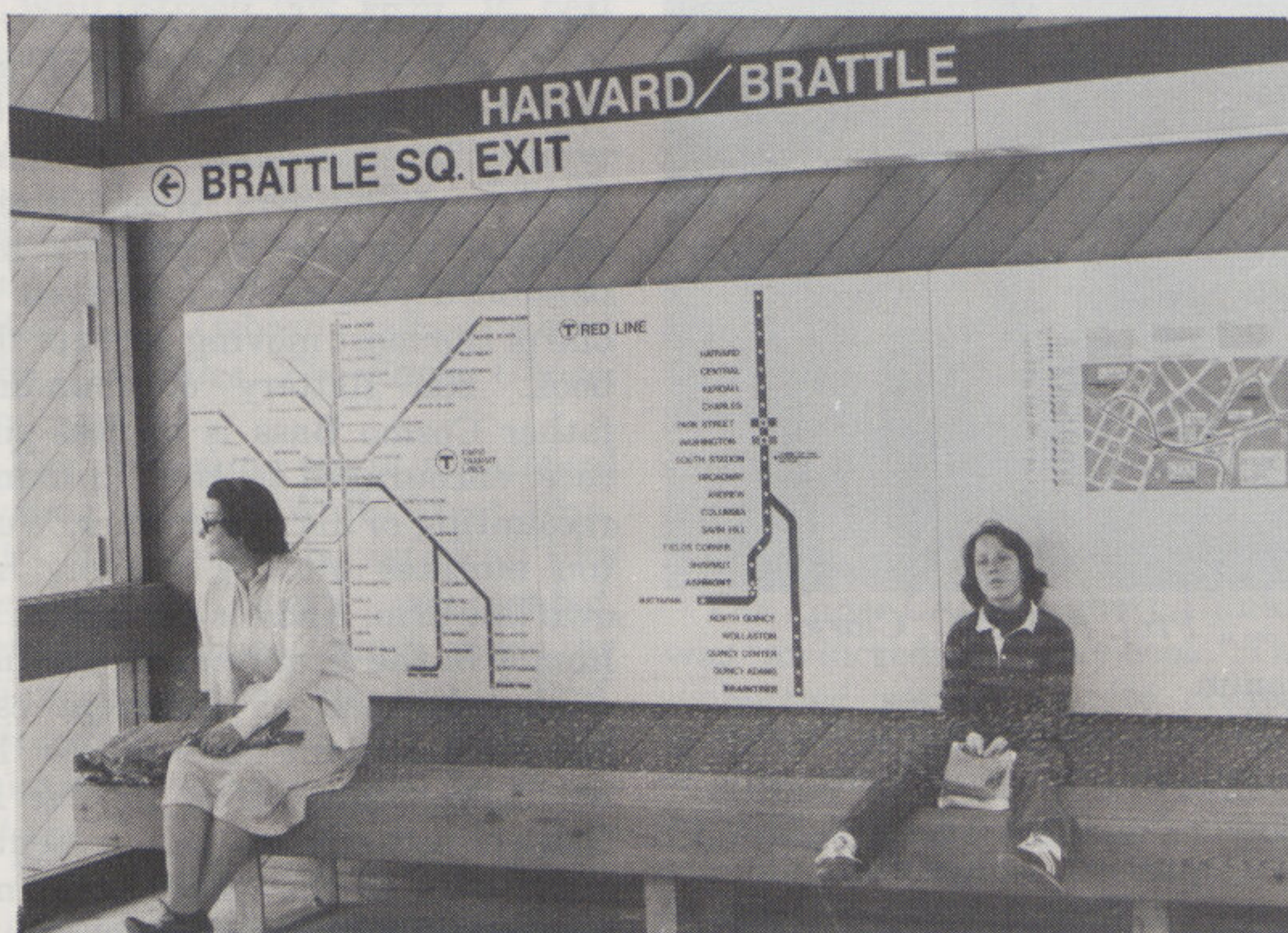
America's Oldest Law School Newspaper

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TWENTY CENTS



See "MBTA Strategy: Divide, Conquer" on page 12

Students Help Students: SFF Funds Public Jobs

By Dan Hershman

This summer approximately 21 HLS students working in public interest law positions will receive financial assistance from Student Funded Fellowships, a not-for-profit corporation and charitable organization run by seven HLS students. Now in its fourth year, SFF has actively solicited pledges and contributions from students, faculty and graduates totalling "approximately \$14,500," according to president Doug Geoga, 2L.

Geoff Crawford, 2L, SFF's treasurer, estimates that about 40 percent of HLS J.D. students have made pledges to the drive. "We're trying to promote public

interest law," Geoga says. The program is designed to enable students to explore careers in the public sector by providing funds for them to meet summer living expenses. Maximum weekly funding per student is \$150 for 10 weeks. Any pay received from employers — who must be not-for-profit — is deducted from the maximum. Each of the 34-50 applicants must "demonstrate some financial need" for the fellowship, including arrangements for financing law school and the extent of personal savings. "We try to spread the money around on an as-needed basis," Geoga explains.

Students eligible for jobs
(Continued on Page 16)

Former Student: Bias Caused My Dismissal

By Jorie Roberts

James Henderson, a former HLS student, has issued a statement challenging the anonymity of the grading system at HLS, alleging that he, as a minority student and a course repeater, was failed wrongly in Contracts by Prof. Philip Areeda.

Henderson's statement, distributed to all students, along with a request for information "for use in any appeal to the faculty or Administrative Board or for possible legal action," asserts he was unfairly treated by named students, faculty members, and the HLS administration. All persons contacted either denied Henderson's allegations or withheld comment, in light of possible legal action.

According to Henderson, he was asked to leave HLS after his first year (1976) because he failed two first-year courses, Prof. Charles Fried's course and Prof. A. James Casner's course, as "a direct result of intense personal and family pressures." Readmitted in the fall of 1977, he was asked to leave again in the spring of 1978, after failing Areeda's Contracts course and receiving a D in Property from Prof. Lance Liebman. Henderson claims that comparison of his contracts exam with those of several others revealed that he received less credit for essentially similar answers.

Petition Filed

After he received the grade,
(Continued on Page 4)

Homo Associensis: Osborn's Newest

By Robert C. Clark

Aristotle believed (I think) that every species of living thing, while of course involved in basic vegetative and locomotive activities, has its own essential function. For example, the horse excels at running, and *homo sapiens* is good at reasoning. By contrast, the law firm associate is better suited to suffering. Or, perhaps, to meaningless striving. At any rate, these functions are attributed to this peculiarly American animal in John Osborn's new book, *The Associates*.

The protagonist, Samuel Weston, has recently begun service at the Wall Street firm of Bass and Marshall. Walking almost innocently along the corridors, he is ambushed by Lynch, a litigation partner who sentences him to hard labor on a "big" case. Lynch, Weston, and Littlefield, another associate, work furiously on a brief. They behave as if the task were comparable in magnitude to Hannibal's crossing of the Alps. They frequently work through the night. They run up hundreds of billable hours. Littlefield takes speed. Weston loses his sexual prowess. Lynch bores them with stories about his ancestors and long fulminations about the "bastards" on the other side. He procrastinates shamelessly and then gets an extension of time for filing the brief, thus maximizing the agony of his two helpers. And what was all the fuss about? A simple question of



Prof. Robert C. Clark

venue.

Weston's efforts to win the love of associate Camilla Newman, and to rescue her from a liaison with an evil, married, senior associate, are just as difficult for him and just as entertaining for the reader. On several counts, though, the story has a happy ending.

A Veridical Portrayal?

