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Margaret Conklin

Dan Schlesinger, 1L (No. 5), hits his stride in Monday's marathon.

Boston Marathon: Students Stay the Course

By Ernie Cicconi

Harvard Law School was well-represented at the 87th annual running of the Boston Marathon last Monday. Well over a dozen HLS students completed the course, foregoing the better part of a day on campus for a grueling afternoon on the 26 mile, 385 yard route between Hopkinton and the Pru.

Dan Schlesinger, 1L, kept pace with the sport's best with a blistering 2:11:36. The time was a personal record for Schlesinger, and gained the world-class long-distance runner an eighth place finish in the prestigious event.

Schlesinger, running in his first Boston Marathon, described the

route as "extremely hilly" and "a downhill course." The Raleigh, North Carolina native said that he was "not too pleased with [his] result" because he lost contact with the leaders for a major portion of the race after he had to stop to retie his shoelaces at the two or three mile mark. He felt that the generally fast times occurred because the top runners were "really keyed up" and treated the race "like an Olympic trials."

Schlesinger stressed that what made the race "truly memorable" for him was the fabulous work done by the HLS students on his road crew and the invaluable help of

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Faculty Votes: "No-Sanctions Pass" Fails

By John Morris

The "no-sanction pass" went down to defeat by a vote of 36 to 12 at the faculty meeting on Wednesday. Attempts to adopt some statement of opposition to the "hassling" of students who pass were also defeated. Dean James Vorenberg said at the meeting that this would be the last time that the issue would be on the agenda this academic year.

In addition to marking the end, for the time being, of the debate over passing in class, the meeting was noteworthy because of the presence of 50 students who assembled before the meeting to show their support for the "no-sanction pass" resolution. They stood quietly along the hallway leading to Pound 200 as the faculty members made their way into the room. Faculty members could recall no such demonstration since 1970.

"We hope to remind them of the actual body of students supporting the resolution," said Joy Kruse, 2L, one of the organizers.

At issue at the meeting was the clarification of existing Law School policy regarding students who pass in first-year classes. The Legal Education Committee proposal which went down to defeat would have declared that no disciplinary sanctions could be imposed on a first-year student who passed.

In its place was substituted a resolution written by Prof. Lance

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3L Tackles Two-Tiered Trial System

By Lee Christie

Dick Sinapi, 3L, has been handling criminal matters for the Massachusetts Defenders since last June. He now has a case pending before the Supreme Judicial Court of Massachusetts (SJC) involving serious constitutional problems in the administration of Massachusetts' two-tiered system of criminal trial courts.

Sinapi's client, who was seventeen at the time of his arrest and had a clean record, was charged in March of 1982 with attempted auto theft and "possession of a burglarious implement." The defendant and his two friends were arrested as they walked away from a car in a parking lot. According to Sinapi, the evidence was uncontradicted that the youths never entered the car; nor did the arresting officer observe any attempt to pry the door. Even the car's owner admitted that the car bore not a scratch of damage. The "burglarious implement" was an ordinary screwdriver.

Bench Trial First

The case was heard in Boston's municipal court, where cases move quickly, and where persons charged with relatively minor offenses waive the right to jury trial in the first instance and go before often-harried judges. Ordinarily, Sinapi says, a municipal judge will not enter a judgment of "guilty" if the defendant's prior record is clean. Instead, the court will enter a "finding of sufficient facts," which means that if the defendant stays out of trouble for the next year or so, the charge is simply dropped and no judgment is ever entered. But this time the judge entered judgments of "guilty," and handed out six-month suspended sentences.

Sinapi immediately filed a notice of appeal in the second tier of the criminal court system, the municipal court's jury session. At jury session, a person convicted at a prior bench trial gets an automatic reversal of the conviction and a trial de novo before a jury. Each and

every minor offender does not proceed to this second stage as a matter of course because bench trial sentences are often suspended, probationary, or lenient, and because it is pointless for defense lawyers to go to the trouble of a second trial in cases where the client's guilt is clear. Persons charged with serious crimes — homicides, armed robberies, etc. — are charged by indictment in superior court whose judgments are reviewed, not in a de novo trial, but by an appellate court.

Sinapi explains the merits of his appeal by comparing the two-tier system to one with a single court at the trial level. After conviction in a one-tier system, a defendant may ask an appellate court to reverse the conviction on the ground that the evidence against him was insufficient as a matter of law. If he succeeds, he gets a reversal and a new judgment of acquittal, and the case is over. But in two-tier states (roughly half the country), those criminal "appellants" whose minor charges were first tried in the lower tier must go through a *second trial*, with no opportunity for an appellate ruling on the legal sufficiency of the state's evidence in the first trial. To Sinapi, this scenario sounds like double jeopardy.

Sinapi knew of a federal habeas corpus case, *Lydon v. Boston Municipal Court*, in which Judge W. Arthur Garrity had ruled that when a bench trial conviction was based on legally insufficient evidence, a retrial constitutes double jeopardy. Before seeking relief in Garrity's court, Lydon had taken his double jeopardy argument all the way to the SJC, which told Lydon that the two-tier system did not violate his constitutional rights.

But Sinapi filed a "*Lydon* motion" anyway. He asked the jury session court to dismiss the charges on the ground of double jeopardy, and argued that the bench trial conviction was based on insufficient evidence. "The judge," Sinapi says, "just didn't want to hear it. I asked him for the grounds on which he denied my motion to dismiss and he said, 'Because that's not the law of the Commonwealth.' He would not assess the evidence in the record." The judge set a trial date, and rapped the gavel.

Meanwhile, the first circuit had sustained Judge Garrity's ruling in *Lydon*. So Sinapi took his case before a single justice of the SJC to seek extraordinary appellate relief, pointing out the fact that, if he was denied, he could "go across the street and institute a federal habeas proceeding" as in the *Lydon* case. But the single justice denied the appeal, once again without ever assessing the sufficiency of the state's evidence at the bench trial.

SJC Grants Stay

Sinapi was prepared to institute a habeas corpus proceeding on February 23, just eight days before the trial date. But, knowing that the federal judge could, technically, demand exhaustion of state remedies, Sinapi went to the state courthouse for one last try, this time before the full bench of the SJC. He asked the court for a stay of the trial proceedings until such time as the full SJC could hear his client's case. "I fully expected to be denied," said Sinapi. "I figured I would just have to get the federal court to order a stay of the state proceedings." But
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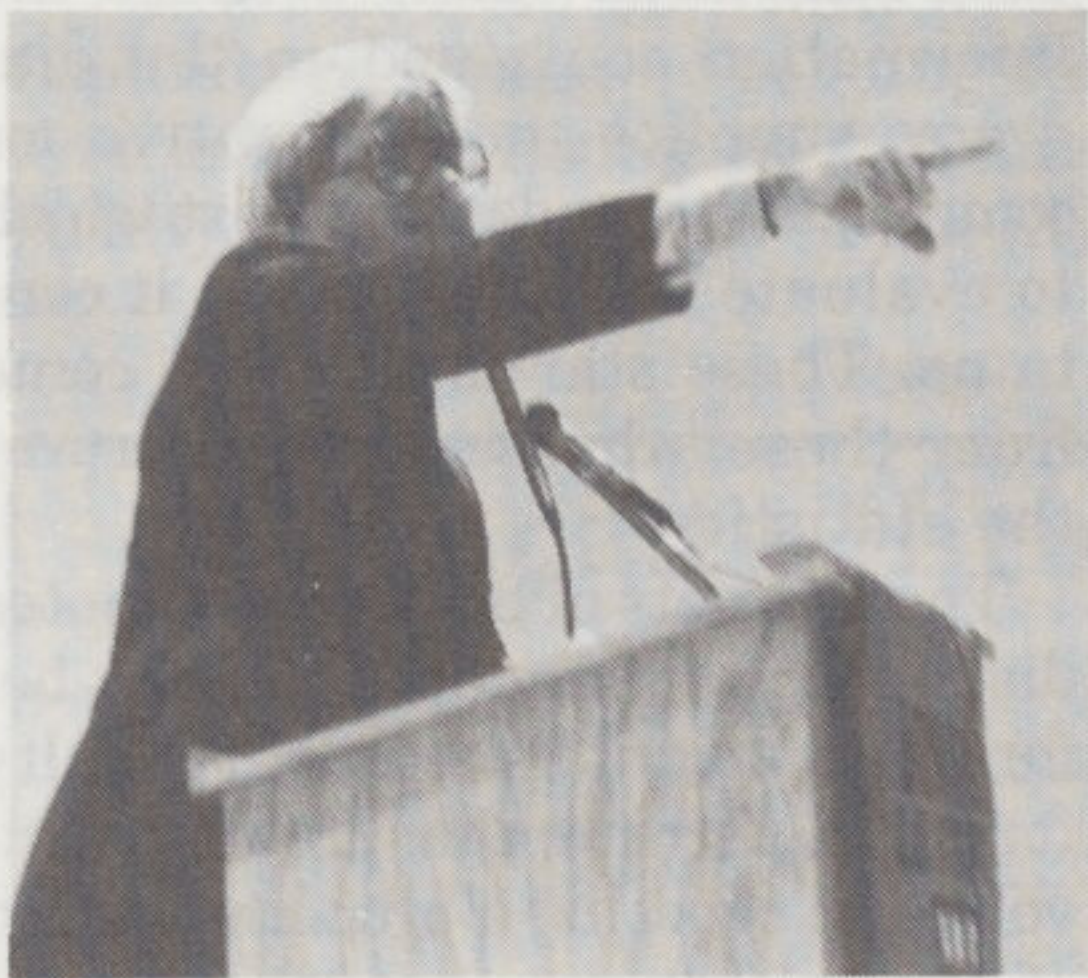
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Donahue Charms Forum Audience

By Charles Thensted

There was a time when Phil Donahue was considered in some quarters as something of a wimp, a "quiche-eater," as he puts it. ("I'm in the book," he says, referring to *Real Men Don't Eat Quiche*, the author of which has appeared on his show.) Then "The Richard Simmons Show" became a popular television staple, and its star a favorite of a sizable segment of the predominantly female daytime viewing au-



dience. Donahue began to look more and more like a pale Mr. T without ornamentation.

