

HARVARD LAW RECORD

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25 CENTS



Erich Merrill

Another sound in Langdell North Middle — 3Ls Roland Monson, Mike Zachary and Fred Yen (back to camera) join Leslie Sonder, a graduate student in geology, for string quartets on a sunny Friday afternoon.

Prof. Chadbourn Dies at 76

James H. "Chad" Chadbourn, Fessenden professor emeritus of law, died last Tuesday, Sept. 28, at the age of 76. As a scholar, Chadbourn made his reputation as the editor and reviser of John Henry Wigmore's *Evidence in Cases at Common Law* and was a renowned teacher of Evidence, Civil Procedure and Federal Courts at the Law School.

At the time of his death, Chadbourn had completed the revision of seven of the nine volumes of Wigmore, which is perhaps the best known and most respected of treatises. The revisions were the culmination of 17 years of work. Those la-

bors eventually proved so absorbing that Chadbourn left teaching in 1974 before the mandatory retirement age.

"I wanted him to keep teaching because he was so good a teacher," former Dean Sacks recalled this week. "But he was determined to finish as much as possible."

In later years, his work was interrupted by periods of bad health, but he fought with the cancer that eventually proved fatal. "His death has a special impact on all of us because of his amazing and courageous struggle with his illness," Dean

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Writing Comp May Become Spring Rite

By Andrea Hartman
and Karen Moghtader

The *Harvard Law Review* is considering substantial revisions in the Writing Competition. On September 21, the Writing Competition Committee of the *Review* released a report outlining two proposals it adopted, both of which call for moving the Writing Competition to the spring semester of the 1L year, beginning with the current 1L class.

Proposal A utilizes a two-round competition, almost identical in form and procedure to the competition currently held at the beginning of the 2L year. As stated in the report, however, "The plan departs from that structure in that roughly two months intervene between the first and second round."

Round one under Proposal A would be scheduled to take place over the last weekend of January. The results of round one would be announced on March 9. Round two would be scheduled to take place during or shortly after spring vacation; entrants would have the choice of participating either during the week of vacation, or during the following week. Winners of the competition would be informed in early July, at the same time as those selected on the basis of grades.

Proposal B calls for a substantial departure from the current format of the Writing Competition. Under

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Minority Recruiting Efforts Explained

By Dave Horn

Underlying the Third World Coalition's boycott of the winter term course on Racial Discrimination and Civil Rights is the students' contention that the Law School has not tried hard enough to hire minority professors. Some professors say the students just do not understand the facts. (See Letters, p. 11.) Many students disagree, saying that if the Law School really wanted more minority professors, then it would find them.

According to this week's letter to the editor from Profs. Vern Countryman and David Shapiro, in the past decade, four blacks have taken permanent positions on the faculty, and two of those have left after having been granted tenure. In addition, Countryman and Shapiro's letter reveals, a total of three other blacks have been offered positions in the last ten years. This appears to mean that the of-

fers discussed in the last issue of the RECORD are the only ones that have been made to blacks in the past decade. Those offerees included Adebayo Ogunlesi, '79, who has reportedly accepted and will begin teaching at HLS next fall; John Payton, '77, who is still considering his offer; and Stephen Carter, who declined Harvard's offer in order to teach at Yale.

Over 100 Active Files

In an interview with the RECORD this week, HLS Dean James Vorenberg described how the faculty searches for minority professors. Since 1973, the faculty appointments committee has had one member designated to oversee special efforts to recruit minorities. The persons filling that position have been Profs. Frank Michelman, Vorenberg, C. Clyde Ferguson, Henry Steiner, Alvin Warren (now chairman of the appointments committee) and Morton Horwitz. Horwitz presently chairs a subcommittee on minority recruiting which has existed for several years and presently consists of Profs. Horwitz, Ferguson, Christopher Edley and Detlev Vagts.

Vorenberg said the committee is now maintaining over 100 active files on minority lawyers who are considered possible candidates for faculty positions. These are people with whom positions have been discussed or who are being evaluated for possible consideration in the future.

Several Avenues Pursued

According to Vorenberg, the faculty actively pursues several avenues to learn about minority lawyers eligible for the faculty. Among the sources of information he named were: the Law School's own faculty, faculty and administrators at other law schools, persons working for public-interest organizations and law firms, the American Association of Law Schools, and a number of HLS graduates. Vorenberg said

that when this "continuing search and screening process" yields a promising candidate who appears "ready" for consideration, then the chairman of the minority hiring subcommittee presents the file to the appointments committee, which may then present that candidate to the whole faculty. "I am optimistic," he said, "that this will in time result in several more minority appointments."

Vorenberg said it is not true that there is any "set requirement" for faculty candidates' credentials. He said that when professors look at candidates, they ask, "Is this someone who is likely to be an interesting and effective teacher, and make some contribution to legal scholarship in one way or another?"

The dean stated that "the faculty is committed" to hiring more minority professors. He noted that of the 40 tenure-track professors hired in the past 12 years, five — including the professor who will assume his duties next year — have been black. Vorenberg added that two offers were made to blacks during the 1981-82 year.

Prof. Albert Sacks, who was dean of the Law School from 1970 until 1981, told the RECORD that during his tenure there was "a strong and sustained effort" to recruit minority faculty, but that he would rather not comment on specific efforts or issues.

Dean Derrick Bell of the University of Oregon School of Law, who came to HLS in 1969 as the school's first black professor and left for Oregon in 1980, told the RECORD that the faculty has pursued minority hiring "in good faith, on their terms." But Bell said the Law School should long ago have adopted the approach he said federal judges had taken toward desegregation of schools — that after a while, good-faith efforts must be backed by results. Bell said HLS should "raise its sights" and not adhere so strictly to its traditional criteria for hiring.

One of the greatest honors in academia — having someone else's name in your title — has been bestowed upon 2 HLS professors. Henceforth, Laurence Tribe will be known as Ralph S. Tyler Jr. Professor of Constitutional Law, and Alan Stone will be Touroff-Glueck Professor of Law and Psychiatry.

Stone was born in Boston in 1929 and is a graduate of Harvard College and Yale Medical School. He has taught at HLS since 1968.

Tribe was born in Shanghai in 1941 and has received three degrees from Harvard: an A.B. in mathematics in 1962; a J.D. in 1966; and an LL.D. in 1980. He clerked for Chief Justice Tobriner of the California Supreme Court and for Justice Potter Stewart before joining the HLS faculty in 1969.

The RECORD sells indexes to back issues for \$8.00 per year.

Students Express Opinions on Boycott

By Dave Horn

By wide margins, HLS students oppose the boycott of the winter term course in Racial Discrimination and Civil Rights, but agree that the Law School "should make a special effort to increase the number of minority professors," according to a RECORD survey conducted this week.

The telephone survey, conducted by several members of the RECORD staff, reached 162 students, about 9% of the HLS student body. Telephone numbers were selected at random from a Law School directory.

In response to the question, "Do you agree or disagree with the decision by some student organizations to boycott the course?", 13% of the respondents agreed, 71% disagreed, and 16% either didn't know or said they could not give a clear answer.

Asked whether they agreed that "a special effort" should be made to recruit minority professors, 90%

of the sample said yes. Only 4% said no, with another 6% uncertain.

All but one of the respondents said they were aware of the boycott, which was called late last spring and received extensive national media attention during the summer.

Poor Choice

About three-fourths of those who opposed the boycott said they felt it represented a poor choice of tactics. Many respondents said the boycott represented "reverse discrimination." A larger number of boycott opponents pointed to the qualifications of Jack Greenberg and Julius Chambers, the instructors of the course, and said it seemed illogical or counterproductive to boycott their course.

Nearly all of the supporters of the boycott said they wanted to draw attention to the Law School's record in hiring minorities, which several called "abysmal." One stu-

dent explained, "I'm in favor of the boycott because I'm in favor of integrating the Law School faculty." Others said the administration had left students no alternative but to take "drastic action".

In answer to the question whether the faculty had "made a good-faith effort to increase the number of minority professors," the largest group of respondents, 48%, said they didn't know. Seventeen percent believed a good-faith effort had been made, while 35% disagreed.