Is Osborn's portrayal a veridical one? While it greatly exaggerates the general madness of law firm life — which has parallels, after all, in most other settings — the book does convey a valid core of feeling about the associate's experience. This is done partly by use of symbolic events, such as the lawyers' spending all night at the printer's or the founding partner's showing approval by taking the associate to lunch at his private club. It also results from an accumula-

tion of realistic descriptive details, for when Osborn himself was working as an associate at a Wall Street firm he unfailingly recorded each day's interesting occurrences in a diary, which he used when writing the novel. The feelings thus conveyed are more balanced than my opening lines suggest and they typify the experiences of at least some young lawyers. Weston's reverential reaction to Lynch's impassioned courtroom argument is one of the most moving parts of the book. His flattery of founding father Cosmo Bass is no less sincere: encouraged by the old man's recounting of his early years, Weston imitates him by starting his own law firm. And his perception of humor in the firm reminds us that a slightly mad environment can provide abundant material for the wit. Like Scott Turow in *One L*, Osborn actually reveals a sentiment akin to the ex-serviceman's fondness of memories of boot camp.

Harvard-Yale Distinction

Readers of the *Record* will not want to miss the comparisons of the Harvard and Yale Law Schools that are implied at various points in the book. For example, Weston hated law school but the refined, philosophical Littlefield can think of no more wonderful environment and in fact returns to his school as an assistant professor. Question: which of the two went to Harvard, and which to Yale?

Osborn's views on Harvard-Yale differences were shaped by firsthand experience. His being a Harvard law student was the basis of *The Paper Chase*, of course. Less generally known is that fact that, after being in practice a while, he went to Yale, ostensibly to get an L.L.M. but actually to write *The Associates*. As luck would have it, he was my "advisee." I observed him adapting quickly to Yale law student norms: he lusted after

(Continued on Page 3)

Editor's Note: Prof. Robert C. Clark, whose column appears here, is a friend of Osborn's and is rumored to be a character in "The Associates." Until this year, Clark was a professor at the Yale Law School. Last fall, he accepted a faculty appointment at HLS.

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'I Write and I Teach': John Jay Osborn, Jr.

By Richard B. Bernstein

"I practice law, I write, and I teach," says John Jay Osborn, Jr. "Writing and law go hand in hand; it's not something that can be separated."

Osborn, who has just published *The Associates*, a novel about life in a Wall Street law firm, is best known as the author of *The Paper Chase*, a 1970 novel about life at Harvard Law School which has spawned an Academy Award-winning film and a current television series. Interviewed recently by telephone, Osborn talked about *The Associates*, *The Paper Chase*, and writing.

The Associates casts a satirical eye on a large Wall Street firm. "It's supposed to be satirical, like *Catch-22*," Osborn commented, echoing an observation made by John Houseman, who played Prof. Kingsfield in both the film and television versions of *The Paper Chase*.

"It's basically true — it does have a grain of truth at the center," Osborn hastened to add. "When you write, however, you must turn the characters into caricatures, as in *Bleak House*."

The Associates has much in common with *The Paper Chase*; it opens with a quotation from a lecture delivered by the now notorious Prof. Kingsfield, and two of the main characters in *The Associates* owe a great deal to characters in the earlier novel. Sam Weston, the associate who narrates the book, is modeled on Hart, the protagonist of *The Paper Chase*, and Osborn confesses that both characters are to some extent modeled on himself. Littlefield, Weston's friend and fel-

low associate, who develops a speed habit and begins to cite Cicero and Clactus the Short instead of cases in his memoranda, "is Kingsfield had he gone to law school in the '70s."

Defends Series

Osborn was critical of the reaction to "*The Paper Chase*" series expressed by many at Harvard, including *The RECORD*. In defense of the show, he said, "It's about being educated. You can't sell a show to CBS and have it be just about law school. The world is out there, and they're learning from TV that to be able to give one-liners is the key to success. We're trying to say that it's okay to do something significant with your life."

The Paper Chase, Osborn thinks, was "an incredibly lucky book." The embattled series, despite critical acclaim, was less fortunate; it was cancelled by CBS this Tuesday. Contacted by the *RECORD* on Wed-

nesday, Osborn commented, "I think it's horrible." However, *The Associates* will be the basis for a new ABC "sitcom," to be produced by Paramount, scheduled to begin this fall. Earlier, Osborn had said, "Paramount will do what every studio does — they'll sit around until they have to do something with it, and then they'll do it." After the announcement, however, Osborn was more optimistic; he disclosed that "The Associates" will follow ABC's hit comedy "Mork and Mindy" in the fall line-up.

As his next project, Osborn is writing a "dynasty" novel about a wealthy, aristocratic family living along the Hudson River Valley in upstate New York. Osborn should have little difficulty with his new novel; he is a descendant of John Jay, first Chief Justice of the U.S. Supreme Court and a prominent member of that same Hudson Valley aristocracy.



Clark on Osborn's 'Associates': Conveys 'Valid Core of Feeling'

(Continued from Page 2)

Freedom and Special Deals. At one point he wanted approval to take a seminar — Law and Business Policy, which featured pass-fail grading and a parade of speakers from private practice and government agencies — which he excitedly described as an egregious gut until he noticed that I was running it. Later, he asked whether, in lieu of taking the exam for the seminar, he could submit a paper analyzing the speakers' use of imagery. I said,

"Sure, why not?" and in due course received the paper, which was a good one. What I remember best is the documented proof that the most popular speaker, Ralph Ferrara of the SEC, used an incredible number of food images — "peeling the banana," "tossing the hot potato," "stealing candy from babies," etc. Like his novels, Osborn's was a lot better to read than another bluebook.



BARBEQUE, Friday, May 4
from 4:30-6:30 p.m.
in the Hark.

"The African Queen"
Saturday, May 5
at 8:00 and 10:00 p.m. in the
Harkness Commons Dining Hall.

Admission: \$1.00 or \$.50 with
HLSDC Activity Card.

Welcome No Ls

New readers of the *RECORD* beginning with this issue are the members of the class of 1982. Copies of this issue are being sent to those persons admitted to next year's 1L class through the courtesy of the Alumni Association and the Admissions Office. The *RECORD* bids the "No Ls" welcome to the Law School.

Student Sought Readmission, Failed

(Continued from Page 1)

Henderson contacted Prof. Frank E. A. Sander, Administrative Board Chairman, and subsequently challenged the mark by filing a petition with the Board in August.

Henderson states that when the Board met in September, it disqualified its only black member because she was a joint degree candidate, the Board having no previous policy with respect to joint degree candidates. Henderson attended fall courses until Sander allegedly told him to stop and informed him that his locker had been entered and reassigned.

At Henderson's October 18 hearing, "Professor Areeda did not attend, nor did he submit any written statement explaining how the exam failed to demonstrate the required level of competence," said the statement. Commenting on the outcome of the hearing, Henderson

stated, "The Board denied the petition for reinstatement, asserting, 'We exercised just such discretion following your failing grades in Contracts and Property. Unfortunately, you were unable to meet the academic requirements of the School for a second time.'"

Henderson also offered evidence of his competence as a student, measured by a B.A. magna cum laude from Harvard College, and a B- average in his other first and second-year courses.

The statement argues, "The evidence suggests that Jim was a 'marked man' upon his return to HLS to repeat Contracts and Property." Henderson was told by a Law School professor that he was expected to fail. He adds, "The prevailing attitude at the law school appears to be that professors can do no wrong."

Attached to Henderson's statement were 20 questions focussed on

the actual anonymity of the grading system and Henderson's case, which students were requested to answer "in the spirit of academic freedom."

Ad Board Responds

Responding to Henderson's statement, Sander emphasized, "The Administrative Board has a general policy of not discussing individual cases of academic failure which are considered by the Board."

