

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 76, NO. 11

MAY 12, 1983

25 CENTS

Students, Profs Discuss New Grade Proposal

"I do think there is something seriously wrong with the communications between the faculty and the students at this Law School."

With that remark, addressed to an overflow crowd of over 400 at an opening meeting of the Committee on Legal Education (CLE), HLS Dean James Vorenberg pledged himself to work on better lines of communication and means of student participation at the Law School.

The May 9 open meeting was called in response to student protest over grading policies adopted by the faculty in its May 4 faculty meeting (see box on page 4).

The 1L small section proposals came out of the CLE, although they did not win an endorsement of the majority of the committee's members. All three student members were opposed to the proposals.

The 2L/3L proposal was one of a series of recommendations made in a June 1982 report of the Michelman Committee. Students served on that committee, but they were opposed to the 2L/3L recommendation. The CLE never actively considered or made a recommendation on this proposal. It was distributed to the faculty as being related to the proposed 1L policies. The proposal was moved at the May 4 faculty meeting by Prof. David Shapiro, who had served on the Michelman Committee.

Gathering Input

CLE Chairman William Andrews and student member Angela Carmella, 3L, co-chaired the open meeting. Andrews said the meeting's purpose was to gather input in order to make a recommen-

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Peter Lebold Cohen

Students march through Langdell on the way to Dean Vorenberg's office. See story on page 3.

Profs "Ashamed" of HLS, Decry Minority Hiring Results

By Louis J. Hoffman

In the aftermath of a heated discussion in the closed portion of the May 4 faculty meeting, a number of professors have expressed dissatisfaction over the state of the Law School's minority hiring program. Some stated that they are "ashamed" to be members of the Law School faculty and that the results of minority faculty recruiting indicate institutional racism.

The faculty meeting discussion began with Prof. Morton Horwitz reporting the outcome of the efforts of the Subcommittee on Minority Hiring, which he chairs, and the Appointments Committee action on the recommendations. In an interview, Horwitz stated, "The message I wanted to send to the faculty

was that we worked extraordinarily hard this year, and the result is likely to be not a single tenure-track minority appointment for several years, because it's hard to attract successful minorities into teaching."

The Appointments Committee did recommend, and the faculty just approved, an offer to a black woman to become a visiting professor. But the committee refused to recommend two minority teachers to the faculty this year. Horwitz said that he "appealed to the faculty to send a message to the committee that what happened was bad, because these were the strongest candidates who were interested in teaching."

Prof. Alvin Warren, who chairs the

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Students Charge Procedural Mistake

By Steve Cowan

Although their degree of concern varied widely, students at HLS were unusually unified in their opposition to Wednesday's faculty vote, and in their support for the subsequent demonstrations. By Monday afternoon more than 850 students had signed petitions expressing their concern. "I was impressed," said 2L Robert Shapiro, "with the number of students who joined the protest on such short notice, and beyond that, with how sensitive they were to the depth of the issues involved."

Students were concerned not only with the substance of the faculty's resolutions, but also with the procedural issues surrounding them. Says Helen Irvin, 2L, a member of the Legal Education Committee, "The whole procedure was less than open and generous. It was sort of mean-spirited and petty." Many people were also upset with the faculty's timing. The resolution seemed to have been intentionally proposed when, because of upcoming exams, students would find it extremely difficult to object. "It gives the impression," says 1L Brian Davis, "of something being brought in the back door." Both students and faculty also observed that this presented the problem of inadequate notice for those enrolled in classes in which the new rule will be employed next year.

Most students canvassed, however, believed that this was only a symptom of much deeper problems. "There's something wrong," said 1L Stephanie Pollack, "when it doesn't even occur to the faculty that an action of this nature would provoke such a wide range of student opposition. This inability to predict points to a communication gap that needs to be remedied." Shapiro agreed with this perspective, and felt that the faculty's treatment of other groups and issues in the past has demonstrated their lack of sensitivity. He added, "I hope the students recognize, and I think that many do, that the Third World Coalition's frustration this year has stemmed, in part, from the faculty's disdain for student empowerment."

Kim Crenshaw, 2L, agreed, and took the point somewhat further. "When you talk about student empowerment and the lack of student participation in decision-making," said Crenshaw, "it points to an important problem at the Law School. The Law School operates on an authoritarian basis and at some point students are going to have to take responsibility for that fact because they allow it."

Crenshaw felt that the faculty's assertions that students have power lack

credibility. "Dershowitz's response that students do have power because we can gather outside and speak shows a lack of understanding," Crenshaw said. "That we have the power to meet means nothing if we don't have the concurrent power to effect change through the institutional structures. Students are starting to recognize that they accept procedures and disempowerment that they wouldn't accept in society at large."

Irvin, who has considerable experience with student-faculty decision-making, agreed, stating, "It should be an open process, but I don't think they really want to engage students in it at all." Although Irvin was upset that this proposal was attributed to the Committee on Legal Education, she felt that some ideas that were advanced by committee members were also quite distressing.

Some faculty members, said Irvin, feel

impose it the next."