Statistical Validity

There is a 95% probability that, if the entire Law School student body were sampled, the responses to any particular question would vary by no more than 7.5 percentage points from the results obtained in this sample. Specifically, the expected range of error for each question is: question 1, 2.3%; question 2, 6.8%; question 4, 4.5%; question 5, 7.5%. ❖

SUMMARY OF SURVEY RESULTS

- | | | | |
|---|------------------------------------|----------------|------------------|
| 1. Are you aware that there is a boycott of the winter term course in Racial Discrimination and Civil Rights? | Yes — 98% | No — 2% | |
| 2. Do you agree or disagree with the decision by student organizations to boycott the course? | Agree — 13% | Disagree — 71% | Don't Know — 16% |
| 3. What is your main reason for supporting/opposing the boycott? | See story for summary of responses | | |
| 4. Do you believe that the Law School should make a special effort to increase the number of minority professors? | Yes — 90% | No — 4% | Don't Know — 6% |
| 5. Do you feel that the faculty has made a good faith effort to increase the number of minority professors? | Yes — 17% | No — 35% | Don't Know — 48% |

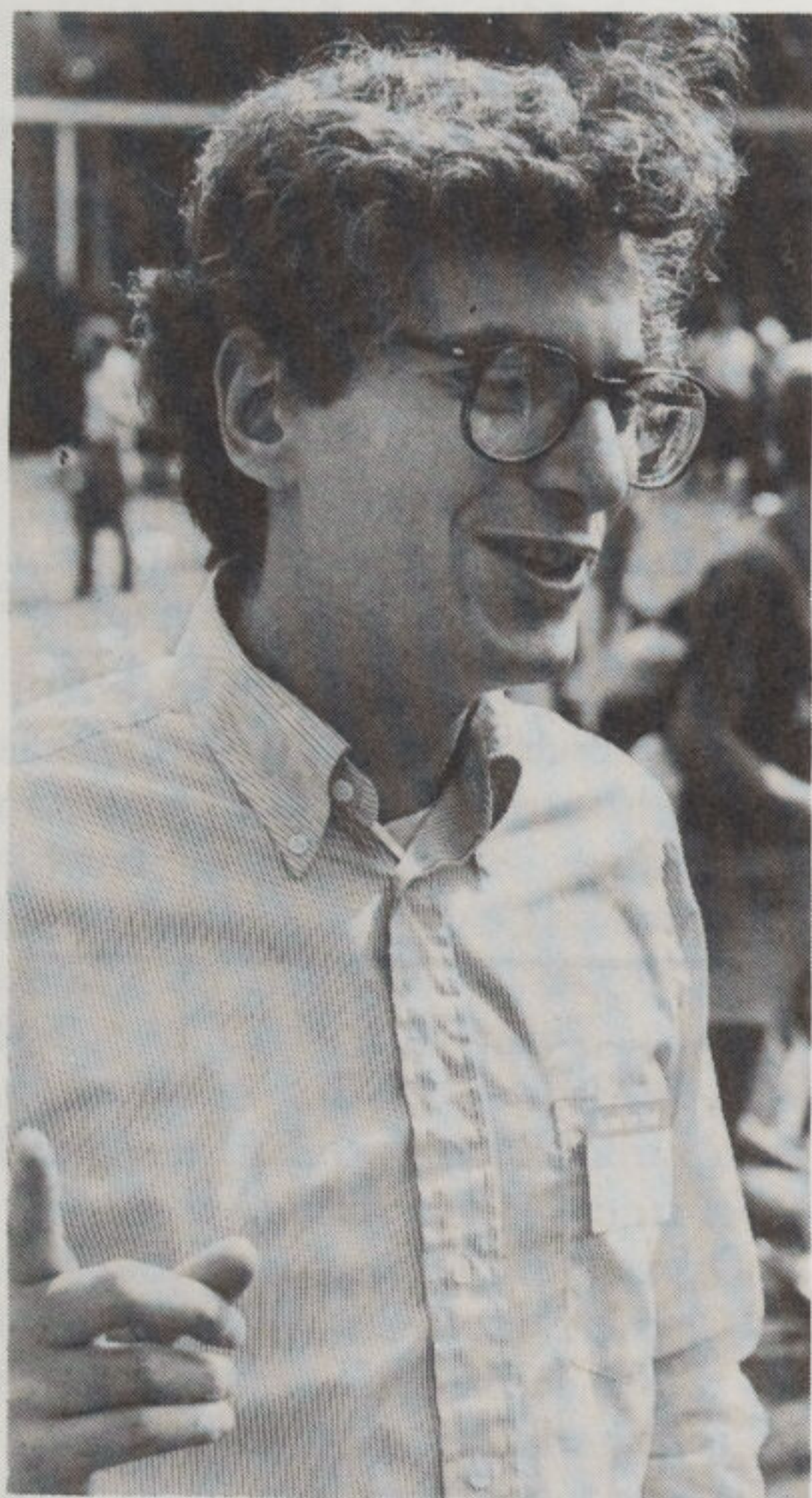
Meltzer Returns to HLS

By Susan Smith

Daniel Meltzer returns this semester to the campus he left only seven years ago. However, when he enters the classroom now, it's as a professor, not a student.

"Ever since I graduated I had sensed that teaching was what I would end up doing," he explains. "What appeals to me about teaching is the interchange in the classroom. I find contributing to the students' education rewarding. I also enjoy the large measure of freedom to work on those things that interest me in the field of law."

Meltzer, 30, spent his childhood



John Morris

Prof. Daniel Meltzer

years in Chicago. He attended Harvard University as an undergraduate, officially majoring in economics but scheduling many history courses as well. After receiving his degree in 1972, he moved north to the Law School campus. He served as President of the *Harvard Law Review* in 1974-75, and received his J.D. in 1975.

After relocating to Washington, D.C., Meltzer had the opportunity to clerk for Judge McGowan of the U.S. Court of Appeals for the D.C. Circuit. He then clerked for Justice Potter Stewart in 1976-77. From there, he moved to the Department of Health, Education and Welfare, serving as Special Assistant to Joseph A. Califano Jr.

For the next three years, Meltzer practiced with the firm of Williams and Connolly in Washington, D.C., where he enjoyed a variety of cases in both civil and criminal litigation.

This semester Meltzer teaches Criminal Law to 1Ls in Section III. In the spring, he will teach Advanced Criminal Procedure. "I had some experience in my practice in criminal cases, which I enjoyed," he notes. "I like the mixture in the first-year course of procedural and substantive law."

Pressed for advice he would offer his students, Meltzer concedes, "The first year is very hard work. But it shouldn't take up all your time. There are lots of opportunities in the Cambridge and Boston area, and you really should take advantage of them."

Meltzer was recently married to a Boston lawyer. He and his wife reside in Cambridge.

WLA Dinner Stresses Support Role, Plans

On Friday, September 24, the Women's Law Association (WLA) held their annual dinner. This year the event took place at the Harkness Commons. About 187 HLS women, mostly 1Ls, were joined by Prof. Elizabeth Bartholet, Dean of Students Mary Upton and Director of Placement June Thompson.

Following cocktails and the meal, WLA Chairperson Annette Carnegie, 3L, spoke briefly about the role of the organization. She stressed that the WLA gave women a chance to learn and benefit from each others' presence at the Law School. Later, when asked about the WLA's plans for the year, Carnegie said they included recruiting women students for HLS, promoting the hiring of women faculty, and sponsoring movies and speakers.

Upton presented the guests with statistical information regarding 1L women. She noted that 2,700 women applied for acceptance to this year's class, and 187 registered. The 1L women range in age from 20 to 40, though 75% are between the ages of 21 and 24. Twenty-one women received advanced degrees before beginning law school.

The dinner was organized by WLA member Lynn Chambers, 2L. According to Chambers, most of the cost for the event was paid by Upton's office.

A.H.



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**No RECORD
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Motley, First Black Woman on N.Y. Federal Bench, Visits

By Sheryl Silver

Constance Baker Motley, the chief judge of the United States District Court for the Southern District of New York, visited the Law School



Erich Merrill

The first sukkah ever erected on the Law School campus appeared last week just outside Harkness Commons. According to David Mirchin, 3L, the sukkah, associated with the Jewish holiday of Sukkot, is an outdoor structure which traditionally has a roof made of cut branches and greenery.

During the seven-day holiday season, Jews eat meals and sometimes sleep in the sukkah. David Schultz, 2L, explained that the move from secure houses to a relatively flimsy structure reminds observers of the holiday that they are protected by God, not by their physical surroundings.

