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25 CENTS



Ralph Nader encourages students to develop perspective and expand horizons.

Nader Prompts HLS: Demand Constant Change

By John Brandolino

Ralph Nader, '58, revealed to a full house of spectators in Ames Courtroom last Friday that he has not forgotten his experiences at HLS even though it's been twenty-five years since he shifted from the challenges of the Law School to the challenges of consumer advocacy.

"When I came here in 1955," Nader recalled, "about the fourth week of school, everyone was on pins and needles. You wouldn't leave your books anywhere if you didn't have an eye on them, especially notebooks."

"We were the chosen ones about to go through a period of unparalleled rigor. And by the time we came out of this place, we were just going to be the up, up and up. People

would be knocking on our doors. We would be very successful even though we'd been through such a strain."

Catalytic Environment

Those comments on the Class of '58 were background to the consumer rights activist's two-hour lecture on the possibilities of progress at HLS. In the course of his speech, sponsored by the HLS Forum, Nader concluded that the students of 1983 have more of an opportunity to produce progress than students of the 1950s.

In view of such a catalytic environment, he urged current law students to avoid familiar pitfalls which have lingered over time, and

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Few Firms Respond To Gay Survey

By Bruce Kelly

For gay and lesbian law students, the legal job market is an arena of high uncertainty, presenting potentially significant personal and professional risks. A recent effort by the Committee on Gay and Lesbian Legal Issues (COGLLI) to render a clearer picture of homosexual law students' job prospects met with only limited success, largely because of spotty employer response to a COGLLI mail survey taken last April.

The COGLLI letter, mailed to about 1,000 firms and organizations, requested that employers affirm "a formal policy of non-discrimination in the hiring and promotion of gay and lesbian attorneys." Only 87 employers responded with such an affirmation.

Ben Schatz, 2L, chairperson of COGLLI, views the results in two ways. First, compared with COGLLI's previous knowledge of only two non-discriminatory firms, the survey results are heartening. On the other hand, with less than 9% of surveyed firms responding, the situation for gay and lesbian students remains uncertain at best.

Although most law students approach the placement process with a certain amount of trepidation, worries are typically centered not on getting a job but on obtaining a position with a leading firm, or

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Auerbach Entertains, Criticizes Lawyers

By Stephen R. Kaufman

At an Oct. 6 HLS Forum presentation in Langdell North Middle, Arnold "Red" Auerbach, President and General Manager of the Boston Celtics, acknowledged that lawyers are a necessity for the business aspects of modern professional sports. The former coach did, however, criticize the unethical practices of lawyers, particularly when serving as player's agents.

An agent, Auerbach said, is often thought of as "kind of a sleazy character . . . and being a lawyer doesn't change that."

Auerbach's entertaining address, entitled "Are Lawyers Ruining Sports?", was delivered to a near capacity crowd of what he jokingly referred to as "young Dershowitzes." Prof. Alan Dershowitz, who introduced Auerbach, and who is more accustomed to sitting near the Celtics' legend at the Boston Garden than on a dais, observed that Auerbach received his nickname not from the color of his hair but from the color of his face during Celtic games.

Renegotiation Offensive

A player's attempt to renegotiate a contract (as center Robert Parrish is currently hoping to do with the Celtics), is particularly offensive to the Celtics' G.M. Auerbach made his view clear: since the team must pay a player the contract salary if the player has a bad year or is injured, a player's good year should be simply a plus for the owner.

Auerbach strongly decried intrusions of professional basketball into the college game as unhealthy. He noted that some unscrupulous agents loan money to college athletes in return for the athlete's promise to retain the agent after graduation. Auerbach said he knows of "two definite cases" where a college player fell more than \$100,000 in debt to an agent in such a way.

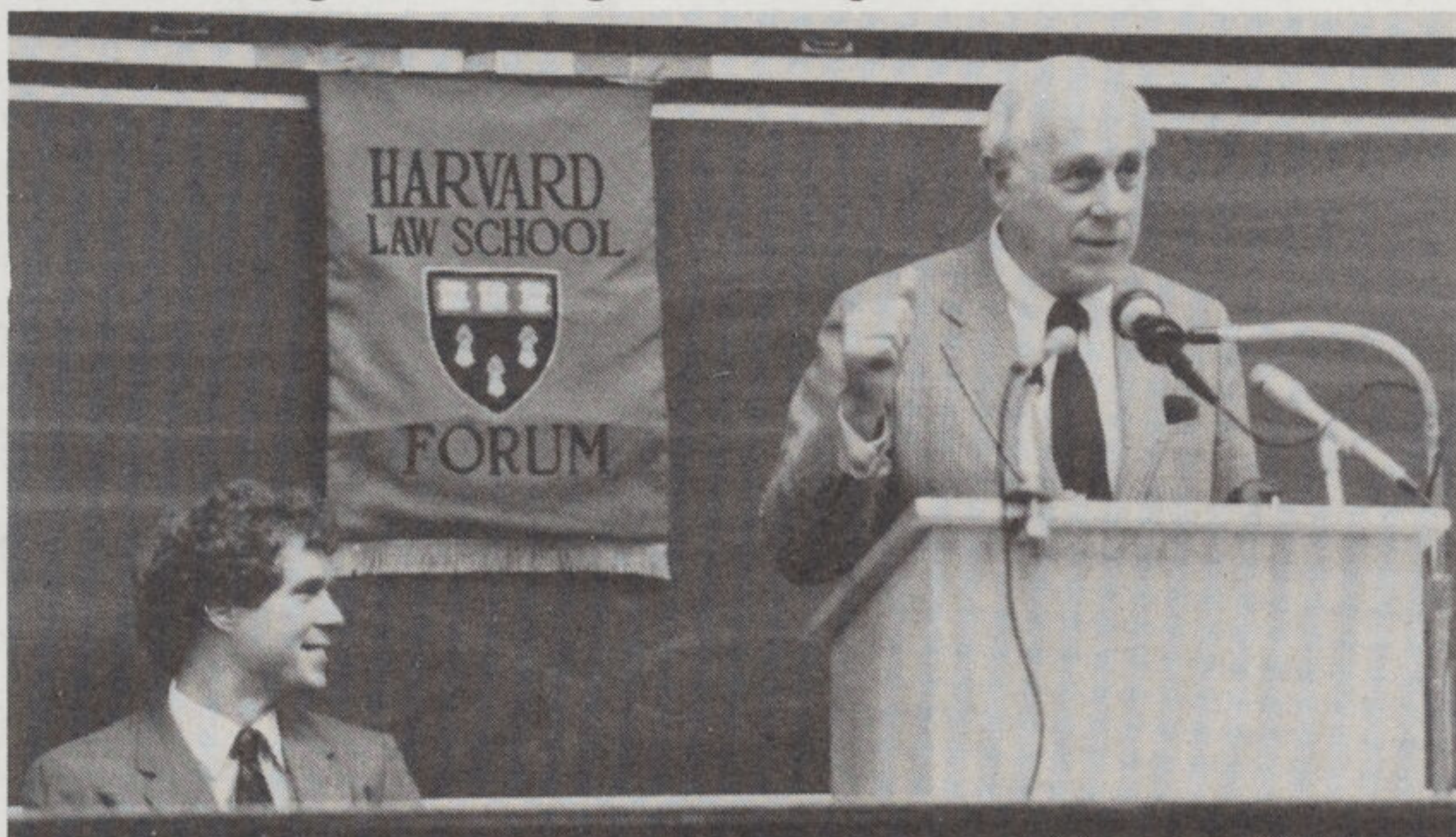
Turning to the impact that courts of law have on life on the basketball court, the famous coach criticized a ruling striking down the National Basketball Association's prohibition