Some students were disappointed that their colleagues reserved their most vigorous protest for this issue. "It's a sad comment," complained 3L Michael Astrue, "that such a ridiculous amount of energy was spent on such a minor change when only a handful of students turned out to protest the lack of minority hiring."

Others disagreed, however. "Complaining that students aren't active on more significant issues is no reason to denigrate their action on this one," said 1L Jacques Delisle. "It's unfair," continued Delisle, "to say this is just about grades. It's a real disaffection. The problem is that the faculty and administration are insensitive to, and ignorant of, student concerns."

Some students felt differently about both the resolution and the protests that followed. "It's a good resolution and it



Peter Lebold Cohen

Protester displays his prescription for the Socratic method.

that the Law School ought to attempt to emulate the Business School. Irvin felt it would be unwise and "demeaning" to the Law School to "try to emulate a vocational school." She said that because of time constraints, grading here would be more subjective than it is at the Business School. The next step, feared Irvin, may be to employ student graders in large classes. Although she had only heard it mentioned briefly so far, Irvin was afraid that faculty members may "drop an oblique reference one day and

will definitely benefit some people," said Josh Davidson, 1L. "It's hard to believe," continued Davidson, "that the faculty would be racist; we should give them the benefit of the doubt. . . ." Additionally, Davidson regretted the protesters' "immediate call to arms," and he felt the students should have employed "well-reasoned analysis; we are lawyers after all."

"We Won't Talk if You Won't Teach"

By Brad Hudson
and Charles Thensted

Monday's student-faculty meeting followed two days of student protest over the new grading policies. (See box, page 4.) On Thursday, May 5, the day after the faculty vote, 500 students gathered outside Langdell Hall at the urging of a letter from the newly formed Progressive Alliance of Law Students that criticized the 2L/3L policy.

The protesters voiced concerns over the substance of the new 2L/3L policy and the procedure through which it was adopted. Some were concerned that grading general class participation in large classes would encourage "senseless competition" in the classroom. Others worried that the mostly white, male professors would identify with and reward students who were most like them, leading to a disparate impact on the grades of women, racial minorities and students with unpopular political viewpoints.

Two procedural complaints were voiced. First, students had signed up

for fall classes without prior knowledge of which professors would implement the policy. Second, the issue took the general student body by surprise; few if any students knew that the issue was even scheduled to be discussed by the faculty.

Following several speeches, over 400 of the students took their dissatisfaction to the faculty and the dean. They marched through Langdell Hall, chanting, "We will talk when you will teach," and, "No more coercion."

When the protesters met with Dean James Vorenberg in his office, newly elected Law School Council President Kent Markus, 2L, presented the group's demand: an open faculty meeting at 10:00 A.M. the next day to reconsider the new policies.

