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25 CENTS

Faculty Discusses Clinical Ed, Aid Regs

By John Morris

The faculty voted Wednesday to accept a Clinical Legal Education Committee proposal recommending that the school continue funding of the Legal Services Center until July 1986. The faculty also discussed a Financial Aid Committee recommendation regarding the federal government's proposed regulation requiring students receiving federally funded student loans to certify that they have registered for the draft or are exempt.

The financial aid proposal would allow students refusing to provide the federally required certification to borrow from the Law School at market interest rates. Dean James Vorenberg and university President Derek Bok, who was present for the

meeting, said that a university-wide policy would have to be established on the new regulations and that a Law School faculty vote would thus not be inappropriate now.

Later in the meeting, the faculty took up discussion of the Third

World Coalition's presentation which was made at the last meeting a month ago. That part of the meeting was closed to students.

Discussion of the funding of the clinical programs centered on de-
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Committee "Fine-Tuning" Means Early Jobs Season

By Lee Christie

Next fall's on-campus interviewing season will begin and end earlier in the semester than last fall's. Prof. Abram Chayes, chairman of the Placement Committee, has sent a memo to the faculty entitled "Fine

Tuning the Placement Process" in which he briefly outlined some pros and cons of the placement procedures that were new last fall: the compressed, four-week schedule; the late-October starting date; afternoon/evening interviewing; and the Jan. 10 deadline for responding to offers. Chayes's memo then sets forth a modified schedule to be followed in the fall of 1983.

The new schedule will retain the compressed, four-week format (reduced from the seven-week schedule used up through 1981), but will move the entire process forward two weeks, to the second Monday in October rather than the fourth. On-campus interviews, which lasted until Nov. 19 last fall, will wind up on Nov. 4 in 1983. The Law School Council, whose detailed recommendations and survey of employer opinion were attached to Chayes's memo, felt that the four weeks of interviewing were overcrowded. But the committee was evidently satisfied that its Oct. 10–Nov. 4 plan was better than the council's proposal for a five-week format that
(Continued on Page 16)



Sandra Yamate

Eat pizza or eat lead! Story on page 4.

Critical Legal Studies Raps Socratic Method

By Steve Cowan

"Mr. Kennedy, please state the case of *Hewitt v. Hewitt*," demanded Prof. Clare Dalton.

"Uh, uh, uh . . . well . . .," replied the visibly shaken Prof. David Kennedy. "That was a Supreme Court case where they decided whether. . . ." With these words, the roll of a drum and a clash of cymbals, Harvard's critical legal scholars renewed their drive to politicize law students by demonstrating the politics implicit in existing legal institutions.

The Feb. 16 presentation was the third in a five-part lecture series on Critical Legal Studies (CLS) prepared and promoted by Matt Kramer, Jon Weber, Stephen Presser, Raun Rasmussen and Joy Kruse, a group of interested second-year students.

The presentation was in three parts. First, Dalton and Kennedy performed two versions of a Socratic dialogue. In the first of these, Dalton chased and chastised Kennedy through the case. In the second, they used the same dialogue interspersed with pauses during which Kennedy

explained the student's mental process which led to each response.

In the second part of the night's presentation, both Dalton and Kennedy elaborated upon their attitudes toward the Socratic casebook method. They presented two fundamental criticisms. First, they stressed the fact that Socratic interrogation serves as an integral

TWC to Host Student-Faculty Affirmative Action Forum

By Andrea Hartman

Next week the Third World Coalition will sponsor an open forum during which HLS students and faculty members can discuss affirmative action issues.

According to Prof. Paul Weiler, he and Profs. C. Clyde Ferguson and Laurence Tribe were asked by Dean James Vorenberg "to liaise with the coalition." He said the primary issues to be considered at the forum will be admissions, appointments and curriculum development, and the faculty responses to the needs of the TWC.

Joe Garcia, 3L, one of the TWC members who organized the forum, stressed the breadth of the issues which would be addressed. Said Garcia, "The point of it is to discuss affirmative action at the Law School in general. The topics will be broadly defined by the Third World Coalition's affirmative action proposals which we presented to the dean last year."

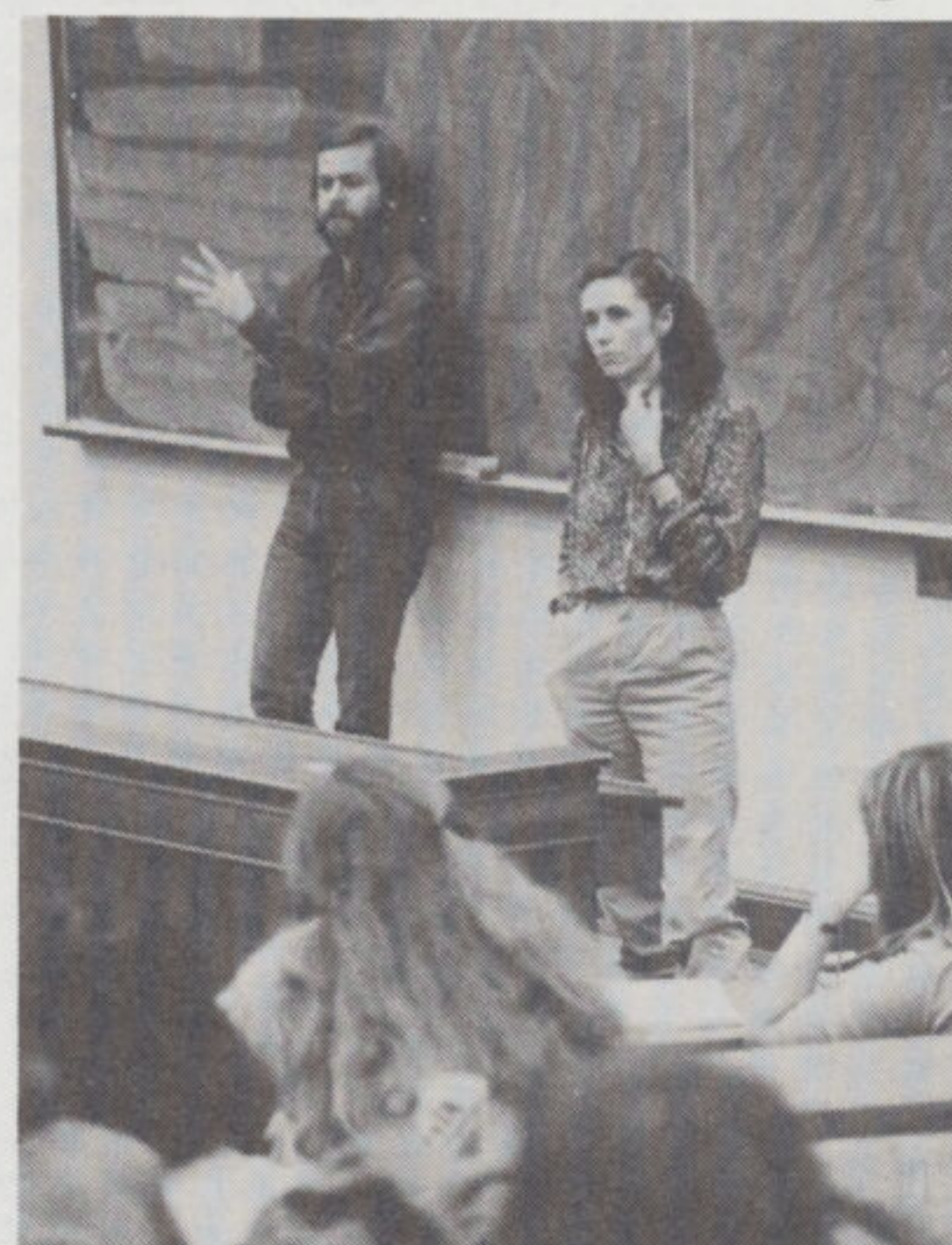
opening statement given by a student, followed by a five-minute statement by a faculty member.

Garcia believes that the forum will be beneficial for all participants. "We feel that we [the TWC members] stand to learn as much as the faculty."

Both Weiler and Garcia expressed hope that many faculty members would attend the forum. Stated Weiler, "My personal view is that it will be a useful exercise. I will be there. I hope a considerable number of my colleagues will be there."

Said Garcia, "We [the TWC] think the whole point of it is that the faculty at large has not listened to students. . . . We think it's important that all the faculty be there." He added, "We hope a lot of students will show up."

The forum will be held on Wed., March 9, from 2-4 P.M. in Langdell North Middle.



Erich Merrill

Profs. David Kennedy and Clare Dalton

part of the Law School's assault upon the student's self-esteem. Because none of the student's answers are acknowledged by the professor as correct one of the important inferences to be taken by both the subject and her colleagues is that there is something wrong with her.

Their other fundamental criticism of Socratic interrogation concerns its pedagogical goals and usefulness. Both Dalton and Kennedy stressed that Socratic questioning has the tendency to confuse the student and obscure the issues. This confusion is often followed by the imposition

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Brief Statements

Garcia said the forum will be structured to allow students to make brief statements, and to ask the faculty members questions. It will be moderated by a student who is not a member of the TWC. The forum will begin with a five-minute

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Clerkship Advice May Mislead 2Ls

By Jack Robinson

A notice from the Placement Office that has appeared in the *Adviser* for the past two weeks has thrust Harvard's placement policy into the limelight once again. The notice, which is directed to 2Ls, read: "In order to have greater uniformity and fairness in the clerkship selection process, the National Judicial Conference will be looking into the clerkship process at its March meeting. *Until the Conference has come to a definite decision, it is not appropriate for you to seek a judicial clerkship or to try to arrange faculty recommendations for a clerkship.*" (Emphasis added.)

