

Red Set
C.I.

Circulation

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 75, NO. 1

SEPTEMBER 10, 1982

25 CENTS



John Morris

Three 1Ls chat along the railing at the stern of the cruise boat which carried them and 500 classmates across the Boston Harbor waters on Saturday night. More 1L pictures on pages 8 and 9.

Army Threatens Siege Over Gays, School Responds

By Michael Medina

The United States Army has threatened to withdraw all defense contracts from Harvard University because Harvard Law School will not allow the army to recruit here. An HLS non-discrimination policy prohibits organizations that discriminate against applicants on the basis of age, handicap or sexual orientation from recruiting at the Law School.

In a letter addressed last May to HLS Dean James Vorenberg, Judge

Advocate General (JAG) Major General Hugh J. Clausen wrote that he is "considering recommending" that no further defense contracts be awarded to Harvard because of the policy. The JAG, the top United States Army lawyer, also addressed similar letters to law schools at Yale, NYU, Columbia, UCLA and Wayne State University, which have comparable anti-discrimination policies.

If followed through, the with-

(Continued on Page 12)

Charges Fly Over BLSA Course Boycott

By Dave Horn

Following several weeks of harsh criticism from the national press, the leader of the Harvard Black Law Students Association returned to Cambridge this week and claimed that BLSA's boycott of the winter-term course on Racial Discrimination and Civil Rights has been badly misunderstood. He labeled as "demagoguery" Dean Vorenberg's charge that BLSA was boycotting the course because one of its instructors, Jack Greenberg, is white.

Muhammad Kenyatta, president of BLSA, told the RECORD that "the dean has dealt with us in bad faith. By injecting the charge of anti-white bias and reverse racism, the dean has played into the hands of the most reactionary and racist elements of our society."

Dean Vorenberg denied that he had done anything to focus attention on the "reverse racism" issue and declined to comment on the accusation that he had tried to portray Kenyatta or BLSA in a bad light.

Kenyatta was referring to a letter Vorenberg wrote to all returning students in July. In that letter, Vorenberg announced his opposition to BLSA's boycott of the course and referred to an earlier letter in which Kenyatta allegedly stated that one reason for the boycott was that the course was being taught

(Continued on Page 6)

HLS '85: Puzzles, Performances,

By Andrea Hartman

This year's 1L class was chosen from a record 7,505 applicants. The Law School accepted 783. While each student entering the class undoubtedly demonstrated his or her



Pamela Moore, 1L

academic capabilities prior to arriving at HLS, some also proved that life exists outside the library.

Harvard Law School intramural football teams may want to recruit David Dougherty, 1L. Reveals Dougherty, "I bagged it, but I was an all-New England safety at Yale." After graduating from college, Dougherty tried out for the Atlanta Falcons. Although he had not been cut from the team, he decided to go back to school. Why did he give up a potential football career for Harvard Law School? Responded Dougherty, modestly, "to solve most of the major crises of our time."

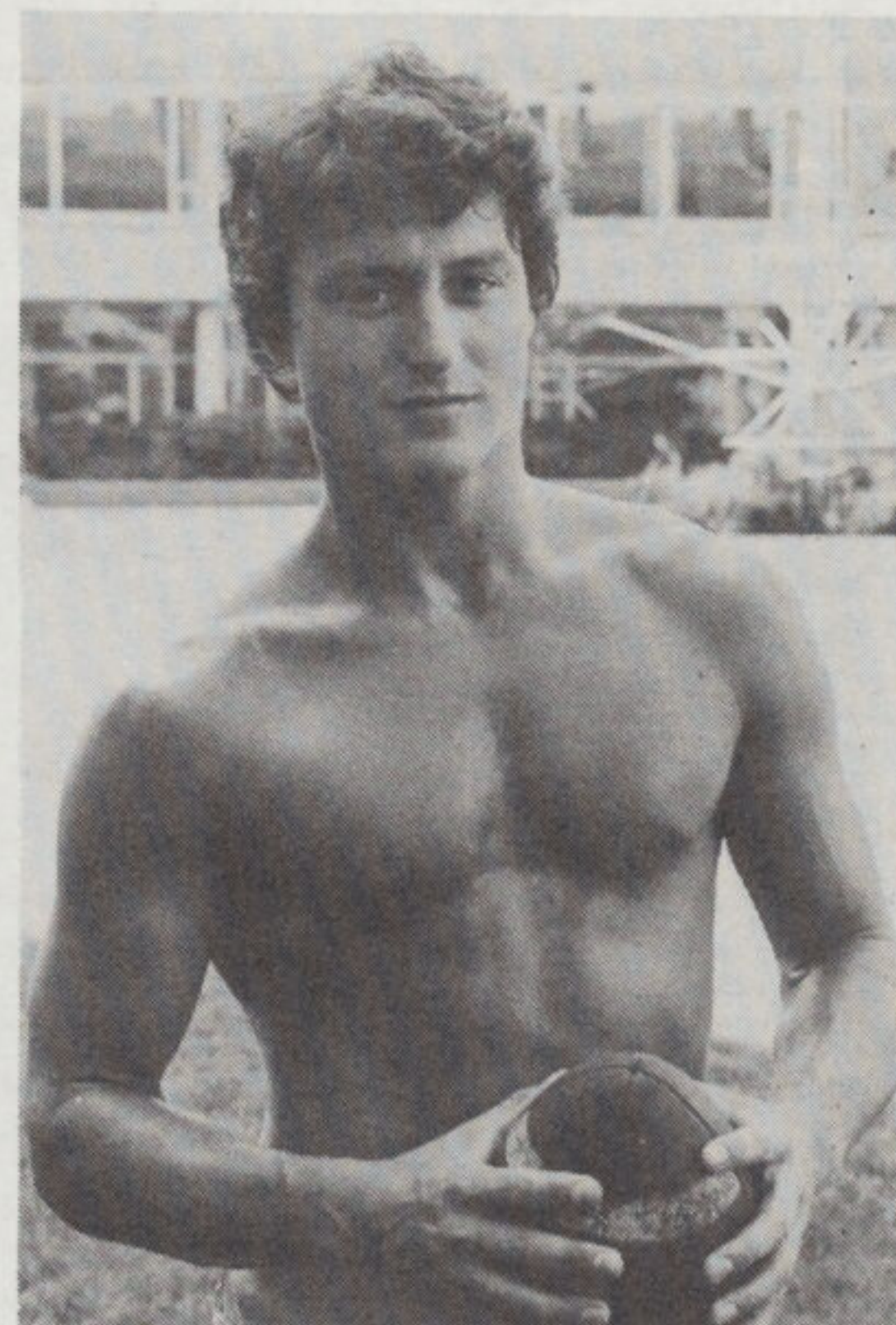
Those HLS football teams not fortunate enough to recruit Dougherty need not despair. Kenny Rubenstein, 1L, played four years of football at Cornell as the starting kicker. Said Rubenstein, "I thought about pursuing football until I got accepted here."

No Dummy

Rubenstein, besides being an athlete and scholar, enjoys performing, and is a talented ventriloquist. He and his companion, a dummy affectionately referred to as J.J. (Junior Junior), have performed at summer camps, in school talent shows, and this last summer at nightclubs in Long Island. Their

accomplishments also include reaching the finals in a national college competition in informative speaking — the topic of the talk was, of course, ventriloquism.

Rubenstein seems to be happy with his new surroundings at HLS.



Photos by John Morris

David Dougherty, 1L

J.J., however, professes indifference. Noted J.J., "A school's a school, you know." J.J.'s no dummy.

Rubenstein and J.J. are not the only HLS newcomers who appreciate an enthusiastic audience. David Stone, 1L, produced a weekly public affairs television program before coming to law school. The program, entitled "From the Editor's Desk," features guests including senators, diplomats and economists. Leading editors engage the newsmakers in conversation. Stone said that he "had complete responsibility for getting the guests," and also assisted in scheduling the guests and editors, doing research, reporting, and writing scripts.