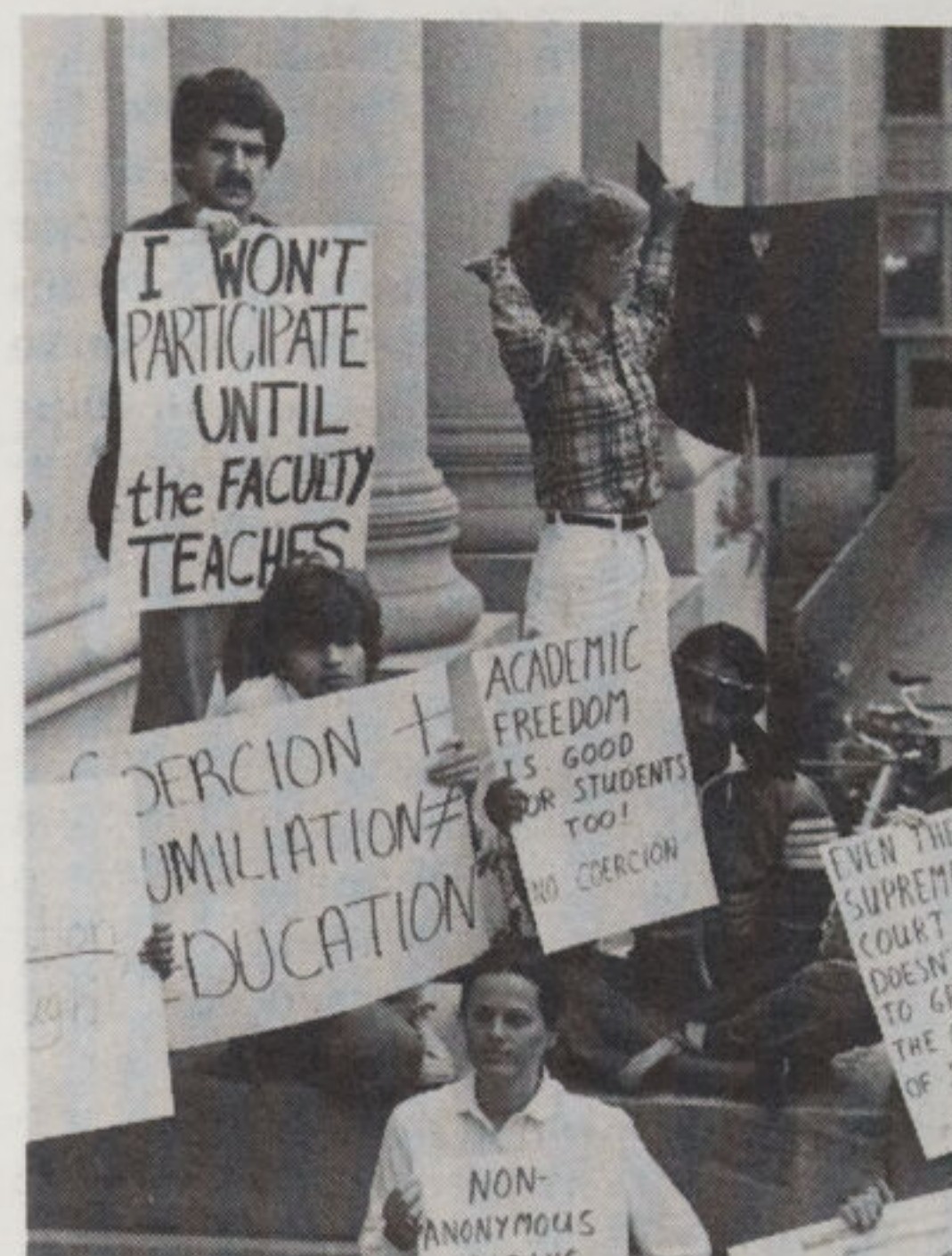
Pressure Cooker

After defending the new proposals, Vorenberg said that he would not schedule a faculty meeting on short notice in such a "pressure cooker" atmosphere. He also said that formal fac-



Sandra Yamate

Dean James Vorenberg fields questions about the new policy from students crowded into his outer office on Thursday.



Peter Lebold Cohen

ulty action on the new proposals should not occur until next fall.

The crowd, now numbering about 250, regrouped outside Langdell and decided to call their own student-faculty meeting for 10:00 A.M. the next morning. "If the faculty won't meet," shouted Tony Thompson, 1L, "we should shut this institution down for the day."

Vorenberg then rejoined the crowd outside Langdell. He said that although he could not deliver a faculty meeting for the next day, he was concerned by the students' lack of "notice" before the policies were adopted. He said he would arrange for an open meeting of the Committee on Legal Education (CLE) sometime during the next week.

The increasingly hostile and vocal protesters were not satisfied, however. They marched back into Langdell and Griswold, chanting, clapping and "inviting" the faculty to the meeting they had demanded.

About 100 students occupied the faculty library for about 15 minutes. They pounded on the walls and shelving, yelling "Shut it down," and sent at least four faculty members scurrying.

"Open Discussion"

At 10:00 A.M. the next morning, about 500 students and 20 faculty members gathered for the student-faculty meeting. Irma Tyler-Wood, 2L, welcomed the crowd to "a demonstration of free and open discussion."

Following Kent Markus's somewhat flawed and controversial statement of the proposals' history, Stephanie Pollack, 1L, excited the crowd when she drew on University President Derek Bok's recent speech attacking legal education for "stirring proclivities to