Several 3Ls who will be clerking next year spoke to the RECORD about the placement office's action. They claim that the *Adviser* notice is misleading and could prevent 2Ls from making knowledgeable decisions about the application process. They also charge that the notice reflects another placement policy which will adversely affect the careers of HLS students.

One of the 3Ls in this group stated that "there is no guarantee that the conference will adopt a uniform policy, and even if it does, it may not take effect until next year." He explained that because there is no uniform policy among judges regarding the timing of applications, 2Ls who wait until the conference

to find out what specific judges require may be prejudicing their chances for obtaining the clerkships in which they have an interest. "The notice in the *Adviser* has the effect of freezing any kind of student action at least until the middle of March — and by the time applications [begun then] are complete, it may be too late for many judges," said the student.

Assistant Dean Molly Geraghty, who is responsible for handling judicial clerkship placement at the Law School, said that "it is almost assured that the conference will move the application process to the fall of the third year." According to Geraghty, the primary rationale for such a move is to allow judges to "make more informed decisions in evaluating applicants," by enabling them to base selections on two full years of a candidate's grades and more polished writing samples.

When Geraghty was asked why she decided to make students wait until the conference (which meets March 15-16) before beginning the application process, she said, "It's only two weeks away; certainly judges aren't going to make decisions in the next two weeks."

Geraghty said she has been in contact with Chicago, Columbia, Yale, Stanford and Penn law schools and coordinated a policy of waiting until after that date. Although she admitted that some judges and stu-

dents may possibly disregard her request, she felt that students who waited would not be disadvantaged because of the uniform policy with other schools comparable to HLS.

Even if judges do not choose clerks by the time the conference reaches a decision, a two-week delay poses problems, said one 3L. The notice in the *Adviser* prohibits students from even approaching faculty members for recommendations during the next two weeks. According to the 3L, this policy is ill-advised because it could lead to a frantic scramble for recommendations in mid-March. "The fact is that recommendations cannot be produced on 30 minutes' notice. It takes at least two weeks for a professor to furnish a recommendation. If students are forced to wait now and the conference doesn't change anything for this year, there will be a rush for professors in mid-March. This could add even further delay to the process of getting recommendations."

Too Late

In these circumstances, 2Ls probably will not be able to send their completed applications to judges until mid-April. In many cases this will be too late. Last year, according to the 3L, many students who applied in the middle of April received letters from judges saying that the positions had been filled weeks earlier.

Wayne Greenberg, assistant dean at Tulane Law School and president of the National Association of Law Placement, said that "there is a 90% chance that the conference will move the application process into the third year." When told of the notice in the *Adviser*, he explained that "we aren't discouraging people [at Tulane] from applying now but we are telling them that, if the conference decides to move the process to September effective this year, there is a strong likelihood that judges will return applications to those who have already submitted them."

No New Minority Professor Next Year, Dean Announces

It is "very unlikely" that Harvard Law School will have a new full-time, minority professor for next year, according to Dean James Vorenberg.

Vorenberg confirmed on Tuesday that Adebayo Olusegun Ogunlesi, '79, has accepted an offer for a teaching position at HLS, but will not begin as a full-time professor next year. Ogunlesi may teach a single course next spring, said Vorenberg, but no definite arrangements have been made as yet.

The RECORD had reported earlier that Ogunlesi had accepted an offer to teach at Harvard (Sept. 24, 1982). Vorenberg's announcement marked his first acknowledgment of the Ogunlesi offer.

Vorenberg added that in the past some visiting professors and lecturers have been appointed in the late spring. He expected that there will be a few such appointments later this spring.



B.H.

(Continued on Page 15)

A Little Drama, A Lot of Song . . .

—Charles Thensted

The HLS Drama Society unveiled its spring extravaganza, "North By North Middle," at a dress rehearsal Tuesday. I managed to pick up a few clues as to what someone who invests \$4.00 in a ticket might expect to see when it plays at Pound

Miller (Rob Okun, 2L) is away, substituting for Johnny Carson, while his "good friend," Charo, takes over his class on motion practice. Alan Dershowitz (Lawrence Lincoln, 3L) is Arthur's guest, fresh from appearances on "Donahue,"

Stang is equal to the task, however, and comes across as a cocky, cute, sexy Eve. At one point, she sings a sultry love song, "Whisper to Me," written by 3L's Michelle Kleinman and Joel Farley, to a surprisingly wooden Thornhill. If Lavin is acting bored in that scene, he's brilliant. If he's just terminally jaded after constant rehearsal, I'm sure each night's audience will yield several amateur stunt-doubles willing to risk libidinous impulse in the face of Stang's pleasing voice and teasing caresses.

Frankly, only a few of the other songs worked as well in rehearsal. One that did was the opener shared by Ken Hodder, 3L, and Rosanna Marquez, 3L. It is a shrewd move having Hodder open: he can sing, dance, act, move, mug — and he does it all in the opening number. On the other hand, the production numbers, as in most dress rehearsals, need work.

Rubber Duckies

For sheer fun, though, you'll have to look elsewhere. Temple Dickinson, 2L, for example, is right on the mark as Natasha, the bumbling, though earnest, enemy agent. Dickinson never slips out of character or accent or runs out of imaginatively gruesome tortures for his prey. "Lock him in a room with

(Continued on Page 5)



Sandra Yamate

Phil Kroft, 2L, Peter Rienecker, 1L and Nancy Frantz, HLS Staff

this week and next.

Touted as a musical-comedy-action-thriller, the show is broadly based on Hitchcock's "North By Northwest" and features Jerry Lavin, a 1L, in the Cary Grant part. As Roger Thornhill, a prospective HLS student who falls in with the wrong crowd, Lavin is equally at ease and effective singing or trading quips with the bad guys who dog his path. Unfortunately, he is given only a few funny lines until the second half of the show, which is not to say there's no fun up to that point.

Faculty Members

A number of HLS faculty members are portrayed by the cast. In fact, life in "North Middle" resembles a typical day at HLS. Arthur

"Captain Kangaroo," and "The Brady Bunch." The Dean (Phil Kraft, 2L) does his best to stay out of trouble and in his humble place: "L'école c'est moi." Roberto Unger (Will Brownsberger, 3L), "the man who inspired the movie, 'E.T.," is a concept comedian who "can't get no respect." "North Middle's" producers threaten to have a real faculty member show up each night in a cameo role, but that shouldn't deter anyone who otherwise plans to attend.

Andrea Stang, one of the leads in the Society's fine production of "The Importance of Being Earnest," is given a chance here to display other facets of her talent. In what no doubt is the acting challenge of her life, Stang, a 1L, plays Eve St. Marie, a 3L, in love with Thornhill, a pre-L! (Hard to imagine, isn't it?)

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... And A Big Barrel of Laughs

(Continued from Page 4)

Paul Bator's ego," he pleads in one scene. Rob Okun earns a glass of Tang and Mrs. Lupner's best egg salad sandwich with his portrayal of a nerdy law student. Phil Kraft's "Dean Dean" is constantly befuddled and funny whether lyrically extolling the delights of Mr. Bubble and rubber duckies while bathing at his "domicile" or trying to divine the meaning of a William O. Douglas quote he'd just butchered.

You might miss some of Kraft's best method befuddlement, though, in a scene designed to be stolen by Ken Hodder and Jacques Semmelman, 3L, who play the bickering Roger Fisher and Frank Sander, masters of one-upmanship, facing and failing the negotiation challenge of a lifetime — each other. Hodder, who apparently doesn't realize he's wasting his time and considerable musical-comedy talent in (it hurts to say it) law school (ouch!), has the rare ability to rise above his material. Here he doesn't have to. The dialogue is funny, the song "Getting to Yes" is funny, and his partner, Semmelman, matches him jab for jape.

Agent Orange

There are other effective turns as well. Nancy Franz handles the role of Agent Orange with sinister good humor and sings a down and dirty song called "Mean Streak" with real flair. Her spritual opposite number, Victor Patrick, 1L, as Prof. Van Dorn is wickedly well-done. He appears to be forced out of character

to sing a broken-hearted love song, but he does it so well that the damage to his characterization is negligible.

Lawrence Lincoln and Barbara Overton, 1L, are just so obnoxiously nice and eager as Ames partners, Rick Bismarck and Farrah Fargo. Holly Wright, 2L, delivers a solid, assured, often amusing performance as Beatrice Foods, the BSA representative. Unfortunately, she seems to bear the brunt of a plethora of penis jokes which are offered as the humor in the early going. They *do* peter out after a while, but, alas, so does Wright's character.