In addition to religious activities, the booth has been used for discussions of legal issues of particular concern to Jewish-Americans, Mirchin added.

last week as part of a program that included meetings with various groups at HLS as well as conferences with several federal judges in Boston. Her biography presents an extraordinary figure, outstanding because she has blazed many trails in her career.

Desegregation Work

Motley did her undergraduate work at New York University. Upon graduation, she attended Columbia University Law School, where she received her LL.B. in 1946. While at Columbia, she joined the legal staff of the NAACP Legal Defense and Educational Fund. She later became associate counsel and principal trial attorney for the organization. In this capacity, Motley argued cases before the U.S. Supreme Court, in addition to appearing before state and federal courts throughout the country.

The cases Motley argued, which include many of the major school, housing and transportation desegregation cases, were instrumental in black Americans' struggle for equal rights and against discrimination. The judge participated in the famous *Brown v. Board of Education* case, which held, in 1954, that segregated education deprived black children of their right to equal protection under the Fourteenth Amendment. Another case, *Watson v. City of Memphis*, which Motley herself argued before the Supreme Court in 1963, resulted in the requirement that Memphis's recreational facilities immediately be desegregated, thus defeating that city's plan to desegregate over a twelve-year period. The Supreme Court used this case to warn that the period of transition from segregation to desegregation was to be accelerated.

Motley also argued many of the sit-in and protest demonstration cases in the 1960s which involved black students. She and other NAACP Legal Defense attorneys

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Review Names New Editors

The *Harvard Law Review* announced this week the names of the students who have been chosen as editors of the *Review*. The 2Ls are:

Peter M. Brody, Richard Brunell, Richard J. Busis, Wayne M. Carlin, Hemmie Chang, Florence A. Darwin, Joseph M. Feller, C. Edward Fletcher, Ross E. Getman, Lawrence E. Golub, James Goodman, Annette Gordon, Joan I. Greco.

David Lloyd Hayes, Steven J. Heyman, David Hoffman, Francis M. Holozubiec, Brian A. Johnson, Robert L. Jones, Yadin B. Kaufman, Girard D. Lau, Paul Getz Levenson, Joanne McPhee, Stephen J. Marzen, Scott Nelson, Matthew M. Neumeier.

Stephen Presser, Charles Purcell, Louise R. Radin, Robert W. Riggle, Mark D. Schultz, Amy L. Schwartz, Beth A. Shapiro, Leonard H. Shen, David A. Sklansky, Mark F. Slaughter, Clifford M. Sloan, Andrew Solomon, Lawrence B. Solum, Eliot Laurence Spitzer, Mark P. Szpak, Joyce M. Tichy, Robin Dale Wiener, Wilburn Williams, Mark Wooster.

The 3Ls are:

Stephen L. Blasnik, Peter K. Levine, John O. McGinnis, Robert D. Manfred, Stephen W. Preston, Nicole K. Seligman.



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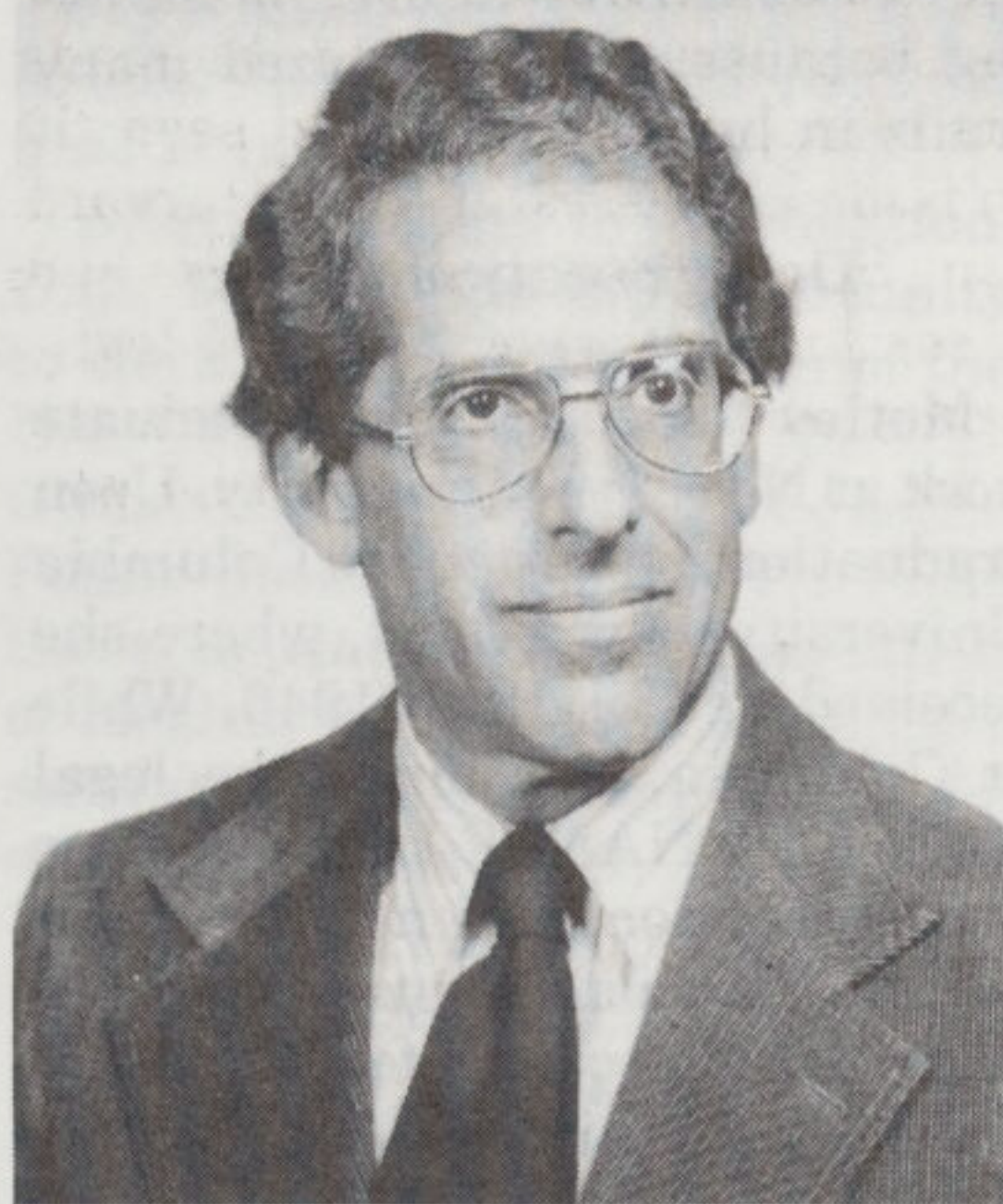
By Charles Thensted

Prof. Paul M. Bator has been appointed by Attorney General William French Smith to fill the newly created position of Deputy Solicitor General and Counselor to the Solicitor General of the United States. Bator will serve as a consultant to Solicitor General Rex E. Lee and complete the fall semester at HLS before beginning his term on January 3, 1983.

No term of office has been specified, but Bator noted that he will be on leave of absence which is limited to two years.

"On the whole, I am very enthusiastic. It's a good opportunity for public service, a very challenging, very interesting opportunity and very right for me because I have been a student of the court for many years," Bator said. His new duties will include preparing and presenting cases to the Supreme Court as well as formulating litigating policy and strategy for the solicitor general's office. Bator has not been given responsibility for any specific area of substantive law, and, because of the broad scope of the new position, his responsibilities will probably include most areas addressed by the attorney general.

Solicitor General Lee has said: "Paul Bator is one of the nation's most accomplished legal scholars. I am delighted that our efforts to persuade him to join our office have been successful. All of us in this



Prof. Paul Bator

office look forward to having him as a colleague in carrying out our task of representing the interests of the United States before the Supreme Court."

Bator clerked for Justice John M. Harlan after graduating summa cum laude from Harvard Law School in 1956, where he was president of the *Harvard Law Review*. He graduated summa cum laude

from Princeton, in 1951, and was a Woodrow Wilson Fellow at Harvard University where he received an M.A. in history in 1953.