Pamela Moore, 1L, spent much of the last year in Egypt and Sudan, after receiving a fellowship. Moore stated that her research topic "was to study factors influencing the regulation of the use of pesticides in developing countries."

Facts & Figures

Applications. A record-breaking 7,505 applications were received this year, with offers of admission being made to 783.

Geographic representation. All but two states — Nebraska and Wyoming — are represented in the Class of 1985. New York provides 180 members of the class, California 97, Massachusetts 55, Illinois 48, New Jersey 49, Pennsylvania 38 and Texas 32.

Women and Minorities. Another record is being set this year as 33% of the entering class are women. Ninety-seven, or 17%, are members of minority groups.

Schools. Applicants from 179 schools were offered admission, but 381 of the offers were made to Ivy League alumni.

College Majors. Political science, history and economics account for fully 54% of the 1Ls' majors.

Ages. Ages of the entering class members range from 20 to 47. The average age is 23.3; the median is 23.4. One hundred and eighteen are over 25; 34 are over 30. More than 250 have been out of college for at least a year. Seventy-nine hold graduate degrees.



Pigskins and Pesticides

Moore's interest in pesticides stemmed from a summer job at Legal Services in Mississippi, where she investigated complaints regarding pesticides in the Mississippi Delta. Her recent study overseas focused upon the pesticide regulatory measures taken by foreign governments and the enforcement of those regulations. She hopes to use her research either as a basis for articles or as part of a master's thesis.

Veteran Puzzler

The Socratic word puzzles of Harvard law professors should not dazzle 1L Harvey Sawikin. Writing crossword puzzles is a hobby he began while in high school and pursued while at Columbia University. Sawikin has had two of his crossword puzzles printed in the New York Times (both during 1981) and a third has been accepted and

will be published within the next two years.

Said Sawikin, "I read an article that the Times accepted puzzles from contributors and decided to try. The first one I sent was pretty bad and was rejected. I didn't know anything about how it was supposed to be presented. The second one was accepted. That was real exciting, the big moment." Writing a crossword puzzle takes Sawikin between 7 hours and 2 days. He noted that his vocabulary has improved since he began writing the puzzles.

Sawikin said he decided to apply to law school "just to see where I got in." Once accepted to HLS, Sawikin made up his mind to attend law school. Thus far, he is quite content. Concluded Sawikin of his first week here, "It's great. So far, my vision of HLS is a place where you drink beer, hang out and occasionally read a case."



Great Moments in the Law

The Law in All Its Majesty

Oranges, Grapefruit,
Tangerines and Tangelos
Grown in Florida:
Amendment of Tangerine
Size Requirements

SUMMARY: This regulation increases the minimum size requirement applicable to fresh shipments of Dancy variety tangerines from 2 $\frac{1}{16}$ inches to 2 $\frac{5}{16}$ inches in diameter during the period August 23, 1982, through October 17, 1982. Such action is necessary to promote orderly marketing of suitable sizes of tangerines.

— 47 F.R. 34351 (Aug. 9, 1982)



... The ostrich of invalidity has not succeeded in concealing itself by hiding its head in the sands of verbosity.

— *Shortell v. Evans-Ferguson Corp.*
98 Cal. App. at 656 (1929)

SEPTEMBER 10, 1982

Back to Legal Methods...

§1... The words, "transmitting messages," in addition to the usual and popular meaning, include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but do not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages. ...

"Taxpayer" means a person engaged in the business of transmitting messages. ...

— Illinois Messages Tax Act



Readers' contributions to "Great Moments" are welcomed.



Students Flock to Meal Plan

By Louis Hoffman

Harvard Law School will have a board plan if the initial response to two meal-plan proposals continues. According to John Lojko, Food Services Director, the two new Harkness food plans have been quite popular with 1Ls, but as of Tuesday Lojko had not counted the responses from 2Ls and 3Ls. "They are pouring in too fast," he said.

There are two plans pending for the Harkness cafeteria. Plan A, an "all you can eat" deal for all diners at Harkness, will cost \$262.50, or \$4.45 a meal, a discount of 50¢ a meal from the normal cost. The dinners will include two "special events" a month.

Discount on Books

Plan B allows the Hark diner a 10% discount on five \$50 pre-purchased coupon books. Also, one of the semi-monthly "special event" dinners will feature a coupon-users discount. The coupons will be redeemable at breakfast, lunch or dinner. Single \$50 coupon books will be available for purchase at face value.

Current projections call for the meal plans to be available only through December 23, the end of the current semester. However, "if participation and satisfaction are sufficient," the Food Services circular promises that the board plans will continue.



**Professional Dry Cleaning
and Shirt Laundry**
at

Rite-Way
DRY CLEANERS, INC.

547-8008

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

Shared Outlines: An End to the Paper Chase?

By Brad Hudson

In an attempt to encourage a spirit of cooperation and sharing among first-year law students, two HLS students have submitted a proposal to the administration and the Board of Student Advisers to establish a 1L-supported course material library at the Law School. The proposal, submitted by Jon Weber and Matthew Kramer, 2Ls, could fundamentally alter traditional methods students use to prepare for Law School exams.

The proposal grew out of a similar library put together by members of last year's Section I. Last spring, the section independently organized a library of student-prepared course outlines, summaries and other materials. These materials were placed on open reserve in the library during the weeks preceding final exams.

No Contribution Required

Any student could submit an outline to the library, and any student could use the materials. Students were not required to contribute material in order to have access to the library.

According to the proposal, before the formation of the library, many students prepared for exams by preparing their own study materials, either individually or in small study groups. The "outline group," in which each student in the group outlines a portion of the course and then exchanges his outline with other group members, is a legendary institution at HLS.

When the library was first proposed last spring, some initial re-

sistance was encountered. Many students believed that their work should not be enjoyed by students who had not contributed anything. Students also feared that the "best" outlines would not be contributed, because of fear of competition.

But the proposal asserts that none of these fears were realized. In all, 48 students contributed well over 100 items to the library, and library staff members reported extraordinarily high usage of the materials.

Detailed Plan

The proposal lays out a step-by-step plan for establishing the course material library as a regular part of the first-year program. First, students would be notified of the program through notices in the *Adviser* and letters placed in 1L boxes. Next, contributor forms would be distributed. On these forms, students would list and describe the materials they wished to submit. The completed forms would then be read into a data base emulation program with list and sort capabilities. This program would allow the materials to be organized by course name or contributor.

The finished product would be a catalog of the available materials, similar in appearance to the course evaluation booklet now produced by the BSA. Finally, the actual materials would be collected and made available near the library circulation desk.

The proposal suggests that the BSA administer the program, with the advice and support of an ad hoc committee composed of members of

last year's Section I. "The BSA is the ideal entity to effectively implement this program as it has an established channel of communication to first-year students, organizational goals which could be furthered by the existence of the proposed program, some degree of continuity of leadership, and an identity with the Harvard Law School administration." However, the BSA supervision would be accompanied by broad-based participation by the students themselves, furthering the program's objectives of cooperation and active participation.

The proposal requires both approval by the BSA and adequate funding. Weber estimated the start-up costs for the computer cataloging at no more than \$1,100 in the first year and \$300 in subsequent years. In addition, funds would be required to cover printing costs.

Under Advisement

Kathy Seward, chair of the BSA, said that the proposal is similar to a project now being explored by the board, and is being taken under advisement.

The proposal cites many benefits of having a course material library. Students not involved in formal study groups would be brought into contact with others through discussion of the pooled materials. Attention could be drawn away from the proliferation of outlines and review materials and directed toward discussion and review.

But the broadest impact would be at the attitudinal level. The library would shift the institutional focus away from competition on exams to cooperation. This shift, says the proposal, would carry "the important message that doing well and doing good need not always diverge."



**New Subscriptions?
See Page 16.**

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617)495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 25 cents at the Law School, 75 cents mailed. Second class postage paid at Boston, Mass.

Copyright 1982 by the Harvard Law School Record Corporation and by the contributors. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation.