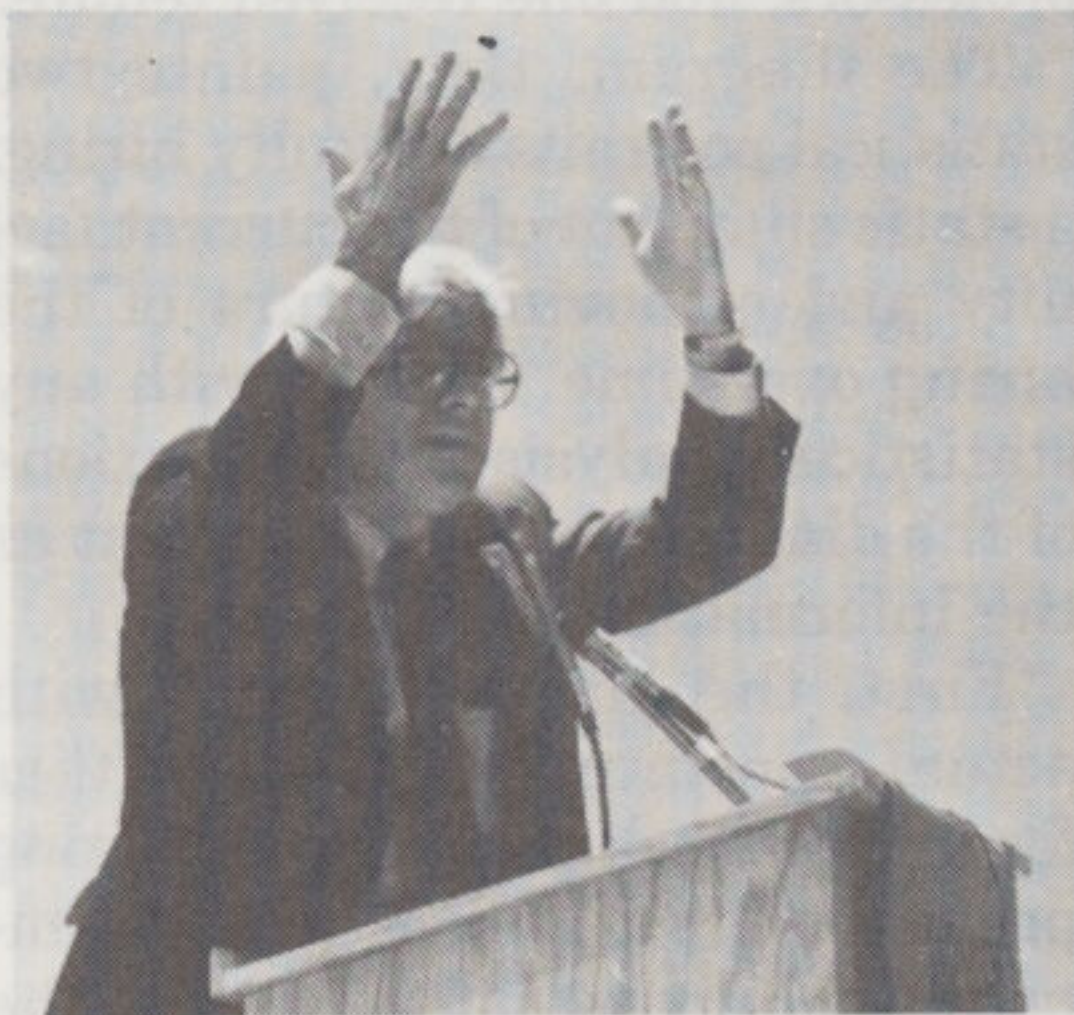
This revisionist's Donahue brought the most vital element of his widely-viewed television show, himself, to Pound Hall on Thursday, April 14, and was enthusiastically received by an audience of several hundred, many, if not most, of whom were from outside the Law School community.

"You're a lot thinner in person," he began, perhaps beating many of his fans in the audience to the punch. Actually he looked very much the part he plays on television: the unmistakable thick gray hair, conservatively cut dark blue suit, about 6 ft. 1 or 2. He apologized before shattering the TV image by donning unfamiliar glasses: "I think they make me look like a gynecologist." The applause told him his failing eyes would be forgiven.

What followed was equal parts theater, personal introspection, confessional, pleading and provo-

cation, audience involvement, and mostly pleasant, easily digested conversation. In short, it was very much the Phil Donahue Show.

What he revealed, in the main, is that the secret of his show is difficult to conceal but still more difficult to copy. Phil Donahue is an unlikely celebrity who chafes under the restrictions that status implies. He is without affectation, and much prefers communication as one human being to another. His is an active, probing intelligence, curious about virtually everything that affects people, and he obviously cares about the people he probes and the insights he gains while doing it. He can be an incisive, insistent questioner, often asking the questions his audience wishes they had thought to ask. But, with Donahue,



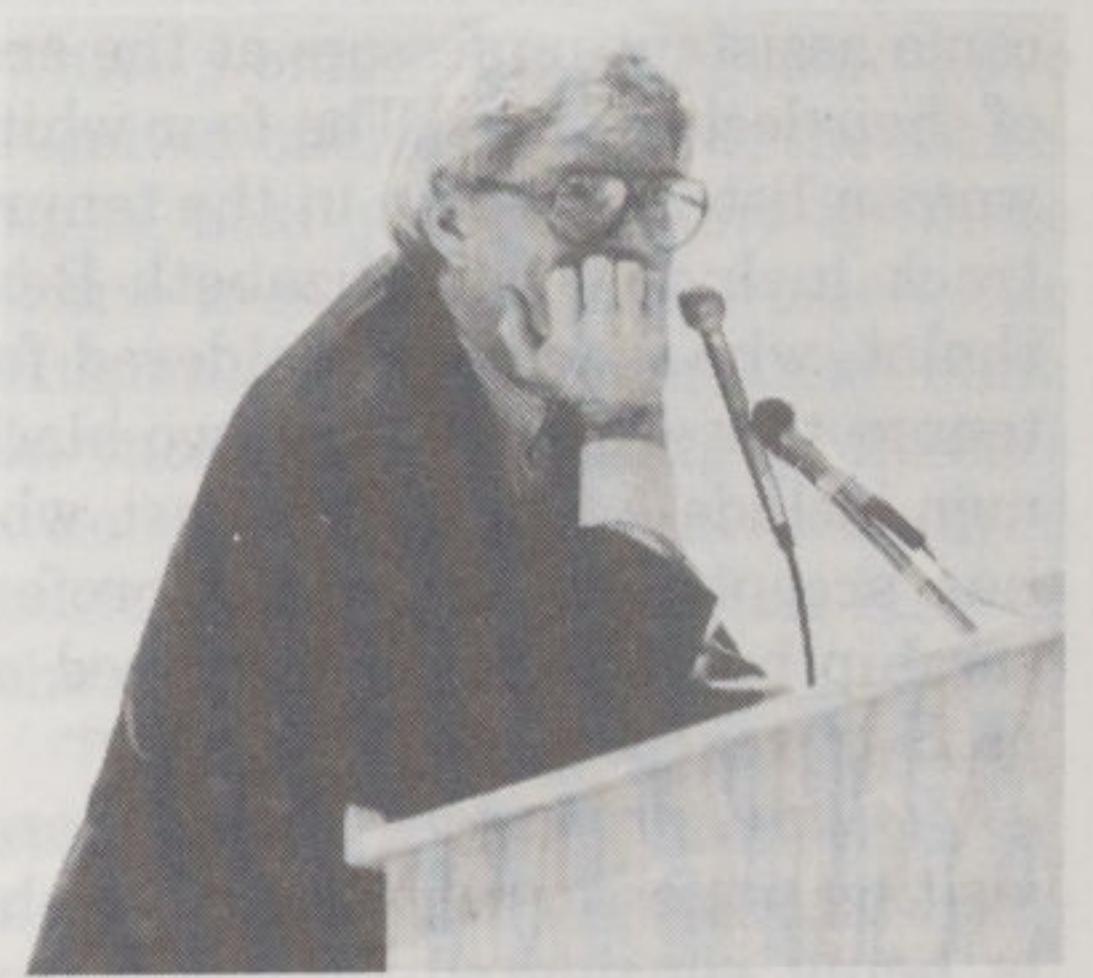
everybody gets involved. You don't have to have a Ph.D. to have an opinion or a voice. And there's always something more to learn. "I know a lot less now than I used to," he admits.

Donahue is concerned that his audience take the opportunity to learn, to grow, to feel as he does. He recalled one show involving a guest who had just detailed a particularly egregious example of man's inhumanity to man. Donahue himself was shaken. During a break in the taping a lady in the audience grabbed his arm and said, "My sister sees you at the A&P." He stared at her in disbelief, wanting to shout, "Didn't you hear what he just said?" He didn't say it. But he wanted to.

Women and their concerns are still very much his concerns. "Twenty years ago," he said, "we didn't respect women from the neck up." Women were not thought of as intellectual partners but rather simply as "occasions of sin." "The Catholic church bred sexism," he added. "I served Mass as a boy and the nun who taught me was not even allowed on the altar."

More salvos were fired in the direction of TV news ("More and more of our TV news shows are looking like People Magazine."), cosmetics ("We're telling you women you're not good enough as you are. How did your grandmother get through life without vaginal deodorant spray?") and standardized tests ("I was a bluebird. The fast readers were eagles. I will go to the grave as a bluebird.")

None of the evening's topics was addressed in great depth, but Donahue has never cast himself in the role of the one with the answers. "I hope something I've said has made you sad, glad or mad," he said, encouraging the audience to ask



Photos by Sandra Yamate

questions. Getting the audience involved and talking is his strongest suit, and this audience was definitely involved. The questions and comments were not as fast-paced as a viewer of his program would come to expect, however, primarily because Donahue himself was not darting from aisle to aisle controlling the flow.

One extended discussion was
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The Track Record in Faculty Hiring:

By Brad Hudson

Last week, the RECORD began its two-part focus on faculty hiring with two articles on the hiring process and an interview with Dean James Vorenberg. The focus concludes this week with a look at hiring facts and figures and guest opinions by Profs. Alvin Warren and Clare Dalton.

In a controversy like that over faculty hiring, the natural tendency is to turn to figures and statistics to try and somehow uncover the answer to the dispute. While it is important to know the statistics of faculty hiring, it is also important to realize that the answer given often depends on the question asked.

One question that can be asked is: "What does the current faculty look like?" The accompanying diagram can provide an answer to that question. But, like any simplified representation of a complex process, some of its assumptions need to be made explicit.

Tenure track faculty combines assistant professors with full-time lecturers who are expected to become assistant professors at the end of their lectureships. The four white women listed as being in the tenure track include Prof. Elizabeth Bartholet, who is being considered for tenure this semester. The two black men include Adebayo Ogunlesi, who has accepted an assistant professorship but has not yet arrived at HLS to teach.