of a team's drafting of a college player whose class had not yet graduated. According to Auerbach, college-age players do not have the physical or emotional maturity to compete successfully in the NBA. He did recognize, though, that both Moses Malone and Darryl Dawkins are rare exceptions.

In response to a question about Auerbach's own interest in Ralph Sampson while the promising center was still a student at the University of Virginia, the NBA's Executive of the Year in 1980 stressed that the court ruling made it illegal for

tistics as an accurate measure of a player's worth, Auerbach refuses to negotiate performance incentives into contracts. Auerbach, who coached the Celtics to 11 NBA championships in 13 seasons, views such incentives as dangerous to team morale. Auerbach commented that if one of his players requested an extra \$10,000 for making the All-Star team, he would tell the player that "if you're making \$600,000 a year and you *can't* make the All-Star team, who needs you?"

Similarly, Auerbach will include no perks such as automobiles,



Adam Eisgrau

Red on roundball? Actually, Auerbach on attorneys, agents, and athletes.

the league to refuse to negotiate with a player seeking to become a professional by declaring hardship conditions. Auerbach took this opportunity to emphasize, as he did frequently in his speech, that it is a person's duty to operate within the rules even while disagreeing with them.

Arbitrators Don't Work

Auerbach also directed his sincere but good-natured condemnation at the arbitration process. The problem with arbitration, according to Auerbach, is that the arbitrator, who "naturally is a lawyer," has only statistics as guidelines. As such, the arbitrator knows nothing of a player's character, ability to perform under pressure, or chemistry with the rest of the team.

In line with his rejection of sta-

apartments, or tuition money in a Celtic's contract, refusing to serve as banker or investment counselor for his players. "I'm running a basketball team," Auerbach declared.

Celtics Lore

At several points during his presentation, Auerbach digressed in order to tell stories from his extensive collection of Celtics lore. He concluded his talk on the law's intrusion into the world of sports, though, by advising that "the best law is plain common sense — just doing what's right." The appreciative crowd responded to this final remark with a standing ovation, applauding even more enthusiastically after Auerbach fan Dershowitz suggested that the legendary basketball mentor apply for admission to HLS.

Legal Video Games Teach Students

By Brad Hudson

The plaintiff's attorney approaches the witness, brandishing a single sheet of paper. He shows the paper to the witness and asks: "Do you recognize this document?"

"Yes," the witness replies.

"Your honor," says the plaintiff's attorney, "I'm entering this document into evidence as plaintiff's exhibit..."

Wait a minute, thinks the defense attorney, there's something fishy here. "Objection," she says.

"What grounds?" she is asked.

"Improper foundation," she replies.

"Sustained."

Typical courtroom dueling? Not exactly. The defense attorney is sitting in a classroom, not a courtroom. And she isn't an attorney; she's a law student. And her objection wasn't sustained by a judge — it was sustained by a computer.

This evidence lesson, a combi-

nation of computer and video technology, is one of the newest and most sophisticated creations of HCLIP — the Harvard Computer-Aided Legal Instruction Project.

HCLIP, which bills itself as a "combination teaching organization and computer software house," is an HLS student organization whose members write, edit, program and publish interactive computer lessons in various areas of the law.

The lesson described above is an example of flexible interaction between computers and students — a kind of "Dungeons and Dragons" for lawyers where the student is put in the position of a trial lawyer. To participate in the lesson, the student watches a videotape that shows an attorney examining a witness. The student can raise an objection at any point in the examination by pressing a key on a computer keyboard. The videotape then stops, allowing the student to offer grounds for the objection.

Computer as Judge

After ruling on the objection, the computer provides an explanation for the ruling, sometimes playing an "amended" version of the examination to illustrate how the attorney should have proceeded. At the end of the lesson, the program replays any objectionable questions that were not spotted by the student.