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

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

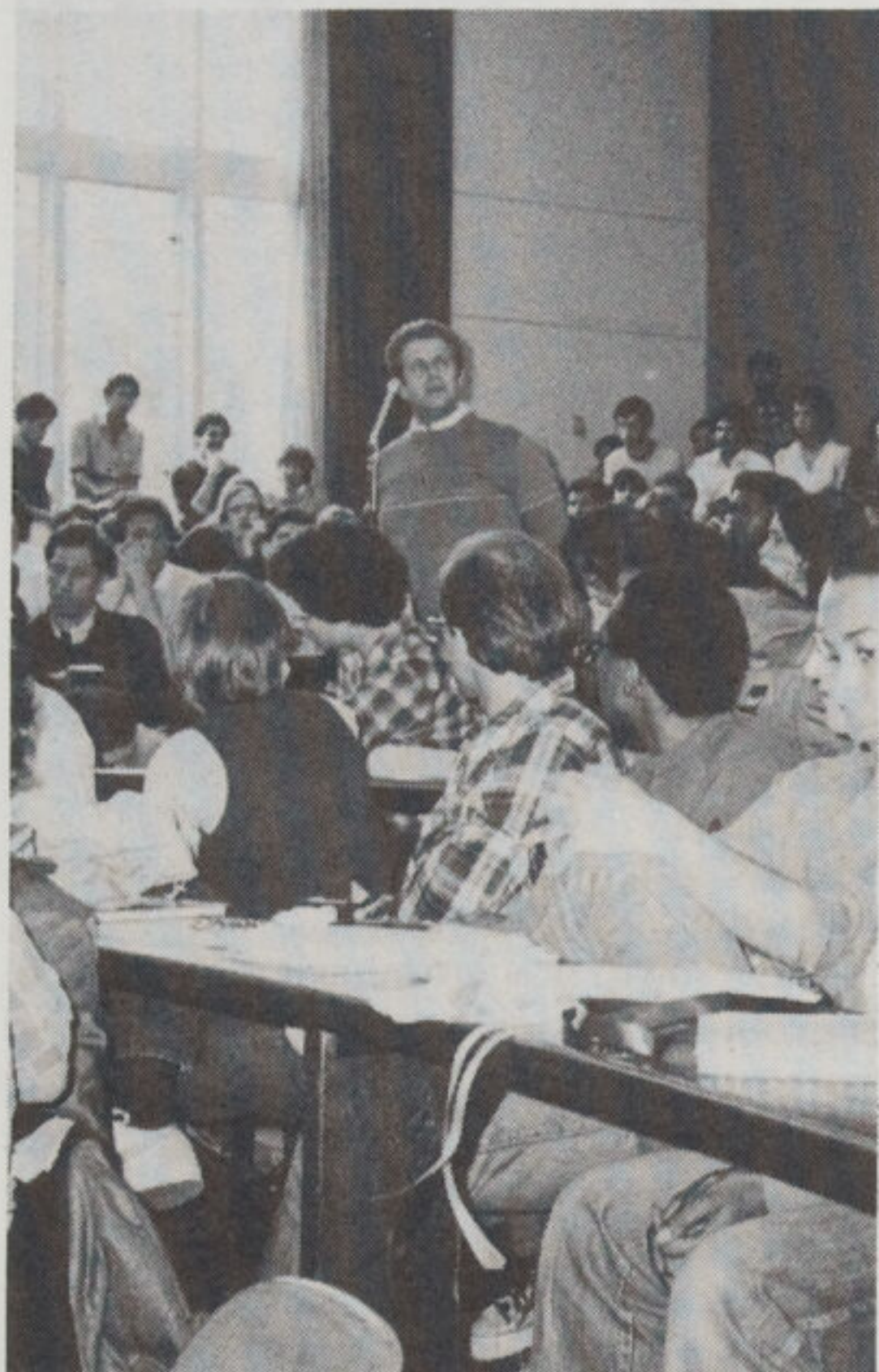
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Faculty and Students Pack Open

(Continued from Page 1)

dation about the new policies to the faculty at its next meeting, scheduled for May 18. He also said that other matters could be raised. But he cautioned at the outset that "this committee



Sandra Yamate

Prof. Laurence Tribe addresses the open meeting of the Committee on Legal Education.

recommends — it has no power."

Several CLE members addressed the meeting. Prof. Lewis Sargentich spoke of a growing recognition among the students and faculty that the process by which the 2L/3L policy was adopted was "flawed."

First, he said, the proposal was never actively discussed by the CLE. Second, the proposal was just one of a series of recommendations in the Michelman Committee report. The report itself vigorously opposed enacting the 2L/3L graded participation policy in isolation from the rest of the report's recommendations. Because it was considered out of its context, "This particular recommendation was not, in a full and satisfying sense, the recommendation of any committee at the school," he said.

Sargentich recommended that the faculty vote on May 18 to "revoke" the 2L/3L policy and institute a "plenary" discussion of it in the fall.

CLE member Prof. Hal Scott believed that the faculty "made a mistake" by voting on the 2L/3L proposal on May 4. First, he said, students had no chance to select fall classes based on which professors would implement the new policy. Second, he felt the vote had come

as a surprise to both the faculty and students.

Not Mandatory

However, Scott favored the proposal on the merits. He observed that the policy was not mandatory and that "no student should be required to take a 2L or 3L course from a professor who follows this policy."

Scott thought that arguments that this policy would significantly affect a professor's grade curve were exaggerated. He only saw the policy being used in cases where students have both a low exam grade and excellent class participation. In this way, a student's entire grade would not depend on one exam. He recommended that implementation of the policy be postponed until the 1984-85 academic year.

Helen Irvin, a 2L CLE member, then read the recommendation of the three student members opposing the 1L proposals. The students recommended non-graded assignments designed to give feedback and stated that general classroom participation should be non-graded and voluntary. She also called for more openness and "ongoing dialogue between the students and faculty before it makes a report."

CLE member Prof. Martha Minow felt that the meeting's agenda should be broader than the procedural defects involved in adopting the 2L/3L proposal. She suggested the following items: the causes and possible solutions to unsatisfactory experiences in Law School classrooms, the respect and lack thereof for students in the classroom and out, issues of sexism and racism in the classroom and in the Law School, and the intolerance of contrary political viewpoints in the classroom and in the Law School.

Almost everyone who spoke conceded the procedural difficulties in the enactment of the 2L/3L policy, but several persons spoke in favor of its substance. Prof. Robert Clark explained that he had, in effect, already been grading participation on pre-assigned panels under the rule that allows graded "oral exercises" in large classes. He said that he lowers the overall grade curve by about a step, upgrades those who participate on their pre-assigned day by a step, and raises those with "good participation" by a couple of steps. He has found that, overall, students like his panel system and he feels it has increased the quality of classroom participation.