Peter Rienecker, 1L, Jay Handlin, 1L, and Mark Morris, 2L, are fine in relatively minor roles though one wonders after seeing Morris in two

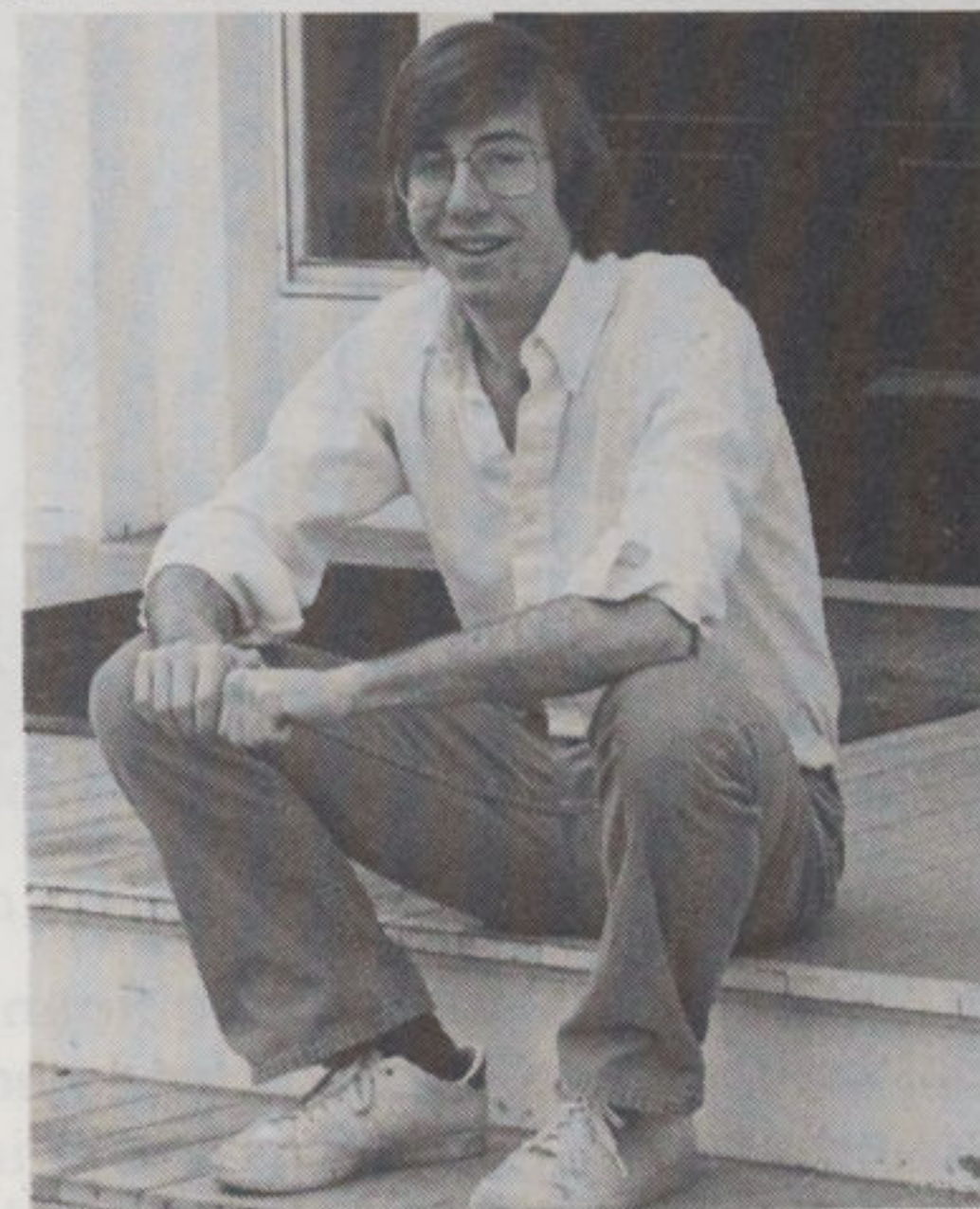
shows this year why he doesn't sing more. Mollie Sherry is charmingly vacuous as the secretary, and as Sgt. Itch, Chris Hewitt, 3L, has his moments as well.

"North By North Middle" has some good music, lots of laughs (particularly if you like in-jokes about the law school, and what law student doesn't?) and the last appearances in this venue of the redoubtable Ken Hodder. Some of the musical numbers are disappointing in execution and the story and humor flag at times. It is, however, an all-original law student production, and, on those terms, successful. And, although I didn't see it, they tell me there's going to be a big finale, which is more than I can claim about this piece. ✻

Review, Bureau Elects Heads

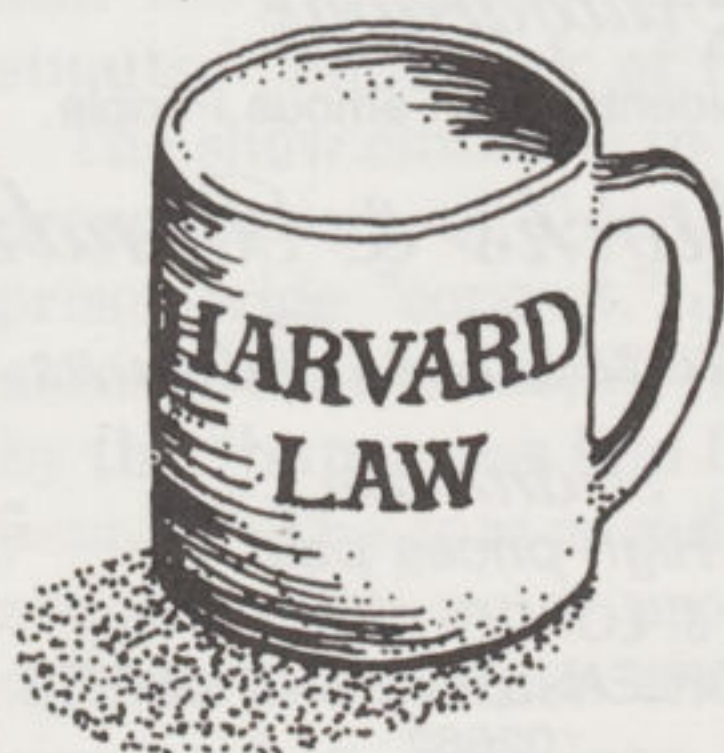
From a field of 11 contenders, the *Law Review* has elected Scott Nelson, 2L, as its President for the 1983-84 year.

The Legal Aid Bureau has elected the following new officers: President, Laura A. Burton; Vice President, Edward Feldman; Executive Director, Maria Dalterio; Secretary, Donald Tyler; Treasurer, John Jacobi; Research Director, Thomas Jackson; Associate Directors, Shereen Arent, Alex Feldvebel, Mary Ellen Roy. All are second-year students.



Mike Lyon

Law Review President Scott Nelson, 2L



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Nicaraguan Says U.S. in Secret War

By Mike Isbell

The Reagan administration is using the Central Intelligence Agency to wage a secret war against Nicaragua, the first secretary of the Nicaraguan embassy told a group of about 100 persons at the Law School last Thursday.

Francisco Campbell, a guest of the Harvard Law Guild, said hundreds of Nicaraguan civilians have died during operations by anti-government guerillas who "are trained, financed and encouraged by the CIA." Campbell said the U.S. has also supported efforts to disrupt the harvest of coffee in Nicaragua.

"The Nicaraguan people now have

the long history of American intervention in Latin American affairs, Campbell said.

"The first intervention by the United States in Nicaragua was in 1853, when an American named William Walker went down to Nicaragua and through force imposed himself as president," he said. "Walker received the indirect support of the U.S. administration then."

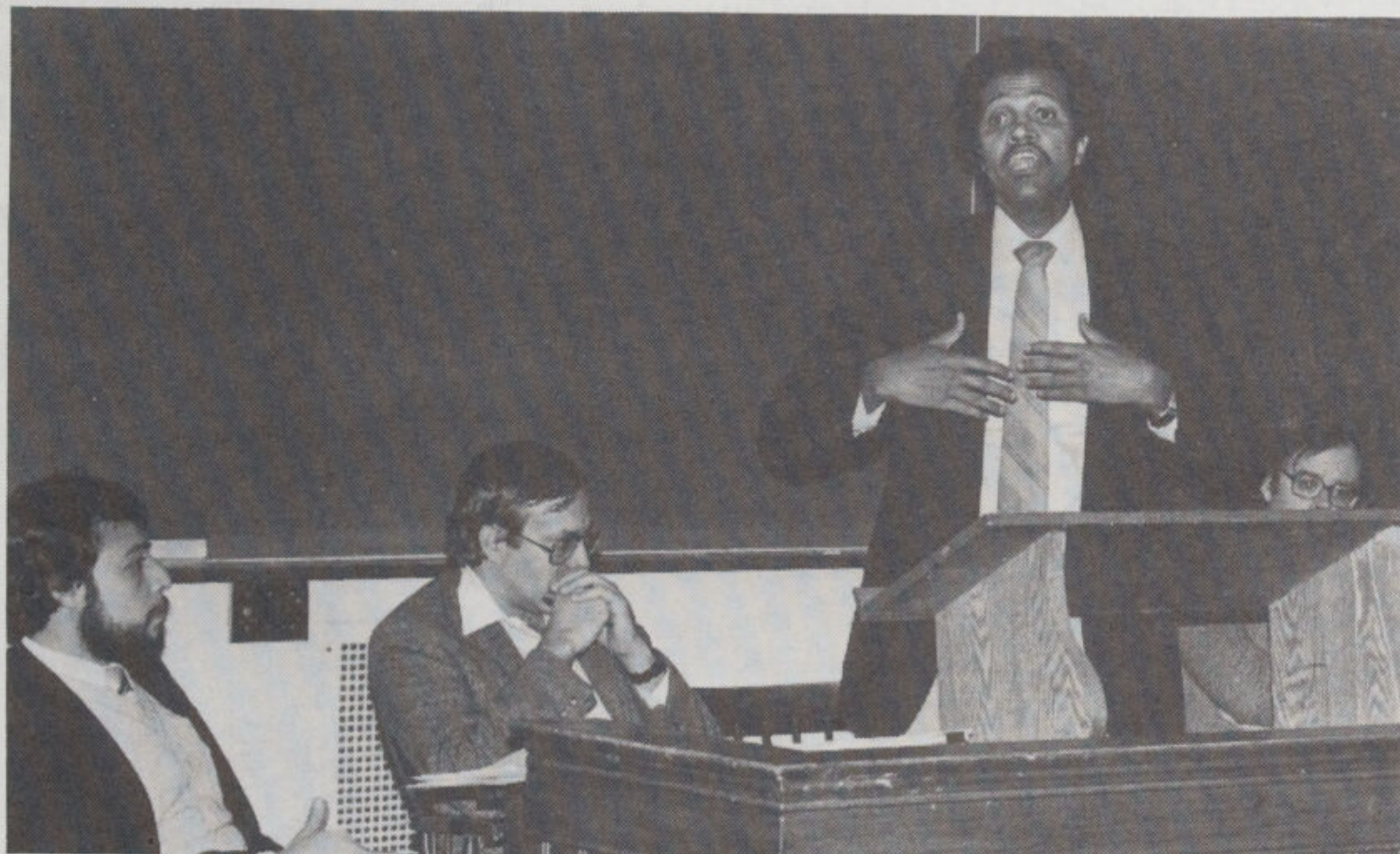
Campbell said that by the time of the Bolshevik Revolution in 1917, Americans had already intervened militarily in Columbia, Honduras, Haiti, Venezuela, Cuba and Puerto Rico, as well as in Nicaragua. "The argument today that what is taking