Most of the lessons created by HCLIP do not exhibit the role-playing format used in the evidence lesson. Instead, they basically work in a question and answer format. However, even these lessons can involve a complicated branching structure that provides a great deal of flexibility. Because of this struc-

ture, a program can allow students to skim over subject areas with which they seem familiar and concentrate on areas with which they are less familiar.

Even in the less interactive question and answer format, computer-aided instruction can be useful in a number of settings, according to Herbert Fockler, 3L, HCLIP's editor in chief. He outlined three of those situations.

Three Situations

Situation 1: The Property Professor. A property professor approaches that point in the semester when he must teach the rule against perpetuities. Rather than using hours of class time teaching the mechanical aspects of the rule (such as who is the life in being and what does he have to do with the fertile octogenarian?), the professor can turn the mechanics drill over to a computer-aided lesson.

The professor is then free to use class time to explore historical, theoretical and policy perspectives that may often be ignored in the rush to "learn the rule." Also, the students receive the benefits of participation and immediate feedback.

Situation 2: The Clinical Director. Students who want to do clinical work need to become grounded in the "nuts and bolts" aspects of substantive and procedural law. Use of computer-aided instruction to cover these "fundamentals" can relieve the clinical director of the need to provide this basic training to the many students who wish to do clinical work.

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2L Authors Book On Medieval Law

—Rob Nanan

The first thing one notices about Simon H. Cuttler's *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge University Press, 1982), is that the author is a Harvard Law School 2L. The second thing one notices is that the book is a fascinating, important piece of scholarship which — in an interesting, highly readable way — fills a noticeable lacuna in the study of treason.

The American law student's exposure to treason is probably limited to Benedict Arnold, the Rosenbergs, and Art. III, Sec. 3 of the Constitution. This dearth of case law and of clearly-defined constitutional delimitation is not evident in 14th and 15th century France, where the law of treason was as much a political tool as a legal, criminological matter.

Constant Struggle

Later, medieval France witnessed a constant struggle between the monarchy on the one hand, and the seigneurs, towns, and the Church on the other hand, with the kings endeavoring to increase and expand their power over the country. A major part of the king's arsenal in

his battle over conflicting claims to power was the law of treason. Since this battle played a crucial role in the development of modern France, the position of the law of treason in French history must be seen as very significant.

Cuttler recognizes the dichotomous legal and political aspects of treason and organizes his book around them. He presents a perfectly-balanced account not only of the theoretical and legal complexities of treason, but also of the extent and political context of the enforcement of that law.

Legal Treason

That part of the book which deals with "legal" treason starts with its very concept: its genesis in Roman law, and the theoretical framework upon which French kings ostensibly based their use of it. This creativity extended to the crimes which could be classified as treasonous: a panoply of activity ranging from regicide to counterfeiting to treason by words.

The wider the scope of treasonably determined behavior, the greater the jurisdiction of the king (as he had sole jurisdiction over treason);

the greater the king's jurisdiction, the greater his power. The extent to which the crown could claim jurisdiction for itself was directly related to the authority it could exhibit. The era's administration of justice — not unlike today's — was a manifestation of power and authority.

Cuttler's examination of jurisdiction centers upon this thesis, as he describes the varieties of royal jurisdiction, and the important, tactful interplay between crown and chalice *vis à vis* jurisdiction.

Another aspect of "legal" treason with which Cuttler deals is procedure. (Continued on Page 16)

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Group To Ask 3Ls To Contribute

Next week, the Harvard Fellowship in Public Interest Law (HFIPIL) will begin its campaign to raise money for public interest jobs. The organization, in its third year, asks 3Ls to pledge one percent of their gross earnings for the first year out of law school. That money goes to fund one-year fellowships for one or more 3Ls going into public interest law.

In its first year, HFIPIL raised \$30,000 from about 120 third year students. Last year, the organization raised \$45,000; contributions were made by about 160 third year students, as well as several alumni who pledged again.

Paula Litt, 3L, president of HFIPIL, said the organization "hopes to expand the program by having alumni re-pledgers." She added, "I also think we can get a much larger base from the 3L class."

The 1% Solution

HFIPIL has a new slogan this year — "The 1% Solution." According to Litt, the campaign demonstrates both that it is possible for new graduates to begin a career in public interest law and that it is possible for those entering corporate law firms to support public interest work.

"There's something unique about people getting together to help their classmates do public interest work that needs to be done," said Litt. "I think that what's special about this is that it allows everybody to

participate in their own way. You shouldn't have to feel that you have to go into the public interest trenches yourself to make a contribution. You can make a contribution through your pledge."

The actual process of selecting the third year fellows does not begin until the spring. Everyone who

pledges becomes a member of HFIPIL. The members elect five directors, who along with the four current officers select the fellows.

"This really is something that everyone can support, whether they do the work directly or not," Litt concluded.

☛

Birthday Celebration Soon For Austin Hall

A celebration commemorating the 100th anniversary of Austin Hall will be held on Friday, Oct. 28. The Centennial Celebration will be marked by speeches in the Ames Courtroom, followed by a reception featuring a cake in the shape of the building.

Austin Hall was first opened for classes on Oct. 1, 1883. A wealthy Boston merchant, Edward Austin, donated the money which financed the construction. Henry Hobson Richardson, a well-known 19th century American architect, designed the building.

The celebration also marks the beginning of a campaign to ren-

ovate Austin Hall. The exterior is scheduled to be completely restored. The classrooms will be refurbished, and corridors and other public spaces will also be restored.

The Oct. 28 commemoration, which coincides with the reunions of several HLS classes, will feature an address, "H. H. Richardson Designs a New Law School," given by John P. Coolidge, a professor of Fine Arts at Harvard College. Also scheduled is a panel discussion by law school faculty members on changes in legal education over the last 100 years.