Sander stressed that "the Board's failure to comment on the Henderson case at this point is in no way an acquiescence to the allegations or quotes in the statement, rather, it represents adherence to the Board's established policy of non-discussion as well as understandable caution in the face of Henderson's reference to possible legal actions against the University."

Sander continued, "Frankly, I am puzzled as to why this document suddenly surfaced six months after the hearing." Sander went on: "Mr. Henderson did not contact the Board before distribution of his statement, and I have not talked to Mr. Henderson since immediately following the case."

Sander also commented on the Administrative Board's role in reviewing grades. "I don't know of any case in which the Administrative Board has been asked to review a grade, at least in the five years I've been on the Board. According to a faculty vote, professors cannot change grades except for a clerical error. In addition, there is no HLS policy for a review or second grading of exams receiving failing grades."

Sander eventually responded to Henderson's assertion that Sander prevented him from attending classes after the Administrative Board refused to readmit him. "The Administrative Board deals with two kinds of matters — disciplinary cases and the application of academic requirements. In disciplinary cases, involving such matters as cheating and destroying li-

Blind Grading Policy, Practices

The anonymous grading system now in use at HLS was initiated in 1976. Pursuant to a 1976 faculty vote, professors may only change course grades from exam grades under two circumstances.

First, an instructor may adjust an examination grade up or down on the basis of other assigned exercises but only if all students were required, or had the option, to do those exercises, and advance notice was given that the other work would count as part of the course grade.

Second, in a class of 50 or fewer students, the instructor may adjust grades up, but not down, on the basis of overall class performance.

Registrar and Asst. Dean Mary Upton explained how the system operates. "After exams are over, the faculty members are given the blue books. After they finish the grading, the registrar sends up a list of numbers without names, upon which the grades are entered, then returned to the registrar's office. Only then are professors given a names-to-number key." When asked if the anonymous system could be abused, Upton responded: "It is theoretically possible that if one professor of a first-year section finished grading earlier and had already received the names to numbers key, he or she could give it to another professor. Such a breach of anonymity would be harder in upper level courses, where professors don't know students' other professors."

Upton added, "In short, any system can be cracked if people are determined enough to crack it, but it would take quite an effort here."

Finally, Asst. Dean Stephen Bernardi outlined HLS's policy on keeping exams. "The registrar saves exams for several years, and students who want to look at their exams have a right to do so. Mary (Upton) provides storage space, if professors do not want to keep them in their offices." — J.R.



(Continued on Page 5)

Bias Denied; Legal Remedy ??

(Continued from Page 4)

brary materials, students can attend classes until the Board acts on their cases and decides they should be dismissed. In contrast, Henderson's case was one for readmission — since, in the fall of 1978, he was not a student by reason of having failed out, he was not authorized to attend classes until he was readmitted by action of the Board."

Strategy Mystifying

Asst. Dean Stephen Bernardi stated, "I'm totally mystified as to Henderson's strategy. We have tried to make it a point in the case of any student who has failed here to help with his or her application to other law schools."

Bernardi also noted: "Grade review and changes are simply not within the prerogative of the Administrative Board. Except for clerical errors, grades can only be changed by a faculty vote." He added, "The last time a grade went to the faculty was in the 1930s, and the faculty said 'no'."

Asst. Dean Mary Upton responded to Henderson's charges concerning the disqualification of the Board's only black member. "There were two students on the Board — one white male (Dan Hirsch) and a black female (Karen Turner), both pursuing joint degrees at, respectively, the JFK School and the Business School. Having never encountered this situation before, the Board decided that students not enrolled at HLS should not be on the Board, so two new members should be selected."

Areeda denied Henderson's claims that he marked Henderson unfairly, but withheld further comment. Similarly, Fried refused to comment on having failed Henderson in 1976.

Expelled v. Flunk

Patricia Wells, the only student member on the Board at the time stated: "Henderson's statement is a mischaracterization." Henderson asserted that Wells attempted to get him to "waive the right to chal-



James Henderson

lenge the outcome of the hearing on the basis that more students were not present."

Wells responded: "I did not try to get Jim Henderson to waive his right. It was a rather unusual situation that more students weren't yet on the Board. I was only questioning him to clarify the situation, since we had been going back and forth as to whether he wanted to wait until more students were selected for the Board."

Wells also stated, "The phrases were wrong. Henderson was not expelled — he flunked out."

Henderson's Response

In a telephone interview, Henderson, now drafting contracts for a local public broadcasting station, initially emphasized that he was declining to comment on his specific allegations, since he was "seeking for an amicable resolution of the problem with the HLS administration." He did say, everything in his statement had been confirmed several times. Henderson declined to name the professor whom he alleges told him he was "expected to fail" after he was readmitted.

After hearing Wells's comments, Henderson said that Wells's criticism of his use of the word "expelled" rather than "failed" was splitting hairs. "The Board was there to

decide whether I was qualified to continue, yet refused to look into the process by which my exam was graded in coming to its decision."

As to Wells trying "to get him to waive his rights to a rehearing," Henderson explained: "It didn't come out in the statement, but Ms. Wells did vote for my readmission. I did feel, though, that she could have been more supportive during the Board hearing."

Student Hearing

Henderson also elaborated on his statement's assertion that the removal of the two student members in joint-degree programs was unfair. "I wanted student members to hear my case, so my hearing couldn't take place until after the school year started." He explained that he registered for classes, but at the end of September, "Sander wrote me to stop attending classes. Then on Oct. 17 Bernardi told me that the new student members could not be approved for a couple of more weeks. It was my decision to proceed then with just Patty Wells on the Board — I wanted the matter resolved so I could return to school."

Finally, Henderson elaborated on his allegations concerning Areeda's grading process. "Other students in my contracts class have looked at their exams, and a number of Areeda's numbers didn't correlate with the scores at the top. When I asked him about how he graded the un-marked essay section, he said he remembered the scores. Later, in the Administrative Board meeting, it was related that he wrote them down."

Lewis Font, Henderson's attorney, discussed the next step to be taken in the Henderson matter: "At this point we are gathering information. We have had a tremendous response to the questionnaires attached to Henderson's statement. It seems clear that James Henderson has been the victim of racism at HLS, and I hope the University responds appropriately."



1Ls: The Names Will Change, But the Faces . . .

By Tammy Jacobs

For the past two years, entering classes at HLS have included about 560 students, some 20 more than the school is designed to hold.

This year, says new admissions director Molly Geraghty, attendance will be back down to normal — 540. "From Al's tone of voice," she adds, referring to Dean Albert M. Sacks, "that does not mean 541. We will have 540 bodies if I have to get out there with a Tommy gun."

Most likely, the heavy artillery will not be necessary. Geraghty says that the admissions office is being a bit more cautious this year in an attempt to curb the over-admission problems of the recent past. Moreover, applications have dropped off about five percent — from around 7,300 last year to an early estimate of about 7,000 this



Assistant Dean Molly Geraghty

year. Nationwide, there has been about a 10 percent drop in people taking the LSAT.

Minority Upswing

From early indications, the class will look much the same as it did last year, in terms of male-female ratio, geographical distribution and racial mix, although there have been small but encouraging upswings in certain racial and ethnic categories.

Geraghty's aide, Josephine Provenzano, has worked closely with students this year in recruiting women and minorities. She keeps statistics, updated weekly, on such categories as blacks, Chicanos, Asians, native Americans, Puerto Ricans, Cubans and

other Spanish-surnamed individuals. The charts include the number of applicants, the number admitted, the number that have accepted and comparisons with figures from earlier years.

Geraghty declined to release the most recent statistics on confidentiality grounds, but noted that minority admissions, so far, are up from last year.