POSTMASTER: Send address changes to Harvard Law Record (ISSN 0017-8101), 23 Everett St., Cambridge, Mass. 02138-9984.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$4.80 of his H.L.S.A. annual dues are used to purchase the Record subscription he receives. Dues paid at any time during the H.L.S.A. fiscal year that began in April 1982 and ends in March 1983 will purchase a subscription that begins in September 1982 and expires in May 1983, and so on in following years.

Where They Spent the Summer:

	2Ls	1Ls
New York City	143	68
Boston	81	52
Washington, D.C. area	78	41
San Francisco	40	9
Los Angeles	39	7
Chicago	15	29
Dallas	14	8
Philadelphia	9	13
Seattle	9	4
Houston	9	3
Twin Cities	9	2
Other California	8	4
Denver	7	5
Hawaii	5	2
Ohio	4	6
Pittsburgh	3	8
Connecticut	3	8
New Jersey	2	11
Other New York	2	6
Detroit	1	8
Virginia (not D.C. area)	1	7
Missouri	1	6
Kentucky	1	5

Information was taken from summer address lists distributed to all students last spring. Students splitting summers were counted once in each city in which they worked. Areas listed are those in which at least five 2Ls or five 1Ls worked.

A Society Column in the RECORD?

We aren't exactly sure what's behind it all, but if the stampede of the past summer continues, we may have to branch out into subjects wedded to the law that we haven't covered in the past.

Prof. Arthur Miller started the trend last spring when he announced his intention to marry Marilyn Tarmy. The ceremony took place on June 27, 1982.

Next to walk down the aisle was Prof. Henry Steiner. He was married early in August, and he and

his bride added a twist to Miller's performance by moving into the house formerly owned by Prof. Paul Bator.

Not to be outdone, Prof. Roberto Unger married Tammy Lotham, recently an HLS student, a few weeks ago. Unger and his bride are now in California, reliable sources tell us.

If things keep going at this rate, the RECORD may have to start a society column.

Law Graduates Find Work

More than 93 percent of the nation's 1981 law school graduates were employed by March, 1982, but the number taking government and public interest jobs had fallen dramatically since 1975. Those were two of the findings of a National Association for Law Placement survey conducted this past spring and released this summer.

Fifty-seven percent of the graduates surveyed entered private practice. Of those, 40 percent joined firms with between two and 10 lawyers. Another 25 percent joined firms with between 11 and 50 attorneys, and 20 percent went to firms of 50 lawyers or more. Seven percent are solo practitioners.

Fewer to Government Jobs

The number of graduates taking government jobs dropped from 18 percent in 1975 to 12 percent in the 1981 survey. Public service and public interest employment fell by 50 percent from the 1975 figure, with only three percent of the graduates taking such jobs this year. At the same time, private firms have replaced government as the largest employers of minority graduates, with government taking only 22 percent of Black, Hispanic and Asian graduates this year, down from 34 percent five years ago. Similarly, among women graduates in the class of 1981, only 13 percent took government jobs, compared with 22 percent in 1976.

Judicial clerkships accounted for 10 percent of the graduates in the survey, while 11 percent found jobs in business, primarily in the general counsel's office of corporations.

The survey results are based upon responses received by three-quarters of the 22,119 law school graduates of 1981.

J.M.

The Record needs writers and photographers . . . Join the Record

BLSA Action Draws Mixed Reviews:

(Continued from Page 1)

in part by a white instructor. Accompanying Vorenberg's July 21 letter were: the above-mentioned letter by Kenyatta, which was addressed to Julius LeVonne Chambers, the black civil-rights lawyer who is scheduled to teach the course with Greenberg; a letter in which the Third World Coalition joined BLSA in supporting the boycott; and separate letters from Chambers and Greenberg in which each criticized the boycott and denied Kenyatta's allegations that Greenberg had opposed the interests of black people on some issues.

Chambers Asked First

The present controversy erupted in the spring of this year when the Law School announced that it would offer a course in Racial Discrimination and Civil Rights during winter term and that it would be taught by both Greenberg and Chambers. Chambers is president of the NAACP Legal Defense and Educational Fund and Greenberg is director-counsel of the same organization. According to Vorenberg, Chambers, and Greenberg, Chambers was first offered the opportunity to teach the entire course. Believing, however, that he would not be able to devote three weeks to the course, Chambers asked Greenberg to teach the second half of the course, and Greenberg accepted.

In May, Dean Vorenberg informed the BLSA executive committee of the teaching arrangement. That committee then voted unanimously to urge HLS students to boycott the course, a suggestion quickly endorsed by the Third World Coalition. Then, in July, Vorenberg mailed the batch of letters to returning 2Ls and 3Ls, and the news of the boycott soon appeared on the pages of newspapers around the country. Editorial commentary generally denounced Kenyatta and BLSA.

In his letter to Chambers, Kenyatta cited several controversial positions taken by Greenberg over

the years. Both Chambers and Greenberg subsequently denied these factual allegations, but Kenyatta told the RECORD that he stands by his letter.

Kenyatta's Letter

Much of the controversy centers around the language of Kenyatta's letter. Some readers of the letter, including Vorenberg and Greenberg, felt that Kenyatta had clearly referred to the fact that Greenberg was white as one reason for the boycott. Kenyatta denies that he said that. In part Kenyatta's letter stated:

"Shortly after learning of this proposed arrangement, the BLSA executive committee met and carefully considered the matter in light of several relevant factors. Paramount among these is BLSA's desire that Constitutional Law and Minority Issues be taught *in its entirety* by a minority professor, most preferably by a full-time professor who could be present on a day-to-day basis and thus available for counselling, advising, informal interaction, and the kind of role model encouragement that Black students so acutely need.

"It would be less than candid if we did not mention that, for a significant number of Black students the selection of Mr. Greenberg seems especially inappropriate in light of his apparent hostility toward historically predominantly Black educational institutions, his adamant refusal to relinquish directorship of the NAACP Legal Defense Fund to a Black attorney, and his opposition to Black student associations on predominantly white campuses (e.g., his intervention against the efforts at Cornell University by the Black Students Union to establish an Afro-American-oriented dormitory). However, it would be a mistake to interpret BLSA's rejection of the Law School's proposal as an *ad hominem* rejection of Mr. Greenberg. Rather, it is the strong consensus of Black students and other student group allies that, in this context, nothing short of a

full-time minority professor will be acceptable. Indeed, even a minority appointee who has no conceivable possibility of expanding his/her sojourn into a tenure-track appointment would be far less than desirable."



John Morris

Muhammad Kenyatta, 2L

Kenyatta explained that BLSA's objection was to the Law School's inadequate response to the Third World Coalition's demand for more permanent minority faculty. The reference to Greenberg's career, Kenyatta said, was only meant to point out to Chambers that Greenberg is "a pretty controversial guy" and that many blacks "have problems with him because of his litigation strategies." "What I said is simply a reiteration of what's public knowledge," Kenyatta said. Making Greenberg director of the Legal Defense Fund, Kenyatta asserted, "was like asking Stokely Carmichael to become the director of B'nai B'rith." Summing up BLSA's position, Kenyatta said, "We object absolutely to a response to our demand for tenure-track minority professors that is any-

(Continued on Next Page)

Denounced by Some, Defended by Others

(Continued from Previous Page)
thing less than tenure-track minority professors."

Dean Vorenberg defended the administration's decision to offer the course and to invite Chambers and Greenberg to teach it. "The Lecturers Committee and I thought that it was important to offer the course," he said. "We thought that the Chambers-Greenberg combination was an excellent one. I don't think there's anything inconsistent with continuing to seek more full-time minority faculty members in making arrangements for an important course to be taught by two people on a part-time basis."

Vorenberg said he ordered the batch of letters mailed to students because "it seemed . . . unfair to expect them to come back and sign up for courses without any information on the boycott. I think it's a very important issue, and one that the student body ought to discuss."

Vorenberg Surprised

"I was surprised by the boycott," the dean added. He said his understanding had been that he would continue his discussions with BLSA and the Third World Coalition this year. "I certainly have tried to keep them informed and I believe I have dealt with them in good faith. And I will continue to do so," he said.