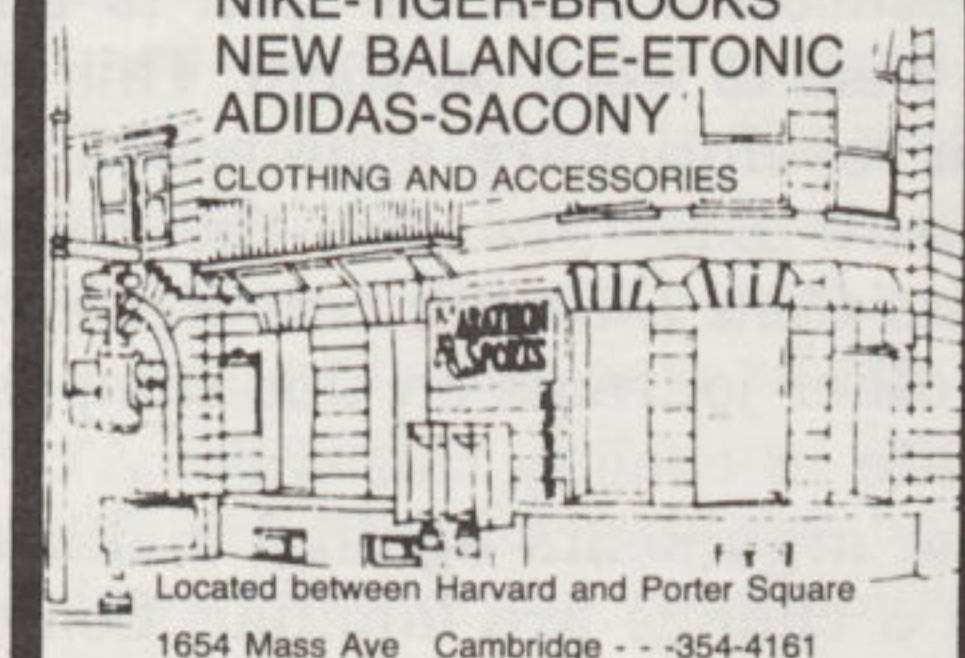
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Workers repair Austin Hall exterior.

Reforming the Law Review

—David Hoffman

The *Harvard Law Review's* selection process has run its course for another year, leaving in its wake the inevitable trail of elation and disappointment. Now it's time to get down to the equally serious business of examining the *Review's* method of selecting editors. I would like to add my voice to the chorus of those who have called for a change in that process.

My principal complaint with the current system is that it reproduces one of the worst aspects of the legal profession itself — the hierarchical organization of the bar — thereby undermining efforts to make the Law School a community and discouraging the impulse for reform both here and in the profession generally.

It is certainly no secret that the legal profession is highly stratified. This is most clearly apparent in the stratification of attorneys' incomes. While a legal services attorney in many cities can expect to start at about \$12,000 to \$16,000 per year (with a raise to about \$25,000–30,000 after 8 or 9 years), the associate at Cravath will start at about \$47,500 (with a raise to about \$325,000 after 8 or 9 years, if s/he happens to be the one of ten associates who makes partner). Even among HLS grads, there is considerable stratification: members of the HLS class of 1966 currently practicing law, for example, receive annual incomes ranging from \$14,000 to \$800,000.

What, one might ask, does any of this have to do with the selection of law review editors? Ever since 1968, when the Law School stopped computing each student's class rank, *Review* membership has provided employers with a convenient

benchmark for employment decisions. Although the *Review's* writing competition has muddled things a bit, most employers can use *Review* membership and a transcript larded with A's as a surrogate for class rank. Instead of a gradually scaled hierarchy, HLS in effect has established a two-tier hierarchy.

Checking Out the Results

Students feel the effects of this ranking not only when applying for entry-level jobs and clerkships but also throughout their careers. Take a look, for example, at some of the elite firms listed in Martindale-Hubbell: at Arnold & Porter, 71% of the partners are former law review editors; at Wachtell, Lipton the figure is 85%. Check out, when you have a spare moment, how many professors *weren't* law review editors; according to my calculations, all but 15 of HLS's assistant and full professors were on law review.

Even Dean Vorenberg has acknowledged that ranking students in this way undermines the educational goals of the Law School (see *RECORD*, Sept. 23, 1983). The reasons why law review selection has this effect are not hard to find. Consider, for example, the way credentialization at the Law School works. It is no news to anyone that our individual credentials — our résumés — are probably the most valuable form of property that each of us now owns. We accumulated some of this "property" before we even got to HLS; most of us distinguished ourselves in some way or other in the past or else we wouldn't have been admitted. To a considerable degree, however, the credentials that we accumulate at HLS will have an even greater bearing on our future position within the bar than our earlier achievements. The problem is that although there are many activities and journals at HLS through which one can acquire

useful experience and recognition, none of those activities carries the weight of *Review* membership. This division of the student body into two groups whose privileges, prospects, and "wealth" are markedly different is one of the factors that makes law school an alienating, demoralizing experience for many students here.

Not only does law review selection bring the stratification of the bar home to the law school and interfere with the effort to build a sense of community among the students, it also operates as a social control mechanism for the law school and the profession. The much-noted demoralization that occurs after the first year is, I believe, one of the reasons why law students here and elsewhere have generally taken so little interest in the governance and direction of their schools.

This passivity and demoralization constitute an important part of the socialization of lawyers as they enter the profession. Lawyers come to see the stratification of the bar, and their own diminished prospects, as a natural part of the sorting process that began in law school. Given this perspective and the pressure of an increasingly tight job market, it is not surprising that lawyers devote more of their attention to tightening their grasp on the hierarchical ladder of "success" than to examining alternatives to the current structure of the profession.

Time for a Change

It's time for a change. The *Review* and comparable journals at other law schools should be open to all who wish to work on them. This is not a revolutionary approach. The *Women's Law Journal*, the *Civil Rights-Civil Liberties Law Review*, and other journals on this campus operate in exactly this way.