does not stand up to historical facts," he said.

According to Campbell, the revolutionary government in Nicaragua has already made substantial progress in establishing "the foundation of a new order." He said the government has arrested the flight of resources from Nicaragua and has significantly reduced the rate of illiteracy.

Criticisms by the administration and the American press of reported human rights abuses in Nicaragua are unfair, Campbell said. "A revolutionary process is something that is dynamic and grows. Contrary to what some might think, a revolution really begins after the triumph. The [Sandinists'] victory of July 1979 meant the majority of the Nicaraguan people were in power and could begin the process of building a new Nicaragua. But the revolutionary government has decided we will accomplish our goals in six years so the government has committed itself to elections in 1985."

Bill Chapp, an attorney for the Center for Constitutional Rights in New York, also told the group of the center's current efforts to use legal means to end the American government's involvement in Nicaragua's internal affairs. The suit, entitled *Sanchez v. Reagan*, is an action brought by seven Nicaraguans who allegedly sustained injuries in American-supported efforts by anti-government soldiers. Chapp said the center will attempt to prove the Reagan administration's actions violated international law.



John Morris

Francisco Campbell addresses HLS audience.

access to land. They receive financial assistance to work the land and get a fair price for their crops. It is for this reason that the Reagan administration has decided to make Nicaragua the target."

Campbell dismissed the Reagan administration's contention that the Nicaraguans are smuggling weapons to anti-government guerillas in El Salvador.

"The Nicaraguan junta has told the United States it is willing to meet with the U.S. with no preconditions," Campbell said. "As to date Nicaragua has not received a reply from the U.S. government."

The administration's effort to overthrow the Nicaraguan government is only the latest episode in

place in Central America is a confrontation between East and West

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"The Island" — A Dramatic Indictment

By Steve Cowan

Harvard Law School was honored this week to have critically acclaimed actors Danny Glover and Kashka Bonjoko give two benefit performances of Athol Fugard's Tony-nominated play "The Island." Unfortunately, sparse attendance on both nights revealed the lack of political consciousness and artistic awareness of both the students and faculty of HLS.

Though never heavy-handed or overly didactic, "The Island" is a powerful indictment of apartheid generally and Robben Island specifically. Robben is a small island seven miles off the African coast at Cape Town. Throughout its history it has been a prison. In earlier days it was a leper colony and then a lunatic asylum. Today it is South Africa's maximum security prison for "political offenders".

From the opening scene in which Glover and Bonjoko mime their excruciating and frustratingly Sisyphean labor, we are led through the daily lives of inmates John and Winston. These lives are made even more painful by the ministrations of a sadistic warder named Hedoshe (a Xhosa word meaning "the big green eyed fly that feasts on human feces"). Between these bouts with Hedoshe, the men spend their time in a cell tending each other's wounds. This relationship is central to combatting the tedium of their hours away from Hedoshe.

This deepening affection is temporarily shattered, however, when John learns that his lawyers on the mainland have successfully appealed, and in 92 days he will be freed. Though initially overjoyed, Winston soon comes to resent John and his reprieve. "You stink," he shouts. "You stink of freedom."

The show climaxes in the inmates' presentation of "Antigone" in a prison-wide "concert." John's Creon asserts that a society is measured by the "happiness and fatness of its people." The law is a double-edged sword which must protect the interests and punish the transgressions of a populace sufficiently happy and fat. Winston, though

hard pressed, finds dignity in his role as Antigone in a powerful and inspiring defense of her actions, and an indictment of Creon's unjust laws.

Fugard's use of "Antigone" is reminiscent of those who employed it in assaults upon fascists in an earlier era. This is an interesting parallel as are those between Antigone and the inmates, and between Robben and South Africa. While never directly criticizing the regime, or even informing us of the prisoners' actual "crimes," Fugard's "Island" profoundly and poetically condemns the gross inhu-

representative, "and it didn't work." He cited Mahatma Ghandi's ultimate failure and numerous massacres by the police as examples of the futility of non-violence in South Africa.

Sandra Ruffin, 1L, who brought the show to HLS, was surprised at the low attendance, but felt it was a success on the whole. "Our intention," said Ruffin, "was to heighten students' awareness and simultaneously raise money for the ANC." Another of her goals was to use this as an introduction to BLSA's upcoming conference on Southern Africa.

Additionally, Glover and Bonjoko



Adam Eisgrau

manity of South Africa's racism. Simultaneously, it is a fascinating exploration of life in prison.

This fusion of art and politics was reified immediately following the performance with a short question and answer session by two Black South Africans, Renene Kolekile (LL.M.) with a representative of the African National Congress (ANC). Kolekile delivered a brief history of Robben, including the fact that no political prisoner has returned. (Fugard's John was thus doubly a wishful fiction.) Most of the questions from the audience concerned the role of the ANC and the appropriateness of violence as a response to apartheid. "We've tried non-violence," said the ANC rep-

felt that this was a unique opportunity for them to present Fugard to a broader audience. Generally they have performed to affluent whites, and they saw BLSA's invitation as a means of presenting "The Island" to a larger audience of blacks.

Sports Answers

1. Terry O'Reilly
2. Rick Honeycutt
3. Sean Farrell
4. Britt Burns
5. Billy Pierce

Army Recruiters Still Banned at HLS

By Brad Hudson

The Placement Committee has unanimously rejected a proposal by the Society for Law and Public Policy to allow the Army to use the placement facilities at HLS.

The Army and the Central Intelligence Agency are the only two employers currently barred from the placement process under the school's anti-discrimination policy. The policy, which applies to admissions, staff hiring and faculty appointments as well as placement, prohibits "discrimination in any form based upon race, color, creed, national origin, age, sex, sexual orientation, marital or parental status, handicap, or status as a Vietnam era or disabled veteran."

The SLPP proposal criticizes the Placement Committee's policies on several grounds. It proceeds from the premise that the school's policy actually forbids all discrimination. It then asserts that affirmative action is reverse discrimination, but that that form of discrimination is justified because it has a rational basis. The Army, then, should similarly be allowed to interview at HLS because it has a rational basis for its exclusion of homosexuals.

The proposal says the standard "does not apply to all discrimination in hiring [by interviewing firms], but only to discrimination in the hiring of lawyers." The society also criticizes the policy for going beyond what current law demands, pointing out that the "Supreme Court has not held that statutory discrimination against homosexuals is unconstitutional." Finally, the policy does not protect those who "have been the traditional targets of discrimination in hiring" such as political extremists.

The policy is "meant to serve members of those mobilized groups who can persuade (or more likely bully) the HLS administration into giving them preferential treatment," the proposal concludes. "The standard, though superficially neutral and even-handed, is in fact freighted with bias. It is deeply, objectionably, and avoidably 'political.'"

It does not mark a clear and principled stand against discrimination in employment, but only against such discrimination as might affect factions in HLS which are noisy, well-organized, and likely to be troublesome."

The SLPP suggested two alternatives to the committee. The first would have been to allow all employers to use the placement facilities, but would have required them to make "full disclosure" of their hiring policies. Under the current policy, says the proposal, the Army and CIA are "plainly being punished, not for discriminating, but for being open, honest and above-board."

The second alternative stems from the proposal's premise that affirmative action is actually an exception to a general rule against discrimination. Thus, reasons the proposal, the policy behind the current rule is actually to allow discrimination when it has a rational basis.

Since sanctions against employers are optional under the current policy and the Army has at least arguably rational bases for its policy, the society contends that the Army should not receive the maximum sanction available under the policy — exclusion from all use of placement facilities, including the inability to place literature on file in the placement office.