Working with minority groups on recruiting has been "the most reinforcing part of the job for me," says Provenzano, who administered an \$8,000 recruiting effort during her first months at HLS last fall. She is hoping for a hike in the budget so that recruiting, done mostly by students, can expand even more.

"Is race taken into account?" Geraghty asks rhetorically. "Yes," she answers. "Disadvantage is taken into account; and disadvantage comes in all kinds of colors."

Sex-Blind Process

On the other hand, the process is designed to be sex-blind; and Provenzano admits that "by the time I get to the end of one of those applications, I've often forgotten" what sex the applicant is.

Provenzano keeps figures on admission of women, and they show that, as of last week, 177 (28 percent) of the 628 applicants admitted are women. A fear that the numbers would be down from last year has faded, since admission of women "has really picked up in the last few weeks."

Geraghty says that she'd "ultimately like to see a world where we can just stop thinking about race and sex, because they're inherently arbitrary. But for now, I think those words which have become corny and loaded with implications, affirmative action, are very important. I certainly would not tolerate a situation where we'd say 'we now have our 30 percent of women, we don't need any more.' I personally won't stand still for that."

She talks, instead, about "digging in our heels and sticking to a



Josephine Provenzano

policy of looking at every one of those applications forms as a serious individual question."

Committee Read-Through

Geraghty works on an admissions committee with five other people — Chairman Prof. Charles Fried, Prof. Clyde Ferguson, Prof. Lance Liebman, Asst. Dean Stephen Bernardi, and Asst. Dean Russell Simpson, whom she calls "the genius of admissions for the whole country — because he's the person who generates statistics and can analyze them, he's perhaps the least obsessive about numbers."

Each application is read — "some faster than others," she admits — and each is voted on.

Geraghty, who says she's wanted this job for "about 10 years," is a 1967 HLS grad. Her background includes stage-managing a circus, working for a Boston law firm, serving as producer of the Advocates television show, as assistant dean at Northeastern Law School and as assistant director of Massachusetts Continuing Legal Education.

"She's so three-dimensional," says Provenzano, explaining what makes Geraghty a "wonderful" boss.

Admissions, Geraghty believes, "is about the most important decision a law school makes. It's the indispensable first step."

"I'm very realistic," she adds. "It's important who goes to Harvard Law School, to the institution, to the profession and very likely to the country. I'm not persuaded that's the way it should be — but that's the way it is."

Reporter's Privilege: The Other Side

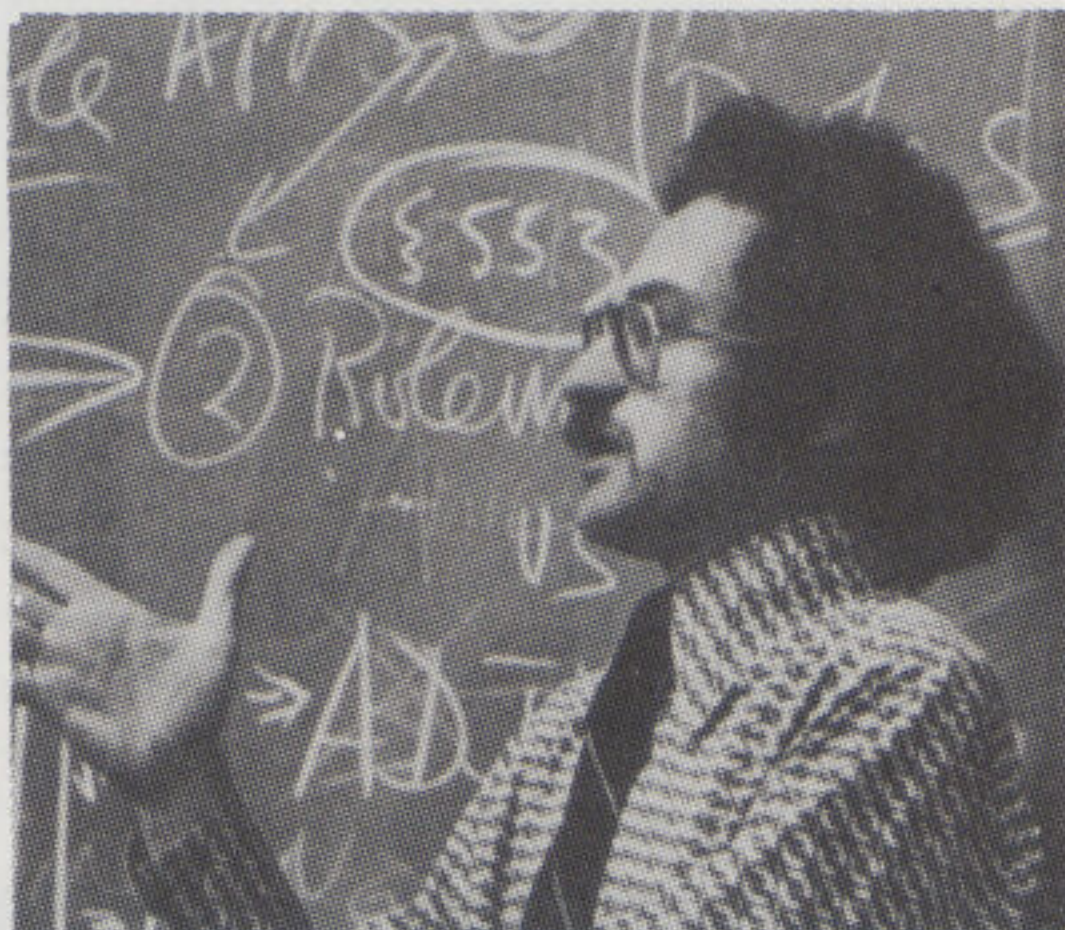
By Alan Dershowitz

The press has widely reported the plight of journalists who have faced imprisonment for their conscientious refusal to compromise journalistic integrity by disclosing confidential sources. But there is another side of the journalist-source privilege that is rarely discussed: the *voluntary* disclosure of confidential information by a journalist not under legal compulsion, but simply to improve or embellish his story. What remedy, if any, does a source have against a journalist who had deliberately breached the source's confidence?

For me, and probably others, this is not merely an academic question. Recently, for the first time in my dealing with the press, a journalist — Steven Brill of the *American Lawyer* — breached the privilege and published with attribution a quotation that I had given to him "totally off the record."

In February of 1979, a controversy developed over the decision of the Harvard Third World Conference to accord "guest-of-honor" status to a Libyan diplomat. After the conference, it was reported by several observers that numerous anti-Israel remarks, and some that could be construed as anti-Jewish had been made and applauded. As faculty adviser to the Harvard Jewish Law Students Association, I spoke to Dean Sacks and suggested that constructive steps be taken in an effort to reduce tensions that had been reflected at the conference.

Several days later, Steven Brill, editor of the *American Lawyer*, contacted me and asked my reaction to a statement he said had been made by an Anti-Defamation League official about the conference. My verbatim notes show that I prefaced my remarks by asking him, "Can I talk to you off the record . . . totally off the record . . . ?" Brill said that I could. I then made some candid re-



Prof. Alan M. Dershowitz

marks to him critical of the purported ADL statement. Brill published those remarks with attribution, despite my prior invocation of the journalist-source privilege. Moreover, the ADL official has since written me to say that he had "never talked to Brill" and had not made the statement to which I had reacted.

In the same story, Brill said that I contacted some of the speakers invited to the Third World Conference, "urging them to stay away." I have challenged Brill to name any invitee whom I urged to "stay away," and he admits he cannot do so; but he refuses to print a retraction.