The arguments against making such a change are familiar. Some people say, for example, that pub-

David Hoffman is a third-year law student and a member of the Harvard Law Review. His views, as expressed above, do not necessarily reflect the editorial position of the Review.

Review Selection Creates Hierarchy

lishing eight issues a year of a high-quality journal requires a very committed staff. This commitment, the argument goes, can only be sustained by offering a substantial reward; if law review membership becomes a less powerful credential (as surely it would if just *anyone* could work on one), then commitment will decline.

Questioning Assumptions

I love this argument — its assumptions are so close to the surface. First, it presumes that “high quality” equates with what law reviews have always published in the past, and that any change in the style or content of these journals that might accompany open membership threatens to lower, rather than raise, their quality.

Second, the argument assumes that students won’t work hard without some highly tangible reward. Yet if that were true, how does one explain the waiting list for Harvard Legal Aid Bureau membership, or the fact that almost one quarter of this year’s 1L class signed up to work for the Prison Legal Assistance Project? Of course, some people will point out that law review work, unlike clinical work, is so dull that offering a substantial reward is necessary. But even if this were true (and I think it is, at most, only partly true), is this a good reason for the law school community to put up with the alienation and demoralization that result, at least in part, from this way of motivating law review editors to do accurate cite-checks and proofreading?

Another type of argument that is used to defend the current selection system points to the virtues of meritocracy. For example, some people fear — and with good reason — a return to the days of the Old Boy Network. Without “merit-based” selection for positions on law reviews, they argue, these journals and the profession would be dom-

inated by white males. But guess what: we’ve had a “merit-based” system for many years now and these positions are still predominately held by white males. And while it’s true that the legal community is now more diverse from the standpoint of ethnicity and class, we have miles to go before anyone can comfortably assert that our “merit-based” systems are color-blind or gender-neutral. (This term, for example, the number of new editors who are non-white is very small, and only seven of the 41 new editors are women.)

Objective Standards?

When people say that law review selection is based on merit, they are, in effect, asserting that there is a set of neutral, objective criteria by which one can determine who would be the best editors of a legal journal. Yet there are no such criteria. It may be that some meaningful distinctions can be made among a set of exam books or writing competition entries, however arbitrary those distinctions may be at the margins. But there is no way to know how much such distinctions tell us about the ability to put out a good law journal.

Even if there were such a consensus, could we really call a system that selects such a disproportionate number of white males “neutral” or “objective”? The problem is that to a great extent grades and writing competitions select people who have been (1) given a head start by virtue of their background, and (2) encouraged to see the world from a highly rationalized, competitive perspective.

What would happen if law reviews used different criteria or simply opened the door to all comers? Would the quality of these journals suffer? Would they attract “less capable” editors? The problem with these questions is that “capability” and “quality” are not self-

defining terms. They seem to do little more than describe a constellation of traits that are associated with the current hierarchies of power and value that exist in the legal profession and in the Law School generally.

I think it’s very possible that changing the *Review*’s selection system would change the nature of the magazine. I think it’s equally possible, however, that the forces of institutional inertia and tradition would keep the magazine more or less the same.

My last point is this: if the law review selection process is going to change, the impetus for that change will almost certainly have to come from the students. Reforms considered thus far by the HLS faculty would not fundamentally alter the magazine’s approach to membership selection. The *Review* discussed the issue of membership selection thoroughly last year. Although a large number of the editors were interested in considering alternatives, ultimately they rejected, by a convincing margin, even a modest reform proposal that would have allowed four editors a year to join on the basis of submitting publishable Notes. (The *Yale Law Journal*, by the way, has picked all of its editors this way for more than a decade.)

Students Should Act

For reasons that must be obvious, neither the faculty nor the *Review* has much incentive to change the status quo. The HLS student body, however, has a different set of interests. It is time for students here to take more responsibility for the shape of our education and the shape of our profession. One of the steps that we can make in that direction is ending the exclusivity of law review selection.

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Drama Society Splits Doubleheader

Charles Thensted

By Charles Thensted

The Harvard Drama Society opened its 1983-84 season this past weekend with an ambitious double bill. The first offering, "The Real Inspector Hound," is Tom Stoppard's improved version of Agatha Christie's "Mousetrap," a satirical and stunning treatment of the drawing room murder mystery with even more than the usual number of plot twists — if that's possible.

Stoppard's play calls for the audience to be joined by a certain Moon and his colleague Birdboot, rival drama critics if you please. The latter is played to great comic effect by a Drama Society mainstay, Philip Kraft, 3L. Kraft's Birdboot is hilarious in his devotion to the principle that "the show must go on," if for no other reason than to supply him with leading ladies and ingenues willing to go to any lengths — with him — to secure a favorable review.

Moon, on the other hand, is an understudy to another critic and agonizes over that humiliation even as he muses about the probable thought processes of his own occasional stand-in, one Puckeridge. As played by Edward Murray, 2L, Moon, whose critical approach is decidedly classical, if mannered, and beyond carnal influences, is marvelous. He becomes noticeably distressed and intense at the state of theater, and his own fortunes, as the play progresses. In the process, his properly and decidedly British accent and syntax make Moon at once quite real and tragically comic.

Moon is a Star

If the play has a star, it is certainly Murray. Strong performances by others in the cast, however, are essential to give Murray's turn the impact and humor it achieves. For example, the estimable Kraft, in no less a major role, occasionally must, with a shocked expression, wince

or gesture, subtly showcasing the extravagances of Murray's character. It is a tribute to Kraft's craft that here, as in other of the Society's productions, he "moves without the ball" so well.

Simon Gascoyne, the indispen-

fair she wears in the play's latter stages.