Although the BLSA executive committee's decision to boycott was unanimous, at least one person dissented from the Third World Coalition's endorsement of the action. In an interview with the RECORD, Joe Garcia, president of La Alianza, emphasized that he spoke for himself, not his organization. The boycott "will hurt minority students," Garcia said. "It's like cutting off our nose to spite our face. We're just hurting ourselves."

"The problem with the boycott," Garcia continued, "is that it's fuzzed the issue. The issue has become the reverse racism of minority students at Harvard." Thus, Garcia said, the boycott was a poorly chosen tactic. "It's made people think

the problem is with minority students rather than an administration that deals in bad faith."

Garcia faulted Kenyatta for criticizing Greenberg, saying that Kenyatta's letter had harmed the Third World Coalition's position with the faculty. By appearing to criticize Greenberg's hiring on the grounds of Greenberg's ideology, Kenyatta raised "academic freedom questions," Garcia said. Faculty members "were all threatened by that," he added.

Garcia also said that he did not believe there would have been a boycott or even a protest if Chambers had been scheduled to teach the course by himself. "Greenberg himself was a problem," he said. In addition, Garcia said that many members of the Third World Coalition had mistakenly believed that Greenberg was at first going to teach the course alone but that Chambers had then been added "as an afterthought." Garcia said he felt this misunderstanding was one reason why the Third World Coalition endorsed the boycott.

"Drastic Action" Needed

Garcia was also critical of Vorenberg. "Drastic action is needed," he said, "because the dean isn't listening." "This administration has let us down. We all expected more." Garcia said Vorenberg "took advantage of [Kenyatta's] letter" to focus attention on Greenberg and "to draw attention away from minority faculty hiring." "He used it in a way Muhammad hadn't intended it to be used," Garcia said.

Garcia said the boycott would probably succeed in deterring minority students from registering for the course unless BLSA calls it off. "I think I might be the only minority student in that class," he said.

Jack Greenberg and Julius Chambers both told the RECORD that they plan to visit Cambridge in the near future to talk with students about the course. The visit might take place in late September, according to Greenberg.

Chambers said he was optimistic that "perhaps the whole problem can be resolved." "I think we'll be able to explain the circumstances of our decision" to teach the course, he said.

"I agree that there should be more tenured black professors," continued Chambers. "My concern was with the limited number of students who are now going into public interest litigation." If BLSA were to proceed with the boycott, said Chambers, "I would be disappointed. I would still try to work with those students who agree to take the course."

Chambers said he understood that BLSA's primary aims were to encourage the Law School to hire more blacks and to elevate the Racial Discrimination course to its former status. He agreed, though, that some students had seemed to object to Greenberg's teaching the course. "I think one could legitimately conclude that there was some objection to Jack's participation," said Chambers.

Kenyatta "certainly said that," said Jack Greenberg. "There doesn't seem to be any question about that." Greenberg said he has taught courses at several law schools including Columbia and Yale and that he had had no reason to think there might be a protest against his teaching at Harvard. "Nothing shocks me," Greenberg said, "but it certainly was not what I'd expected."

Greenberg expressed sympathy for BLSA's position on the minority hiring issue. "I think that through all the major law schools there's a woefully inadequate representation of minorities and women," he said. As to how the boycott might affect the course, Greenberg said, "I don't have the slightest idea." "I'm certainly going to teach the course," he added.

Kenyatta said it is "extremely unlikely" that the boycott will be cancelled, since there has been "no signal from the administration that would make calling it off thinkable." Asked about Vorenberg's July

(Continued on Page 13)



Bear, Beer and Bleacher Bums





It was a busy week for the Class of 1985. After orientation tours earlier in the week, the roughly 550 1Ls heard Dean Vorenberg deliver his welcoming address in Saunders Theater Friday, Sept. 3 (top two photos at left). Included in the Dean's speech was his by-now-famous tale of the bear, intended to warn against the dangers of competition. (Two campers discussing their options after awakening to hear a grizzly bear outside their tent — First camper: "I think we should run for it." Second camper: "Do you think you can outrun the bear?" First camper: "I don't have to outrun the bear. All I have to do is outrun you.")

After the Dean's speech the 1Ls headed for the lawn outside the Hark for a picnic lunch. Seen here (bottom photos at left) are, respectively, Prof. Charles Fried chatting with a 1L between bites and former Dean Sacks, fresh back from a year at Boalt Hall, surrounded by budding lawyers.

A Toast and a Win

Saturday night, more than 500 would-be sailors cruised the waters of Boston Harbor. (See photo on page 1.) Katie Zoglin and Margaret Conklin, 1Ls, (bottom right) were caught toasting the beginning of the school year — or at least the cruise.

Sunday afternoon brought a special Boston treat: a come-from-behind win by the Red Sox over the Seattle Mariners. Eight dull innings left the Sox trailing 5-2, but by the bottom of the ninth, they tied things up, 5-5. Shown here (barely visible) is Dave Stapleton's double which brought home the tying runs. Carl Yastrzemski drove in the winning run in the 10th, giving the Sox a 6-5 victory. Not a bad opening act for the Class of 1985.

J.M.



Photos by John Morris

Time to Call It Off

Nearly everyone we have talked with (except the Black Law Students Association leadership) is upset by the attempt to boycott the Race Discrimination course to be taught in the winter term by Jack Greenberg and Julius Chambers of the NAACP Legal Defense Fund. We believe the boycott was ill-considered and will only set back the cause for which it was instigated: the hiring of additional minority members for the Law School faculty.

BLSA has accused the dean of twisting its statements to make the boycott appear to be an act of reverse racism. In the last several weeks, BLSA has repeatedly characterized the boycott as simply a means of protesting what it feels is the unjustified under-representation of minority members among the faculty. The boycott is directed at this course, BLSA claims, because the course is merely a token effort on the school's part to respond to the demands of BLSA and the Third World Coalition that more minority members be hired.

From the beginning, though, it has been clear that Jack Greenberg's role in the course was a major focus of BLSA's dissatisfaction. The unwarranted (and incorrect) attack made on Greenberg in BLSA President Muhammad Kenyatta's letter to Chambers, which was sent to students this summer, reveals a clear concern with Greenberg's color. It is hard to believe that BLSA would have chosen to lead a boycott of the course if Chambers, or some other black, had taught the course alone, even though such a course would have equally failed to satisfy the group's demands for tenure-track positions for minorities. The rhetorical flourishes of the latest BLSA press release cannot disguise an unjustified concern with race.

Even if the thrust of the protest were not as it is, a boycott of this course would be inappropriate for, as Chambers pointed out in response to Kenyatta's letter, one of the instructors' hopes is that the course will motivate some students to pursue a career in anti-discrimination law. Could not a better focus for pressure have been found?

As the discussion has degenerated, the original issue — the hiring of minority faculty members — has been lost in the din of charges and counter-charges of racism. By its own actions, BLSA has made its tactics into the issue which commands attention. The fear of facing charges of racism now threatens to preclude discussion of the larger issue, not only between the dean and BLSA, but among students and faculty and alumni.

If BLSA really seeks to put pressure on the school, it must call off the boycott. The boycott is too clearly motivated by resentment of Greenberg's role in the course and in the Legal Defense Fund. This undermines BLSA's effectiveness as a force for change in the Law School. Both as a matter of principle and as a matter of politics, the boycott must be called off.



HARVARD LAW RECORD

EDITOR IN CHIEF Erich Merrill
MANAGING EDITOR Brad Hudson
NEWS EDITOR Dave Horn
EDITING MANAGER Louis Hoffman
EDITOR EMERITUS John Morris
SPORTS EDITOR Mark Graham
BUSINESS MANAGER Keith Ward
EDITORIAL STAFF: Jim Chudy, Fenno, Andrea Hartman, Mike Medina, Roland Monson, Mark Pogue
PHOTOGRAPHY STAFF: Adam Eisgrau, Erich Merrill, John Morris

Fenno

Absent-mindedly accepting the package from a messenger he had never seen before, Fenno checked over his equipment one more time and adjusted his Indiana Jones hat. This first day back at HLS would not be like the others; he had a score to settle.