Visiting professors include any visiting professor whether he or she is being considered for tenure or not.

The diagram can also provide the answer to another question: "What has the hiring process looked like over time?" In this case, the diagram illustrates the flow of individuals who have entered the process since 1968, when the Law School hired its first minority professor. The left and right branches represent the two paths by which individuals become tenured faculty members. The left side represents

the tenure track — the right, lateral hires.

Exit includes all those who have entered the system since 1968 but have left it, for whatever reason. For tenure-track faculty, it means those who entered the tenure track and left it without becoming tenured professors. For visiting professors, it includes both those who wanted an offer and did not receive one and those who did not want an offer.

Using women in the tenure track as an example, the diagram gives the following information (beginning in the bottom left-hand corner): seven women have been appointed to tenure-track positions since 1968. Of these, four are still in tenure-track positions, two left the tenure track without becoming tenured professors, and one received tenure.

The diagram, then, paints two statistical portraits of faculty hiring: a static snapshot of the current faculty and a moving picture of the hiring over time. But, as with any statistical analysis, the limitations of the diagram are as important as the information it contains.

First, the diagram begins with actual appointments made, either for tenure-track positions or visiting professorships. It does not encompass the giving of offers or the searching out of candidates. It does not examine the pool of potential candidates or the processes by which individuals become a part of that pool. "Enter" simply represents the outcome of those processes.

Second, the diagram does not include instructors who appear at HLS as part-time lecturers. While the make-up of this group does affect the diversity of the instructors at HLS, a lectureship is generally not an independent path onto the faculty. Its members rarely become permanent professors at the Law School. Presumably, those few would serve as assistant professors or in tenure-track positions before receiving tenure.

Third, the "flow" figures include only those individuals who have re-

ceived appointments to tenure-track positions or visiting professorships since 1968. This means, for example, that a faculty member who received tenure before 1968 and left the faculty after 1968 would not appear in the flow from "tenured faculty" to "exit."

Perhaps the most important limitation on the diagram is one question that it cannot answer: "How well has the faculty done in the hiring of women and minorities?" This limitation exists because the information contained in the diagram supplies no normative or comparative standard against which to evaluate the information it contains. These standards must come from those who seek to interpret the statistics.

The two sets of background notes distributed to students the day before last month's student-faculty forum illustrate the problems involved in choosing a proper standard of comparison.

The figures provided by the Faculty Liaison Committee focused solely on the hiring of blacks. The diagram in this article gives the following information: blacks comprise 2% of the tenured faculty, 15% of the tenure-track faculty and 0% of this year's visiting professors. Since 1968, blacks have received 10% of the tenure-track appointments and represent 17% of the lateral hires. Of those who have entered the process since 1968 and

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The Answers Depend on the Questions

have received tenure, 12% are black.

The faculty Liaison's memo contained the following statistical information about minorities which can be used for comparison: total population (12%), entering first-year class at HLS (12%), college graduates nationwide (6.7%), enrollment in other American law schools (4.5%), flow of graduates from ABA accredited law schools (5%), and faculties of ABA-accredited law schools (5%).

The memo from the Third World Coalition responded by pointing out that minority hiring of full-time faculty members (tenured faculty

plus tenure track) has been limited to black men. The Law School did vote an offer to a black woman, but she accepted another offer before Harvard's offer was communicated to her. The memo also said that no member of another minority group has been appointed to the faculty.

Even when the facts and figures have been compiled and presented, the questions of which figures are important and what those figures mean remain to be discussed and debated. Underlying this process of selection and interpretation will be broader, more fundamental issues. One of these issues, qualifications

for teaching at HLS, is discussed in two guest opinions in this issue of the RECORD.

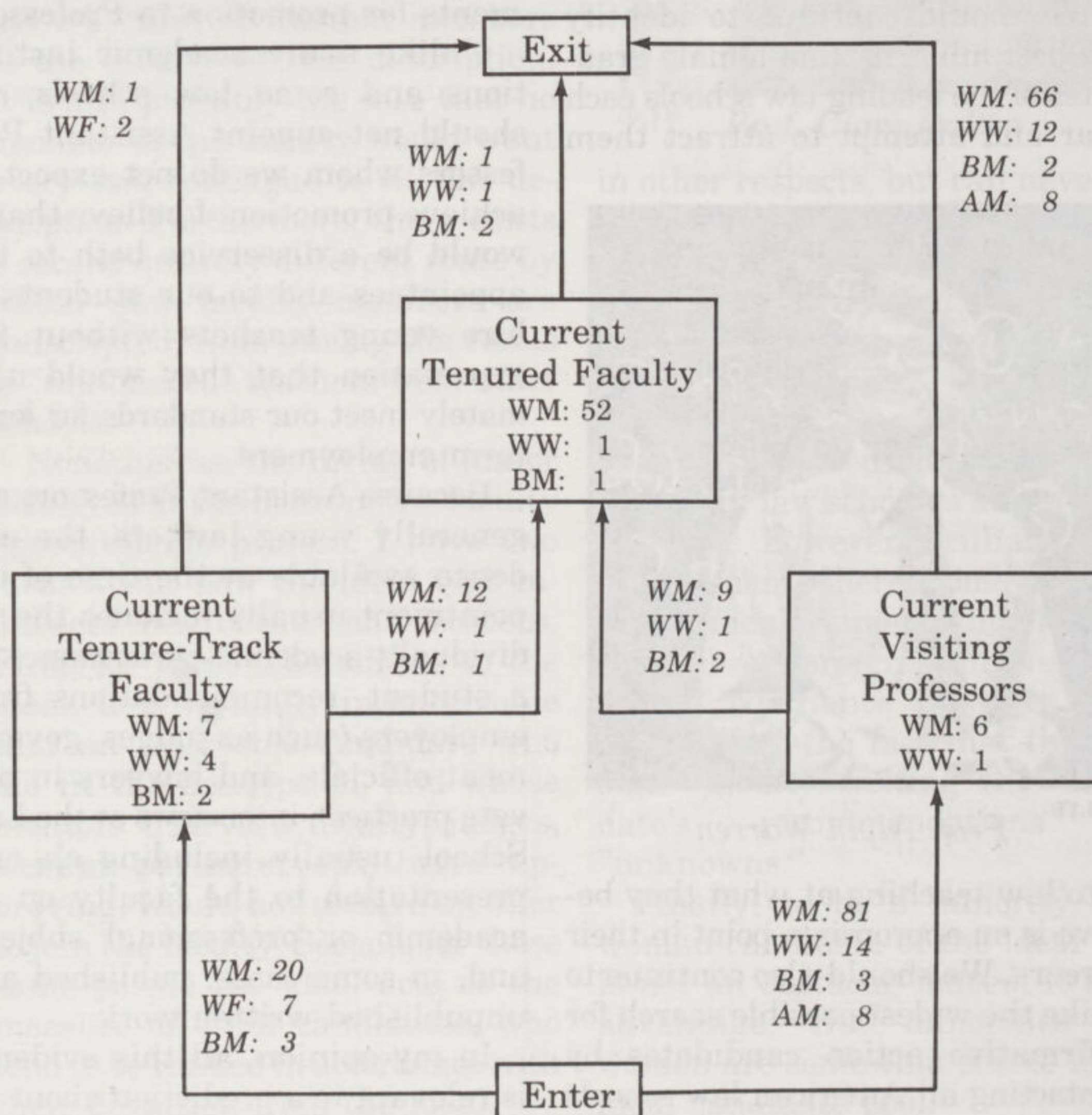
The faculty hiring statistics can help answer at least one other question: "What may lie ahead in the immediate future?" Any change in the tenured faculty will be very gradual. Assuming an average of five years in the tenure track, only one woman could receive tenure this semester. Of the other three, one would not come up for two years, the other two, for three years. One of the black men would come up in three years, the other not until six years from now.

the fact that many of the minorities and women that have been hired have joined the faculty within the past few years. From 1980 to 1982, of 10 appointments made to full-time faculty positions (assistant professors and lateral hires) three have been white women and two have been black men.

Lateral hiring of visiting professors is a more rapid process. This year's group of visiting professors consisted of six white men and one white woman. To date, none have received offers. As of now, the make-up of next year's visitors is: three white men, four white women, one Hispanic man and one Asian man. In most cases, visiting professors who do want and receive tenured positions simply remain at HLS at the end of their visit.

The school has one offer outstanding — it is to a black man for an assistant professorship. During the current academic year, 14 individuals interviewed with the faculty, the Appointments Committee, or one of the two affirmative action subcommittees: six white men, two white women, five black men, and one black woman. If any of these individuals are hired as an assistant professor or visiting professor the earliest he or she would begin teaching full time would most likely be January of 1984.

Faculty Hiring: 1968-1982



The italicized figures next to arrows indicate the number of faculty members who have moved along the path indicated by that arrow since 1968. These figures only include those who "entered" after 1968.

Key: WM = White men, WW = White women, BM = Black men, AM = Asian men.

Qualifications for Faculty Appointments

Alvin Warren

The RECORD asked for my opinion on "the topic of qualifications for being a member of the Law School faculty." I am happy to respond because the continued pre-eminence of the School depends on the quality of those who join the faculty, and it is important that our processes be understood. I will discuss separately the four different faculty positions: Professor, Assistant Professor, Visiting Professor, and Lecturer.

Professors: The qualifications for appointment to a permanent position on the faculty — that of a tenured Professor of Law — should follow from the two major functions of the faculty: the education of law students and the advancement of understanding about law. If the Law School is to provide the best legal education possible, we should appoint as Professors individuals who are not only committed to successful teaching, but who are themselves outstanding analysts of legal subjects or of the role of law in this or other societies.