While he wouldn't ever implement the policy in his own class, Prof. Clark Byse said he thought his colleagues ought to be able to do so if they thought it would be helpful.

Larry Corman, 3L, said that students who don't prepare for and participate in class are robbing other students and the institution.

But many speakers expressed fears that graded participation in large classes would only increase classroom tension and competition, and would harm those students of a different race, sex, or political viewpoint from most of the school's faculty. They felt that a professor would most likely reward classroom comments that agreed with his or her own views.

Prof. Duncan Kennedy felt that graded participation would not create active, participating students, but would instead create passive students who submitted to professors by talking a lot. He feared that such students would be submissive toward their employers, authoritarian toward their clients, and passive about injustices in the current legal system.

What the Faculty Approved

(1) "Class performance" can be taken into account in grading for all 2L and 3L classes provided that the criteria used are explained at the outset of the course. "Class performance" includes both assigned exercises and normal participation when a student is called on or volunteers. Normal participation of this sort can be used only to adjust a grade upwards, however; and if the class is larger than 50, it can only increase a grade by one step (e.g., from a B to a B+). Under former policy, normal class participation

could be counted only in classes of 50 or fewer students.

(2) One-Ls in small sections of fewer than 50 may be assigned written exercises which can be counted in their course grades. These exercises need not be graded anonymously.

(3) Similarly, 1L small section instructors may give oral exercises to be graded.

(4) In 1L sections of fewer than 50, "overall class performance" may be considered in order to raise grades.

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Legal Education Committee Meeting

Prof. Charles Fried was also troubled with the substance of the policy. He didn't think professors in large classes could fairly use it to adjust large numbers of students' grades. But if only a small number were adjusted, he didn't think "the game is worth the candle."

While acknowledging that "it is a racist world," Fried stated that "the notion that this is a racist faculty is rubbish." But in response, Stephanie Moore, 1L, asked: "How can one say there is racism in the world and in the same breath exclude the Harvard faculty?"

Demonstrations Criticized

Some of the discussion focused on the two days of demonstrations that preceded the meeting. Vorenberg felt that the "outpouring of rage" was not the only way to be heard, and that the students should have tried the intermediate step of talking with the faculty first. He also criticized the personal harassment that he felt had occurred in Thursday's protest.

"I don't think that your reaction was very nice," said Byse. Referring to the "pounding on my door," the "singing so I can't work," the disturbance of his class, and the harassment of Prof. Emeritus John Dawson in the faculty

library, Byse observed: "Those are not the ways to engender friendly exchanges."

But Stephanie Pollack, 1L, doubted that filing a letter of protest with the faculty would have put the policies on the faculty's May 18 agenda. "The channels aren't working," she claimed.

Prof. Laurence Tribe said that he appreciated the intensity and responsibility of the students' expression of concern. He felt that the concern was a "collective and not an individualistic phenomenon." He then thanked the students for "reminding us of what some of us, inexplicably and regrettably, may have forgotten."

Most people at the meeting seemed to agree with Vorenberg's observation that serious problems of communication exist at HLS. Lauren Taslitz, 3L, observed that "more than half of the Law School Council was [protesting] in the dean's office." Scott agreed that the "profound breakdown of communication," should be one of the highest matters on the school's agenda.

But the consensus wasn't as strong when the discussion turned to general issues of student participation in Law School affairs. "The issue we keep coming back to is power," observed Pollack. Advocating an LSC proposal to let its members vote in faculty meetings, she

urged the faculty to "show us that you're serious and give us a little piece of power."

Kimberle Crenshaw, 2L, pointed out that the fact that the meeting didn't have any power illustrated the general problem. "We want to participate in the whole Law School environment," she said.

Dick Tofel, 3L, told the faculty that "I don't think you should run the school as a democracy," but felt that the faculty should admit that it "is not ready to share the ultimate power over the future of this institution." The danger in not admitting this is that students will be driven into "Duncan Kennedy's fantasyland," he said.

"Right on," responded Byse. "I agree with you."

Late Tuesday, the RECORD learned that the CLE had voted to recommend that the faculty suspend implementation of the 2L/3L policy for one year with a commitment to restudy the proposal. The CLE would take up the policy for study next year. It also voted to recommend that the faculty reconsider its new policy on allowing grading of general class participation in 1L small sections. The faculty is expected to act on these recommendations at its May 18 meeting.

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A History of Protest: Grades, Hiring, War

Rummaging through RECORDS past reveals a lively, if spotty, history of unrest among students at HLS:

April 1969: Two hundred students came to a "study-in"/sit-in in Langdell library. Concerned faculty members ventured in to field questions and discuss the issues foremost in the demonstrators' minds — grading policies and student participation in Law School decision-making.

November–December 1969: On-campus interviewers from Ropes and Gray and Cravath worked their way through picket lines as students protested against activities of the firms' corporate clients. Their sins? Exploiting coal miners and sanctioning South African apartheid, respectively.