Go Behind The Rule

Robert Macaulay, a 3L society member, criticized the Placement Committee's handling of the proposal. His major complaint was that the committee "refused to go behind the stated rule and look at the policy." "[The proposal has] been dealt with in an abrupt, per se manner."

Macaulay contrasted the treatment of the Army with affirmative action. "While [affirmative action] is on its face discrimination on the basis of race, it is justified." He maintained that the school should analyze the Army's situation the same way, by looking behind the rule. He believes that the Army's exclusion of homosexuals is justified

by special circumstances that Congress and the courts have approved of. "[The committee members] treat it as such an easy case, when it's not."

Prof. Abram Chayes, chairman of the committee, disagreed with Macaulay's assessment of the committee's performance. "I think we gave it a lot of time," he said, adding "the decision was made on the merits."

He disagreed with the society's premise that affirmative action is an "exception" to a general non-discrimination policy. He felt that the policy is an absolute one, saying, "We don't want to be part of a process where people make invidious distinctions among students."

Chayes said that the committee was simply not prepared to make an exception. He said that even though the Army may have good reasons for its policy, "Our policy says something about what the school stands for."

Robert Delahunty, the 3L who has handled much of the work on the proposal, criticized the way the society has been dealt with throughout the entire process. He criticized the committee's refusal to involve other interested parties in the hearing and to issue a written statement on its decision.

Both Delahunty and Macaulay said that the administration would like to see the issue quietly fade away — that it finds the whole issue "an embarrassment." Noting that the Army probably lacks a large constituency at HLS, Delahunty wondered "if the small group is being sacrificed to make groups like [the Committee on Gay and Lesbian Legal Issues] feel something is being done — but doesn't touch vested interests like law firms upon which the school depends for support." He added that he realizes this belief is "cynical," and he hoped it wasn't true.

Chayes defended the committee's action regarding both the failure to notify other student groups and the denial of a request for a written response. "We're not an adjudicative body," he said. "We're managers

Despite Student Group's Proposal

more than anything else."

Chayes also said that the committee has held "public hearings" on proposals in the past, citing a meeting held last year to discuss proposed changes in the placement schedule. But in the case of the society's proposal, he felt that the issues were "not of practical significance to a wide number of students." He also felt that it would be inappropriate for the committee to issue only one opinion in 15 years.

Chayes also felt that this type of policy was not amenable to student majority rule. He doubted, for example, that if three-fourths of the students wanted to let employers discriminate against minority students, the policy would be changed. The policy represents a faculty position, he said.

Chayes disagreed with the society's assertion that granting the Army an exemption would not be an anti-gay move. He added, however, that he believed that the society's proposal was not motivated by anti-gay sentiments, but that "they believe they are acting to make everybody equal."

Correspondence Struggle

One of the society's major attacks on the committee involves its request to examine any correspondence between the school and Major General Hugh J. Clausen in order to ascertain and evaluate the grounds for the school's denial of an exemption for the Army. In a letter to Delahunty dated Nov. 10, 1982, Chayes stated, "I have reviewed with Mr. Bernardi and Dean Vorenberg the question of releasing the correspondence and other documentation in which you are interested. After discussion, we have concluded that it would be inappropriate to do so. The correspondence and memoranda reflect statements made and positions taken on both sides without any thought that they might become public."

In a Nov. 22 reply, Delahunty criticized the withholding of the letters. "We hope you will recognize

that our ability to present our most effective case has been impaired by the adamant refusal of the Law School authorities to disclose *any* of the original documents relating to this controversy, or even to reasonable summaries of them."

The society was able to obtain the correspondence from the Army under the Freedom of Information Act (FOIA). The correspondence between Clausen and the Law School maps out the chain of events leading up to the Army's threat of sanctions against the Law School. On Sept. 1, 1981, Clausen wrote Vorenberg, requesting an exception from the anti-discrimination policy with respect to handicap and sexual orientation.

Vorenberg referred Clausen's letter to the Placement Committee, which discussed the request. On Sept. 23, 1981, Chayes informed Clausen that the request had been unanimously turned down. "The Committee was prepared to assume that the [Army's] policy is fully in compliance with applicable law but decided that that alone does not justify an exception to our anti-discrimination policy with respect to homosexuals."

On Oct. 20, 1981, Clausen asked Chayes if the placement office would be willing to "maintain [Judge Advocate General Corps] literature on file, post announcements regarding JAGC opportunities, or refer students for off-campus interviews."

Not Consistent

Chayes replied on Nov. 30, 1981, saying that the posting of announcements and keeping of literature on file would be inconsistent with the policy but that "if individual students express an interest in seeking employment with your office and ask how to go about it, we would give them your name and address. . . ."

On May 1, 1982, Clausen sent Vorenberg the much-publicized letter threatening sanctions against the school. The three-page letter defended the Army's policy with regard to homosexuals. "Soldiers . . .

must sleep, eat, and perform personal hygiene under conditions affording minimal privacy. The presence of homosexuals in such an environment tends to impair unit morale and cohesion as well as infringe upon the right of privacy of those service members who have more traditional sexual preferences. Furthermore, homosexual conduct is a crime in the military." Clausen also cited numerous cases upholding the Army's exclusionary policy.

Vorenberg responded in a letter dated May 18, 1982. He outlined two approaches to Clausen that he thought might be helpful. "First, I would be very glad to meet with you and try to explain more fully (and I hope more persuasively) than we have in the past why we have taken the position we have."

"Second, we would like an opportunity to explore with you the Army's policy with respect to homosexuals. We are not sure we understand the basis and need for the policy and, at least, would appreciate learning what the possibilities for modification may be."

Taken By Surprise

On Aug. 6, 1982, four days after the National Law Journal made public Clausen's May 1 letter, Vorenberg reminded Clausen of his suggestion for a meeting. "I was taken somewhat by surprise by the recent media attention to this issue. I still think it would be worthwhile to exchange views and I am wondering whether you agree." Clausen agreed, but Vorenberg wrote later that he had no immediate plans to be in Washington.

Vorenberg confirmed that he has not met with Clausen to date because he still has not gone to Washington. Dismissing any notion that the letters contain any "secrets," he maintained that his policy toward the letters had always been that he would not release them without first obtaining Clausen's okay. He noted, however, that no one had ever requested him to write to Clausen to get his permission to release the letters.

They're At It Again

They are at it again. Three times in the last three years the school has tried to curb what it feels is the excessive distraction resulting from the hiring process. Two years ago, it was 1L placement. Wait until the spring, we were told. Last year the 2L and 3L placement season was jimmied to minimize (supposedly) its effects on easily distracted students. Wait until November to interview, we were told. Wait until vacation to fly out, we were told.

Now it is the clerkship-finding process. Wait until some as-yet-unknown date before applying, we are told. Now, it is likely that most judges won't hire their clerks before March 15. But postponing the process of obtaining recommendations until after that date will delay things to the point where would-be clerks may well be disadvantaged.

A clear pattern has developed. In each case where a new placement policy has been foisted on students, the faculty and administration has begun with a perception that things are out of control and a belief that the leverage of the Harvard Law School can be applied to remedy matters. But in each case the solution has flown in the face of the realities of the outside world. Many firms don't hold spots for 1Ls until February. Many could not hold open slots for 2L and 3L late-comers from Harvard. Likewise, some judges aren't waiting now and others will likely not wait for whatever guideline dates may emerge from their meeting this month.

In each case, the school's recommendations have been misleading and, if followed, potentially detrimental to students' interests. The most troublesome aspect of this year's placement procedures, the timing, has been altered for next year. But the paternalistic attitude of the school towards students, and the arrogance (remarked upon by so many employers) of the assumption that employers, be they law firms or judges, will defer to the wishes of this law school, is still visible in this latest attempt to unilaterally control a process is largely outside the control of the school.



HARVARD LAW RECORD

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Fenno

Fenno itched under his robe and the smell of burning incense made him want to sneeze. But he dared not attract the attention of the other 90 people kneeling around the altar. For Fenno had been smuggled in to witness the most awesome transfer of power imaginable: bigger than the President, bigger than the Pope, bigger than Miss America. He would witness the selection of the new President of the *Law Review*.

"Psst," said Fenno to the figure kneeling beside him. "Why are those books stacked beside the fireplace?"

"So we can signal to the crowd assembled on the Common that we have made a decision," whispered the figure. "Those on the left are copies of the *Yale Law Journal* — they make black smoke, which means no decision. The copies of the *Review* in the right-hand pile make white smoke: a new President has been chosen."

The previous year's Chief rose and led the group in a chant: *Om mane padme id. Obiter dictum supra caveat emptor nolo contendere*. "As you know," said the Chief, "all 42 2L members are running for the position of President. Anyone who wishes may now submit comments on these candidates."

"Brother Michael almost always remembers to put his footnotes in numerical order," piped up one voice. "Sister Ruth must be dedicated," chimed in another. "She must put in long hours at night because I never see her around Gannett House during the daytime." "Brother Gabriel should be disqualified for campaigning," added another.

"What has he done?"

"It doesn't matter," the accuser explained. "If he's perceived as campaigning he must be doing *something*. And there was that full-page ad he took out in the *Times*."

Fenno put the time spent in discussion to good use. He inconspicuously wandered over to the ballot box — after all, he had learned something from the summer he'd spent in Chicago.

The ballots were tabulated. "We have a new President," the leader announced. "Brother Fenno." Suddenly, an ethereal face began to take shape in the smoke from the incense.