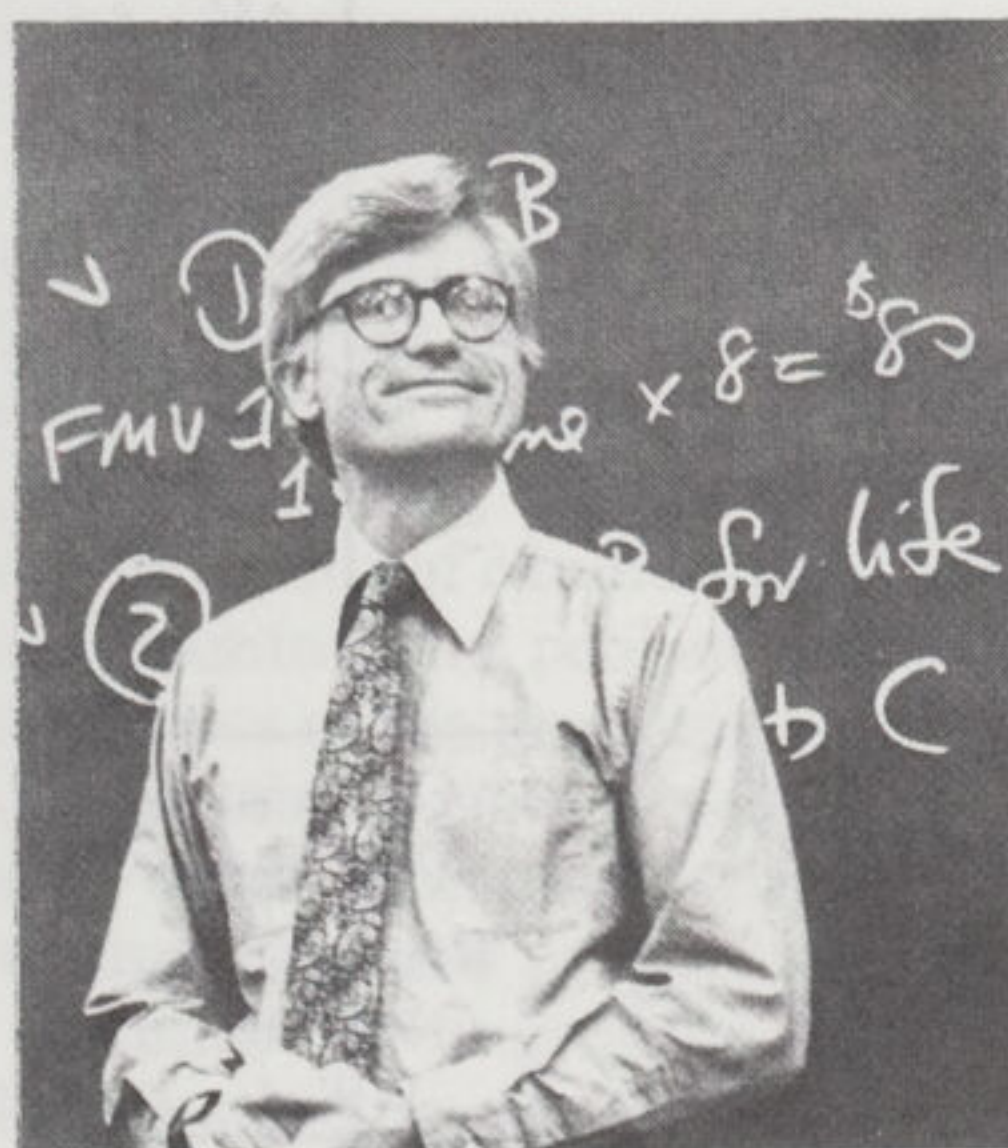
In my opinion, we should be flexible about the type of teaching in which success is demanded. Although the large classroom question-and-answer style of teaching will probably continue to be a major form of educational experience for most students, the Law School should, as it has, also recognize the importance for many students of other forms of education by members of the faculty, such as the individual supervision of student work in clinical contexts.

Similarly, we should be flexible with regard to the type of scholarship or writing about law that we require for appointment as a Professor. To take my own field of taxation as an example, it seems to me that distinguished writing about current tax law, about what tax law should be, and about the subject as viewed from the perspective of other disciplines, such as economics, phi-

losophy, or sociology, can all add to our understanding of the field. What should be crucial is that the work, whatever form it takes, is of the highest quality, because a tenured appointment lasts until a Professor's retirement, a period that may exceed thirty-five years.

In *all* categories of faculty appointment — Professors, Assistant Professors, Visiting Professors, and Lecturers — we should be especially interested in affirmative action regarding women and minority lawyers. We should have particularly extensive searches for such appointees, and we should ignore some reasons that might otherwise preclude an appointment, such as a surfeit of faculty members already in a candidate's field.

We should continue to identify the best minority and female graduates of the leading law schools each year and attempt to attract them



HLVB Prof. Alvin Warren

into law teaching at what they believe is an appropriate point in their careers. We should also continue to make the widest possible search for affirmative action candidates by contacting all American law schools about their recent graduates, as well as seeking recommendations from a wide variety of judges, practitioners, government officials, and other employers of lawyers.

Using processes such as these, we should actively seek to increase the number of outstanding women and minority candidates appointed to the faculty. I do not myself believe that this goal would be advanced by adoption of standards for such appointments that are different from the standards applied to other appointees.

Assistant Professors: Assistant Professors, who are generally young lawyers beginning an academic career, are appointed for a term, typically five years, after which they are considered for appointment as a Professor. The qualifications for appointment as an Assistant Professor should be based on the expectation that the individual will in time have fulfilled the requirements for promotion to Professor.

Unlike many academic institutions and some law schools, we should not appoint Assistant Professors whom we do not expect to achieve promotion. I believe that it would be a disservice both to the appointees and to our students to hire young teachers without the expectation that they would ultimately meet our standards for long-term employment.

Because Assistant Professors are generally young lawyers, the evidence available at the time of appointment usually includes the individual's academic performance as a student, recommendations from employers (such as judges, government officials, and lawyers in private practice), interviews at the Law School (usually including an oral presentation to the faculty on an academic or professional subject) and, in some cases, published and unpublished written work.

In my opinion, all this evidence is relevant to a prediction about an individual's future performance as a teacher and scholar, but it is important to understand that there is

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Being a Member of This Faculty: What Does it Take?

Clare Dalton

It is my sense that there still exists, in the minds of a sizable constituency within the Harvard Law School faculty, a clear image of the ideal junior candidate for appointment.

This candidate graduated within the top five percent of a recent Harvard Law School class; was ideally President, but certainly served on the editorial board, of the Harvard Law Review; clerked for one of a select few federal appellate judges and/or a justice of the Supreme Court, and may in addition have spent a year or two in practice or government service.

Now let me qualify. It is of course not true that all current members of the faculty fit this description. It is also probably the case that no member of the faculty would want every last colleague to fit this description. Furthermore, there exists a second entirely different route by which new faculty members are conscripted, from among the ranks of "established" teachers from other schools.

Nonetheless, the hiring of junior faculty is at the heart of the faculty appointments process. I have two ideas about how the ideal type influences these debates and decisions. First, for those who adhere to the ideal, it is virtually inconceivable that an interested candidate who did fit the description, and whose mentors (Harvard faculty, judges, alumni partners, etc.) were approving, would not receive an offer to join the faculty. Second, for these same people the ideal acts as the measure of other candidates, who tend to be ranked in accordance with their deviation from the ideal.

A candidate with all the same credentials, but from another of the nation's "top" law schools is almost, but not quite, as good. Then comes the candidate with all but one of

the key credentials. Other less typical academic credentials, such as a Ph.D. in economics or history, can tip the balance in favor of a candidate who is less than superlative



HLVB Prof. Clare Dalton

in other respects, but can never replace the core credentials entirely.

Three other observations may fill out the picture. First, a mediocre academic record from Harvard, whatever one's subsequent achievements, is a major obstacle to overcome. Second, to hail from a "lesser" law school is also a major obstacle, however brilliant one's achievements there. Some members of this faculty appear unable to assess these "foreign" achievements. Their experience is only compounded by the fact that the "foreign" faculty writing this candidate's recommendations are "unknowns."

Finally, to be a minority or a woman candidate of the ideal type is not an obstacle; indeed, it is an advantage. But minorities and women are somewhat scarce in the ideal candidate pool.

To have any perspective on whether the influence of the ideal type on faculty selection is good, bad or indifferent, you need to have other kinds of information, or opin-

ions. For instance, what do these ideal and near-ideal candidates turn out to be and do as teachers here? And, even assuming you want teachers who behave exactly as it turns out the ideal type behaves, couldn't you find them by using some other criteria — which might, for example, qualify more women and minorities?

More fundamentally, what should a legal education at Harvard Law School in the next decades look like? If you knew that, you would be able to assess the probable match or mismatch between your goals for the school and the likely experience, skills and predilections of the ideal type. You would also be able to explore whether different selection criteria would produce a better match.

I should be explicit that I do not expect this last inquiry to reveal consensus, among either faculty or students. It is a political question, not a matter of abstract truth. At the level of politics, then, let me briefly suggest how I would go about answering the questions I have posed.

First, it seems to me important to recognize that there is some diversity among ideal and near-ideal candidates. My own operating presumption is that such a person will be moderately conservative to liberal in politics, will have internalized a traditional vision of law and law teaching, and will teach appellate decisions out of case-books and write traditional legal scholarship.

But experience teaches that this is not always the case. Occasionally these candidates have a very different agenda, or develop one on the job. The problem is that we pretty much can't tell in advance.

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Gay Issues Subject of COGLLI Forum

By Michael Medina

Approximately 80 people including several HLS professors, attended an open forum on gay and lesbian legal issues on Thursday, April 14, sponsored by HLS's Committee on Gay and Lesbian Legal Issues (COGLLI). The forum, which was the first of its kind at HLS, included four speakers and a question and answer period afterwards.

Speakers at the forum were Abby Rubenfeld, from the Lambda Legal Defense and Education Fund, Ginny Apuzzo, executive director of the National Gay Task Force, and two COGLLI members, Ben Schatz and Roy Collins, 1Ls.

Rubenfeld of the Lambda (the gay community has adopted the Greek letter *Lambda* as their symbol) Legal Defense and Education Fund noted that gay people have made significant advances over the last few years "or we wouldn't be able to be here talking about gay legal rights." She also noted, however, that gays and lesbians have a long way to go before they can say they are really receiving equal treatment under the law. Among the problem areas she mentioned were the following.

Criminal Law: Since 1969 about 20 states have decriminalized homosexual relations between consenting adults, but in over half the states homosexual activity is still illegal. Rubenfeld noted that it was ironic that the American Bar Association conference this year is in Atlanta, Ga., where the sodomy laws provide for a penalty of up to 20 years.

Employment: Rubenfeld noted that there is no federal statute protecting gay people from job discrimination, and only one state, Wisconsin, has created state legislation to provide such protection. She also focused on education as an area rife with job discrimination against homosexuals, pointing in particular to a recent advisory opinion of the West Virginia attorney general which says that teachers in that state can be fired for

"immorality," that "immorality" is based on the standards of the county in which the issue arises, and that *reputation* can be used as evidence in such actions.