What is one to do about this kind of irresponsibility by a journalist? Unfortunately, there is no authoritative ethics committee before which a grievance against a journalist can be brought. The press, unlike the bar, has been unwilling to establish self-regulating machinery to check on journalistic excesses. In an age when the courts are encroaching more and more on the First Amendment right of the press, an important first step toward stemming this tide might be the establishment of a journalists ethics committee. Although there is no way to correct or undo a published confidence, the public censure of a journalist for violating a confidence would at least serve to put future sources on notice about the few bad apples in an otherwise

trustworthy profession.

Another possible remedy might be a law suit by the compromised source against the offending journalist alleging a breach of contract or fiduciary duty in publishing information which he obtained under an express assurance of confidentiality. There are precedents for this kind of action in law suits brought against psychiatrists and lawyers for disclosure of confidences; and I am informed that there are several pending cases against journalists and writers for similar breaches.

Several journalists with whom I have discussed this issue would favor such a legal remedy against untrustworthy journalists. They believe that the success of a test case could help to strengthen the journalist-source privilege — and hence the First Amendment — by demonstrating that the privilege is a two-way street and that journalists are prepared to see it enforced against themselves as well as in their favor. Surely legislation that recognizes the privilege should provide effective remedies against offending journalists as well as adequate protection for conscientious ones.

Editor's note:

In the interests of fairness, the RECORD contacted Brill at the American Lawyer and read him the segments of this column in which his actions are discussed. His response follows:

"Prof. Dershowitz's account of our conversation is totally untrue. The statements that I attributed to him were statements he made on the record. My account of his contacts with participants in the conference is true and has been re-verified; I regret that because Prof. Dershowitz has for the first time emerged in a press story with an image that he does not think is favorable, he has chosen to distort the facts in this wild manner." ❧

Financial Aid Loan: Up to \$1,700

By Bill Ross

The Financial Aid Committee has voted to increase the initial loan component of financial aid from \$1400 to \$1700, according to Frederick Snyder, assistant dean and director of financial aid.

Starting with the 1979-80 academic year, the first \$1700 given a student by the Law School will constitute a loan, while any remaining amount will be divided equally between scholarship and loan.

Snyder said the increase reflects inflation, which has also caused the Committee to raise the standard budget for single students from \$8695 to \$9280. The loan threshold was increased last year from \$1200 to \$1400. Snyder noted that no students have expressed objections to the Committee about the increase in the loan component. About 34 percent of all law students receive financial aid from the Law School.

Snyder also said that only one person has thus far applied for aid under the Law School's one-year old repayment program for persons who have taken low income jobs.

Under the program, persons whose income is less than \$8000 are eligible for interest-free loans from the Law School to cover the full extent of repayment obligations on undergraduate and Law School loans. Alumni earning \$8000 to \$11,999 are eligible for interest-free loans to cover repayment in excess of four percent of their adjusted gross income. Those earning \$12,000 to \$14,999 may receive interest-free loans for repay-

ments exceeding six percent of adjusted gross income.

Low Income Plan

For each year beyond five during which a graduate's professional income and his or her spouse's income remain below the maximum level set by the program, the Law School will pay five percent of the original principal and interest commitment on loans borrowed from sources other than immediate family or relatives to pay Law School expenses.

The program is financed by a \$50,000 annual contribution approved by the Law School faculty and is designed to encourage students to seek public interest jobs, Snyder said.

Relieving Anxiety

"It should relieve some of the anxiety felt by some students about whether to make a career choice on the basis of what is germane to their professional objectives or ac-

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A Reminder TO ORDER YOUR CAPS & GOWNS EARLY

RENTALS

Bachelor's Cap & Gown	9.00	Hood	9.00
Master's Cap & Gown	10.00	Hood	10.00
Doctor's Cap & Gown	11.00	Hood	11.00

(\$5.00 cash deposit required on pick-up)

Please specify height, weight, chest measurement, cap size and degree. Will start taking orders April 17. Orders must be placed by May 25.

GRADUATION ANNOUNCEMENTS

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HARVARD SQUARE

Weicker Running Hard at Forum

By Dan Hershman

Approximately 70 people braved a rainy Thursday night to hear Senator Lowell Weicker, Jr. (R-Conn.) address the eleventh Law School Forum program of the year. Weicker, a declared candidate for the Presidency of the United States, took off his coat, rolled up his sleeves, and read his speech on Watergate and the rule of law in America. Later he answered questions on voters, energy, budget control, and why he seeks his party's nomination.

"Watergate was not a whodunit. The issues were and are misuse of government: the CIA, the IRS, the Justice Department. Congress abdicated its responsibility to check the President," Weicker said. "The rule of law was set aside during Watergate," the Senator noted, and warned that it has yet to be reestablished. "Why was [the Nixon administration] able to get away with such massive infringements? Because no one was looking . . . and no one is looking now."

Weicker described what happened to three assistant U.S. attorneys who tried to keep an eye on the government with a probe of the FBI. Attorney General Griffin Bell refused to allow them to bring a perjury indictment against several FBI agents. The three then complained to a Senate committee and were promptly transferred. They then resigned. Weicker feels there has been a long-running conflict of interests between attorneys general and presidents who often appoint them as a campaign favor. "Attorney general should be a constitutional office, an elected office. Edward Levi (appointed by Gerald Ford) was the only one not a friend or a campaign manager or a brother," the Senator said.

Apathy Run Rampant

Weicker criticized the overabundance of national secrets and the people — 13,302 according to his count — who are authorized to create them. Still, our intelligence



Senator Lowell Weicker, Jr.

failed to uncover the Soviet takeover of Czechoslovakia in 1968 and the 1973 Yom Kippur War, he said. "Did we know about Iran?" he queried. The CIA doesn't deserve all the blame, Weicker noted, because Congress is often inattentive to CIA willingness to discuss budget requests. But Weicker saved much of his criticism for the American citizen.

Weicker is angry that only 38 per cent of the nation's eligible voters cast ballots in 1978. He noted the public's disillusionment with government because of Vietnam, Watergate and inflation. This is the "me decade," Weicker said, but "I hope for a contagion of individuals who will refuse to do nothing. Freedom is not the absence of responsibility, but the antithesis . . . It's a great thing this nation has a short memory not to harbor a grudge, but we're withdrawn into ourselves," Weicker said.

Weicker finished his speech by charging lawyers with the responsibility "not to fall prey to false leads and easy opportunities. Instead, lawyers must follow due process, the great procedures, to implement and protect the rule of law."

Going to the People

Turning his attention to the au-

dience's questions, Weicker said he was running for President because "I think I can win a general election." He admonished his Republican party for being "far more concerned with developing a political theory than with winning general elections." He said he wouldn't wage two campaigns but would gamble by going right to the people, talking about civil rights, cities, housing, and education. "This is an upbeat and very positive country," he said. Of the incumbent he said, "President Carter's heart is in the right place but he doesn't know how to act."

Weicker urges spending cuts before tax cuts like the Kemp-Roth bill are passed. "Sunset legislation and zero-based budgeting should be enacted," he said. The Senator has voted for defense funds to be transferred to energy and food programs. "But across the board tax cuts are a tragedy; it's a lazy way out," Weicker warned.

Weicker revealed a keen interest in energy, calling for mandatory conservation along with decontrol of the industry. "I will support the President on a windfall profits tax," he said, because "companies can share the expense." Weicker called for increased use of clean-burning coal and a six-day driving week, which would enable the United States to bargain with OPEC.



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Make the History Whole

The Board of Student Advisors got the Course Evaluation books out in the nick of time this year, barely days before registration for the 1979-80 school year.

Once classes have been selected, it's easy to forget the other uses of the evaluation books. They should serve as guides to the Appointments Committee and to the dean; and they should be considered a record of the quality of teaching in a given year at HLS, as seen by the consumers of that teaching.