"I am the spirit of the D.C. Circuit," boomed the face. "I approve of your choice and invite him to serve me next year in Washington."

Fenno looked confused. "But the *Adviser* said that you're supposed to wait until next fall," he blurted.

"He's an imposter," someone shouted. "No real *Review* member would ever fall for that line."

Fenno ditched the robe and ran for the door, pelted by copies of the *Review*. "Next time," he thought, "I'll run for something safer — like president of the WLA."



Letters to the Editor of the Record

Self-Reliance

To the Editor:

This is an open letter to 2Ls seeking clerkships from fifty 3Ls who will be clerking next year.

The Law School has put notices in the *HLS Adviser* recently [Feb. 17 and 24] stating that it "is not appropriate for you to seek a judicial clerkship or try to arrange faculty recommendations for a clerkship" until the *Adviser* notifies students of a decision by the National Judicial Conference regarding the timing of the clerkship application process.

We feel that the *Adviser* notice misleads you and may prevent you from making knowledgeable decisions regarding your own career.

The important facts are these:

- There has been until now, and continues to be, *no uniform policy among judges* regarding the timing of clerkship applications.
- Some judges will welcome and act upon applications before April, indeed even before the National Judicial Conference.
- There is no guarantee that the National Judicial Conference will in fact agree upon a uniform schedule; many judges value their independence in such matters.
- Even if the National Judicial Conference does agree upon a uniform schedule, there is no guarantee that the schedule will be binding upon judges or that any schedule will take effect this year.
- In past years, some students who waited until the time the Law School suggested found that their applications were too late for some judges.

Many judges *do* wait until April or later to decide upon applications, and there are good reasons for uniformity in the clerkship application process. But uniformity does not in fact exist, and the *Adviser* notice obscures the variety of practice among individual judges.

Our advice to you is not to rely upon the Law School administration for guidelines as to when to seek a clerkship. Find out on your own. A good practice would be for you to ascertain from individual judges when they will welcome and act upon applications, and to time your actions accordingly.

If individual judges are not ready to act upon applications, let them tell you so; they

will likely hold applications and act upon them later. But if you wait longer than they do, you risk damaging your chances of success. Depend on your own efforts, not on the *Adviser's* suggestions of "appropriateness."

S. Berman, C. Bloomgarden, D. Boyer, A. Bridges, C. Cameron, A. Carnegie, P. Carome, S. Cobert, E. Constantine, J. Cook, D. Culp, T. Edelman, P. Fischer, K. Florini, A. Flournoy, S. Frumer, S. Galvis, D. Golden, B. Grandstrand, W. Guzik, S. Heinze, J. Howe, K. Johnson, M. Justin, R. Kaplan,

L. Lenfestey, W. Lightsey, L. Lustberg, M. Lytton, D. Mandelbaum, J. McCabe, S. Michaels, B. Parker, J. Payne, C. Poinsette, L. Pulgram, M. Regan, J. Roth, S. Routh, R. Sankovitz, M. Schenker, M. Schmitt, K. Seward, P. Simshauser, J.D. Stahl, R. Stanley, J. Sternlight, C. St.Romain, R. Wohl, W. Widen, 3Ls.

Bearing the Burden

To the Editor:

I was quite infuriated to read today that Harvard is strongly considering compensating students for federal funds lost through their refusal to register for the draft.

Such a policy would be repugnant for two reasons. First, requiring individuals to register is to impose a very small obligation in comparison to the many benefits of citizenship. Regardless of whether one believes registration is a good policy, the United States asks very little of its citizens, and the time required to complete a short questionnaire should not impose a serious burden on anyone, even if they are busy Harvard students.

Second, as a law student and recipient of financial aid, I am concerned that my financial aid will be reduced in order to compensate for the loss in federal funds to students who refuse to register. This will in effect mean that I will be paying higher tuition to subsidize the illegal activities of my fellow students. I believe that forcing me to assume such a position is a morally unacceptable stance for Harvard University to adopt.

Some will make the argument that the University contemplates only loans, not grants, to replace the money refused by non-registrants. This obscures the fact that the University must obtain this money somewhere. Whether it borrows or self-finances, the total University budget will only increase, inevitably generating higher tuition levels.

Some will stand beneath the banner of academic freedom and proclaim that all students, regardless of their political views, deserve the opportunity to have a Harvard education, and that this opportunity requires guaranteed financial aid for all. I agree that students should not be excluded from Har-

vard because of their political beliefs. However, there is no adequate justification for forcing those who do register to shoulder part of the burden of those who do not. If the non-registrants are willing to openly defy the law, they should also be willing to pay the added cost of taking outside loans or jobs to replace the federal funding they have denied themselves. It is they alone who have broken the law, and they *alone* who ought to bear the full financial responsibility of their non-registration.

Thomas G. Rozinski, 1L

No Guess

To the Editor:

I wish to respond to Donald Tyler's Feb. 18 letter to the editor, which makes several points that may have misled RECORD readers.

Referring to the new black professor reportedly hired by HLS, Tyler "recall[s]" that "the RECORD's Sept. 24th issue made a guess at the Black professor's name — a guess thought by some to be in error." Tyler recalls incorrectly. As then-news editor, I was involved in researching the Sept. 24 article, and I know that we did not guess about anything in that article. What we did was report that, according to several sources, Adebayo Ogunlesi, '79, had accepted HLS's offer of a tenure-track position. Not all of the several sources were named in the Sept. 24 article, but among those listed were Prof. Alvin Warren, chairman of the faculty Appointments Committee, and Keem Belo-Osagie, a Nigerian acquaintance of Ogunlesi — two independent, seemingly reliable sources. There was speculation, as Tyler notes there still is, that Ogunlesi might be unwilling to leave his successful private practice in order to teach at HLS. Whatever Ogunlesi *intended* to do, and regardless of whether he has changed his mind, it is clear that either Ogunlesi did accept HLS's offer or a lot of folks were lying to the RECORD. In any case, we did not guess about Ogunlesi's identity and we did not predict what Ogunlesi would actually do in the future.

The Law School's lying to the RECORD is the offense suggested by Tyler's next statement, "Moreover, some minority students even suggest that the Law School's renewed offer to that attorney was merely cosmetic — a dishonest yet desperate attempt to publicly depict the School as a conscientious supporter of affirmative action, when in fact no offer had been made." Are "some minority students" really suggesting that the Law School's offer to Ogunlesi was so cosmetic that it was never made? Either it was made or it wasn't, and the beauty of Tyler's construction is that either way, the Law School was up to its old anti-affirmative action tricks again. If the offer *was* made, it was merely cosmetic, which apparently means it was

(Continued on Next Page)

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 especially on subjects which have appeared in the RECORD.

Letters must be typed and received by 4:00 P.M. the Tuesday before each issue. We prefer letters of no more than 700 words.

Letters to the Editor of the Record

(Continued from Previous Page)
not meant to be accepted. If the offer was not made, then HLS was lying to cover up its racist hiring policies.

To the extent that Tyler suggests the Law School deliberately set out to publicize its hiring of Ogunlesi, his letter is misleading. While one HLS official confirmed that it was Ogunlesi who had been hired, the dean refused to, and anyway, the Law School didn't give us the information in the first place. All the facts about Ogunlesi's acceptance in the Sept. 24 article were originally told to the RECORD by persons who learned of the story not from Dean Vorenberg, but from Ogunlesi himself. And while he had no way of knowing this at the time, the original informant whose tip led to the Sept. 24 article was Donald Tyler. While giving no names, Tyler told me in September that several HLS students knew the identities of the blacks who had been offered faculty positions.

Tyler's suggestion that the offer to Ogunlesi was never made flies in the face of all the evidence, published or unpublished, and can only serve to fuel suspicion of the dean on the part of those who don't know the facts. It seems particularly unfair in light of the undisputed news, also reported in that Sept. 24 article, that two *other* blacks had also received offers.

With Donald Tyler's letter, the level of "debate" about affirmative action at HLS has sunk to a new low. Tyler urges the Law School to do something to relieve all the tension surrounding the issue, but how does Tyler himself help to relieve that tension? Admitting that he is engaging in speculation, Tyler first posits a set of facts — implausible to those who've closely followed the boycott story — and then, drawing on his hypothetical facts, accuses the administration of various forms of dishonesty. Tyler's letter is especially shocking to me because it seems out of character. Since September, Tyler has consistently been the most articulate and persuasive spokesmen for the pro-boycott forces.

Those who are determined to call the dean a liar continue to find ways to do so, even if it means making up their own facts to support the accusation. Meanwhile, the real policy issue facing HLS — the question of what standards should be used in hiring new faculty members — continues to be ignored.

Finally, I was glad to see Tyler reaffirm the principle behind the boycott, namely that "the Third World Coalition has already shown that it will not accept visiting minority and women professors as substitutes for *tenured* minority and women professors." Opponents of the boycott who have wondered if the boycott wasn't really aimed at Jack Greenberg, his whiteness, his Jewishness, or his leadership of the Legal Defense Fund can now be proven wrong when the Coalition,

reaffirming the principle stated by Tyler, boycotts next year's course in Civil Rights Litigation, scheduled to be taught by Visiting Professor Gerald Lopez.

David Horn, 3L

Our Own Liberators

To the Editor:

On March 9 the long-awaited student-faculty forum will finally happen. It raises the perennial issue of the student's role at Harvard Law School. Many students object to dehumanizing treatment, a lack of community, an unheard voice in the process that governs us. But most of us feel powerless. Why? What can we do?