Military: Rubenfeld called the situation for homosexuals in the military "pretty grim." Individuals are not allowed to enlist if they are admittedly gay and are discharged if it is discovered that they are gay. Homosexuality is still a crime under armed forces law.

Family Law: Currently no state recognizes marriages between homosexuals, which casts a social stigma on what may be very significant and legitimate relationships to the individuals involved. Rubenfeld noted that in child custody cases homosexual parents often lose merely because of their homosexuality, and she argued that this is often because the decision is left largely to the discretion of the overwhelmingly straight, older, middle-class, white, and male judges.

Meeting "Jerry's kids"

Apuzzo, executive director of the National Gay Task Force, observed that the COGLLI forum was occurring at the same time as talk show host Phil Donahue appeared at HLS. She said that she had recently appeared on the Donahue show with TV evangelist and Moral Majority founder Jerry Falwell. "I keep on running into 'Jerry's kids' all over the country — Tulsa, Birmingham, even the Bronx," she joked.

Apuzzo divided the history of the gay rights movement into three periods: the Stonewall period, the Anita Bryant period, and Post-Anita Bryant period. She characterized the Stonewall period as a time when the gay community was being energized by anger; the Anita Bryant period as a time when many straight people were being energized by overt bigotry; and today's Post-Anita Bryant period as still in the process of being defined. "The gay movement had better address itself to

the generic problem of oppression," she closed. "If it doesn't, it will have become a mere fad."

COGLLI President Ben Schatz spoke at length about his personal experiences as a gay person, and how it tends to pervade his existence. "When you come out of the closet, it's like going from being non-existent to being a spectacle," he said. "Sometimes I feel like an ambassador from the planet Homosexuality. Everyone knows who you are ... everyone tells you about their gay friends or their bisexual experiences. ..."

COGLLI member Roy Collins spoke about what it was like to be

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Panelists Discuss Soviet Rights Record

By Michael Malamut

On Sunday, April 17, a group of prominent Soviet emigrés and American scholars gathered at the Law School to discuss the denial of basic human rights by the Soviet legal system. The conference on Law and Repression in the Soviet Union was sponsored by the Harvard Jew-

on human rights. The organizers worked to attract a cross-section of both the Soviet dissident movement and American sovietologists. Approximately 150 people attended the conference.

Harvard University Prof. Richard Pipes, the first speaker, discussed historical aspects of human rights

Tartars were denounced as traitors and deported from their homeland during World War II despite having fought for the Soviet state. Half the Tartar nation died during deportation, and today the Tartars still are forbidden from returning to the Soviet Union.

Other speakers included Ludmilla Alexeeva, a member of the Moscow Helsinki Watch Group; Alexander Volpin, one of the fathers of the human rights movement in the Soviet Union; and Tatania Svitlychna, a Ukrainian nationalist.



Ludmilla Alexeeva addresses HLS audience.

Mike Lyon

ish Law Students Association, the Harvard Society for Law and Public Policy and the Harvard International Law Society.

According to William Jacobson, 2L, and Frederick Nelson, 3L, organizers of the conference, the aim of the forum was to explore the nature of the Soviet state and its record

protection in Tsarist Russia and the Soviet Union, stressing the traditional Russian sense of collective as opposed to individual rights.

Dissidents Speak Out

Next was a panel of Soviet dissidents in exile. Many of them spoke through translators, yet all seemed to move the audience with their stories of courage and oppression. Nadia Seytmuratova gave a stirring speech on the fate of the Crimean Tartars. She recounted how the

American Hypocrisy

In his keynote address, Yuri Luryi, a former defense attorney for dissidents in the Soviet Union, stressed that the Soviet attorney can play an important role in the dissidents' struggle. HLS Prof. Alan Dershowitz led a panel discussion which touched on the hypocrisy of many American liberals who complain about human rights violations in countries allied with the United States, but not in the Soviet Union.

Also participating were Aryeh Neier, vice-chairman of the New York Helsinki Watch and former director of the American Civil Liberties Union; Hugh Simon of the State Department's Human Rights division; and Donna Arzt, director of the Soviet Jewry Legal Advocacy Center.



Sports Questions

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2. Willis Reed
3. Brian Piccolo
4. Mike Bass
5. Frank Viola

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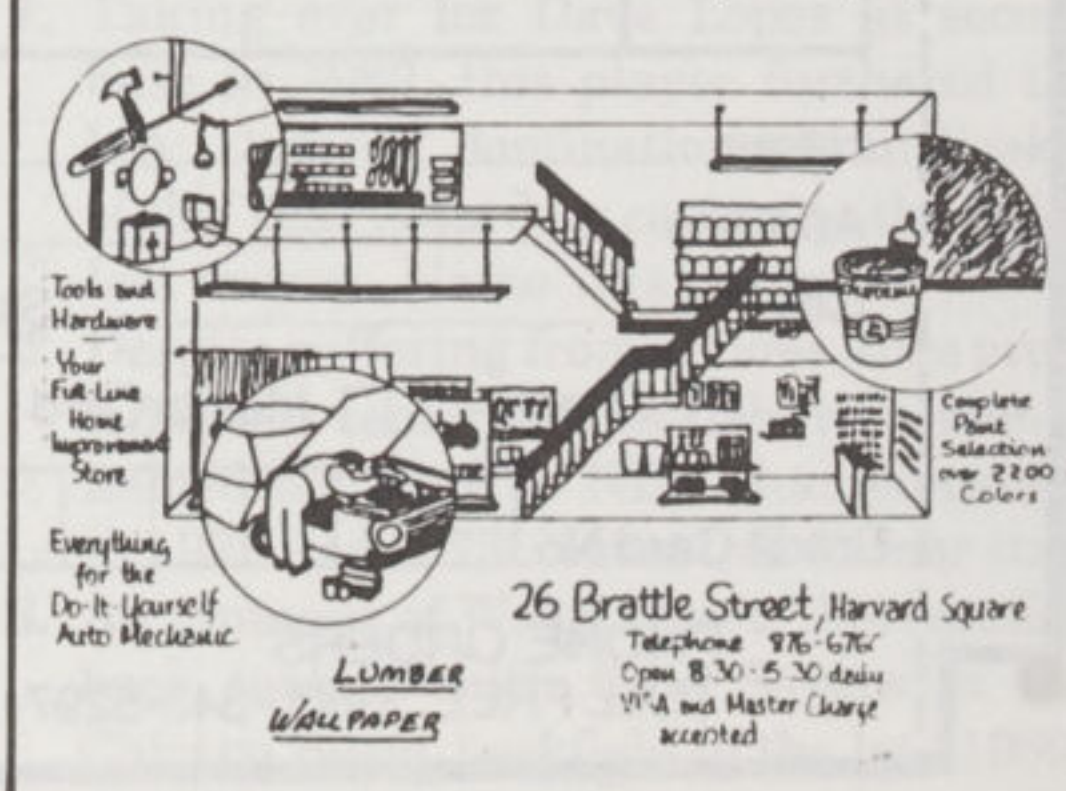
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Next
RECORD:
May 6

HJLSA Sponsors Week of Remembrance

By Michael Seigel

From April 11 through April 18 the Harvard Jewish Law Students Association (HJLSA) sponsored a series of events to commemorate Holocaust Remembrance Day and Israel Independence Day, according to HJLSA President Yadin Kaufmann, 2L.

"Last Sunday [April 12] was Yom HaShôa [Holocaust Day]," said Kaufmann. "We officially observed the day on Monday by wearing yellow Stars of David with the word 'Remember' on them and by distributing these stars in the Hark to anyone who wanted one."

Kaufmann explained the significance of the yellow stars. "Jews living under Nazi occupation during the Second World War were forced to wear them for identification. Many chose to wear them in plain view as a badge of pride rather than hide them in shame. The King of Denmark showed his defiance of Hitler by voluntarily wearing one himself, and by asking all his subjects — Christians as well as Jews — to wear one, too."

Reminders of the Past

HJLSA put an explanation of the stars in everyone's Hark mailbox. The result was that many persons other than HJLSA members wore the stars. Moreover, the symbols played an important informational function. "The generation of people who actually suffered through the atrocities of WWII is getting older and dying out. Younger generations are less aware of the persecution of Jews and other peoples under the Nazi regime." This is apparently true even at HLS. "We thought it was particularly appropriate here since recent events indicate that some among us have, in fact, forgotten — on several occasions we have found swastikas [emblem of the Nazi Party] on the HJLSA bulletin board," said Kaufmann.

On Tuesday night HJLSA sponsored "Night and Fog," a film documentary depicting life and death

inside a German concentration camp during the war. "It is very graphic, containing real footage of things such as bulldozers plowing through piles of human bones, and the interior of human crematoria," Kaufmann said. A disappointing number of people turned out to see the movie, apparently because of

the limited amount of publicity surrounding its showing.

HJLSA organized an informal lunch with a group of six Jewish HLS faculty members on Wednesday. The professors who participated were Martha Minow, Susan Estrich, Andrew Kaufman, Alan Dershow-

(Continued on Page 14)

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Intramurals Healthy, Says Exiting Director

By Mark Graham

At the end of his second and final year as the Law School athletic director, Pat Fischer, 3L, spoke with the RECORD about the current state of the school's largest participatory activity and the prospects for the future of sports at the Law School.

By far the most encouraging sign for intramurals has been the marked increase in student participation. According to Fischer, participation in the three most popular sports — football, basketball and softball — has doubled in the past two years and the increased interest in volleyball has propelled that sport into prominence at the Law School.

Despite the large increase in overall student participation, 30% fewer 1Ls engaged in intramurals this year than last. The decrease in Fischer's view, "does not bode well for the class of '85," and could

turn into a major problem for the intramural program if the class does not participate more actively next year.

Fischer suggested that some rule changes would improve the games. In football, for instance, Fischer acknowledged the need for an A League to accommodate the faster and more physical players but suggested the elimination of the immediate rushing of the quarterback in favor of the delayed rush employed in the other leagues.

Turning to basketball, Fischer praised the program in general and cited as his only disappointment the level of abuse heaped upon the referees. Said Fischer, "Players expect referees here who are paid \$5 per game to live up to the standards of those who referee for a living." In this context Fischer noted sadly that some players still refuse to talk to him because of his refusal to overrule a referee's controversial decision in the basketball playoffs. "This kind of behavior," said Fischer, "is an example of taking intramurals too seriously."

collapsed for lack of interest. Fischer suggested that this alleged lack of interest in intramural sports among the faculty has also manifested itself in the failure of the Law School to purchase Hemenway Gym from the Faculty of Arts and Sciences. According to Fischer, such a purchase would create much greater flexibility in the scheduling of intramural games and would prevent other parts of the University from temporarily restricting access to certain Hemenway facilities.