In order to serve those functions effectively, the future course books should include evaluations of courses taught by visitors. Such evaluations are written by students, and BSA members tried this year to have them included in the books. They diplomatically bowed to faculty opposition, based on fears that published evaluations would be rude to a "guest" and could be harmful to the visitor's reputation back home.

Given the widespread use of visitors as a farm team for the Real Thing, their records should be open to scrutiny by the Law School Community. Also, as more and more visitors are hired, or return for second years of teaching, students have a right to that data in making course decisions.

Although information on visitors was not included this year, other information that should be used in shaping the curriculum is available. For example, it should be noted that the average "recommend to others" rating of the Winter term was 5.960 — significantly higher than the average for the five terms preceding it.

The Winter term also won higher ratings than the five preceding terms for subject matter interest, class interest, instruction effectiveness, professor sensitivity, teaching effectiveness and intellectual stimulation. It lost out to the Full Year 1977-8/Spring 1978 rating for "overall learning;" and lagged sadly behind in "workload" (which probably endeared the term all the more to students).

It could be that students suddenly became "easier graders" during the last term — more likely, the figures show solid support for the new format. The lessons in scheduling and teaching methods should be noted by both the dean's office and the Michelman Committee.

As for individual evaluations, of course the dean shouldn't cancel first-year Property because it is so much less popular than Civil Procedure. But he should take note when certain professors consistently get below-average marks teaching first-year students and above-average marks teaching 2Ls and 3Ls — perhaps those professors shouldn't be teaching 1L courses.

All in all, there's gold in them thar books — and it should be mined accordingly.



HARVARD LAW RECORD

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Fenno

Fenno sat tied to a chair in the center of the room. Bright lights shone on his face and drops of water fell slowly onto his forehead.

"It's been quite a year, hasn't it, Mr. Fenno?" the professor asked in a sinister voice. "And you thought you'd get away with it all, didn't you?"

Fenno smiled. "I'll confess to anything you want me to," he said. "Whether I've done it or not."

"Tying up Professor Ferguson and teaching his Civil Procedure class?" asked the professor angrily.

"Guilty," said Fenno. "Rule 12(b)(6) will never be the same."

"Suggesting that the entire 2L class begin spring break in the Dominican Republic on January 1?" accused the professor.

"Guilty again," admitted Fenno. "But most of them are back in Cambridge by now."

"And worst of all, poking fun at the Red Sox after their loss to the Yankees last season?"

"I cannot tell a lie," said Fenno. "I love pinstripes."

The professor's face grew red with rage. "You've taken pot shots at every time-honored institution at this school," he screamed. "Tell me, Mr. Fenno, haven't you ever been serious about anything?"

"Yes," said Fenno thoughtfully. "Once. But that was in another land, and besides, the wench is dead."

The exasperated professor threw his hands up in the air. "It's no use," he sighed. "But you're going to pay for making fun of serious matters."

The smile vanished from Fenno's face. "Okay," he said. "You win. I'll be serious for a moment. But you might not like what I'm about to say."

"The problem with this place is that there's too much seriousness. And that's really no laughing matter."

"We deal with serious matters," argued the professor.

"The faculty takes itself too seriously," Fenno continued. "The students take themselves too seriously. And no one has enough time to laugh."

The professor looked down at his shoe tops.

"I don't always want to laugh," said Fenno. "But I have to because this place has lost its sense of humor."

"If Fenno doesn't laugh, no one laughs. And if no one laughs. . . ."

Fenno's voice trailed off as he shook his head. He forced a smile.



Letters to the Editor of the RECORD

Official Response

Editor's Note: This letter is a copy of one sent to the American Lawyer in New York. It was released to the RECORD for publication by Dean Albert M. Sacks.

To the Editor:

As Dean of the Harvard Law School and as Chairman of its Appointments Committee, we take sharp exception to the article in your April issue spreading a malicious rumor that Professor Arthur Miller "campaigned to prevent visiting professor Irving Younger from getting permanent faculty status." The rumor is absolutely false, and its publication seems to us to require an apology.

Neither Professor Miller nor any other member of our faculty campaigned to keep Professor Younger from being offered tenure. The only member of the Appointments Committee with whom any of your reporters checked the rumor, Laurence Tribe, made this point plain and flatly denied the rumor's truth. We are amazed that you published an article vilifying a respected colleague on the sole basis of unverified reports from unnamed sources who could not have known what they were talking about — and in any event were wrong.

Albert M. Sacks
Dean

Laurence Tribe
Chairman, Appointments Committee

SPORTS QUIZ

1. Who edited the baseball oral history, "The Glory of Their Times"?
2. Name the four teams in the Beanpot Hockey Tournament.
3. In what sport are Indiana, Philadelphia Textile, and San Francisco major college powers?
4. What National League shortstop hit .385 in 1935, a figure no NL player has surpassed?
5. How long is the Kentucky Derby?

(Answers on Page 13)

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MBTA Strategy: 'Divide, Conquer';

By Josh Dratel

There are plenty of catchphrases with which to describe the MBTA's strategy concerning the Red Line Extension Project, but the most appropriate are "Divide and conquer", and "The best defense is a good offense."

The latter involves the invocation of good policy, namely mass transit, in order to put the "special interest" labels on the Project's opponents.

The former utilizes enough incentives and threats to various groups so that they support the Project thereby effectively limiting organized and widespread protest.

Who would dare be against mass transit? The MBTA has offered three major justifications for the Red Line Extension: a) extending the "convenience of rapid transit to thousands" who presently live beyond its reach, b) relieving the traffic congestion and pollution in Harvard Square and c) offering alternative transportation in the wake of escalating oil prices.

Deception, Neglect

Well, the Red Line Alert is not opposed to mass transit, but the



group wonders why the other suggested routes were dropped, why the MBTA has practiced systematic deception and why the MBTA has neglected to alleviate the average merchant's or the average homeowner's burden as a result of the Project.

"I don't think the project has been well planned at all," James H. Quinn maintained. "It will affect a lot of businesses and neighborhoods, and will stimulate uncontrolled development.

"We (The Red Line Alert) just want to bring some sanity into this project."

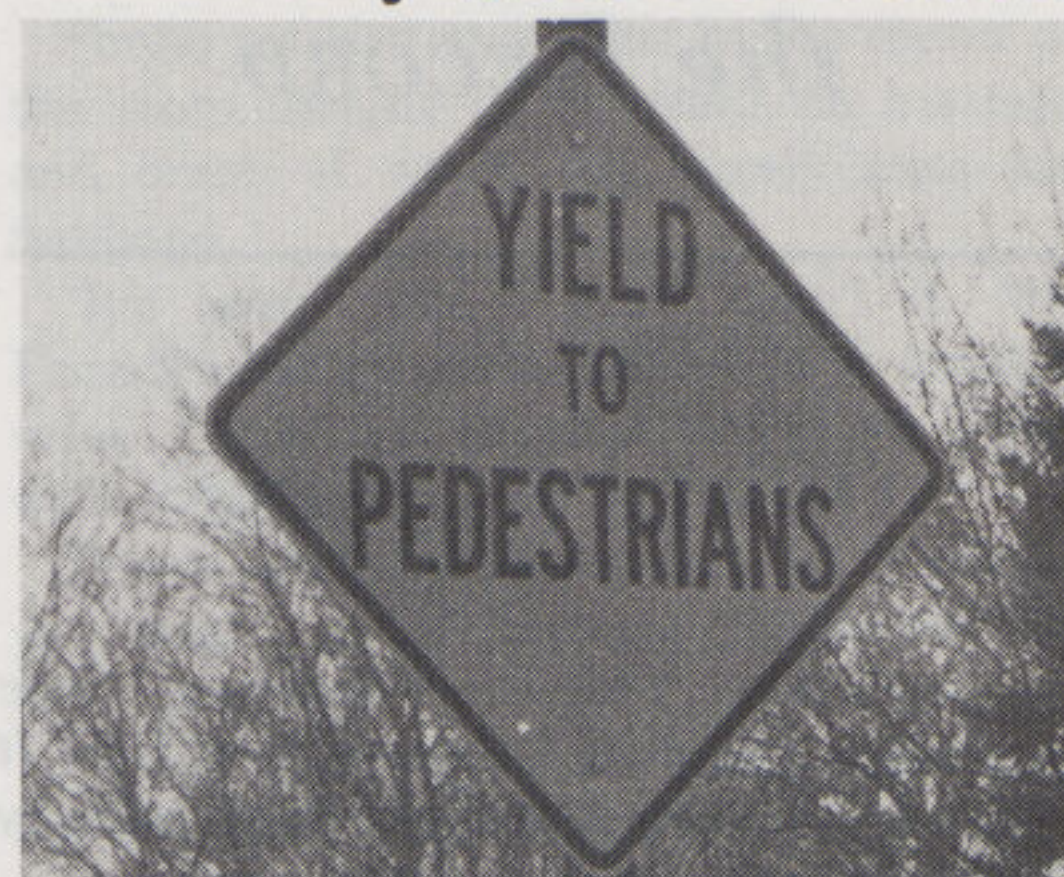
Stephen Gay of the North Cambridge Planning Team asked, "Who will it (the Project) benefit and who will it hurt?" He and Quinn both felt it would be a windfall for developers and a potential disaster for residents.