New York Practice

Following his year with the Supreme Court, Bator worked with Debevoise, Plimpton & McClean in New York from 1957 to 1959, when he left to become an assistant professor at HLS. He became a full professor in 1962, eventually being named Bruce Bromley Professor of Law. From 1971 to 1975 he was associate dean of the Law School. Additionally, at various times, he has served as visiting professor of law at the University of Chicago, Stanford University and the University of California at Berkeley.

Bator is a member of the New York bar and of the American Law Institute, where, from 1964 to 1968, he served as a reporter on the Model Pre-Arrestment Code Project and as a member of the project's Advisory Committee. He is also a co-author of a leading text on federal jurisdiction, Hart & Weschler's *Federal Courts and the Federal System*.





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Beaten Again: A 2L Confession

— Lee Christie

"Say sour grapes
You can laugh and stare
Say sour grapes
But I don't care."

— John Prine

It is almost funny to see the zest with which the students here, either openly or privately, covet a spot on the staff of a publication which few of us have ever read, or ever will read with any regularity. I am convinced that if *Law Review* membership, carrying with it a mandatory commitment of thirty-five hours per week, were offered to all students on a non-competitive, first-come-first-served basis, the line would be a lot shorter than the lines for Hemenway lockers or even Harkness food. The Writing Competition offers perennial testimony that the competitive spirit at Harvard Law School is alive and well, and that almost any commodity, desirable or not, will command a stiff price if only it is made scarce enough. A little reflection on the *Law Review*, and especially on the Writing Competition, can teach us something about ourselves.

My law school class arrived here thirteen months ago, full of people who were accustomed to being the best, or at least close to the best. We knew we were the best scholars, writers, thinkers, speakers, and

so on, because people who seemed to know about such things kept telling us so, and because the people who controlled our destinies — the givers of tests and the readers of applications — had seen fit to issue us passes into the Harvard Law School. The whole process had a comfortable, unchallenged legitimacy about it, and was therefore a lot of fun for everyone who was winning.

The Fun Continues

For the forty 2L's who have been named *Law Review* editors, the fun continues. Let me make it clear that I am unabashedly jealous. I was the one hundred forty-fifth 2L to pick up the Round I Writing Competition materials on Saturday, September 11, following up on a heartfelt decision made many months ago when first semester grades were distributed. To maintain the studied nonchalance that is fashionable here in the first year and mandatory in the second and the third, I waited until two or three hours after the Griswold window opened to pick up the inch-thick stack of materials the *Law Review* staff had prepared. Through Saturday night I tried hard to work hard, but on Sunday I spent a couple of hours staring at the NFL, and then a couple of hours that evening staring at a movie. On Monday, I cut Estate Planning to work on my writing entry, but spent the entire morning in the kitchen instead — altogether pointless since my apartment has Somerville's stupidest kitchen and I can't cook anyway.

By 11:30 P.M. I realized that if I worked through the night I could put together an entry before Tuesday's noon deadline, but I also knew it wouldn't be very good. The task of editing and criticism which Round I presented was formidable. They had told us at the introductory meeting that Round I took three days, but they did not bother

to point out what I should have realized on my own — that there would be no time during those three days to do anything but eat, sleep and work. Round I presented *Law Review* aspirants with a task that was only partly a test — a fair test, I think — of editing, writing and legal analysis. Round I selected not merely talent but talented *workhorses*, which is as it should be. I had gone through college looking around me in puzzlement at people who seemed as bright as I but got lower grades. In my view, they suffered from a failure of nerve that was inexcusable — not an inability to rise to the occasion but an unwillingness to do so which seemed childish to me. It seems more reasonable now.

I went to bed at midnight, entry unfinished, comforting myself with the laughable thought (useful at the time) that I was not a workhorse but a thoroughbred. But by morning I was having more serious thoughts: Goodbye, Supreme Court clerkship! Goodbye, law school professorship! Hello, ordinariness! Then it was silver-lining time — not being on *Law Review* would leave ample opportunity for the pursuit of other, more genuine interests, such as competing in moot court and writing for the *RECORD*. At HLS, and maybe even other places in life, perhaps it would be okay to be ordinary after all.

At this law school, fine distinctions are drawn in a good-faith attempt to categorize some very fine people. Last year's movement to banish grades from resumes reminded me of a whining gambler who, in the moment when his good luck turns sour, is abruptly convinced of the need for a rule change to make the game more fair. Given this school's consistent placement record, most people's worries turn out to be silly; it is a durable rumor that even a pair of Harvard Law School faculty members received

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Getting to Yes on Nuclear Survival

By Charles Thensted

In a unique program orchestrated by Harvard Law Professor Roger Fisher, a few hundred lawyers, law students and others participated in an open forum at Hynes Auditorium in Boston last Saturday. The forum was designed to isolate, analyze and offer solutions to the problems contributing to the present stalemate in arms control negotiations.

Sponsored by the Boston-based Lawyers Alliance for Nuclear Arms Control, the program featured Paul C. Warnke, who was formerly the principal United States SALT II negotiator and is now a partner in the Washington law firm of Clifford & Warnke. On the Soviet side, the group heard from Oleg M. Sokolov, minister-counselor with the Soviet Embassy in Washington and deputy chief of the United States Department of the Soviet Foreign Ministry.

The purpose of the forum was to get lawyers involved in the process of arms control negotiations which at present, according to Fisher,

"hold little promise of bringing the nuclear arms race under control."

Fisher, director of the Harvard Negotiation Project and author of *Getting to Yes* and *International Mediation: A Working Guide*, described several things he sees the parties doing wrong: linking the arms question to other bilateral difficulties, bargaining toward a predetermined position, eschewing the techniques of brainstorming in the talks, playing a waiting game to wear the other side down, and failing to consider alternatives to negotiations until the negotiations fail. Fisher said it was time to adopt objective standards of fairness and to abandon notions of out-negotiating the other side, adding, "We're both in the same boat. There's no way to make our end of the boat safer by making their end of the boat more likely to capsize."

Sokolov disagreed with Fisher's premise that the present structure of negotiations preordained failure, and expressed the opinion instead that the United States simply is not serious about arms control. In his view, the Reagan administra-

tion "has replaced serious negotiations with public relations. U.S. policy has reversed from moralist-positive to unsure-negative." Sokolov also decried what he termed the "so-called position of strength, the bargaining chip" approach of present U.S. arms efforts. On this point Fisher pressed the Soviet minister, and asked pointedly whether Soviet decision-makers, in electing to deploy more nuclear weapons over the past decade, might not have at least thought of their value in strategic bargaining. Noticeably uncomfortable, Sokolov responded: "No, I would not say so."

Love-Hate Relationship

Fisher continued to prod both Warnke and Sokolov on points of agreement and disagreement, as did various members of the audience who were encouraged to offer their own suggestions and criticisms. Warnke was particularly critical of the present U.S. position, or lack thereof, calling it a reflection of our "love-hate relationship with nuclear weapons." The U.S., he said, must "decide whether we're for nuclear war or against it." He was particularly bemused by the notion that it is possible to negotiate a treaty that would put the Soviets at a disadvantage. He noted that all such treaties contain a withdrawal clause which might be triggered if one side found later that it had bargained itself into an untenable position. "We must be prepared to accept what logic teaches us," he said. "We cannot gain nuclear superiority, and we cannot survive a nuclear war."

Judge Edith Fine of the Massachusetts Superior Court, retired Vice Admiral John Marshall Lee, who was assistant director of the U.S. Arms Control and Disarmament Agency, and Dr. Herbert Abrams of Harvard Medical School spoke at a morning session of the conference. They dealt with questions of civil defense and maintenance of order in case of nuclear attack, the possibility of nuclear war, and medical responses to such a calamity.

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HLS Profs to Act as Judges for a Day

By Mark Pogue

Harvard Prof. Bernard Wolfman and Lecturer on Law Jack Greenberg will be on the bench tomorrow when Howard Law School in Washington, D.C., sponsors a moot court to consider the issues raised in the real case of *Goldsboro Christian Schools, Inc. v. United States of America*. *Goldsboro* is an important test case, questioning whether schools which discriminate against blacks are entitled to certain tax benefits under the Internal Revenue Code. The purpose of the Howard event is to provide a practice session for William T. Coleman, HLS '46, who has been appointed amicus curiae by the U.S. Supreme Court in order to argue a position that the government won on below but has now abandoned. The actual *Goldsboro* case will be argued before the Supreme Court on Tuesday.