In all, Athletic Director Fischer is optimistic about the future of intramural sports. Squash intramurals have worked well this year and, with adequate financial support, expansion into tennis and track are possibilities. It will be up to Fischer's successor John Carwile, 2L, to determine the feasibility of adding these new sports.

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Faculty Support Needed

A lack of faculty support for and participation in intramurals is a source of concern to Fischer. Only a handful of faculty members participated in the inaugural season of intramural squash and the effort to organize a faculty softball team

LSC Reps Announced

Elections for at-large representatives to the Law School Council were held on Tuesday. The winners are 1Ls Verna Bigger, Leslie Cornfeld, Mike Hambly, Stephanie Moore, and Eddie Vela. The alternate is Anne-Marie Burley. These students will serve a two-year term on the Council.

Sports Quiz

Note: Today's sports quiz asks you to identify athletes whose last names are associated with musical instruments.

1. Taking over for Dave Lopes at second base in 1982, this player furthered the L.A. Dodgers' domination of the Rookie of the Year Award by capturing the honor last season. Name this player.
2. Despite suffering from serious knee problems, this center and Grambling alumnus helped his team to NBA championships in 1970 and 1973. Name this former star.
3. An alumnus of Wake Forest, this running back teamed with Gale Sayers in the Chicago Bears' backfield in the late 1960s

and his tragic death in 1970 prompted the production of a critically acclaimed movie. Name this man.

4. In Super Bowl VII in 1973, this man's interception and return of Garo Yepremian's ill-fated pass accounted for the only Redskin touchdown of the afternoon. Name this defensive back.
5. This lefthanded pitcher began strongly for the Minnesota Twins last season in his rookie year but lost his last 6 decisions and finished with a 4-10 record. Name this young pitcher.

(Answers on Page 9)

The Wrong Questions

Law School education, even in the best schools, is, then, so inadequate, wasteful, blind and foul that it will take twenty years of unremitting effort to make it half-way equal to its job. . . .

What with the case-book and the pseudo-Socratic monologue, we have grown sleepily comfortable among our conveyor-belts. . . . We can use an alarm-clock. It is time to challenge the regime of mass production.

How do we teach? We rise and juggle balls before the class. Our more finished performers can juggle table, knife, and derby hat. The class is supposed to learn by watching. It being mostly a simple type of juggling, the quicker men do learn it. The slower learn it partially, or not at all.

— K. N. Llewellyn, *On What is Wrong with Education*, 35 COLUM.L.REV. 651 (1935)

Karl Llewellyn's 20 years have stretched to almost 50. A vague but powerful sense of dissatisfaction with the process of legal education seems to hover constantly over the Law School. Every now and then it takes a concrete form: a student-faculty forum, a Michelman Committee, a pass-fail grading proposal, a no-hassle pass.

The no-hassle pass, and the no-sanctions pass, were good answers to bad questions. Whatever may be wrong in today's Harvard Law School classroom, it cannot be resolved by parceling out rights and duties to those who gather inside its walls. The no-hassle pass would have given students rights against their professors. Instead, the faculty voted to place a duty on students to follow the classroom ground rules, as set out by the professor.

But by placing duties on students, the faculty members created rights for themselves. Again, the solution to classroom problems was treated as one of carving out spheres of rights and duties.

Those charged with creating and administering legal education are caught in a terrible contradiction. They want students to take an active role in their education. Yet they also want the power to define both the substance of legal education and its form.

Professors giving students classroom rights, or defining rights for themselves, cannot solve the problem of encouraging students to take responsibility for their own education. Perhaps we should spend the next 20 (or 50) years in search of better questions rather than better answers.



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Fenno

Fenno had to threaten to file a sex discrimination suit before he got the job. But there he was, on the phone with his first customer at Sexy Lex Dirty Raps (a subsidiary of West Publishing Co.).

Fenno took the caller's credit card number in falsetto and began his rap: "I want to Shepardize you, baby, all over. Arraign me where it counts."

He breathed heavily into the phone. "Interpellate me and make me feel it. Make me love it. Ooh, subpoena me till I faint." Fenno moaned softly. "What is your pleasure, counselor?"

"Do you do humiliation? The Greek technique?"

"Ah, the Socratic method. Pretty kinky." Fenno suddenly recognized the caller's voice. His jaw dropped in surprise. So did his voice: "Professor Digressor!"

"Who is this?" asked the Professor.

"Remember that student you regularly humiliated in class many years ago?"

"I never expected to call on you again."

"Well, tuition's going up to \$7900 and a case of beer costs \$13. I'm using my legal training to make a little money."

"Uh, you won't tell anyone about this, will you?"

The conversation was cut short — there was a billy club in the phone cradle. Fenno looked up to see the club attached to a police officer. "You're under arrest," said the officer.

Fenno was booked at the station house and granted a call. He checked the phone book and dialed Professor Digressor's number. A woman answered, and said the Professor wasn't in.

"Who's this and where is he?" Fenno asked.

"I'm the Professor's pre-law advisee. He's at the office working tonight."

"Yeah, real hard, I bet. Tell him I have a free speech case for him. What are you doing tonight?"

"Oh, de minimis."

"You have a terrific voice. Say that again."

"De minimis."

"Ooh, I love it. Can you join me for a beer tonight?" Fenno arranged to meet her, and hung up.

Soon he was explaining to the judge that he hadn't been speaking with a lawyer or bail bondsman: "She has an angelic voice. She's been whispering to me in my daydreams all my life. I have to hear her in person. Tonight."

"All right," said the judge. "I'm releasing you on personal recognizance."

"Ooh," said Fenno. "I love it when you talk legal to me."



Letters to the Editor of the Record

Correction

To the Editor:

I am writing to correct some errors which were contained in your story "Evidence Suggests RA Selection Bias," (RECORD, March 18, p. 6).

First, I only had, and provided the RECORD with, data from the last three years, not four, in which I have been choosing RA's. (1980-81 was the first year I selected the RA's.)

Second, in the interview, the RECORD reporter never asked me for a statistical breakdown of minority representation.

I am therefore providing the minority breakdown of RA's over the past three years:

1982-83:

one Native American (8%)

1981-82:

one Black (8%)

two Chicanos (17%)

1980-81:

one Black (8%)

one Chicano (8%)

one Native American (8%)

According to the Admissions Office, 12% of the school is black and 3% Hispanic or Chicano. The total minority population is 18%.

Your readers should recognize that the choice of RA's is a complicated matter in which factors such as dormitory preference, prior experience, participation in dorm activities and student evaluations are all taken into account.

I hope that in the future if any individual group of students feels it was under-represented in the RA applicants, the group would come and discuss the problem with me. More active involvement by minority groups could result in a larger and more qualified applicant pool.

Mary D. Upton,
Dean of Students

Our reporter did not mean to imply in his story that Dean Upton was the source for any information extending beyond the last three years. — Ed.

Interference?

To the Editor:

Last week the RECORD ran a letter from the Jewish Law Students Association concerning a resolution passed by the National and Harvard chapters of the Black Law Students Association. The letter, however, misrepresented some essential facts. We would like to clarify these.

At the National convention in Atlanta, the HJLSA attempted to interfere in the proceedings of the National Black American Law Students Association. The interference was over the resolution, ultimately passed

by the National BALSAs, that the Palestinian Liberation Organization be recognized as the legitimate representative of the Palestinian people.

The Harvard chapter takes special exception to the actions of these students, particularly because they made no attempt to dialogue with the delegation prior to its departure for the convention. However, as a courtesy, the National board members *did* meet with HJLSA before the vote was taken on the resolution.

The National BALSAs, by voting as it did, simply falls in line with the rest of the world in recognizing that the Palestinian people have a viable voice in the Middle East, and that this country must recognize that voice in order to forward the effort for peace in that region.

The interference by the HJLSA, however, raises a more local issue, and that is its unwillingness to accept that Third World Student Organizations, and BLSA in particular, have the right and responsibility to choose their friends and allies based on common interests and common concerns. BLSA has never interfered in the internal decision-making process of HJLSA. We consider this interference by them as setting bad precedent, and we condemn this paternalism.

Finally, HJLSA asks how BLSA would feel if it recognized the KKK. The comparison is absurdly inaccurate. The HJLSA frequently invited representatives of Israel to speak here. Israel has formal ties with South Africa and is the largest arms-supplier, to the extent of giving the apartheid state nuclear capability. BLSA respects the discretion of the HJLSA to endorse whomever it chooses. We expect the same courtesy in return.

Harvard Black Law Students
Association

Barbarous

To the Editor:

David Salzman's letter in the April 15th edition of the RECORD ("Mouthless Lawyers"), struck me as deeply offensive. In his zeal for promoting professional competence, Mr. Salzman advocates "chastis[ing]", humiliating, even, it would appear, expelling students who fail to participate in class discussions. While I agree that the Law School should stress oral advocacy in its curriculum, I can only condemn the methods Mr. Salzman proposes.

Mr. Salzman seems to feel that intimidation, if not outright brutalization, should be used to teach effective speaking skills. Such tactics would be both counterproductive and uncouth.

A student who does not know an answer,

or, for whatever reason, is unprepared, will not be enlightened by harassment. More likely, he or she will be embittered and alienated. Instead of stimulating the student's interest, humiliation will undermine it, as the student loses confidence in his or her capabilities and views the professor as an oppressor rather than an educator. As the student's self-esteem diminishes under badgering by a hostile professor, he or she is robbed of the courage and initiative essential to effective public speaking. After an abusive encounter with a professor, the student might withdraw to the back benches and abandon further efforts at participation. Rather than promoting successful oral advocacy, Mr. Salzman would silence students, depriving our "noble profession" of potentially distinguished members.

Furthermore, Mr. Salzman seems oblivious to the civility and respect for the dignity of others that are fundamental to the educational process at a graduate institution. The students Mr. Salzman would harass are hardly churls or ruffians, but reasonable, intelligent people motivated to learn and grow in professional stature. Occasional episodes of unpreparedness notwithstanding, students here are committed to becoming capable and effective lawyers. To belittle them during the frequently difficult learning process would reflect an appalling lack of consideration for their efforts. I submit that the callousness Mr. Salzman advocates has no place at "our fine institution".