Halfway to his destination, Fenno paused to look over the incoming 1Ls who were milling about Langdell. Far too many of them were enthralled by their Sony Walkman personal stereos; clutching them as if they were dialysis machines; the glassy-eyed proto-lawyers were oblivious to the serenity of Cambridge in the fall. Fenno's eyes narrowed and his hand darted to the bullwhip on his belt. Eleven sets of earphones ripped away from eleven pairs of 1L ears, and the tinny squeals of the Beach Boys, Diana Ross and Miller on Civil Procedure abruptly ceased as Fenno stomped the pestilent machines into uselessness.

"Where did they come from?" Fenno asked, but the cowed 1Ls could only point to the package under Fenno's arm. Filled with foreboding, he tore it open, only to find another Walkman and a card. As he read the inscription, his face hardened. "'Compliments of Dean Vorenberg!' That's it — no more Mr. Nice Guy!"

The Dean looked up in astonishment as Fenno's phaser blasted his locked door and half the adjoining wall into nothingness. Fenno returned the Dean's startled stare unblinkingly; a cold, sardonic smile played briefly over his tanned features.

"So, Dean, we meet again." Fenno's voice was dangerously soft. "That was a novel idea last spring — telling everyone I'd quit to join Cravath. But it won't work. You can't get rid of me that easily — especially considering *this*." Fenno hurled the Walkman onto what was left of Vorenberg's desk. "It's harder than you think to get rid of the Raider of the Lost Hark."

Despite all his training, the Dean winced. "You've seen too many movies, Fenno," he said soothingly. "Let's just let bygones be bygones and we'll forget all about this, shall we?"

"I don't forget, Dean," Fenno said. He slashed an *F* into the wall with his lightsaber. "I can't let you reduce any more minds to amoral jelly. I'm leaving now, but not for long." He reached out and touched the Dean's forehead. "In the meantime, I'll be right here." He tossed something into the Dean's lap and walked out.

The Dean sadly surveyed his wrecked office, toying idly with the shiny cylinder Fenno had tossed to him. Suddenly he started and examined it more closely. "A silver bullet," he muttered tonelessly. "Is it too late for a sabbatical?"



Letters to the Editor of the Record

What Are We?

To the Editor:

Your May 7 "Sports Quiz," question 2, brings back memories of a poignant event. If those memories are accurate, Roberto DeVincenzo's immortal words were not

"I'm such a dummy" —

they were

"Oh, what a stupid I am!"

For pure anguish, that's hard to beat.

Alan Grass, '67
Los Angeles, Calif.

Which Road?

To the Editor:

As an alumnus subscriber, I enjoyed your recent issue paying tribute to one of the School's greatest alumni, Archibald MacLeish [April 30, 1982]. . . .

Incidentally, your editorial about MacLeish perpetuated a popular misinterpretation of Robert Frost's poem "The Road Not Taken." The speaker in that poem did *not* take the road "less traveled by." The path he took was "grassy and wanted wear" — but so was the path not taken, for "the passing there had worn them really about the same," and "both that morning equally lay in leaves no step had trodden black." The point of the poem is the speaker's self-awareness: He knows that someday he will succumb to the temptation to describe his life as infused with a sentimental meaning it did not in fact have. The poem, therefore, does not apply to MacLeish, although he might have been ruefully amused (as was Frost) at further evidence that apparently simple poems are rarely given the attention they deserve.

Thomas D. Fuller, '77
Washington, D.C.

Letter Policy

The RECORD's policy on letters is simple. We read all of them. We print most of them, subject only to editorial discretion. We encourage letters on any subject, and particularly concerning subjects which have been covered in the RECORD.

Letters should be typed and must be received by 5:00 P.M. on the Tuesday before the issue. We prefer letters of no more than 700 words. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD.

In Defense of Leach

To the Editor:

I want to take exception to certain references to the late Prof. W. Barton Leach in the article by Karen Berger Morello in the issue of May 7, 1982. Morello quotes Charlotte Horwood Armstrong who purports to remember Leach well and states: "... He took sadistic delight in hounding women, but for men as well his style was teaching by humiliation, ..." Ms. Armstrong may remember Prof. Leach well but she certainly did not understand him well. While I cannot speak about his attitude toward women students, there being none at the school in 1947-1950, as a professor and as a man Barton Leach was a delightful person.

He taught with a sense of humor and enlightened his class with anecdotes. Despite his frequent trips to Washington to contribute his expertise to the U. S. Air Force, he managed to keep up with his classes and to conduct them effectively and cheerfully. No one ever dozed in Barton Leach's class; it was too much fun to miss. It was a pleasure to confer with him both in class and out. Students found him always generous with what little spare time he had.

From what I know of him — and while I did not know him well, I knew him better than I knew any other Harvard professor — I must agree with the opinion of Elise

Heinz expressed in the same article. Why anyone who knew Prof. Leach would characterize her defense of him as "surprising" is beyond me. I suspect that most of the first women students were cowed to some extent by the aura of the law school in those days, and failed to recognize, as Elise Heinz apparently did, the effective banter that was Prof. Leach's style.

Charles D.T. Lennhoff, '50
Fairfax, Va.

Warren or Pound?

To the Editor:

I have just read your issue of May 7 and in particular the article "First Women Survive Rejection, Laughs and Narrow Mindfulness." Attributing the incident in question to Dean Pound is wholly unjustified. My class, like that of Bart Leach, was 1925. The incident in question actually took place in the Corporations class in 1925. I was present. "Bull" Warren was the professor in question.

George I. Devor, '25
Beverly Hills, Calif.

The incident referred to appears to be that described in the second paragraph of the article. The author's version was based on a story told her by a member of the class of 1948 who claimed to have been present when Dean Pound "evicted" a student's fiancé who was visiting that day. — Ed.

The RECORD's next meeting is at 6:00 P.M. Tuesday, Sept. 14, 3rd floor, 23 Everett St. Potential staff members are welcome.