Openly Discriminate

Goldsboro represents a clash between claims of free religious exercise and the public policy that militates against racial segregation. The petitioners are two private Southern schools which openly discriminate against blacks. One of them, Bob Jones University, is a school of some 5,000 students incorporated under South Carolina law "for the general education of youth in the essentials of culture and in the arts and sciences, giving

special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures." Bob Jones University forbids students from engaging in interracial dating or marriage, a policy based on its belief that God intended the races to live apart and that interracial marriage is contrary to the Holy Scriptures. *Goldsboro* (North Carolina) Christian Schools, Inc., the other petitioner, is a non-profit school for children in kindergarten through grade 12, which denies admission to all black applicants.

The beginnings of the *Goldsboro* litigation can be traced to 1970, when the Internal Revenue Service

revised its longstanding policy under IRC § 501(c)(3) of granting tax exemptions to private educational institutions without regard to the schools' admissions policies. In 1970 the IRS announced that such schools would no longer get tax benefits if they discriminated on the basis of race. The IRS notified the *Goldsboro* and Bob Jones schools in 1974 and 1976, respectively, that they no longer qualified for the § 501 tax exemptions. Taxes then were levied against each school under the Federal Unemployment Tax Act, and the schools challenged the assessments.

(Continued on Page 15)

Conservatives Spring to Life

By Erich Merrill

In recent weeks an organization has sprung to life to represent, according to its founders, yet another minority group — conservatives. The purpose of the group is to "help create a friendly atmosphere for conservatives on campus," according to Fred Nelson, 3L, who was instrumental in organizing the group.

The group, which calls itself the Harvard Society for Law and Public Policy, has existed since 1976, when it incorporated as an outgrowth of the Journal on Law and Public Policy. Bill Lash, 1L, who is in charge of recruiting for the organization, said that no meetings were held until this fall.

Lash said that the Harvard group is a chapter of the Federalist Society, a national conservative law organization. While attending a symposium sponsored by the Federalist Society at Yale last spring, Lash, Nelson and other Harvard law students decided to activate Harvard's chapter. This fall, the group's weekly meetings have drawn between 20 and 30 students, and membership is in the thirties, Lash said.

Nelson feels the organization is sorely needed at Harvard. "We want to have a presence on campus which

will make it acceptable for students to raise their hand in class and advocate positions of individual freedom, instead of just listening to the collectivist and social ideas which now dominate class discussion," he said. The chapter shares the national organization's purpose of challenging the "liberal orthodoxy" which it feels dominates the teaching of law.

Nelson said the group plans to bring conservative speakers to campus, participate in debates with students "both formally and informally," and write position papers on legal issues which will be sent to legislators.

Conservatives with a Mission

The society also has a mission off campus. The group will attempt to organize other chapters of the Federalist Society in law schools throughout New England. "We'll start by preaching to the heathen at schools like B.U. and Suffolk," Nelson explained.

Asked what else the organization had on its agenda, Nelson responded, "We'll have a little fun and cause a little trouble like most other organizations here do." The society holds meetings each Wednesday at 6:30 in ILS. All students are welcome to attend.

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Chad

It is clear from the comments of those who knew him that Professor Emeritus James Chadbourn was a man of strength and wit whose students loved him.

Those of us for whom courage means daring to ask employers about their pro bono policies can learn something from Chadbourn's life. He spent his first year out of law school travelling through the South researching the practice of lynching. His book on the topic was not one of those disapproving glances backward into the Dark Ages — it was current history.

From all accounts, he was the kind whose gift for teaching and "earthy" wit endeared him to his students. They dedicated the yearbook to him when he retired in 1974. One of the tributes described "Chad's" closing lecture in Civil Procedure:

"He spoke of us becoming good lawyers, as he felt confident we would, and what was more important he emphasized gently — good people. And happy, good people. It was a simple speech, but eloquent and important."

In his final years, we are told, Chadbourn's tenacity in the face of his illness inspired and moved those who knew him. The stories about this happy, good man convince us that we, too, suffered a loss by never having known him.

Toward Better Planning

Registration proceeded smoothly this year, but there are still some wrinkles in the system of assigning students to oversubscribed courses.

One of the inequities of the present system is that many students can't get into courses in the fall which are prerequisites for courses taught in the spring. The situation becomes especially aggravated when one course, such as Tax, is a prerequisite for a second, such as Corporate Tax, which is a prerequisite for a third, such as Business Planning.

A simple solution exists. Students who sign up for a spring course that has as a prerequisite a fall course should be given priority for the fall course. Perhaps a similar system could be worked out for spring courses which are prerequisites for the following year's offerings, though checking on students' true intent to take the later course would be difficult.

This change won't give all students all the courses they want, but it might reduce some of the frustration that comes from having one's course plan disrupted.



HARVARD LAW RECORD

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Fenno

Fenno was uncomfortable in a dress and high-heeled shoes. "Geez," he muttered as he teetered through Harvard Square. "What a man will do for a free beer."

He entered the building where the Armadillo Club was holding its first party of the year. He waited in line behind women from Lesley, Wellesley, Pine Manor, Mt. Ida, Simmons and Emmanuel Colleges, and the Katharine Gibbs secretarial school.

At the door stood an Armadillo Club member with a wispy moustache and a gold Armadillo pin on his wide-open collar. He excluded all men who weren't Club members and admitted all women at no charge. "What's your name?" he asked Fenno.

"Lesley College," Fenno answered.

The Armadillo wrote "Lesley" beside "School" in the guest book. Fenno waited until he finished.

"No," Fenno said. "I go to Katharine Gibbs. My name is Lesley College. That's Katharine with a K and College with a C."

The Armadillo scribbled faster than a test-taker after time has been called. "Katharine College — you got that?" Fenno called over his shoulder as he wobbled onto the dance floor.

An Armadillo wearing a button, "Voulez-vous F.R.Civ.P. 35 avec moi?" sidled up to Fenno. "Hi there. What's your name?"

"Katharine Gibbs," Fenno answered.

"Do you go to school around here, Kathy?"

"Lesley College."

"Say," said the Armadillo, "would it be a tort if I put my arm around you?"

"I think I'm going to be sick," Fenno said. "Where's the powder room?"

Fenno ducked into the Men's Room when no one was looking, and locked himself in a stall. He pulled the dress off, kicked off the high-heels, rolled his pant legs down, and pulled on a shirt. He heard two Armadillos lumber into the Men's Room.

"How's your luck?" one asked.

"So-so. I met some babe named Kathy, but I haven't seen her for a while. How about you?"

"I'm looking for this chick Lesley I let in the door, but I can't seem to find her."

"Lesley's on the dance floor right now," Fenno announced as he emerged from the stall. The dress was draped over his arm. "She got hot dancing and asked me to hold this for her." The Armadillos bolted out the door to see for themselves.

Fenno left the Men's Room and headed for the keg. He got two cups of beer and drained one. Feeling much better, he looked around. He spied a strawberry blonde whose summer tan had begun to fade. Fenno approached her, flashed a big smile, and said, "Say, would it be a tort if I put my arm around you?"



Letters to the Editor of the Record

Profs Defend Hiring Record

To the Editor:

In recent months, a number of charges have been leveled at Harvard Law School for its policies on matters of race. Some of those charges ignore or overlook important facts, and we therefore want to report them in the interest of more informed discussion.

Harvard, like many institutions, has had its growing pains in recent decades, but the story of that period is one of growth.

1. In the early and mid-1960's, the Law School's concern over the low level of black participation in the legal profession led it to establish a summer program of introduction to law for black college students. It was one of the first, if not the first, of the major law schools to launch such a program, and partly as a result of this and other recruitment efforts, black enrollment at Harvard and other schools steadily increased and, at Harvard, now averages over 10% of each entering class.

2. In the last ten years, the Law School has had three tenured black professors. Of those three, one is now a federal appellate judge who is presently teaching at the school as a part-time lecturer, and one is now the dean of another law school.

3. During this same period, the Law School has made four offers of assistant professorships — full-time, tenure-track positions — to young black lawyers. One of the four declined, one accepted and is now at the

school, one accepted and will begin teaching in 1983-84, and one currently has the offer under consideration. A subcommittee of the Appointments Committee is actively engaged in preliminary consideration of a number of minority candidates.