While I admire Mr. Salzman's concern for promoting professional excellence, I regret that he feels that it should be achieved by such barbarous methods. Student participation is more effectively encouraged when the professor creates a classroom environment in which the student feels free to express his or her views without fear of ridicule or disapproval, and facilitates the student's inquiry considerably. The educational process is best furthered through a cooperative dialogue between student and professor and the uninhibited interplay of ideas. By simultaneously cultivating the student's competence and confidence as a future professional, the professor will best fulfill his or her mission of training the kind of lawyers of which this institution can be proud.

Don Gorton, 1L

Is Beauty Sexist?

To the Editor:

What in hell is sexist about saying that "... it is a distinct advantage to a woman to be born beautiful."?

Also how did Linda get admitted to Harvard Law School?

Thomas Todd, '33
Seattle, Wash.

Letters to the Editor of the Record

Complex Issues

To the Editor:

Since the controversy over our efforts to persuade the Placement Office to remove its ban on Army and CIA recruitment at the Law School has extended over several months, and involves issues of considerable complexity, we would be grateful for the opportunity to present our views directly to your readership.

In essence, we offered three distinct approaches for resolving this problem. Any one of them might have served as a basis for further negotiation; all three were rejected. Our request for a written explanation of the Placement Office's reasoning was summarily denied. These proposals were as follows:

(1) The Placement Office should read a "Rule of Reason" into its antidiscrimination standard. If the Army's discriminatory hiring policies are found to have a reasonable basis, then an exemption from the general ban should be accorded to it. (While HSLPP does not maintain that the Army's policy has a rational basis, we believe that due weight should be given to that agency's expert evaluation of its own requirements, particularly since the policy has survived scrutiny in the Federal courts.)

(2) Alternatively, we proposed that the sanctions directed against the Army and the CIA, which according to the Placement Office handbook are not mandatory, should be dropped or, at least, mitigated. In view of the fact that only these two employers are subject to sanctions of any kind, while no effort is made to identify other violators of the antidiscrimination rule, the ban on military and intelligence recruitment, which reaches the posting of announcements or the keeping of literature on file, seems unduly harsh and selective.

(3) A third solution was to replace the existing "regulatory" scheme, which is inherently unenforceable, with a "disclosure" standard. This proposal was grounded on the theory that the Placement Office is a clearing house which exists for the convenience of students and recruiters. On this theory, it is clearly inappropriate to use the Placement Office as an engine for working statutory change. As we envisaged it, disclosure would have required all employers recruiting here to set forth any systematic bias in their hiring policies with respect to members of any of the groups designated by the current Placement Office rule. Among the merits we saw in this proposal was the fact that it would encourage the exchange of ideas between the Army and its critics. In a liberal society, we believe, commerce in ideas is more fruitful than restraint of trade.

The heart of this issue is whether the Law School, unlike the College and Graduate Fac-

ulties, should involve itself through its control of the recruiting process in the advocacy of political ends. Whether or not the Army's policy is defensible — and members of our group disagree about this — it is certainly *lawful*; and given that it is lawful, we see no justification for treating soldiers any differently from other recruiters.

Harvard Society for Law and Public Policy

No Bigotry

To the Editor:

The March 11, 1983, issue of the RECORD quotes Professor Dershowitz as asserting that "barely twenty years ago blatant anti-Semitism was quite common in the legal establishment." That was not my experience, and the evidence Professor Dershowitz cites seems unpersuasive. I do not know why Mr. Dershowitz was turned down by all 32 New York law firms to which he applied. Nor do I know why he was "made to feel something less than a first-class citizen" when he joined the Harvard Law School faculty. But surely anti-Semitism is not the only possible explanation.

The fact that he was turned down by all 32 of the New York law firms to which he applied suggests that something other than anti-Semitism was at work. Unless he se-

lected the firms to which he applied by some very peculiar standard, it is incredible that all 32 of them could fairly be accused of bigotry. The only firms he specifically identifies are Cravath, Swaine & Moore and Sullivan & Cromwell, which he says "sensitized" him. I can only report that I and many other Jews were associates at Cravath when he graduated from law school, and that many of us have become members of the firm.

Those of us who believe that religious bigotry is not a trivial thing but a grave evil wherever it is encountered should be careful not to make accusations of anti-Semitism without good ground.

Robert S. Rifkind, '61
New York, New York

Class Fools

To The Editor:

Please take this seriously. Your 1983 April Fools issue was the finest of its genre, outclassing even the 1974 edition, which forced me to explain to Professor Cox that he indeed did *not* miss the faculty meeting at which pass/fail grading was voted. Your 1983 jokes were so funny that even persons without Harvard JDs were chuckling over your work. Congratulations and many thanks for a lot of laughs.

Seth A. Davis, '75

Jewish Students Remember

(Continued from Page 10)

itz, Lance Liebman, and Bernard Wolfman. Commented Kaufmann, "We had no set agenda. We just thought it was a good chance for Jewish students to meet Jewish faculty members and discuss Jewish as well as other issues." About 16 students attended the informal luncheon at the Hark, the second of its kind this year.

On Thursday afternoon the commemoration/celebration continued with a talk by LL. M. student Israel Leshem, a native of Israel. He spoke about the recent massacre in Lebanon and the Israeli commission that was set up to investigate Israel's role. "Leshem is very familiar with the politics and government of Israel," noted Kaufmann. "He studied and practiced law in that country, and has followed its events closely since coming to HLS."

The final event took place on Monday, the 35th anniversary of Israeli independence. Shulamit Aloni, a member of the Knesset (Israel's Parliament), delivered a speech titled "Israel at 35: Hopes and Realities." "Shulamit represents the Citizens' Rights Party in the Knesset," said Kaufmann. "She is a human rights activist and an outspoken critic of the Begin government. Generally, she perceives certain threats to a healthy democracy in Israel: Begin's policies which she views as inconsistent with full individual rights as well as religious extremists who in her view have undue influence under the Begin regime." Not everyone in the audience in the Mallory Smith Room agreed with Shulamit, which, according to Kaufmann, "resulted in a pretty lively discussion after she finished her prepared remarks."

Participation Requirement Approved

(Continued from Page 1)

Liebman, a dissenter from the committee report. His motion, which passed by a vote of 33 to 15, declares "that reasonable requirements of class participation, when explained in advance, are within the discretion of the teacher." Dean Vorenberg said he would construe this to be a mandate to draft new language for the HLS catalogue warning students that class participation would be expected of them.

The discussion began with Prof. Lewis Sargentich, drafter of the "no sanctions" resolution, defending the proposal on several grounds. He said there was no need for the sanctions and that coercive measures should be avoided. In practice, he said, there have been no sanctions for seven years — since classroom participation was eliminated as an element which could lower a student's grade — and no problems have been encountered. Since students have no choice in their 1L courses, the argument for academic freedom was particularly weak in this case, he said.

"Ultimately and deeply in its aspirations," he went on, education is "voluntary and collaborative," and a vote for the resolution would be "a vote of confidence in our educational system."

The chairman of the committee, Prof. William Andrews, dissented from its report and argued that class participation had always been ex-

pected. While this should be encouraged by voluntary means, "the existence of sanctions in the background is something about which, until recently, there wasn't much doubt," he said, denying that there has been any ambiguity in the current policy.

Prof. Todd Rakoff, a committee member who voted for the Sargentich resolution, said he thought that it was very important for students

to be able to occasionally opt out of the frequently emotionally charged classroom environment.

Proposal A Compromise

The committee's "no sanctions" resolution was a compromise suggested by Prof. Lewis Sargentich after the committee split evenly on a proposal to give students the right

(Continued on Page 17)

Popular Student Diversion

(Continued from Page 1)

George Riley, 3L. Riley trained with Schlesinger until he was hobbled by a serious injury and then continued to help Schlesinger prepare for the race. Schlesinger added that his road crew was not only largely responsible for his success, but also for that of the women's world record setter Joan Benoit, who enlisted the law students as her designated water bearers.

A number of third-year students also made their mark among the 6,664 official entries. Bryan Lessley, 3L, clocked in at 2:25:54 for 190th place. For Lessley, who qualified with a time of 2:25:44 in Washington, D.C. last November, it was his fourth marathon and his first in Boston. Another 3L running his first Boston Marathon was Dan Ossoff. In only his second marathon ever, Ossoff captured the 708th spot in the men's division with a time of 2:39:02.

Marshall Schmitt, 3L, ran his third Boston Marathon in as many years. Schmitt cruised in at 2:40 to shave five minutes off his time of a year ago. Injured for most of February and March, Schmitt nonetheless smiled his way to the impressive finish on the strength of experience gained in eight previous marathons and the support of the crowds which, he said, "makes Boston something more than your average marathon."

Another official entry, Brent Knudsen, 3L, came in at 2:49. Knudsen, who recorded a time of 2:47 in the New York Marathon in

October and has run under 2:40 in the past, was a "little disappointed" by his first Boston outing.

Heading a host of unofficial runners in the race, Jeff Stein, 3L, crossed the finish line at 2:48 in his fourth Boston run. Phil Barnett, 3L, came across at 2:54 while Neal Kravitz, 3L, registered in at 3:03. Ironically, two weeks ago Kravitz's doctor, spotting an apparent stress fracture, put Kravitz's foot in a cast and told him to rest it. Kravitz proved the diagnosis incorrect by turning in his best time yet in his third Boston Marathon.

Runner Barnett knew one of his competitors quite well. Last week he married Iris Sokolow, 3L, who ran her second Boston Marathon this year in 3:16. Also in the women's division, Sally Kingsberg, 3L, having completed her first marathon last fall in New York in 3:21, ran a 3:10 while Jennifer Hillman, 3L, finished the course at 3:54.

The second-year class was represented by two HLS athletes who made auspicious marathon debuts. Allan Taffet, who had never run more than 12 miles at one stretch, coasted in at 3:15. Kevin Gaut, who trained only two weeks for the event, came across at the 3:22 mark.

In the same vein, Dave Millon, Dan Laster, and Rob Cameron, all 3Ls, clocked in at 3:40, 3:50 and 4:45, respectively, after deciding to participate on the spur of the moment. As Cameron explained, completing his "first and only marathon" was a "matter of principle."

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Faculty Clarifies Position on "Pass"

(Continued from Page 15)

to pass "without hassle" which was put forward by Profs. Richard Parker and Duncan Kennedy. The Sargentich measure would not have prohibited instructors from hassling students informally in class. In fact, the report accompanying the motion contained a list of the means at professors' disposal to encourage participation short of seeking disciplinary sanctions.