First, we as students can recognize that in a fundamental way we have responsibility for our situation. Every day we make choices that determine the quality of our lives. True, faculty and administrators have built the prison we see ourselves in — and they are responsible for it, but *we* have the key to unlock it. We're just too afraid to walk out and be free. We are our own jailers. Blaming administrators doesn't change that fact.

Since we are our own jailers, we are also our own liberators. The power of this realization is inestimable. And there are many ways we can set ourselves free. Student Funded Fellowships, the Third World Coalition Alternative Course, the Critical Legal Studies Series, and the Harvard Fellowship in Public Interest Law all exemplify students taking responsibility for their situation and changing it. Other initiatives aren't hard to imagine: what if, on a given day, students agreed not to say anything in class — as a sign that we've got things to say but no one is listening. Or if we brought dogs to class to show how we think we're being treated.

Second, we as students must realize that we cannot legitimately expect the faculty to treat us any better than we treat each other. As long as we patronize and devalue our fellow students (even the "obnoxious" person in class or the "corporate type"), we are going to be patronized and devalued. So change in this area begins with one another. It means being less self-righteous (which leftists are just as good at as conservatives) and more compassionate — *especially* with those you disagree with. Then, we can justifiably expect to be given the same concern and respect we give others.

Third, we can begin to create a real sense of community at HLS. This is done by taking time to be polite — showing the basic human decency to each other that systematically gets sacrificed to schedules. It's done by being cooperative, by not depending on competition to validate our self-worth.

We create community by being open with one another, by admitting our vulnerabilities — instead of deceiving ourselves by pre-

tending we don't have any. And we show community by giving each other positive reinforcement and support, of which there is a dearth at HLS. Community means recognizing that we are all part of a larger whole, and that our interests are coextensive. This larger whole includes students, faculty, staff, and the world outside HLS. We have to learn to get along *altogether*.

Finally, we as students must be truly honest with ourselves. For instance, how many of us who decry grades now did the same as undergraduates, when we got the benefit of them? This is not to say that grades are in fact legitimate and we're just hypocrites; rather, it's to help us be less arrogant and more understanding of why some people still attach their sense of self-worth to grades: at one time some of us did too. Perhaps we should thank HLS for changing that.

To be legitimate, therefore, we can't just question grades at Harvard Law School (places don't matter at HLS because we're all in the Olympics anyway, right?). We have to challenge the very system that brought us here in the first place.

Some 3Ls like me may think that it's too late for them to change anything, and other students may think that nothing's even worth changing — just do what you can do to get by and get out. But each day we accede to oppression at law school is one more bar we add to our cages, one more time our resistance muscle atrophies.

Before long, the cage could be removed and we'd never even notice: we're conditioned to it. And the cage at law school just conditions us for the cage after law school. It's never going to get any easier to liberate ourselves than it is now. And now matters, because if we don't do it now, we'll never do it.

Liberating ourselves now can mean many things. It can mean a state of awareness, or saying hello to a fellow student in the hall rather than looking away. It can mean boycotting a class. They're all important. But the real point is to see each choice we make as a potential act of liberation, and to realize how many choices we do in fact have.

One important way we can liberate ourselves now is to show up and speak up at the student-faculty forum to be held on March 9. There's a lot to be said. But unless we say it, we have no right to blame the prison-builders; we've locked the cell door ourselves.

None of this essay is meant to lessen the responsibility of faculty and administrators for the quality of student life at Harvard Law School. They *are* responsible. Rather, it is meant to emphasize that the primary responsibility is ours, as students. No one can do to us what we won't let them do. Let's not let them.

Linda Monk, 3L

HARVARD LAW RECORD

March 1, 1983

COOP NOMINATIONS

The Board of Directors of the Harvard Cooperative Society has 23 members, 11 of whom are students from M.I.T. and Harvard, 11 are members of the faculty and staff or alumni of M.I.T. and Harvard and one is the General Manager of the Society.

The following persons have been nominated by the Stockholders of the Society to serve as Student Directors during the 1983-1984 school year.

HARVARD AND RADCLIFFE COLLEGE STUDENTS

Cynthia Hickman, '84
Mir Saied Kashani, '85
Julia S. Rubin, '84

HARVARD GRADUATE STUDENTS

John H. Adler, '84
Regina C. Brown, '84
Lawrence E. Golub, '84
David L. A. Gordon, '85

M.I.T. UNDERGRADUATE STUDENTS

Charles R. Markham, '84
Sarah A. L. Tabler, '84

M.I.T. GRADUATE STUDENTS

William Hilliard, '84
Gordon B. Hunter, '84

PROCEDURE FOR ADDITIONAL NOMINATIONS FOR STUDENT DIRECTORS

Additional nominations for student directors may be made by petition signed by at least one hundred (100) student members and filed with the Clerk of the Society (by leaving the petition at the General Manager's office in the Harvard Square store) not later than 5 p.m. March 18, 1983.

Ballots will be distributed in April to all student members for the purpose of electing eleven from the whole list of nominees. If you are interested in becoming a petition nominee you should promptly acquire petition forms and instructions from the cashier's office in any of the Coop stores. Remember that completed petitions cannot be accepted after 5 p.m. March 18, 1983.

HARVARD
COOPERATIVE
SOCIETY

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Sports Quiz

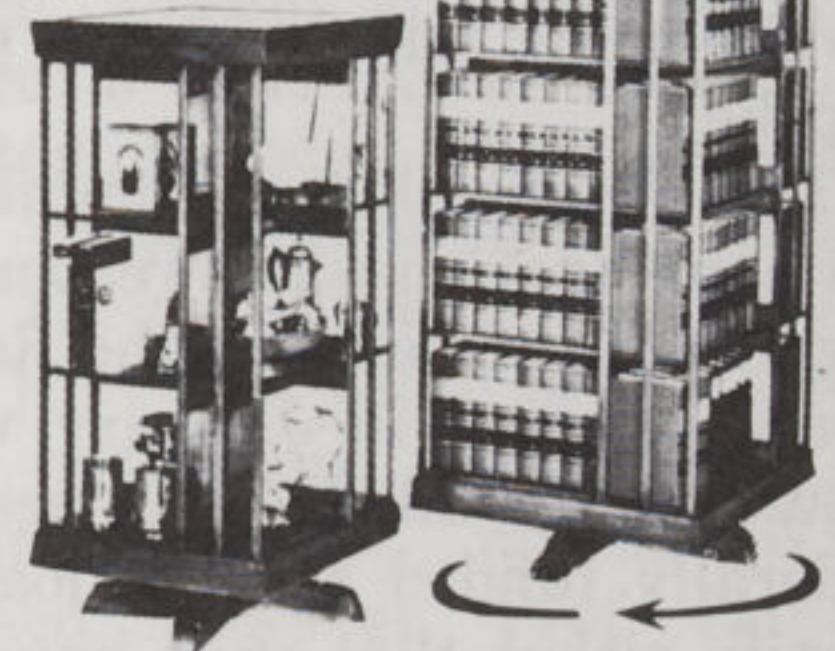
*Note: In honor of the last episode of M*A*S*H, this week's sports quiz asks you to identify athletes whose last names are either the last names of characters from the series or of actors who appeared on the show.*

1. Injured for most of the current season, this veteran Bruin forward began the season on suspension for hitting a referee during last year's Stanley Cup playoffs.
2. A pitcher with the Seattle Mariners from 1977-1980, this lefthander has the dubious distinction of having lost 17 games for the Texas Rangers in 1982.
3. Considered one of the finest offensive linemen in the country when he played at Penn State, this guard was the number-one draft choice of the Tampa Bay Buccaneers in 1982. Name this football player.
4. Having pitched for the White Sox since he began his major league career in 1978, this big lefthander finished second only to LaMarr Hoyt in victories for the team last season. Name this player.
5. A major league pitcher for 18 years, this lefthander, who won over 200 games in his career, pitched for the White Sox from 1949-1961 and also pitched for the San Francisco Giants in the 1962 World Series. Name this former athlete.

(Answers on Page 7)

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Faculty Discusses Clinical Ed, Aid Regs

(Continued from Page 1)

tails of the Legal Services Center. Prof. David Herwitz expressed concern about the center's location in Jamaica Plains, a 40-minute subway ride from Harvard. (The committee report also mentioned the worries of some students that the neighborhood and subway ride are not safe.)

Prof. Phillip Areeda said the advantages of a closer location — in particular, better integration of students and faculty in the program — should be weighed. Vorenberg and Associate Dean Lance Liebman, chairman of the committee, both said the present location provides a good mix of both clients and work.

Prof. Martha Minow, who is teaching a section of Legal Profession with a clinical placements this term, defended clinical education, saying she was "thrilled with the spontaneous connections my students have been making" between their clinical experiences and the theoretical material of the course.

When the report came to a vote, the sole nay was that of Prof. Charles Donahue who said simply, "We're being asked to buy a pig in a poke."

The Financial Aid Committee's recommendation was a response to regulations proposed by the Reagan administration in January which would require all students receiving federally funded student loans to certify either that they have registered for the draft or that they are exempt. The certificates would be required of women and of men born before 1960 even though both

groups are exempt from the registration requirements.

The committee's response was three-fold. It recommended first that failure to provide the federally required certification should not cost a student any school-funded aid, and second, that any federal aid lost be made up for in loans from school funds made at commercial rates.