February–March 1970: The Administrative Board recommended discipline against five black law students who were part of a protest against discriminatory hiring practices at Harvard University. The five were part of the "Organization for Black Unity," which occupied University Hall and the Faculty Club.

At the next faculty meeting, 40 protesters "crashed" the meeting room while over a hundred others gathered outside. The meeting was forced to adjourn, and was reconvened the following evening — behind closed doors on the tenth floor of Holyoke Center.

The following week, over 700 students attended a series of open meetings in the Ames courtroom to discuss what had happened and why.

April 15, 1970: After a day-long antiwar rally on Boston Common, evening disturbances spread into the Harvard

Square area. Three law students, who said they were taunted and beaten by police, were arrested in the area of Gannett House and held overnight in a Cambridge jail.

April 16, 1970: Over 150 demonstrators gathered outside Harkness Commons as the Harvard Radical Law Students Group and the Harvard-Radcliffe Radical Arts Troupe ridiculed members of the HLS Visiting Committee for their devotion to the "establishment" character of the Law School.

May 1970: In the aftermath of the Kent State killings, the Law School student body voted to join a campus-wide student strike. Class attendance dropped below 10 percent. Scheduled final exams were cancelled.

May 1972: More than 250 law students boycotted classes for a day in protest against the Vietnam War.

December 1973: After the faculty voted to abolish the pass-fail grading option, which had been available to 1Ls for several years, 413 1Ls signed a petition urging the faculty to reconsider. (They *did* reconsider, but the outcome was the same.)

March 1976: Members of a student-faculty committee voiced concern that the longstanding policy permitting class participation might need clearer guidelines, and perhaps limits.

February 4, 1977: The RECORD devoted five full pages to the nagging issue of "participatory democracy at HLS."

L.C.

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Why the Outcry?

"What is all this fuss about?" We're sure that is the attitude of many faculty members and alumni.

Viewed from one perspective, the events that have provoked the demonstrations of the last week seem relatively minor. It is unlikely any student will be taken to the Ad Board for passing occasionally. And many faculty members will count class performance only where an exam grade seems anomalous. So why the outcry?

The issue is *not* the inclusion of written assignments in grading. That is a step forward, for it is giving exams less weight in evaluation. Even graded oral assignments could help relieve the pressure created by exams, although they may introduce a new kind of pressure to the 1L experience.

But any step away from anonymity in grading is feared by many students. Too often professors' preferences for particular students and particular points of view are too obvious; permitting assigned exercises to be graded non-anonymously allows these biases to come into play unnecessarily. This is even more true in the case of "overall classroom participation."

And the complaints cut more deeply. Students were offended by the fact that there was so little warning that this subject would be on the faculty agenda. More importantly, the defeat of the no-sanctions (not to mention no-hassle) pass proposal, the passage of the grading changes last week, and the failure to make much progress in the hiring of minorities and women make it seem that the faculty is incapable of coming to terms with the serious educational problems of the school. In the last several months there has been an outpouring of concern on the part of students about the institution. The underlying issues — classroom teaching and minority hiring — are not new to the faculty but they have not been confronted. The real issue of how students are treated in class was never discussed on April 20; the quality of classroom teaching was also ducked on May 4. And if the course of faculty debates in the past few years is any indication, they are not likely to be faced anytime soon.

What is disturbing about the faculty responses of the last several weeks is that they have shown so little awareness of the deeper problems. Three years of the Michelman Committee's time were devoted to problems of the second and third years of law school yet virtually nothing has been done about them except these bandaid measures. Similarly, the issue of minority hirings has been on the larger agenda of the faculty for more than a decade, but it seems almost no progress has been made.

The demonstrations and sit-ins of this past week are not responses to an isolated issue. They are the response to years of frustration. Even those who want to view the faculty's motives and actions generously are finding it difficult to do so.



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Fenno

Fenno hadn't seen anything like it since 1970, in the aftermath of Kent State. Hundreds of students were chanting and cheering, singing and waving signs.

Fenno ran to his locker, which he hadn't cleaned out in years. He dug down to the bottom and found a fading placard, "Draft Beer, Not Students."

But when he got back to the rally, he found that his sign was not on point. He stood and listened, and did a slow burn: the faculty had voted to deny his right to tune out their droning sophistry.

He borrowed a felt-tip marker. "No More Coercion," he wrote on the back of his placard.

"We're here for only three years," said one student over a microphone, "but that doesn't mean we can't leave HLS a less repressive institution than when we arrived."

Fenno suddenly felt guilty: he had been here for more than three years. A few more years as a student, and he'd be on tenure track. Yet he had done nothing to change HLS since Kent State.

Professor Dershowitz addressed the crowd next. HLS was not repressive, he said, in comparison with other places.

Fenno grew furious — enough to speak before his fellow students for the first time. He stepped to the microphone and said, "We've just been told in effect that a little bit of repression is OK. Why? Because we're not being clubbed and gassed, unlike students in France? Because Polish students are shot, and we're not? We're not being killed, true, but our joy in learning has been killed. So has a little bit of our human spirit, and for that, I'll never forgive the faculty."