4. A significant part of the total teaching program is carried out by part-time lecturers — distinguished judges or practitioners who generally teach a single course. In each of the last two academic years, there were three part-time lecturers who were black, and in the present year, there are four.

The goal of racial justice is one of the most important facing our society. Much remains to be done. But we have made a start.

Prof. Vern Countryman
Prof. David Shapiro

Boycott Feedback

To the Editor:

With respect to BLSA's boycott of the winter-term course on Racial Discrimination and Civil Rights, I am baffled by the attitude that a course on racial discrimination should ideally be taught by a minority professor. Perhaps Larry Tribe should give up the podium when *Roe v. Wade* is discussed because he lacks the necessary empathy? And Frank Sander shouldn't have the audacity to give his views on family law? I anxiously await the day when women and minority professors at Harvard are asked to teach corporate finance or advanced civil procedure rather than employment discrimination and civil rights.

Laura B. Bartell, '78
New York, N.Y.

Resurgent Racism?

To the Editor:

Muhammad Kenyatta revealed something in his "Harlem to Harvard" article (RECORD, v.75, n.3, Sept. 24, 1982, p. 8) that was so astonishing I'm dying to see it in print again: "White America wants to return to a game where even the best Black players almost always lost and any red-neck know-nothing could win."

Imagine — white people everywhere are in the grips of a resurgent racism! Naturally, I am surprised and discouraged to learn this. And it must be a hell of a shock for white liberals — many of whom have spent their lives feeling guilty about privilege and working to make affirmative action a reality — to be informed now that they've just been fooling themselves all these years; that no progress has really been made; that, deep down, all of us are the same racist bastards our forebears were. Hard truths, and thank goodness we have Kenyatta to observe and explain them.

That White America, whatever and wherever it is, wallows in lingering racial hatred is something of which all of us need to be aware. But the next question is this: Is it even possible for a white person — any white person — to purge himself of the bigotry and narrow-mindedness that go along with whiteness? I don't know the answer to that, but I'll bet I know who does.

Lee Christie, 2L

Animal Tales

To the Editor:

Your story about the welcoming message to the incoming students delighted me. I had not heard before that the current message to the 1Ls is the 'bear' story. [RECORD, v.75, n.1, Sept. 10, 1982, p. 9].

An inspirational story, and it brought back so clearly the one we incoming students of fifty-odd years ago had told to us. Our Welcomer (Dean Pound?) quoted what he said Professor Warren — 'Bull' Warren he was called — used to tell the first-year men back at the turn of the century: "Look well to the right of you; look well to the left of you; because one of the three of you won't be here next year."

A different time, before LSAT; a different story. But the same admonition, and it led me to wonder if maybe it is not paralleled in other disciplines. For instance, in the Divinity School would not the Message be "Work hard, be good, and may the Devil take the hindmost"? In its own way and to its own students it would no doubt be most effective; but of course HLS has to adapt to the jargon of the marketplace, and so for the word 'Devil' it substitutes the Bull and the bear.

L. P. Fisher, '34
Iron River, Mich.

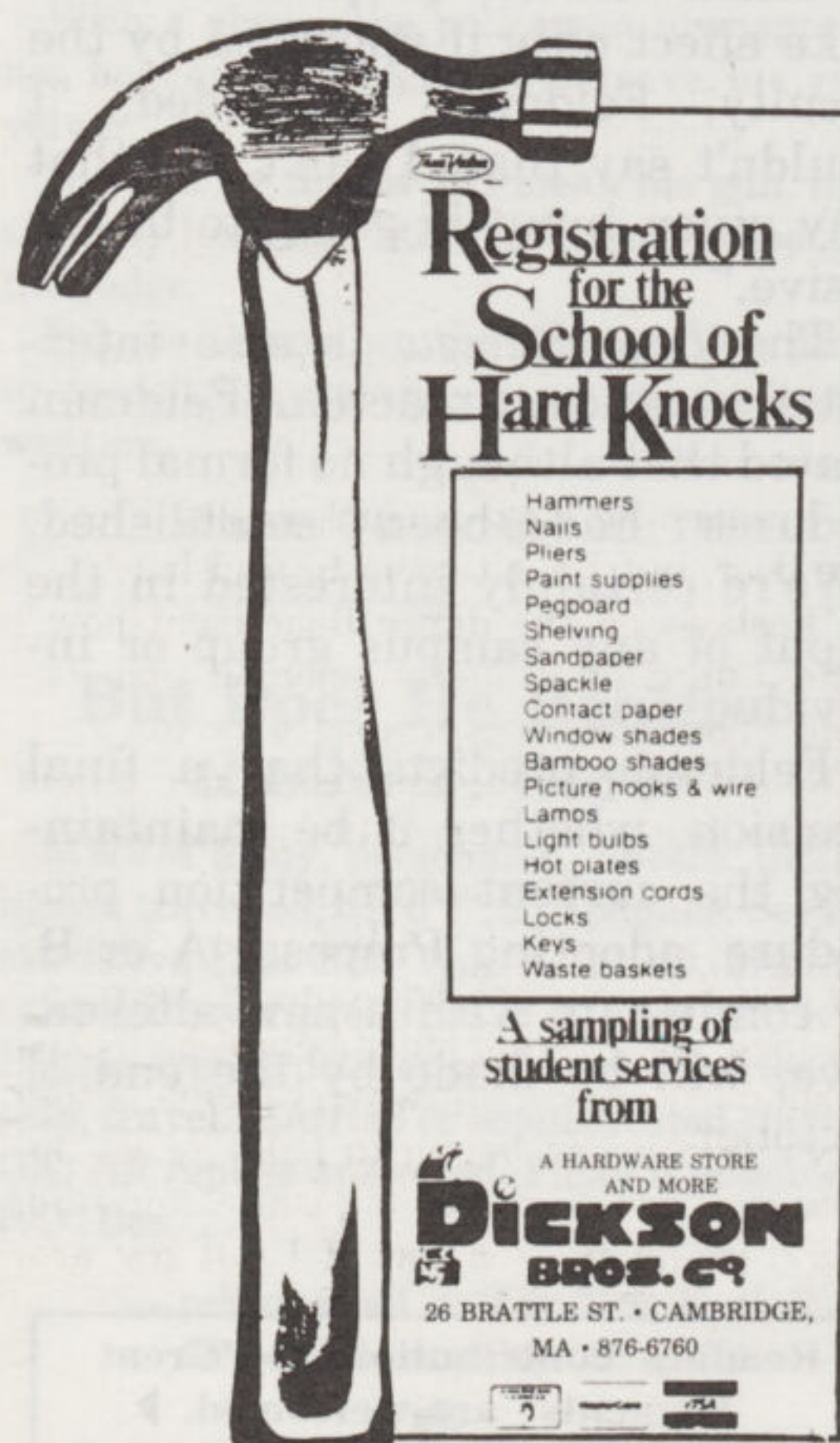
Placement Meeting Not the Best

To the Editor:

Hip Hip for Harvard Law School. Professor Chayes' 15-minute walkathon and 30-minute pep rally brought home to us the awful truth that most, if not all, HLS students succeed above the bottom line. Those of us from last year's Section I perhaps felt Professor Scott's last word supreme: "Jobs! Jobs!"

But what of that. In a colossal waste of over 300 valuable person-hours, Professor Chayes accomplished little beyond introductions and a half-hearted apologia for the change in Harvard's recruiting season. Now

(Continued on Next Page)



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Letters

(Continued from Previous Page)

I'm not one excessively opinionated on the latter subject; however, I, and many of my classmates, would have appreciated brevity in exposition and increased substantive suggestions.

The highly-touted 'job search strategy' could usefully have been exemplified; experiences concerning the value of a non-corporate firm job might have been meaningfully presented. Although I would take issue with Prof. Chayes's contention that a legal education encompasses the job search, he could have discussed the various career paths that our celebrated alumni "bounced" along. Where work our classmates 5 years out from school? 10 years out? What about the forgotten few who don't make partner? Do public interest firms appreciate experience gleaned in the large law firm world? Is trial work prerequisite to ascendancy to the bench? What about academic jobs outside of Harvard, Yale, Stanford? And what about non-lawyer roles for graduates?