JAMES F. BRINE INC.
29 BRATTLE ST.
HARVARD SQ. 876-4218

SPORTS EQUIPMENT AND APPAREL
FOR THE ENTIRE FAMILY

SOCCER JOGGING SQUASH
SHOES WARM-UPS RACKETS
BALLS SHOES SHOES

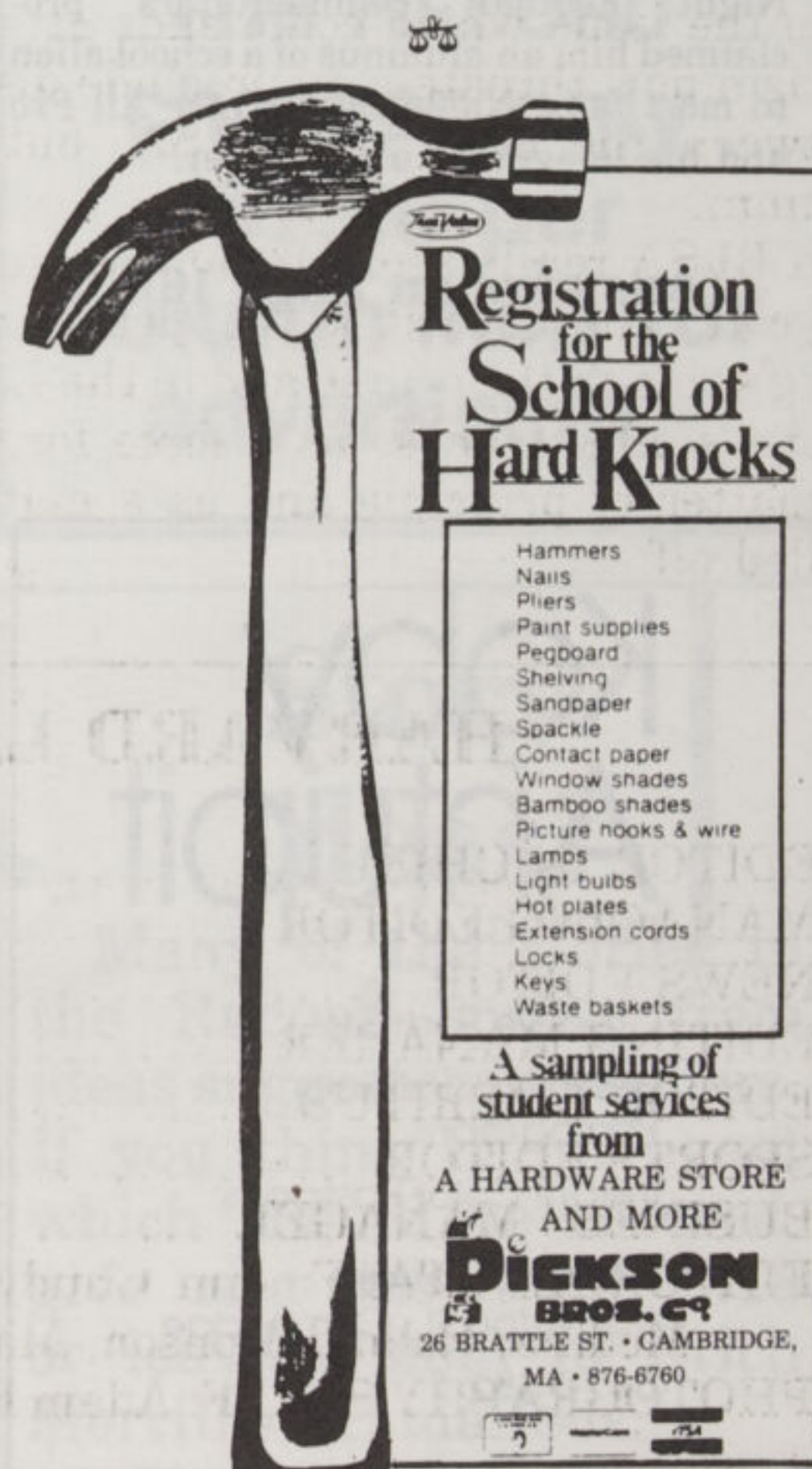
ATHLETIC SHOES BY:

ADIDAS, TIGER, ETONIC, NIKE,
BROOKS, LE COQ SPORTIF.

WARM CLOTHES FOR FALL &
WINTER

DOWN PARKAS & VESTS, WOOL
SHIRTS, RUGBY SHIRTS, WOOL
SWEATERS.

"BETTER BUYS AT BRINE'S"



Registration for the School of Hard Knocks

- Hammers
- Nails
- Pliers
- Paint supplies
- Pegboard
- Shelving
- Sandpaper
- Spackle
- Contact paper
- Window shades
- Bamboo shades
- Picture hooks & wire
- Lamps
- Light bulbs
- Hot plates
- Extension cords
- Locks
- Keys
- Waste baskets

A sampling of student services from
A HARDWARE STORE
AND MORE
DICKSON BROS. CO.
26 BRATTLE ST. • CAMBRIDGE, MA • 876-6760

Sports Quiz

Note: As this year's first-year students are graduates of a wide variety of undergraduate institutions, the first sports quiz of the year asks you to identify athletes and the colleges they attended.

1. Known for his vicious hitting, this veteran linebacker with the Pittsburgh Steelers comes from a college better known for its unrest than for its football. Name this player and the college he attended.
2. This guard was an NBA scoring leader with Kansas City in the early 1970's but it was more his playmaking skills than his scoring that helped his team win a championship in 1981. Name this player and his alma mater.
3. A long time placekicker for the Green Bay Packers in the 1970's, this alumnus of a small college in Michigan has been in the news lately for his brushes with the law. Name this former player and the college he attended.
4. A guard who has played with Philadelphia, San Diego and Golden State, this basketball player is best known for his propensity to shoot the ball and for his recent name change. Name this player and the college that he played for.
5. Though this defensive lineman with the Oakland Raiders in the 1970's was one of the few NFL players in recent memory not to have attended college, Monday Night Football commentators proclaimed him an alumnus of a school alien to most fans. Name this former All Pro and his imaginary alma mater.

(Answers on Page 16)

Koby Antupit
PHOTOGRAPHERS

Creative Portraits
Resume & Publicity
Photographs
Instant Color Passports

Harvard Square
8 Boylston St., Cambridge
547-7552

School Holds Ground

(Continued from Page 1)

drawal of the defense contracts would result in a loss totaling approximately 40 million dollars for the six schools. Harvard would lose approximately three million dollars in defense contracts awarded primarily for military research.

In addition to the threat of withdrawal of defense contracts, the JAG also stated that he was considering eliminating ROTC programs from the campuses involved, prohibiting army personnel from participating in training at those campuses, and "writing to each of your law students" to let them know that they were being denied employment opportunities with the army.

One of Three

Although the army is not allowed to recruit at HLS because they also discriminate on the basis of handicap and age, the JAG's letter focused primarily on the army's exclusion of homosexuals. Military personnel "must often sleep, eat, and perform personal hygiene under conditions affording minimal privacy," Clausen wrote. "The presence of homosexuals in such an environment tends to impair unit morale and cohesion as well as infringing on the right of privacy

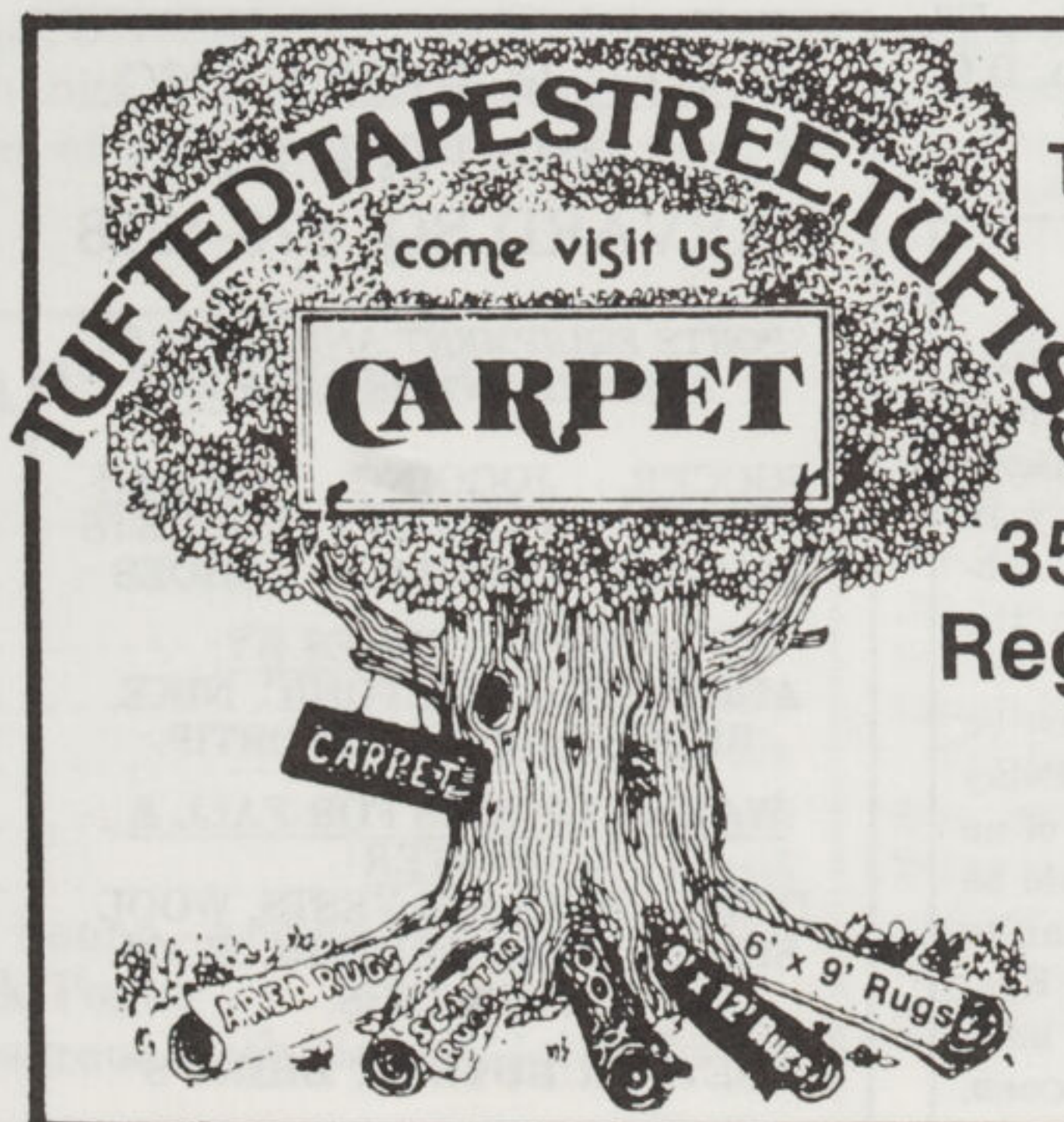
of those service members who have a more traditional sexual preference." Homosexuality is a crime under military law in all branches of the United States Armed Forces.