The students marched on Griswold Hall. Fenno ran to his locker again, and rummaged till he found a toothbrush. He was going to the Dean's office, and he wasn't leaving until the faculty rescinded its vote.

He was ready to be expelled. "I've been in this detestable place long enough." He was ready to be arrested. "I'm wearing chains already. Handcuffs won't matter."

But the rest of the students eventually left Griswold and Langdell Halls to lobby for rescission. Fenno sat on the couch outside the Dean's office as everyone else filed out, chanting and clapping.

He sat alone for a while. Dean Vorenberg came back to his office and Fenno leapt up. "I'm not leaving!" he shouted.

"Get out of here, Fenno." Vorenberg walked past and shook his head. "Even Fenno's mad."

Fenno went to his locker and put his "No More Coercion" sign in it. He would be needing it again.



Professors Charge Institutional Racism

(Continued from Page 1)

Appointments Committee, stated: "I believe Prof. Horwitz is too pessimistic. In light of our offers now outstanding to visiting and assistant professors, I would expect and hope that we would make permanent minority appointments more rapidly than he predicts."

Faculty Dissatisfaction

Horwitz refused to discuss specifics of the faculty meeting, but he felt that the discussion in the meeting "indicated some strong faculty dissatisfaction." During the discussion, one white, tenured professor reportedly called the faculty "racist." The professor felt that the Law School's process amounted to institutional, rather than personal, racism.

Prof. Christopher Edley, Jr., the only black assistant professor at the Law School, stated that he "left the faculty meeting in protest after the dean's speech at about 5:05." According to Edley, Dean Vorenberg said that substantial progress had been made in the area of minority recruiting, commended the efforts of the Appointments Committee, expressed hope for the future, and stated that he believed that the committee's actions reflected the sentiments of the faculty.

Edley said that he felt that the committee's actions did not reflect the feelings of the faculty. "The dean misperceives faculty views yet has the power to appoint the Appointments Committee," Edley noted. Edley also said he was "pessimistic" about future progress.

Dean Vorenberg declined to comment. (For a summary of Vorenberg's views on minority hiring, see RECORD, Apr. 15, p. 4.)

Best-Case Analysis

Horwitz said that he told the faculty his opinion that, at best, there could be one more minority assistant professor in the fall of 1985. "It may not be that soon," Horwitz added, "because the most likely candidate may want to go into practice or teach elsewhere." That candidate is one of five minorities invited to visit the campus this year on a "fly-up." Despite the work of the Subcommittee on Minority Hiring, Horwitz said, "besides visitors, the odds are the faculty will make only one offer to a minority as a result of this year's recruiting, and they may not get around to it this spring."

As far as lateral hiring is concerned, Horwitz said that the faculty has voted

to invite two minorities to become visiting professors on the basis of the subcommittee's work this year. One, Gerald P. Lopez, '74, of U.C.L.A., has accepted the offer and will be visiting next year. The other is the black woman who just received an offer. Two assistant professorship offers were outstanding at the beginning of the year, and both offeres have agreed to teach here next year as part-time instructors.

Hoping for better results, Horwitz and Edley reviewed the files or names of all minorities teaching at American law schools. This search led to two candidates, one of whom is Prof. Charles Lawrence of the University of San Francisco, who will be visiting next year at Stanford.

Committee Postponement

The subcommittee recommended to the Appointments Committee that Lawrence be offered a tenured position (he has already been a visitor) and that the other be invited to visit. By a 5-2 vote, the committee decided to postpone any recommendation to the full faculty that the two be given offers. The decision on Lawrence was made despite a student protest (see RECORD, May 6, p. 7). The committee action should not be interpreted as a "no, never," according to Prof. Detlev Vagts, a member of the Appointments Committee. "We're negotiating with two [candidates] who will receive continued consideration next fall."

Horwitz said that there were several faculty members who wanted to press directly for appointments in the faculty meeting, despite the Appointments Committee decision. That action was not taken, at the candidates' request.

Faculty response to the discussion was mixed. Prof. Laurence Tribe stated, "While faculty hiring policies may survive a *Washington v. Davis* analysis, our current practices, even if inadvertent, help perpetuate racism in America." (*Washington* held that practices with differential impact on the races are invalid only if discriminatory intent existed and there is no "compelling governmental interest.")

Prof. Warren said that "the appointments process is not racist. Increasing the number of minority faculty members is a very important goal for the Appointments Committee, one on which we've done a lot of work and made some progress. I hope we'll make more progress in the future."

Prof. Richard Parker stated, "I'm ashamed to be a member of a faculty with only two blacks in 1983." Parker said that strong words were appropriate.

"I don't know how else to respond to emotional issues of this sort," he said. Parker noted that de facto discrimination is equivalent to institutional racism and is "radically unjust."

Ashamed and Discouraged

Edley generally agreed. "I think that 'racism' is too provocative a label, and it focuses on the institution, diverting attention from the role of particular individuals in shaping and implementing appointments policy. Instead, we should ask whether their personal actions and values are impediments.