Indeed, the Rindge Towers, according to a Cambridge brochure, were put in a seemingly out-of-the-way location because the (future) Red Line Extension would make them much more accessible to working areas.

The increased access to Harvard Square and beyond will also make North Cambridge more attractive to members of the Harvard community and others, thereby driving up real estate values and quite likely forcing current residents, unable to afford the rising costs, to abandon their own neighborhood.

The same market forces probably will act similarly on North Cambridge and Harvard Square businesses, resulting in the loss of the small markets and shops that have serviced the community for generations.

"We don't want more development that will cause spiraling rents and the destabilization of North Cambridge," Gay added. "It will mean more Harvard people moving into the neighborhood, and people don't like that because it drives values too high."



Harvard Resented

And it is no wonder that the surrounding communities resent encroachment by Harvard. The University will be amply compensated (estimates are in the \$1 million range) for easements and property takings, and, as University Director of External Projects L. Edward Lashman noted, "We expect to have appropriate protection for ourselves."

The Harvard-MBTA deal points out the utility of our second adage. The MBTA has foreclosed mighty Harvard's objections with a substantial settlement, and has played other segments of the community against each other in order to short-circuit any community solidarity.

Davis Square and Porter Square merchants are looking forward to the increased business they believe the new station will bring while Massachusetts Avenue proprietors are threatened with constant construction for at least five years. This hardship could seriously impair the ability of those businesses to continue.

But homeowners have not shown much sympathy for the merchants, for the alternative is moving the material or digging the holes along their streets.

"It's as though I don't exist here," Wendy Landry of Mass. Ave.'s Fabrications lamented. "It's the same for the other merchants here, too."

(Continued on Page 13)

Local Merchants Differ on Protest

(Continued from Page 12)

"No One Listening"

"There's no one listening to the merchants," agreed John Mitchell of John Mitchell's Croppers. He claims "it seems even the residents want to destroy us" because of their insistence on side-street parking restrictions, and "they shouldn't be our enemies because I see a need for us, too."

Mitchell also sees the need for more aggressive and vocal action to stop the project, but such suggestions only bring up another rift between those fighting on the same side.

"We believe the courts are our last resort," countered Henry Shawah of the Red Line Alert. "We saw it as our best alternative. What else could we really do?"

The Alert will have its day in court, too, as a hearing in Federal District Court to determine the adequacy of the Project's Environmental Impact Statement and the MBTA's compliance will be held today.

But more important than the squabbles between merchants and residents is the issue of community participation in such a project that will have such a profound impact on the community's way of life.

"We're fighting to keep economic control of our community," Gay insisted. Shawah decided, "If money is going to be determinative as to whether a part of the city survives, then I wonder whether this is democracy in action."



Drafting Contest Winners

By Jorie Roberts

Urania, an under-developed country, has large deposits of uranium. IONCO, a western-based multinational corporation, wants to "exploit" Urania's resources. A contract must be drawn to accommodate Urania's goal of mineral development and IONCO's desire for the mineral rights. And twenty HLS students, serving either as counsel for IONCO or Urania, did just that, during the International Legal Drafting Competition recently sponsored by the International Law Society.

Joel Trachtman, 2L, explained ILS decided to initiate the competition because "it's important for lawyers to practice the special skills involved in international legal drafting."

2Ls Gene Schneyer and Joan Young won the competition and \$40 each. Rosemarie Morse, 3L, and David Smith, 2L, took second place. Each participant received a copy of Mikesell's *Copper Investment in Chile*.

Trachtman, Dean David Smith, David Fitch, 3L, and Vicky Tkachenko, 2L, judged the contracts. Tkachenko said, "It was difficult to draw the line between an advantageous and workable contract and one which was so beneficial to one side that the agreement probably wouldn't last for long."



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3. Soccer
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5. 1 1/4 miles

'Dred Scott Case': Worth Its Pulitzer

By Richard B. Bernstein

Stung beyond endurance by the rhetoric of the leaders of the American Revolution, Dr. Samuel Johnson asked in 1776, "How is it that we hear the loudest yelps for liberty among the drivers of negroes?" His embarrassingly direct taunt echoes down the years, confronting us with the paradox of a society that simultaneously espoused ideals of freedom and equality and condoned a brutal and demeaning social system that denied that freedom and equality to an entire people simply because of their race.

In his superb new book, *The Dred Scott Case: Its Significance in American Law and Politics* (Oxford, 741 pp., \$25), Don E. Fehrenbacher shows that it was not until *Dred Scott v. Sandford* reached the U.S. Supreme Court that this fundamental paradox was directly confronted. Fehrenbacher's book is the best history of a landmark constitutional case ever written, but it is far more: it is a probing and lucid study of slavery in American political and legal history and the elaborate dance around the issue performed by most political leaders until one elderly slave's suit for his freedom made its resolution unavoidable.

Penetrating Analysis

It is also a fascinating study of judicial decision-making, the centerpiece of which is Fehrenbacher's penetrating analysis of the notorious opinion written by Chief Justice Roger B. Taney and of the intricate interplay of ambition, sectional bitterness, and fear of disunion that gave the case its final shape. Fehrenbacher further discusses how *Dred Scott v. Sandford* was perceived by contemporaries, such as Lincoln and Douglas, and what influence, if any, the case had on the growing sectional conflict that resulted in the Civil War.

All in all, he brilliantly demonstrates that "the Dred Scott decision becomes a point of illumination, casting light upon more than a

century of American history."

While it may be too long for the general reader, *The Dred Scott Case* is nevertheless a masterpiece of the historian's art, and it was so recognized last month when it received the 1979 Pulitzer Prize for History. The only major fault of the book must be laid at the feet of the publisher, whose decision to set its

price at \$25 places the volume beyond the reach of all but the most affluent. Perhaps Oxford University Press will publish a reasonably priced paperback edition and a wider audience will be able to appreciate Fehrenbacher's achievement.