All in all, however, "Inspector Hound," was very effectively done and left Saturday night's audience in high spirits, which were dissipated by the short original play,



Mike Lyon

Lou Fields, 1L, Phil Kraft, 3L, Mary Lee Wolfe, 1L, Edward Murray, 2L (l. to r.), appearing in "The Real Inspector Hound."

sible "frivolous playboy," is played by Thomas A. Lorenzen, 2L, with just the right touch of good humor. Victor Patrick, 3L, appears in a three-tiered role, most notably that of the terminably snobbish and malevolent Major Magnus Muldoon, no doubt a military pensioner whose career in the service had been marked as much by confident incompetence as it was by social exactitude. Lou Fields, 1L, as Lady Muldoon and John Davis as Inspector Hound are equally fine while Mary Lee Wolfe, 1L, shines as the superficially subservient Mrs. Drudge, "the Help."

Only Virginia Cheatham Veltrop, 1L, as Felicity Cunningham, disappoints. She never seems comfortable in the role, one that requires a sure sense of satire. Even Felicity's costuming seems wrong, particularly the polyester wrap af-

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Creation of Computer Lessons Simple

(Continued from Page 3)

Situation 3: The Corporate Lawyer. Lawyers in private practice who want to do pro bono work often need to become familiar with "the basics" in areas which are not a part of their every day legal practice. A computer-aided lesson could help the attorney brush up on these fundamentals.

Creating Lessons

Fockler, Managing Editor Charles Holland, 3L, and Executive Editor Joe Olivieri, 3L, described the process used to develop a lesson at

HCLIP. First, ideas for lessons are submitted. Many come from law school professors who want to develop a lesson to use as part of a course; other ideas are generated by students.

Once the idea has been generated, it is turned over to an author. The author, who need not know anything about computers, develops a fact situation for the lesson and then constructs a flow chart outlining its structure.

Most of the questions used are yes/no or multiple choice, but short answer questions can also be used. "The sophistication of the program

is only limited by the imagination of the writer," said Fockler.

After the author has written the lesson, it is turned over to a programmer. Surprisingly, in about two hours HCLIP can train a person to program its lessons. Olivieri explained that computer literacy can be achieved this quickly because HCLIP uses a condensed package of Pascal commands called "Socrates."

These commands represent complex subroutines that mirror common operations that the lesson programmer needs to perform. Just as owners of calculators can press a single key to calculate a square root, HCLIP programmers can use a single Socrates command to perform a complex operation.

The programs are then edited and test run in order to work out any bugs. Finally, the lessons, in disk form, are placed in the HLS library and made available for sale. Some lessons are made available through the Center for Computer-Aided Legal Instruction, a joint project of HLS and the University of Minnesota. HCLIP distributes lessons separately as well. Currently, the lessons are available for the IBM PC and the Terak 8510, and HCLIP plans to make them available for other computers in the future.

Ferdinand

Computer-aided lessons are currently being used in conjunction with courses at HLS. Some 1Ls are drilled on the finer points of discovery by a lesson entitled "Ferdinand and the Lobster Trap." Students enrolled in Professional Responsibility are quizzed on the Model Code of Professional Responsibility by a program developed at the University of Minnesota.

Lessons in Accounting, Corporations, Property, Ethics in Discovery and International Tax are also currently available.

Programs in the works include more Corporations and Property, Poverty Law, Professional Responsibility, Evidence and How to Read a Case.

'Sacre-Tease' Disappoints

(Continued from Page 8)

"Sacre-Tease," which followed. "Sacre-Tease" is an ambitious but ultimately superficial exploration of mind and heart that was performed here by the indefatigable Philip Kraft and an energetic Joan Shear.

Kraft is a man of no small talent, and if nothing else this short play gives him the opportunity to break out of the variation on the theme he has played, admittedly to near perfection, in each of the previous three Drama Society productions. His task is to prepare the audience for a rough, raucous and often embarrassingly intimate tour of a young woman's psyche. Unfortunately he is not given enough time or material for the job and, as a result, for many the ride was as satisfying as that of a kidnapping victim who finds himself trapped inside the trunk of a careening car.

Joan Shear, too, was faced with an impossible task — to make an audience believe and care about the

pretentious pontifications of an overly bright young woman. She apparently has not loved enough or lived enough to justify our joining her in suffering through personal agonies of self-discovery and self-doubt. Shear, it seems, has no alternative to over-acting, and that she does with reckless abandon.

Surprisingly, I was not wholly disappointed with "Sacre-Tease." In many ways it is a victim of its own ambition: it tries to do more within the strictures of one brief act than can be realistically expected. Perhaps if more attention were given to the development of the characters played by Kraft and Shear as a backdrop to the narrow slice of their personalities on display here, an audience would more readily accept the youthful exuberance, wonder and self-indulgence this introspective work entails. If little else, such an approach could engender more interest in gradually uncovering the message this play now seems bent on tapping out with sledgehammer strokes.

In the play's present form, Temple Dickinson's direction is difficult to fault. One can only speculate as to what might result if he were to put his not inconsiderable directorial talents to bear on a more fully developed work.

Sports Answers

1. Al Weis; Baltimore Orioles
2. Larry Sherry; Chicago White Sox
3. Don Larsen; Brooklyn Dodgers
4. Brian Doyle; Los Angeles Dodgers
5. Dusty Rhodes; Cleveland Indians

Asking The Questions

The winds of change whistled through the Hark mailboxes this week. Several organizations, led by the Women's Law Association, made direct and, we think, powerful appeals to law school students. We students were encouraged to use our influence as prime commodities in the legal job market to hasten the necessary and inevitable reform of private firm hiring practices. Believe it or not, Harvard students *do* have tremendous clout. Like it or not, we have the responsibility to use it.

Minority hiring, family and personal lives, and pro bono activities are — at least indirectly — issues that will affect each practicing lawyer. Checking such personal concerns at the door of the Sheraton Commander or Lincoln's Inn is an acknowledgement that the "rats" have won even before we enter the race in earnest.