A third part would extend the benefits of the first two proposals to students who are exempted from draft registration. Thus, women or exempted men who refuse to conform to the federal regulations as a matter of principle would not lose school-funded aid and would be eligible for the substitute loans. Committee Chairman Prof. Vern Countryman explained that the committee did not want to have to label those who are violating the registration law, distinguishing them from those who simply protest the financial aid certification procedures.

Concern About Cost

Countryman said that lying behind all the proposals was a belief that failure to register "is a form of civil disobedience which the Law School should not be used to help penalize."

Prof. David Herwitz expressed concern that extending the loans to the exempted groups, who would not stand to suffer from filling out the certificates, would cost the school much money and might encourage disobedience. Assistant Dean Russell Simpson said, how-

ever, that the difference between the market rates charged on the substitute loans and the subsidized and interest-deferred federal loans would deter most students from using the school's loan funds simply to make a statement.

Prof. Susan Estrich defended the provision allowing women to refuse to provide the certification on the grounds that they would be making "a pure political statement," which could not be motivated by self-interest.

Prof. Laurence Tribe agreed with Estrich, saying that it would be better to do nothing than to have the protections extend only to those actually required to register for the draft.

Both Prof. David Kennedy and John Mansfield expressed concern about the government's using the school in the registration enforcement procedures in any way, including filling out the certificates for those students willing to comply.

Prof. Alan Dershowitz asked Bok if the university would not consider taking legal action against the federal government. Bok said the university is asked to join many suits and he expressed a cautious attitude towards such a move.

Prof. Philip Heymann spoke up to ask what was objectionable about the government's using the financial aid process as an enforcement mechanism, but that discussion was cut short.

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Critical Lecture Series Tackles System

(Continued from Page 2)

of a number of traditional notions upon the material by the professor. Thus a view of law is developed.

Kennedy asserts that "the picture that's created by the case method is wrong." It foists upon students the notion that there is a fundamental distinction between law and life. Within this view law is contradictorily perceived as simultaneously flexible and rigid. In order to escape the horns of this dilemma, legal scholars have traditionally employed a variety of mediating devices.

"False closure" is another of the problems Kennedy sees in traditional legal instruction. The issues

considered in law school are often fascinating, but the discussions in class are often so limited that they stop far short of the areas that would be most interesting to consider. This, combined with the limited time that students have to consider their responses to Socratic inquiries, reinforces the notion that there is a bifurcation of law and life.

The final portion of the presentation was an interesting variant of a question and answer session. Prior to the lecture, handouts were prepared and distributed by the student organizers accusing CLS of being "an elitist and narcissistic irrelevance," "nihilistic," and an impediment to "getting the education

we're paying for." Before opening the floor, Dalton and Kennedy addressed these frequently voiced complaints.

Dalton replied that the accusations of elitism, narcissism, irrelevance and obstruction are, on the one hand, personally insulting, and on the other hand, inaccurate. She asserted that the critical legal scholar's "disengagement" is simply a method which permits a more honest analysis of the structure and underlying assumptions of legal argument. Far from impeding, they maintain that this will profoundly facilitate the student's ability to understand and navigate the intricacies of legal argument.

To the assertion that CLS is nihilistic, Kennedy responded that this would only be true of those who come to law school without values. He maintains, however, that, "If you have values, this method will simply demonstrate how to use the legal system to realize them."

Clerkship Application Advice May Cost Jobs, Say 3Ls

(Continued from Page 3)

When asked about the possibility of Harvard students being denied clerkships because of their late start in the process, Greenberg responded that "most federal judges are going to wait for the conference before filling any clerkships." However, Greenberg also stated that, as of March 1, "clerkships have already been filled in the Second, District of Columbia, Fifth and Ninth Circuit Courts of Appeals."

Many 2L's are simply ignoring the placement office directive — as they ignored its interview guidelines last fall — and are preparing clerkship applications now. An open letter from 50 3Ls who will be clerking next year (see p. 11) suggests that this strategy is wise. The letter advises 2L's seeking clerkships to "find out on their own" whether specific judges are ready to receive applications. The fact that clerkships have already been awarded in the most sought-after circuits may well encourage other students to spurn the Placement Office policy.

Geraghty said that she has heard that judges on the Second and D.C. Circuits are not making any offers and are returning applications. She

felt that few students were disregarding the advice in the *Adviser*. "I would have heard if a significant number of students were applying or if a significant number of judges were extending offers," she said.

Geraghty said that she has spoken to several judges about the problem. She has recommended that they wait until March 16. "Most judges will abide by the conference guidelines," she predicted, because the new guidelines are being developed in response to an initiative by several well-respected federal judges.

Although Greenberg says that most judges will wait for the conference's decision, several judges contacted were not even aware that the conference was meeting to discuss the clerkship issue. Among these are judges in the Second and D.C. Circuits, where some clerkships are already filled. The 3L said that this fact supports his claim that if 2Ls do not act now, they may end up without a clerkship. "Many judges are going to value their independence and may select clerks before the conference in order to insure that they get the students they want," he said.

Pointed Barrages

After addressing the difficult questions they had prepared themselves, Dalton and Kennedy received a barrage of even more pointed inquiries. When asked how they reconciled their own beliefs with their workplace, they replied that they find value in the knowledge, or the hope, that they are liberating people's minds. When pressed, however, Prof. Duncan Kennedy, an active spectator, admitted that he sometimes feels as though he's "training the Hessians. . . I'm a partner."

When asked why many students have vitriolic reactions to critical legal scholars, Prof. David Kennedy suggested that it might be because they promise too much and some students come away confused and disappointed. CLS aspires to provide liberation and objectivity, yet it delivers only imperfect approximations of each. Kennedy admitted that he had been very angry with Duncan Kennedy while a student at HLS "because Duncan promised it would be interesting, and it was still torts."

Four Weeks of Interviews to Begin Oct. 10

(Continued from Page 1)

would begin even earlier, on Oct. 3.

The four-week format is one of two new procedures to be retained for 1983 — afternoon/evening interviewing will be back, too. But, in response to complaints about late hours, Chayes reports that the length of the interviewing day will be trimmed a bit. Interviews will be from 1:00 P.M. to 8:00 P.M. rather than 1:00 P.M. to 9:00 P.M. Each employer will decide whether to interview for seven straight hours or take a break, and last year's uniform 6:00–7:00 P.M. "dinner break" will be eliminated, according to Placement Director June Thompson. The Jan. 10 response date will also be scrapped in favor of the Dec. 15 date used by other schools.

The Placement Committee's report culminates an extensive process of review, which included both the Law School Council's survey of employers and the Placement Office's own survey of students' reactions and preferences. Almost everyone who responded to either survey seemed to have something to complain about.

Flawed Reforms

The 1982 changes were initiated by faculty members who wished to minimize placement's intrusion into the educational process. Morning interviews, most likely to interfere with class meetings, were eliminated and replaced with an evening schedule. The late-October starting date was meant to create a period of many weeks at the beginning of

the semester when course work would have the students' undivided attention. Then, after a four-week flurry of on-campus interviews, students would still enjoy several weeks of normalcy before the reading period. The Placement Office suggested that 2Ls and 3Ls postpone flying out for call-back interviews until after exams — that is, until the holiday vacation period. Employers, accustomed to a Dec. 15 deadline for hearing from students to whom they had made offers, were asked to hold Harvard offers open until January 10.

Didn't Work

It didn't work. Students at other top law schools were jetting around and receiving and accepting offers even before the placement process at Harvard had gotten under way. Some HLS students who feared a competitive disadvantage under the new rules interviewed with firms in Boston and New York before on-campus interviewing began. Almost all students took their flyouts as soon as it was practicable — in early November, around Thanksgiving break, even during reading period and exams. There was widespread displeasure over the idea of job-hunting near the year-end holidays — a displeasure shared by the employers as well as the job-hunters. One lawyer's response to a Law School Council questionnaire framed the issue pointedly: "There will be no one on hand [in late December] to see the students. Like

the faculty, we shall be on Holiday."

Another result of extending placement activities into December was that many students, exams looming near, simply took fewer flyouts than they were offered. A 2L who requested anonymity remarked, "The new procedures didn't keep me from getting a job or anything, but I had no time for the good flyouts I wanted. You know — getting a tan and stuff." Whether this side-effect of 1982's later schedule was good or bad depends on one's point of view, but certainly some students who made decisions in December on the basis of fewer flyouts were less informed (not to mention paler) than they might have liked to be.

Potentially, next fall's interview schedule could make life easier for all concerned. It will still be difficult for lawyers to interview until 8:00 P.M. and then catch convenient, same-day flights back to their home cities. But firms wishing to schedule after-hours social contacts or dinners with former summer clerks should find the new 8:00 P.M. ending time to be an improvement.

Firms' Complaints Answered

Overall, the law firms' biggest and most consistent complaints about the 1982 format — its general tardiness, and the comparatively late Jan. 10 response deadline — will be remedied by next fall's plan. With almost all other schools adhering to the standard Dec. 15 response date, Chayes's report admits that having a special date for Harvard offerees was "at best an administrative nuisance" for the law firms.

What may well have been the sobering lesson of last fall's experiments was summed up in another lawyer's response to the Law School Council questionnaire: "Harvard is not the only law school, probably no longer the best, and should not expect employers to hold open 'Harvard slots.'" If next fall's calendar goes into effect as planned, HLS job-seekers are not likely to need any special favors. ☞

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