Sure, I can ask Mark Beyers, or Doug Phelps. Indeed I will. But if the administration means to have a job-search orientation, let it begin there. Or at least warn us to bring caps and scarves and pennants.

David A. Kahne, 2L

Pound Society: Not Just for Old Folks

To the Editor:

Having been privileged to serve as the Roscoe Pound Society's president during its formative year, I was particularly gratified by Brad Hudson's fine article in the RECORD of Sept. 24. I fear, however, that the piece may have emphasized the Society's identity as a group of "older" students at the expense of another of its functions, which is really quite independent of the age of our membership — namely, our interest in interdisciplinary approaches to the law.

In addition, one of the advantages of having worked at or studied something other than the law is that it fosters, at least potentially, a broader, healthier perspective on the various rites of passage which make up so much of the Law School experience. That perspective is likely to benefit a student who has been out of college a year or less as much as it benefits someone out a decade or more. Far from discriminating on the basis of age, the Roscoe Pound Society welcomes the interest and participation and membership of all law students.

Michael G. Michaelson, 2L

1Ls May Write This Spring

(Continued from Page 1)

this plan, the competition would be held in one round. Contestants would have the choice of participating either in the week of spring break or in the following week.

The assignment for the competition would be to write a Case Comment, the same task given under round two in both the current competition and Proposal A. As with Proposal A, winners would be contacted in early July, at the same time as grade winners.

Cohesive Staff

The committee feels that the advantages of holding a spring Writing Competition outweigh the disadvantages. On the positive side, 1Ls would be participating in the competition before they have received most or all of their first-year grades. The report states that "grade demoralization" would then be less likely to deter potential participants from entering.

In addition, all 2L editors would begin working on the *Review* in early August, thus reducing the distinctions between "grade editors" and "writing comp editors." The cohesion of the *Review* would be improved since all new editors would begin their work together, and the journal would benefit by having 20 additional 2L editors available to do work during August and September.

Advantages Described

The committee also points out that, "Less frequently would a student become a key member of another journal, join the Legal Aid Bureau or Board of Student Advisors, or sign up for the first round of Ames and then suddenly have to drop these activities because he or she has become a member of the *Review*." Finally, a spring Writing Competition would relieve the current strain felt by the Writing Competition editors who, after a grueling competition, are thrust immediately into the rigorous work of the *Review*.

The committee also recognizes several disadvantages of a spring writing competition. First, competing for the *Law Review* in the spring would add tension and pressure to the first year. Many 1Ls might already feel overburdened by Ames and classwork, and thus might decide not to participate in the Writing Competition. Second, the report notes that a spring Writing Competition might "favor those students who achieve their legal potential more rapidly."

Faculty Feedback

According to Jim Feldman, 3L, president of the *Law Review*, the two proposals will be voted on in late October by the entire *Review* membership. In the meantime, the *Review* has submitted the report to Dean James Vorenberg, in an effort to get faculty opinion and feedback. Vorenberg has appointed an ad hoc faculty committee to examine the report and to speak with the *Review* and the rest of the faculty concerning a spring Writing Competition. The committee consists of Profs. Richard Stewart, Christopher Edley, Richard Parker and Lance Liebman. When asked if either of the proposals would take effect only if approved by the faculty, Feldman responded, "I couldn't say that. I can't say that any given input is going to be decisive."

The *Law Review* is also interested in student reaction. Feldman stated that although no formal procedures had been established, "We're certainly interested in the input of any campus group or individual."

Feldman predicts that a final decision, whether it be maintaining the current competition procedure, adopting Proposal A or B, or coming up with a new alternative, will be made by the end of October.

Readers' contributions to "Great Moments" are welcomed. ►

Former Civil Rights Litigator Visits HLS

(Continued from Page 5)

represented Dr. Martin Luther King, Reverend Ralph Abernathy, Reverend Fred Shuttlesworth and others in their monumental civil rights movement. These cases generated landmark decisions in the desegregation of public accommodations such as restaurants and other service establishments which had previously discriminated against blacks.

After working with the Legal Defense Fund for 20 years,

Great Moments in the Law

Gum Control

SEATTLE — A Seattle police officer got a lesson in gum control during a recent trip to the witness stand.

When the officer stepped forward to be sworn in during a criminal trial, King County Superior Court Judge Rosselle Pekelis noticed he was chewing gum.

Not wishing to embarrass the officer, she said softly, "Would you just put your gum in the basket?" and pointed to a nearby wastebasket.

"In the basket?" asked the officer.

"Yes, in the basket," the judge repeated.

"There's garbage in there," he said.

"Yes, I know," she replied.

With a shrug, the policeman unsnapped his holster and began to remove his revolver.

"I think he thinks you mean his gun, instead of his gum," the bailiff whispered to the judge.

Pekelis cleared up the issue, telling him to deposit his chewing gum, and the trial went on.

— *Boston Globe*, Sept. 23, 1982

But Does He Require the N. Y. Bar?

MWJM attny, personable, sincere, intelligent, travelled, 51, 6'1", 215 pounds. Seeks attractive East Side type F, 30-40, bright, career, lawyer preferred. 5'5" or taller; Ivy League type & politics preferred. For friendship, travel. Married or sophisticated single OK. All replies answered. Photo if possible. P.O. Box. . . .

— personal ad in *The New York Review of Books*, Oct. 21, 1982

Motley was elected to the State Senate of New York in 1964, and thereby became the first black woman to serve in that branch of the legislature. Here, again, she was active in the civil rights movement. She was elected to fill a one-year vacancy in the office of the Manhattan borough president the next year and became the first woman to serve in that capacity. She was then elected to a four-year term in 1965, winning the endorsement of the Republican, Democratic and Liberal parties — another first. As borough president, Motley pioneered a fight to revitalize Harlem and other underprivileged areas of New York City.

In 1966, Motley was nominated by President Johnson to become a judge of the U.S. District Court for the Southern District of New York. She was the first black woman to sit on that bench, where she has been since.

Motley's professional career did not hamper her personal life. She was married in 1946, and raised a child while she litigated. Her son was obviously not adversely affected by his mother's time-consuming career; he is now a lawyer.

In connection with her position as a Ralph E. Shikes visiting fellow at Harvard Law School, Judge Motley met with many HLS organizations throughout the week. These included the BSA, BLSA, WLA, WLJ, CR-CL Law Review, and many of the voluntary student clinical organizations such as Harvard Defenders, PLAP and HGAP. She also gave a number of talks, among them this year's first Root Room lecture: The Role of Federal Courts in Our Society. Those who met with Judge Motley found her interesting, responsive and very informative.

☞

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** The Primer alone may be obtained by mailing a check or money order for \$12.00. Due to the sophistication of the method, however, attendance at the seminar is recommended.

*** Wentworth Miller is a Rhodes scholar, a graduate of Yale Law School, and a practicing attorney in New York City. He has extensive experience instructing law students in effective study and exam-writing technique.

Chadbourn Was Master Teacher, Scholar

(Continued from Page 1)

Vorenberg said last week. "His students respected him and enjoyed his teaching, and his colleagues valued him as a friend and deeply committed scholar."

"It was in his character that he took on revising what was the greatest treatise," Dean Sacks remarked.

"The man was totally dedicated to evidence," said Eric Green, '72, who now teaches evidence at Boston University's law school. "Every day there were 10 to 20 [case] reporters outside his door."

Chadbourn inspired great affection and enthusiasm among his students. "He was not flashy. He was spectacular in an unflashy way," Green said. "He was so elegant, so concise and so inspirational in his own obvious enjoyment that he was a great teacher among [a generation of] great teachers. . . . He made me want to be an evidence teacher."

"He was a master teacher," Sacks concurred, "both in having a thorough grasp of his subject and having a style that was very distinctive, with a humor and vividness. . . . He was extraordinarily colorful, earthy and humorous."

One measure of his students' affection for him was the elaborate birthday parties which came to be a tradition in his classes.

"In 46 years of teaching I

have never known anyone who gives as much concentrated and prolonged effort to preparing ways of presenting the subject matter, the issues, solutions and alternatives, with utmost possible precision," Professor Emeritus John Dawson wrote upon Chad's retirement in 1974.

Although he was a legendary classroom master, Chadbourn was described by Sacks as "extraordinarily shy. He hated to be thrust into any sort of limelight."