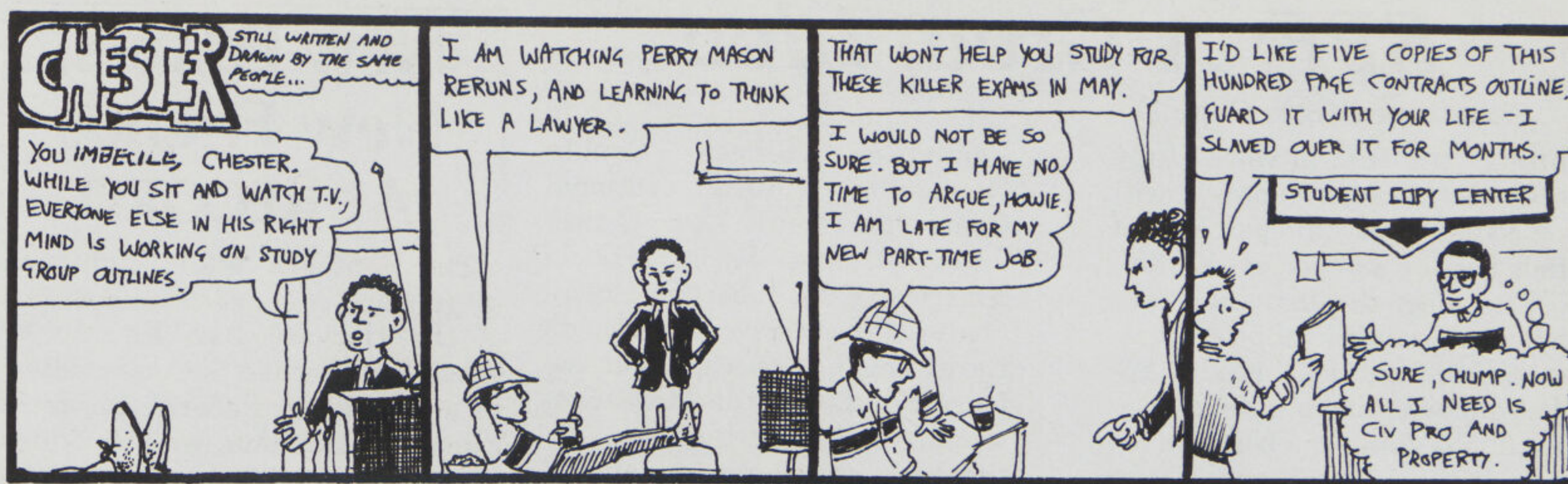


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Off the Record

Griswold On HLS: 12 Years Later

By Robert Reznick

On the eve of his retirement, Dean Griswold made the following remarks at Harvard Law School's Sesquicentennial Celebration.

"For some years I have been concerned about the effect of our legal education on the idealism of our students. I have great faith in our students. They are surely as good, as earnest, as sincere as their predecessors who have come here through the years. They bring to this school a large measure of idealism. Do they leave with less? And if they do, is that something we can view with indifference? If they do, what is the cause? What do we do to them that makes them turn another way?

. . . [I]n exalting purely logical reasoning, . . . we are not giving sufficient weight to other elements in the situation which are equally relevant in any truly intellectual evaluation. We push and squeeze our students; we question them and prod them; we indicate our belief in minutiae. But again and again we stress logic as the ultimate objective, though we may be rather unaware that we are doing so. We encourage imagination — in small ways and perhaps in analogical reasoning. But do we encourage imagination in the broad sense? Do we encourage our students to devise new premises, to start out on whole new lines of rea-

soning, to come up with new solutions?

"The same problem is encountered when new members of the faculty are selected. The persons making the selection have come through the traditional law school mill. They had high grades in law school — very high — or they are not likely to be considered by those who are doing the considering. Other qualities are looked for, it is true, and often found, but there is sometimes a sort of atmosphere that one is unintellectual if he feels that these qualities can have truly independent significance. Thus our faculties tend to respond themselves; and in the process may by the continual inbreeding that is involved, be producing even nar-

rower law students than they were themselves.

"I need not add that I have the highest regard for my colleagues, and great affection for them. I am proud of them and of the great work that they do. It has been a precious privilege to work with them here through most of my professional life. But a dean knows — as foundations sometimes do not recognize — that a law school can do only those things that its faculty members are qualified to do and — even more important — that they want to do."

E. Griswold, *Intellect and Spirit*, 81 Harv. L. Rev. 292, 300-303 (1967).

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SFF: A Great Idea

(Continued from Page 1)

through the federal work study program, Geoga notes, will sometimes get 20 percent of their pay, or \$36 per week, from SFF to meet the matching contribution requirement for compensation from work study. Applicants who have already secured jobs stand the best chance of getting fellowships. "We're not job counselors," Geoga says. "We're just a funding corporation."

SFF also requires applicants to tell the board about themselves — their motivations, objectives, long-term goals — and how their summer's work fits into that picture. In addition, they must explain the type of work the prospective employer does and the nature of the work the applicant expects to do.

Recipients last year had work experiences at such places as Southern Prisoner's Defense

Committee, Bergen County Prosecutor's Office, National Center for Youth Law, Center for Law and Social Policy, American Civil Liberties Union, Media Access Project, Florida Rural Legal Services, Legal Defense Fund, and the Massachusetts Law Reform Institute. Activities of recipients are detailed in SFF's Annual Report.

"I think SFF is a great idea," Geoga enthused. Though he isn't sure SFF encourages students to enter public practice, it does ease financial hardships. He is conscious of the heavy obligation to act responsibly with the large funds SFF handles. "We are students who raise the money and do the best we can in distributing it," Geoga said.

Contributions may be sent to SFF, c/o Tobey Oxholm, 252 Langdell Hall.



Inflation Blamed for Boost In Financial Aid Loan Level

(Continued from Page 8)

cept some other employment on account of the size of their loan," Snyder said. "In some cases, it might make a difference as to whether one accepts a public interest position."

Snyder said that aside from raising the loan component, the Committee has made no changes this year in the nature of the financial aid program. He noted, for example, that the Committee still expects first-year students to save \$550 of their summer earnings plus 50 percent of all gross earnings

over \$2400. Upperclassmen are expected to save \$600 plus 50 percent of gross earnings in excess of \$2500.

According to Snyder, most other law schools impute a higher amount to summer savings.

Snyder noted that the Law School, unlike a growing number of other educational institutions, is not experiencing an increase in delinquency on loans.

"It's not a major problem at HLS," Snyder said. He attributed this in part to the favorable employment prospects of students.



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New Editors, New Friends At RECORD

The Southern Mafia tightened its grip and broadened its horizons at the Harvard Law RECORD by electing its second Southern editor in a row. Jorie Roberts, 2L, from Florence, Alabama, will be Editor for the Fall, 1979, term. At the same time, the legitimate demands of the industrial Northeast were recognized by the election of Dan Hershman, 1L, as Managing Editor.

Roberts graduated from Smith College. Her reporting on international affairs has given the RECORD its cosmopolitan outlook this past spring. Hershman is from Cheltenham, Pennsylvania, and is a graduate of Muhlenberg College.

The outgoing administration, comprising Georgian Tammy Jacobs, Editor, and Coloradan Michael Smith, Managing Editor, both 2Ls, were expected to turn over the reins of power gratefully after this issue. They will, however, stay on in an advisory and exhortatory capacity next year as senior statespeople.

The not totally unexpected elections of Roberts and Hershman were overshadowed by an even happier event, also not totally unexpected: the announcement of the engagement of former Editor Terry Keeney and staff member Gina Markey. See, you can join the RECORD and find love and happiness.

This is the last RECORD for this semester. The RECORD will return at some point in September with the first issue of Volume 69. Until then, have a good summer and don't forget to write.

Prices Going Up

Due to the rising costs of paper, the RECORD will be raising prices beginning with the first issue of the 1979-1980 school year. Student subscriptions will be \$4.00 a year or 25¢ an issue. Mail subscriptions will be \$7.00 annually.