"Sometimes I'm proud to be a member of the faculty, but I've grown increasingly discouraged and ashamed. It's hard to feel comfortable with my colleagues, who seem to hold values so contrary to mine. The issue is so important to me that it is becoming difficult to be tolerant in the face of hostility, intransigence, and disingenuity."

Edley stated that he had thought of leaving Harvard permanently, and he had seriously considered requesting a leave of absence. "But I'm so upset right now that I will wait until the middle of the summer to decide," he said. "In any case, I will certainly withdraw as much as possible from faculty politics and do my best to ignore the Harvard Law School."

Prof. Lewis Sargentich commented, "Any group with a practice that, even in good faith, screens out minorities, must inspect itself to see if there is a reason." Sargentich stated that the faculty must do better to recruit teachers with a wider range of qualifications.

Prof. Vagts characterized the charges as "using an emotive term in an attempt to do a complicated balancing between variety and achievement." Vagts stated that a balance must be struck, but "many faculty members are unhappy about the posture of things." "But," Vagts commented, "one must consider the large number of negotiations currently 'in the pipeline.' Slowly but surely, the pool gets larger."

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**The RECORD staff
wishes you the best of
luck on exams and a
pleasant summer.**

Protesters Occupy Dean's Office

(Continued from Page 3)

competition and rivalry." "Less than a week later," she shouted, "[the faculty] came up with a new way to engender conflict."

Tyler-Wood then invited faculty members to address the crowd. After criticizing Markus's version of the proposals' history and defending their merits, Prof. Lance Liebman, a CLE member, acknowledged that some procedural problems existed. He also confirmed that an open CLE meeting would take place on Monday, May 9, and stated that the faculty would reconsider the policies at its scheduled meeting of May 18.

Helen Irvin, a 2L member of the CLE, responded that sending the proposal back to the committee would be useless because "student input has no effect on faculty votes."

"What [this policy] does is remove those oases of non-repressive learning that go on at this school," Prof. Morton Horwitz told the gathering. However, he cautioned the students that "unless you're willing to go over the long haul, it's not going to change."

Prof. Alan Dershowitz followed and said he had been persuaded to introduce a motion to reconsider the decision at the May 18 faculty meeting. But he aroused a hostile reaction when he said that nothing would be achieved or changed by engaging in the "absurd rhetoric of Mort Horwitz."

"Try having a meeting like this at Cravath, Swaine & Moore," he said. "If you think this is repressive, wait until you get there."

Office Occupied

Tony Thompson then declared, "We're going to begin to change it here and we're going to begin to change it today. We need to show that we do want to participate. Let's go show the dean that we're concerned. He's waiting in his office for us."



Peter Lebold Cohen

Crowd gathers to hear speakers at Friday's open Student/Faculty meeting.

In short order, about 250 determined students marched to the dean's office, where Vorenberg addressed the crowd, saying, "It's a mistake to think that all students take your point of view." He expressed disapproval of some aspects of the previous day's demonstration — the occupation of the faculty library and the march through and disruption of faculty offices. "I think to say that's the only way people will listen is wrong." Vorenberg also expressed the feeling that the open CLE meeting was a reasonable next step.

Prof. Abram Chayes, who voted against the proposals at the faculty meeting, also protested the students' tactics. "This looks like an attempt at intimidation and coercion. From what I know of this faculty, they're not going to change under those conditions."

Cecil McNab, 3L, then called on the marchers to occupy the building. "We're just going to sit down," he said. Seventy-five students then sat barring the doors at either end of the second floor corridor of Langdell West, while 90 more occupied the dean's reception area and entrance hall.

During the sit-in, the students spent time discussing student empowerment at HLS and their next move. One of

the protesters in Langdell brought an electric guitar and led the group in songs reminiscent of protests in the 1960s.

The demonstrators remained in the sit-in areas for about four hours. They then decided to disperse and take their fight to the May 9 CLE open meeting.

In a May 6 memo to students, Vorenberg again defended the policies. "These changes respond to the conviction of many students and faculty members that performance on a written final examination represents less than the whole range of skills and learning that are relevant to a law student. The [2L/3L change] also responds to a sense that encouraging more student participation in second and third year courses is educationally desirable, and that the grading change might be helpful in that regard."

The memo also defended the process by which the policies were adopted. It stated that the CLE has student members and that it had discussed the 1L proposals. Although the three students were opposed to the changes, their views were circulated among the faculty in a written dissent.

The memo also said that the 2L/3L change was a recommendation of the Michelman Committee, although the student members of the committee opposed this particular recommendation. Both proposals were listed on the printed agenda for the faculty meeting and "the faculty meeting was attended by students, including representatives from the Law School Council, one of whom spoke."

Even so, Vorenberg's memo gave three reasons for holding the open meeting of the CLE. First, student reaction to the proposals was much stronger than was expected by the faculty. Second, current students have had no voice regarding the 2L/3L change. Third, students did not have the opportunity to pick classes based on whether particular professors would grade based on participation.

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