Federal law prohibits defense contracts from being given to universities which do not allow military recruiters to interview on their campuses, but it is unclear whether this applies when only a segment of the University, such as the Law School, bars the recruiters. "We will not submit to recruiting in a clandestine fashion like a second-class entity," Clausen wrote.

Army Gets Explanation

Copies of Clausen's letter were obtained by the National Law Journal, which published the details, along with a lengthy feature article on homosexual lawyers, in their August 2 edition. Dean Vorenberg declined to give a copy of the letter to the RECORD, stating "the letter was written to me personally as a direct communication, not as a public document." Although he also declined to release copies of his reply, Vorenberg did state that the essence of his response was "that I thought it would be useful if the Army understood the reasons for our policy,"

(Continued on Next Page)



**OVER 1,000 RUGS
TO CHOOSE FROM**

**Imported Belgian
Oriental Design
Rugs**

**35%-65% Less
Reg. Retail Price***

* oriental rugs not included

**46 WHITE ST.,
SOMERVILLE, MA 02144
776-1279**

Porter Sq. Shopping Center,
opp. Star Market

STORE HOURS: TUES. 12-6
WED. & SAT. 10-6
THURS. & FRI. 10-8

Against Army Attack

(Continued from Previous Page)

and I said I would be happy to meet and talk with them about it."

But No Meeting

So far the army has not taken the Dean up on his offer. In fact, many in the Harvard administration feel that the entire exchange is a "non-issue" and that the Army will probably not follow up on their threats. "We haven't heard anything from them since," noted Steven Bernardi, HLS Assistant Dean for Academic Administration. In Washington, D.C. Major James H. Rosenblatt, chief of professional procurement for the JAG's office, commented that "No decision has as yet been made. We would prefer to deal with Harvard University officials on a low-key basis."

Despite the apparent dissipation of the controversy over General Clausen's letter, some universities are still reacting to it. The July 30

issue of *The Crimson* reported that the Office of Career Services and Off-Campus Learning, Harvard's largest placement office, will probably review its policy of providing space to military recruiters. *The Crimson* also reported that Columbia University is considering reviewing its anti-discrimination policy.

Exemption Requested

Harvard's non-discrimination policy concerning homosexuals was instituted about 4 or 5 years ago, according to Bernardi, at the suggestion of HLS's Committee on Gay and Lesbian Legal Issues. At that time the FBI and CIA, as well as the military, ceased to recruit at HLS. The issue cropped up again last fall when the Army wrote to HLS requesting an exemption from the policy for their recruiters. The HLS Placement Committee considered the request at that time and declined to make an exception.



Instructors React to BLSA Boycott

(Continued from Page 7)

announcement that at least one minority lawyer had accepted an offer to begin full-time teaching at HLS in 1983, Kenyatta said that was "a signal of the school's admission that the charges are accurate."

Personal Views

Donald Tyler, a member of BLSA's executive committee, said the fact that Greenberg is white was not a factor in BLSA's decision to boycott the course. Tyler said the comments about Greenberg in Kenyatta's letter reflected Kenyatta's "personal thoughts" and that some of those statements were "factually incorrect."

Tyler called the boycott "a sym-

bolic gesture" intended to show "how strongly we felt" about the minority hiring issue. He explained that "there is a high level of distrust of the administration within the BLSA membership," and that Vorenberg's letter criticizing the boycott "certainly has increased that distrust."

Dean Vorenberg pointed out that the faculty Appointments Committee has a subcommittee concentrating on the recruitment of minority professors. That subcommittee, made up of Profs. Morton Horwitz, Clyde Ferguson, Christopher Edley and Detlev Vagts, "is already at work trying to come up with names of promising candidates," Vorenberg said.



MONTROSE MARKET

1627 Cambridge St.
492-3199

MONTROSE SPA

1646 Mass. Ave.
547-5053

One Block from the Law School

Open 7 Days a Week
7:30 A.M. - 10:00 P.M.

Gino & Mike's Barber Shop

Unisex Hair Cutting Salon

ONE BLOCK FROM THE LAW SCHOOL
OPPOSITE HOLIDAY INN

354-2260

We do razor styling

**Want to deliver
a message to law
students and
10,000 alumni?**

**The RECORD
charges only
\$7.00 per
column inch for
advertising.**

Story Ideas?

Many of the stories in the RECORD spring from ideas suggested by readers. If you think of an event which should be covered, give us a call at 495-4418 or leave a note in Erich Merrill's 3L mailbox.

Earl Warren: Last of the Progressives

Richard B. Bernstein

G. Edward White, *Earl Warren: A Public Life*. Illustrated, x, 429 pgs. Oxford University Press, \$25.

Earl Warren presided genially and enigmatically over a constitutional revolution that transformed American law and society and, incidentally, astounded both his former political allies and most academic observers of the Supreme Court. In this eminently thoughtful and balanced biography, G. Edward White elucidates the sources and development of Warren's political beliefs and his theory of judging. In the process he challenges both the conventional account of Warren's pre-Court career as a middle-of-the-road California Republican and the traditional criticism of his jurisprudence as "result-oriented."

Difficult Subject

Warren is an extraordinarily difficult subject for the would-be biographer. How, for example, is the biographer to stimulate the reader's human sympathies for his subject when Warren rigorously and consistently closed off his personal and family life from public scrutiny? (Not that Warren had anything to hide; based on the available evidence, he emerges as a paradigm of conventional respectability.) Furthermore, as White observes, Warren "did not act from the perspective of a considered system of thought, but from his instincts for what was fair, honorable, politically feasible and sensible at the time. Like many public figures, he embodied attributes rather than contributing to their intellectual development."

White's biography overcomes these obstacles to understanding Warren because White focuses on Warren in the context of his time. Drawing on his expertise in the history of ideas as well as the his-

tory of law, White lucidly and sensitively recounts the story of Warren's political career and convincingly integrates that account with his analysis of Warren as jurist.

Progressive Roots

Earl Warren came to intellectual and political maturity during the high tide of the Progressive movement in California politics. Progressivism was a response to the bloated, outlandish corruption rampant in American politics and society at practically every level during the last decades of the 19th century. White wisely steers clear of the bitter and inconclusive attempts of American historians to identify the actual sources of Progressivism, instead describing the basic ideas and values of the Progressives who dominated Californian politics under the leadership of Hiram Johnson, Warren's early political hero.