It was clear before the meeting began that the Parker-Kennedy proposal would not garner much support from the faculty as a whole, and so the proponents of the "no hassle" pass concentrated their efforts on defending the Sargentich proposal. In an effort to strengthen the Sargentich proposal, Brian Curran, 3L, introduced during the faculty meeting a motion on behalf of the Law School Council to amend the committee majority report by striking the paragraph listing, and impliedly endorsing, the techniques for hassling students.

There seemed to be little disagreement that the effects of the Sargentich proposal would differ considerably from the minority's proposal that the possibility of sanctions simply be made more clear to students. The advocates of sanctions did not expect them to be commonly used. "The picture of a student who passes once being denied credit is exaggerated," said Prof. Charles Fried. Dean Vorenberg said he thought that students would be protected by the Ad Board from any abusive practices if sanctions were actually sought.

Duncan Kennedy said that he wished the committee had gone further, but that it was important to do something. He told of three students whom he didn't know who came to see him to ask what would happen if they passed in other professors' classes. "These students represented a very special thing," he said. "They felt frightened and intimidated." He said the number who don't want to participate is small.

Citing problems he has with students who don't show up on the one day in the term when they are assigned to a panel to be called upon, Prof. Detlev Vagts said he would vote against the motion. A vote against the motion would help eliminate "those ghastly pauses [in class] that can do so much to destroy continuity," he said.

Dean Vorenberg said he hoped the motion would not pass. He noted that, for the most part, "students arrive expecting to participate. Whether that's true or not, teachers can reasonably expect that." Eliminating sanctions "reaches into the teacher's classroom," he said and would allow an important requirement to be skirted.

Prof. Martha Minow, who voted for the Sargentich proposal in committee, said that while it would make little difference in practice whether it was adopted or not, it was important to make a statement to students. The fact that students don't want to participate suggests a need to convey a "cooling" — but "warm" — message in an overheated environment, she argued.

Passing "Anti-Social"

Students who don't participate are "simply parasites," charged Prof. Louis Loss. "They're anti-social," and force other students to talk more often, he said.

"We're talking around the real issue," said Prof. Philip Heymann. "The issue for me is how the class is conducted, and we're trying to control that in a roundabout way [through the sanctions]," he said. Sanctions should be available in cases where, for example, students refuse to serve on panels, he said. But Heymann felt that the hassling techniques outlined by the majority report were questionable.

The discussion ran for a half-an-hour past the 3:00 P.M. target for a vote. In the end, the LSC amendment was never acted on as the dean called the vote on the motion before a vote on the amendment was taken. When the amendment was put up

for a vote, a number of people expressed confusion about what it would mean to vote to amend the report accompanying a defeated motion, so ultimately there was no test of the faculty's support for the informal means of hassling students in class. Instead, the faculty passed Liebman's resolution.

While the text of Liebman's resolution contains no reference to sanctions, he explained that it was in keeping with Ad Board procedures, which are not highly formalized. He noted that the current catalogue states that attendance in class is expected without mentioning possible sanctions.



Donahue

(Continued from Page 3)

prompted by Donahue's suggestion that the draft age be raised to 28. "Don't you think it's something to think about?" he asked. "If they can't justify what they're doing to 28-year-old men who can think for themselves, then maybe they shouldn't be allowed to do what they're doing."

A fair number of the questions were personal. What lessons had he learned from his own divorce? After a theatrical groan, he responded, "The Downy goes in with the rinse cycle."

The typical Donahue raps were trotted out for his comment. Why was he easy on certain guests? Why so many sex-related discussions like the one on S&M franchises in California? Regarding the latter, he pleaded, "You can't have abortion one day, the bomb the next, racism the next. People will say, 'Enough!' My grandmother used to say, 'A little nonsense once in a while is treasured by the best of men.' Did you see the show about the S&M franchises? You didn't think that was interesting? I couldn't believe it."



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Warren: Faculty Hiring Qualifications

(Continued from Page 6)

no single profile that an appointee must fit. Assistant Professors are not limited to former members of the law review at whatever law school they attended, nor need appointees have completed some prescribed course of clerkships or practice. Rather, the Law School has sought, appropriately in my opinion, to attract as Assistant Professors the most outstanding young lawyers it can find, whatever course their career has taken.

Visiting Professors: Visiting Professorships serve three functions at the Law School. First, they permit us to offer courses for which there is significant student demand during years in which, for whatever reason, we cannot staff the courses with Professors or Assistant Professors. The paramount consideration for such appointments should be the quality of the appointee's teaching.

Second, Visiting Professorships are the mechanism used by the faculty to consider more senior academic lawyers, who typically are tenured Professors at other law schools, for a tenured appointment here. There is a long-standing faculty practice of appointing as Professors only individuals who have taught at the Law School as an Assistant Professor or a Visiting Professor. For visiting appointments that may lead to a tenured appointment in the future, the relevant consideration should be whether the individual is likely to meet the standards for appointment as a professor, either during the period

of the visit or later in his or her career.

Finally, Visiting Professorships permit us to offer instruction by outstanding members of the practicing bar who may not be interested in a permanent academic appointment. Here, I think the most important consideration should be whatever special insights the individual can offer our students from the perspective of practice.

Lecturers: Unlike the preceding categories of appointees, Lecturers are almost always part-time teachers, who are engaged in an active legal career outside the academic world.

In my opinion, this type of appointment should be made when the Lecturer can offer students an important course or perspective on legal subjects not otherwise found in the curriculum. In addition, we should continue to use Lectureships as a means of permitting outstanding lawyers, particularly women and minority lawyers, to test a potential interest in law teaching without committing themselves at once to a full-time position.

Alvin Warren is a professor at Harvard Law School. He is also chairman of the Appointments Committee. ☞

Dalton: Faculty Hiring

(Continued from Page 7)

So if you think as I do that the Law School ought to have very different objectives than teaching appellate decisions out of case-books and writing traditional articles, then hiring ideal and near-ideal candidates is playing a long shot.

Do I think we could find more women and minorities competent to teach appellate decisions and write traditional articles, if we were prepared to deviate further from the ideal set of credentials? Of course. I even think that the school has had enough success with moderately deviant selections (among whom I would modestly count myself) that we should feel confident to pursue this tack further.

But for me the most crucial questions are those of aspiration. I want the Law School to devote much more of its energy to serious theorizing about the nature of the legal enterprise, bringing to bear a variety of disciplines outside of the law, from philosophy and history through social theory and feminism to hermeneutics and deconstruction. Add economics if you like.

I also want to see a systematic effort to broaden our collective understanding of social experience. This requires clinical experiences

of the order provided by our Legal Services Center, and more diversity among the faculty and students. It requires us to utilize those resources in a way we now don't.

Obviously those aspirations alter my selection criteria. For instance, I want people with backgrounds in social theory, and if they were writing interesting law-related stuff it wouldn't matter to me that they had only an A — law school average, and hadn't served on law review.

I want people committed to public interest practice, broadly conceived, and anxious to think about and share that experience with colleagues and students. I want people to teach law courses from the perspective of a specific sex, race, class or group, and want them often to belong to the constituency whose vision they seek to communicate. That's just a start.

Have I already articulated a vision you disagree with? Even if you don't, others will. So let me end by suggesting that while we have to worry about the qualifications of our faculty, we also have to worry about how we accommodate our differences, in an environment that is influenced but no longer dominated by devotion to the ideal type.

Clare Dalton is an assistant professor at Harvard Law School. ☞

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Student Challenges Mass. Criminal System

(Continued from Page 2)

the SJC surprised Sinapi, granting the stay and postponing the second trial until the SJC issues a further ruling. "Now I have filed a brief in the SJC," says Sinapi, "and argument will probably be scheduled for late May or early fall."

Since he won the stay, Sinapi has been watching still another SJC case similar to his, *Montanez v. Commonwealth*, which was decided by the SJC just two weeks ago. The court has finally agreed that *Lydon* was right — the two-tier system *does* have double jeopardy implications. But the court side-stepped the matter by not requiring any form of appellate review for first-tier convictions. Instead, the court left the present system intact, and ordered future first-tier defendants to sign double jeopardy waivers along with the first-instance jury trial waivers that they already sign routinely.

The court's disposition of the *Montanez* case itself was murky. The court did not grant an acquittal because the record before it was "so deficient that we are in no position to assess the sufficiency of the evidence." "My case will be the first to come before the court since *Montanez*," says Sinapi, "and it'll be interesting to see how they handle it."

Under the *Montanez* order, a defendant who refused to sign a double jeopardy waiver would have his case transferred directly to the crowded jury session docket. Sinapi feels that conditioning the course of a defendant's case on whether he will waive his double jeopardy rights is unconstitutional, and expects this aspect of *Montanez* "to spark a whole new wave of litigation."

Sinapi feels that the double jeopardy *Lydon* motion, by providing even a single ground for oversight of bench trial judges, could make a

big contribution to the uniformity of justice in the lower tier. "When a judge gets reversed," Sinapi says, "it affects his future diligence. The way it is now, jury session could acquit someone who had been convicted before, and the first judge might never even know about it."

Gay Forum

(Continued from Page 8)

both gay and black in our society. Collins noted that both blacks and homosexuals are sometimes accused of being separatist when in fact that may be simply the perception of the individual observing them.

"The other day I was sitting in the Hark having lunch with a couple of gay people," he said, "when a straight friend walked by and said 'I would join you for lunch but I wouldn't want to disturb the meeting.' If you had walked by a bunch of white men sitting around, would you assume that they were separatist, or that they were having a meeting?"

Collins said that sometimes he feels that he is being forced to choose between being black and being gay. Although he was primarily involved with minority issues as an undergraduate at Harvard, he said that the overwhelmingly homophobic atmosphere at HLS has convinced him to devote much of his time here to gay and lesbian legal issues.

Collins closed with these tips for straights when dealing with homosexuals:

1) Don't laugh when you hear anti-homosexual jokes. Explain to your friends why you think the jokes are not funny.

2) At TGIF's or other large social gatherings, look around you and think "Now who here is gay?" Remember that 10% of the U.S. population is gay.

3) When you find out that a particular person is gay, don't say: "She's so pretty, intelligent, and creative, she could be a great wife and/or mother. What a waste." Don't worry, she's still being loved.

"Next time you hear that someone is gay — smile!" he concluded.

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