Prof. James H. Chadbourn

In a similar vein, Dawson said of Chadbourn, "he is fiercely honest, hates pretense and cant, and while growling that it's all a waste of time, sets painfully high standards for himself."

"He is a wonderfully good companion who produces and

relishes all kinds of nonsense, provided only that it is tinged with irony," Dawson went on.

South Carolinian

Born in Spartanburg, S.C., in 1905, Chadbourn graduated from The Citadel in 1926. He spent two years teaching and acting as principal in a high school and then headed to law school at the University of North Carolina. He received his J.D. there in 1931 and then joined the school's faculty. Later he served on the faculties of the University of Pennsylvania (1936-50) and the University of California, Los Angeles (1950-60). He was a visiting professor at HLS in 1961 and joined the faculty on a full-time permanent basis in 1963.

In addition to the Wigmore revisions, he authored *Lynching and the Law* (1932), *California Pleading and Practice* (co-authored, 1963), *Federal Courts, Cases and Materials* (co-authored) and *Cases on Civil Procedure* (1961).

Chadbourn is survived by his wife, Erika, who is curator of manuscripts and archives of the HLS library, and by two daughters, one son, a sister and four grandchildren. A memorial service will be held on Tuesday, Oct. 12, 1:00 P.M. at Christ Church (Episcopal), Zero Garden St. in Cambridge.

J.M.



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Story Ideas?

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

Sports Quiz

Note: This week's sports quiz asks you to identify athletes whose last names are the same as female first names.

1. Though Joe DiMaggio is still the owner of baseball's longest hitting streak, this superstar set the National League record for most consecutive games with a hit a few years back. Name this player.
2. A very successful quarterback with the Dallas Cowboys in the 1960s, this player's efforts to lead his team to the Super Bowl were thwarted by the Green Bay Packers. Name this former Cowboy hero.
3. This athlete was an outstanding running back for Yale until his 1982 graduation; he became one of the few Ivy League players drafted by the pros when he was tapped by the Miami Dolphins in the fifth round of this year's NFL draft. Name this player.
4. An alumnus of Alabama, this veteran guard with the New England Patriots is considered by many to be one of the greatest offensive linemen ever to play pro football. Name this athlete.
5. Currently with the San Francisco Giants, this pitcher won 14 games for the Kansas City Royals in his rookie year of 1978. Name this player.

Answers on Page 16



2L Confession

(Continued from Page 7)

grades in Property that should be politely described as unimpressive. Yet the *Law Review* endures as a preserve in which grades assuredly do count.

No doubt the members of the *Review* learn a great deal during their tenure and emerge from HLS genuinely better qualified than some of the rest of us. But the grapevine has it that editors chosen in the Writing Competition are treated as "second-class citizens" not only by the other half of the *Review* staff but even by judges and justices interviewing would-be clerks. I don't know whether this is true, or even verifiable, and I guess I don't care much. But as one who has seen both 1L exams and a part of the Writing Competition, my own wholly disinterested opinion is that such a bias, if any, should be reversed, and that RECORD staffers should be preferred over all others. ❧

Profs Help in Bob Jones Case

(Continued from Page 9)

In *Bob Jones University v. United States*, decided in 1980, the Fourth Circuit found that the revocation of Bob Jones's tax exempt status violated neither § 501 nor the Free Exercise Clause of the First Amendment. The court accordingly upheld the government's disallowance of the school's tax exemptions. The Supreme Court consolidated *Bob Jones* with the *Goldsboro* proceeding and granted certiorari.

About-Face

Then politics entered the picture. Shortly before the government's brief on the merits was due to be filed in the Supreme Court, the Reagan administration advised the Justice Department that the government had taken a new position on the exemption issue. Contrary to what the government had successfully argued in the Fourth Circuit, the administration announced that it now believed that § 501 could *not* be construed to deny tax benefits to the two schools. The Justice Department was instructed to write a new brief.

The government's abrupt about-face received extensive media coverage and a storm of public protest arose. In response, the administration claimed that its hands were tied under the existing IRS statute but that it favored disallowing tax benefits in future similar cases. To this end the president introduced legislation which would have permitted the tax benefit disallowance on a prospective, post-*Goldsboro* basis. But Congress refused to act on the bill until the *Goldsboro* litigation was completed. The administration, meanwhile, maintained that *Goldsboro* and *Bob Jones* were each entitled to tax benefits under the current § 501.

The administration's actions had orphaned the very arguments that the Fourth Circuit had found most persuasive and left the government's abandoned reasoning without a champion before the Supreme Court. Harvard Profs. Wolfman and

Lawrence Tribe filed an amicus brief with the court suggesting that if the government refused to support the position it had taken below, an amicus curiae should be appointed expressly to argue that position. The court responded on April 19, 1982. It took the unusual step of inviting Coleman to argue the *Goldsboro* case, as an amicus curiae, "in support of the judgments" below.

"Judgments Advocate"

William T. Coleman has had a distinguished legal career. He was a member of the *Harvard Law Review* and was the first black to clerk for the Supreme Court. He served as Secretary of Transportation in the Ford administration and is now a senior partner at the Los Angeles firm of O'Melveny & Myers.

As the advocate "in support of the judgments," Coleman will argue that the Fourth Circuit correctly concluded that IRC § 501 permits the disallowance of tax benefits for racially discriminatory schools, and that the schools' free exercise claims are not justifiable. Both the government and the schools will oppose Coleman on the statutory interpretation issue. The government has not joined the schools on the First Amendment question.

In the view of Wolfman, the judgment below should be affirmed. Citing other decisions, he says that "The exemption and deductions are available only for institutions whose policies do not contradict established national policy for school desegregation. Otherwise, the deductions in effect provide federal funds to schools whose purpose is to defeat that national policy." With respect to the free exercise question, Wolfman states, "The First Amendment protects the schools' beliefs. It does not say that schools who discriminate against blacks are entitled to federal support."



Rough Play Leads to Intramural Injuries

By Mark Graham

Prompted by excessively rough play and injuries in the Law School's intramural football games, both school and intramural officials have taken steps to curb violence on the playing field.

In recent years, according to Law School Intramural Athletic Director Pat Fischer, 3L, there has been concern that play in A League, the most competitive of the three intramural football leagues, has become overly rough. This season the League has seen what Fischer termed "excessively violent and unsportsmanlike play."

The problem came to a head in the second week of the season when, in a game between the Black Plague and the Armadillos, several severe injuries were sustained including a broken jaw and a concussion. As intramural rules prohibit contact above the shoulders, the injuries were the result of illegally thrown blocks. After the game, Fischer, who is required to relay information concerning serious injuries to the school, informed

Mary Upton, dean of students, of the incidents.

Later in the week, Upton called in all the captains of A League teams and told them that excessive force in intramural games could not continue. Upton informed the RECORD that she had explained to League members that "intramurals are not the NFL and as the level of intensity has increased beyond an acceptable level, it is the responsibility of the teams to see that the situation turns around." When asked for further comment, Upton stated that "if there are any more incidents, I am prepared to suspend players, teams and A League play itself."

Changes Instituted

In an effort to calm down A League play, intramural officials have instituted several changes. Starting with this week's games, A League teams will supply game referees. After a second penalty for excessive violence, referees are empowered to declare a forfeit against

the offending team or to declare a double forfeit if both teams are at fault. In addition, the Law School intramural athletic director has a representative at every game with the authority to terminate play if the game gets out of hand.

As a result of the incidents in the game between the Black Plague and the Armadillos, intramural suspensions have been handed out and each team has been fined an amount equal to half the forfeit fee that every intramural team must deposit before the season begins. Intramural officials explain that the game is properly classified as a forfeit for purposes of the fine since play should have been stopped as soon as the game got out of control.

When asked for their comments, the captains of both of the teams involved seemed anxious to put the whole affair behind them and to turn their attention to future games.

Another rule that has gone into effect throughout all of the intramural leagues prohibits blocking on kickoffs and punts. Intramural Director Fischer explained that it is on these plays in particular that people tend to get hurt and that he hoped that the rule change would decrease the incidence of player injuries.

With the situation now apparently under control, both players and intramural officials are looking forward to the return of high-quality play and encourage students who like to watch football to go down and see some of the games. True, it is not pro football that they're playing at Soldiers Field — but then again, they're not playing pro football anywhere.



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