Progressivism in California sought to combat the power of the special interests, represented chiefly by large railroads (such as the Southern Pacific, which employed Warren's father and gave Warren his first job) and corporations, and of the urban political machines. Progressives emphasized the need to restore morality to the life of the state by combatting political corruption, by attempting to restrain the unchecked economic power of the private sector, and by attempting to reduce or eliminate the vices which gave rise to what we now call "victimless crimes." Progressives also sought a revival of patriotic attitudes, both by fighting corruption in government and making politics an honorable profession and by emphasizing the connection between America's greatness and "the dominance of 'native' rather than 'foreign' stock." This nativist element of Progressive ideology manifested itself in

pronounced anti-Oriental racism and bitter opposition to Chinese and Japanese immigration. Most distinctive of the three basic elements of Progressivism was the belief in progress itself, and the related emphasis on efficiency, nonpartisan politics, professionalism in government administration,



HLS Art Collection

Chief Justice Earl Warren

and direct action by government, if necessary, to achieve the goals of a just society.

Warren subscribed to all of these beliefs, with varying degrees of enthusiasm, throughout his life. The one which caused him the most difficulty in his later career — the nativist and racist aspects of Progressivism — virtually disappeared from his philosophy, and he explicitly repudiated it in his old age. Other aspects of his Progressive beliefs — his conviction, for example, that direct and positive action by government was necessary to produce a just society and that the marketplace could not be trusted to do so — became even stronger, until the man who had been appointed Chief Justice by Dwight Eisenhower (who believed

The Constitution's Ethical Imperatives

Warren to be a fellow moderate Republican and later decried the appointment as "the biggest damn fool mistake I ever made") was praised by Lyndon Johnson as the greatest Chief Justice in the history of the United States.

Ethicist Jurisprudence

The most original and valuable chapters of White's biography are those in which he presents Warren as jurist. Here White makes use of his analysis of Warren as Progressive to elucidate the basis of Warren's theory of judging and to refute the familiar charge that Warren's jurisprudence was merely "result-oriented."

Because Warren was not a leading theoretician of constitutional law, his opinions have been vulnerable to the "result-oriented" charge. Many critics of the Warren Court focus on the absence of the traditional virtues associated with judicial craftsmanship. Warren rarely cited precedents; his discussion of constitutional doctrine and interpretation of constitutional provisions was, more often than not, perfunctory. Instead, Warren looked to the ethical imperatives underlying the Constitution. Warren argued that the Constitution embodied certain basic principles of constitutional government and individual rights, and that, even though these principles were not specifically spelled out in the Constitution itself, they could be inferred from the structure of the document.

Profs. John Hart Ely and Charles L. Black, Jr. have advanced this approach to constitutional adjudication in recent studies addressed to an academic audience. White's contribution is to illuminate Warren's Progressive career and identify it as a source of the ethical imperatives Warren found in the Constitution. White convincingly

shows that Warren's judicial activism stemmed from his belief that the ethical imperatives of the Constitution required the Supreme Court to give them effect if the other branches of government, to which the more traditional "judicial restraint" theorists of the Constitution looked to accomplish these tasks, could not or would not act. Thus, Warren rejected the criticisms of his opinions by law professors and such colleagues as Felix Frankfurter because he believed that their belief in restraint was nothing more than a willingness to abdicate the Court's responsibility to the Constitution.

Judicial Heresy?

White argues that Warren's theory of judging runs counter to the prevailing academic orthodoxy separating law and morals and elevating doctrinal consistency over "vindication of the basic ethical imperatives of the Constitution." Warren's "approach to judging called for a close examination of the facts of a case, the actors in it, the record below, and the social issues the case raised. It required comparatively little attention to precedent, the exact language of the Constitution, or academic theories of judicial review. In Warren's jurisprudence the results dictated by the ethical structure of the Constitution were more than simply outcomes — they were good outcomes. Such results carried their own ethical justification. If that justification was not sometimes made explicit, or was couched in vague language, that did not mean it was not important."

Though White clearly admires Warren, he does not shirk from criticizing Warren's inconsistencies and his errors and failures in other areas as well. White notes that "when one divorces Warren's opinions from their ethical prem-

ises, they evaporate. No overreaching doctrinal unity binds them; they are individual examples of beliefs leading to judgments. One may applaud the results, embrace the premises, and admire the instincts of the man, but one can never divorce Earl Warren's opinions from Earl Warren and treat them as anonymous contributions to constitutional literature." This may remind us that "when law gets encumbered with professional cant, it ceases to approximate reality and loses its reason for being," but White concedes that Warren "raised ethics to a high judicial art, but could not escape the burdens of he who chooses to proclaim for others what is fair and right and just." These burdens may not have troubled Warren, but they clearly trouble White, and they cannot help but trouble anyone who does not have Warren's calm and unflinching convictions as to what is fair and right and just.

Personal Skills

Warren emerges in his opinions, memoirs and other writings as surprisingly bland. White valiantly attempts to convey some sense of Warren's personality and succeeds to a surprising degree, considering the all-but-impossible task he has set for himself. Warren's extraordinary skills in dealing with people served him especially well on the Court, as they were the only tools he had as Chief Justice in order to achieve his goals. In this respect the chief justiceship for Warren was totally unlike any of his earlier offices, which all had at least some quantum of institutional power and influence.

White focuses on *Brown v. Board of Education* both as the crucible in which Warren formed his theory of judging and as the best example of his skills in dealing with his col-

(Continued on Next Page)

Instinctive Ideal of Fairness and Justice

(Continued from Previous Page)

leagues and marshalling a unanimous Court for *Brown*, something most observers at the time would have deemed impossible. He is equally sure-footed in his account of the deteriorating relationship between Warren and Frankfurter, deftly sketching a Chief Justice who resisted what he saw as unscrupulous manipulation and an Associate Justice who first wooed, then scorned, a colleague whom he deemed inferior. White even tackles the thorny problem of War-

ren's service (against his better judgment) on the Warren Commission, concluding that Warren's aims in *Brown* and in leading the investigation of the assassination of President Kennedy were identical — to secure unanimity, to shape the language of the document embodying the final decision so as to secure that unanimity, and by reaching unanimous conclusions swiftly to settle the political and social issues necessarily arising from the case. But, while in *Brown*, arguably a "simple case," these tactics were destined to succeed, they

were destined to fail in so complex, confusing and unresolvable a matter as the Kennedy assassination.

White's biography of Earl Warren is something rare and welcome in constitutional historiography; in its attention to the political and intellectual history that shaped Warren's career and thought and in its respectful yet critical approach to judicial opinions as a source of intellectual and cultural history, it is an unqualified success. Its significance is inextricably bound up with Warren's significance, which is ably described by White in his concluding pages:

"(Warren) functioned as a symbol for a large inarticulate body of the American public; he pursued everyman's instinctive ideal of fairness and justice. If he was not a sophisticated or wholly consistent thinker, he was nonetheless a great man, not only for what he embodied but also for what he accomplished. In a public world of corruptible and self-serving actors, he set a standard of incorruptibility and humanity; in a society fraught with injustices, he sought to use the power of his offices to promote decency and justice. The end of his public career may be the end of a phase of American life."

Richard B. Bernstein, '80, is an associate with the firm of Murray, Hollander, Sullivan & Bass in New York City and a contributor to the forthcoming Encyclopaedia of the American Constitution.

SUBSCRIPTION COUPON

Name Class
(and 1L section)
Address
(for mail subscriptions only)

STUDENT ON-CAMPUS RATE (20 Issues)—\$4.00 ☐

MAIL SUBSCRIPTIONS (NON ALUMNI)—\$8.00 ☐

FOREIGN—\$10.00 ☐

(Check Box)

Current mail subscribers please include address label below.

Mail to:

HARVARD LAW RECORD

23 Everett St., Cambridge, MA 02138

Alumni Subscribers: If you changed addresses this summer, please send your new address directly to the **Harvard Law School Association, Cambridge, MA 02138**. Prompt notification will save the RECORD the postage which is charged for returning incorrectly addressed issues. Thank you.

SECOND CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS:

HARVARD LAW RECORD

(ISSN 0017-8101)

HARVARD LAW SCHOOL

CAMBRIDGE, MA 02138-9984

Sports Answers

1. Jack Lambert, Kent State
2. Nate Archibald, Texas-El Paso
3. Chester Marcol, Hillisdale
4. World B. Free, Guilford
5. Otis Sistrunk, "University of Mars"

HARVARD LAW RECORD