Change in the legal profession should keep pace with changes in the rest of society. This may seem like a truism to law students, but apparently it is not so obvious to most law firms. The insignificant number of firms that responded to COGLLI's recent questionnaire, 8.7% (see story p. 1), is sufficient indication of the need for law students here and elsewhere to challenge the inertia of such institutions.

The scope and form of such questioning is, and must be, a function of individual conviction and personal style. The issues raised with an interviewer need not be limited to those proposed by the WLA; the questions asked need not be phrased according to the forms suggested by WLA or ABLE. "Tough" questions are not, by definition, antagonistic.

Undoubtedly, some individual interviewers will fail to be amused by polite but close questioning of their personnel or other policies. A few firms might go so far as to reject the applications of students who make such inquiries. Ask yourself, however, just how much of a loss rejection by such a firm represents.

If you haven't seen a copy of the WLA's list of suggested questions for employers, find one and read it. If you have seen one, turn the lights up and read it again. None of us can afford to have these issues amount to no more than whistling in the dark.



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Fenno

Fenno was astonished to see Zenno, nose paint and saffron robes and all, in the Hark. The last time Fenno had seen him, Zenno had been handing out Hare Krishna literature in Harvard Square. "What are you doing here?" Fenno asked.

Zenno bowed. "It is the dharma of my karma. I am conducting a seminar on Zen and the law."

"Where and when? I didn't see it in the course catalog."

Zenno smiled. "It is held everywhere and always," he said, and cocked his shaved head. "Do you know what koan is?"

Fenno shook his shaggy head.

"A koan," said Zenno, "is a seemingly nonsensical question. The meditation on it, not the answer, is illuminating, for often there is no answer. It is much like Western law in that there are not always answers — but Zen masters are less reluctant to admit that than law professors. It is also similar in that there exists a body of koans, comparable to common law."

"It differs from your law, however, in that masters do not demand answers at the end of arbitrary time periods such as semesters. A koan requires years of reflection; students wear out many meditation mats on one koan. Some students contemplate only one koan during their entire current lives."

"Give me an example," said Fenno.

"The most famous koan to Westerners is a classic one: 'What is the sound of one hand clapping?' Have you heard it? With variations on this koan, I am introducing Harvard Law School to the ways of Zen. To a contracts class, I posed the koan, 'What is the sound of one hairy hand clapping?' To a jurisprudence class, I asked, 'What is the sound of Learned Hand clapping?' To the seminar on Adam Smith and the Law, I asked, 'What is the sound of the invisible hand clapping?' To Dean Vorenberg's secretary, I put, 'What is the sound of shorthand clapping?' And in Hemenway Gym, I inquired of two squash players, 'What is the sound of a backhand clapping?' That is my seminar. I roam the law school, explaining Zen and assigning koans."

Fenno tried to look sagacious. "It reminds me of the expression, 'Don't beat a dead gift horse in the mouth.'"

"I must meditate on that," said Zenno.

"How do I sign up for your seminar?"

"You already have. Would you like a koan of your own?"

Fenno nodded.

"All right," said Zenno. "If so many students here despise Harvard Law School, why do they stay?"

Fenno thanked Zenno, and went to the Hong Kong Lounge. He ordered a beer, and began to reflect. He planned on wearing out many bar stools with his koan.



Letters to the Editor of the Record

Jaws IV?

To the Editor:

Since the first two RECORD issues of the new school year arrived practically on consecutive days, I had no sooner finished Karl Ranous's modest proposal (subsequently withdrawn) that not all letters to the editor be published when I found myself reading Alan Dershowitz's extraordinarily intemperate response. If this sample is any indication of the professor's class performances, I count myself fortunate not to have had the opportunity to suffer any of them. "Lawyer-like qualities" must include a sense of balance, propriety and, even, some measure of tolerance. Apparently, if the professor's name is mentioned in print, he rises to the bait like a shark with a mission. Wow!

William D. Gaillard, '56

Forum Laments

To the Editor:

We appreciate the attentiveness of the RECORD's editors to the Forum's recent reawakening. Yet, we are puzzled and irritated by the cavalier and irresponsible manner in which your editorial opinion of October 9, 1983 was researched and presented. In that editorial, you virtually labeled the Forum as a sexist organization without the slightest attempt to investigate our efforts to bring women to HLS as forum guests. This approach indicates a deeply irresponsible and unfortunate editorial process.

Not only did the Forum attempt to attract women as a part of our 1983-1984 program, but we undertook the effort with the same vigor and sincerity employed in the pursuit of our non-female speakers. Every individual we invited this year was approved in advance

by our Board of Directors (which is composed of 4 women and 8 men). These authorized invitees were then each sent the exact same "form" invitation letter. Thus, precisely the "same effort that convinced Walter Cronkite" went into the pursuit of Jane Fonda. So Jane says no while Walter says yes . . . ergo the Forum is sexist? We find it impossible to follow this (lack of) logic.

It is of course true that we do not, as of yet, have any firm commitments from female speakers for the upcoming season. We are disappointed (and somewhat perplexed) by this reality, as most HLS students should be. Therefore, we can understand how someone who merely examines our current speaker list could entertain doubts about the Forum's intentions with regard to female speakers. But even a superficial inquiry (for example, a simple question to any Forum Board member) would dispel any such suspicions. In fact, such a cursory investigation would quickly reveal that the Forum this summer invited more women than it had in the previous three years *combined*. Moreover, we in fact invited many of the individuals you so generously "suggested" — Jane Fonda, Katherine Graham and Coretta King are only a few. And we are also actively pursuing a possible joint effort with the HLS Women's Law Association to put together a spring panel on the future of the ERA.

Our invitation list has always been open for public inspection, comment and additional suggestions. Your failure to inquire about the list before running your editorial would give any "reasonable" man or woman serious cause to question your journalistic integrity and credibility. (And you did have the chance, you know. Members of your staff spoke to Forum officers no less than *four times* the night you went to press. On the evening of Tuesday, October 4, three telephone calls were placed to Steve McKeever and one to

Jim Attwood.)

We lament your patronizing editorial attitude. Since our invitation list was compiled in May and the letters went out in July, Vanessa Williams and Sally Ride were yet-to-be "stars." Do you therefore charge us with lack of clairvoyance as well?

We also lament your choice of forum for making your suggestions. For several weeks last April, we asked (via the *Adviser*) all HLS students who had ideas for potential Forum speakers to contact us. We renewed this plea in the *Adviser* this fall. Yet not a single suggestion came from your almighty halls. Were you afraid to destroy a good story? We trust your level of journalistic integrity has not sunk so low. Yet we cannot help but wonder.

We are the first to admit that we did not think of Diane Feinstein. We also admit that we had certain reservations about bringing Gloria Steinem to campus only five months after her last visit. But some of our other invitees — Sandra Day O'Connor, Jane Byrne, Barbara Walters and Diane Sawyer, for example — were conspicuously absent from your list.

We deeply regret your decision to "go after" the Forum without so much as a cursory investigation. But what we regret even more is that those of your readers who do not happen to read this response will continue to carry the erroneous belief that the 1983 Forum is a sexist organization. We can only hope, for the sake of all the students at HLS who depend on the RECORD for a complete and accurate reporting of the Law School news, that your standards of editorial conduct improve before other HLS groups or individuals are similarly maligned.

James Attwood, 2L, on behalf of the Board of Directors of the Harvard Law School Forum

Letters Policy

The RECORD's policy on letters is simple. We read all of them. We do not usually acknowledge receipt of them. We print many of them, subject only to editorial discretion. We encourage letters on any subject, and particularly concerning subjects that have been covered in the RECORD. Short letters are more likely to be printed. In no event will we print individual letters longer than 700 words.

Letters should be typed and must be received by 4:00 P.M. on the Tuesday before the issue. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD. Organizations should identify the specific individual(s) responsible for approving the letter.

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Letter Uncovers Faculty Support

(Continued from Page 1)

in a preferred specialty. The additional problems of deciding whether to reveal one's sexual orientation — and the possibly chilling effects of such an admission — only serve to heighten this anxiety for gay and lesbian students.

Three Pitfalls

COGLLI members stress three ways in which discrimination against gays and lesbians differs from that against women or racial minority groups. First, in most areas of the country, gays and lesbians have no legal protection from discrimination. Second, because it is virtually inevitable that the sexual orientation of a gay or lesbian attorney will eventually become known to others within the firm, it is important for the prospective employee to know in advance what a firm's attitude is.

As one COGLLI member put it, "When an employer hires a black or a woman, he knows what the situation is up front." But gay attorneys cannot anticipate what might happen if their sexual orientation becomes known. Employees have been asked to leave organizations after such revelations.

Finally, law students have a difficult time talking directly to gay and lesbian attorneys within a firm about that firm's attitudes, since many lawyers keep their homosexuality hidden because they fear adverse discrimination.

Many believe that those who do reveal their homosexuality do so at some peril. Last year, Schatz sent out two types of résumés. One group of firms received a résumé that listed his leadership position in undergraduate and national gay associations, whereas the second group received a résumé without this information. Schatz believes that his leadership positions should have been a positive credential. Nevertheless, the "straight" résumé elicited interview offers 25 percent of the time, compared to only three percent for the "gay" résumé.

Tales of such experiences, com-

bined with the pervasive silence on the subject, have created such a climate of fear and worry that COGLLI decided to seek action by the Law School. Originally, COGLLI hoped that the Placement Committee would send a statement directly to hiring organizations emphasizing the Law School's official requirement of non-discrimination by firms interviewing here.

The Placement Committee declined, fearing that if they did this for one group, others would ask for similar efforts.

Compromise

As a compromise, the Placement Committee took on some of COGLLI's mailing expenses and inserted
(Continued on Page 13)

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Job Hunt Exasperates Gay Students

(Continued from Page 12)

a new paragraph into the "Harvard Law School Placement Information" pamphlet which is sent to all recruiters. In conjunction with other sections addressing interviewer attitudes toward older students, couples, and the handicapped, the pamphlet explains that "fear that employers are unwilling fairly to consider their abilities as lawyers without regard to their sexual orientation" leads many gay and lesbian students to conceal "employment or extracurricular activities which might indicate their sexual orientation."

The statement goes on to stress the unfairness of this situation, and the Law School's policy that "sexual preference is irrelevant to a student's qualifications as a lawyer." It encourages employers who "harbor any lingering questions or uncertainties" to discuss these directly with the student.

COGLLI leaders remain dissatisfied with this response, emphasizing the particular factors which distinguish non-discrimination by sexual orientation from other forms. Nevertheless, COGLLI decided to go ahead with the mailing.

To impress employers with the

seriousness of the request, COGLLI sought approval by individual faculty members of an accompanying letter reiterating the Law School's policy and urging firms to respond favorably. In all, thirty-eight faculty members signed the joint letter, and many provided additional statements. The extent and sincerity of the faculty's response impressed COGLLI members. Said one member, "It would have been easy for them to not get involved."

Different Story

Response from the employers was a different matter. Although disappointed by the paucity of replies, COGLLI was heartened by favorable answers from many leading firms, including Morrison and Foerster in San Francisco, Covington and Burling in Washington, D.C., Foley, Hoag and Eliot in Boston, and New York's Hughes, Hubbard and Reed and Proskauer, Rose, Goets, and Mendelsohn, among others.

Some firms made equivocal responses. A few explained that such a "private matter" would never be discussed, a view described by a COGLLI leader as the "liberal" attitude that "as long as we don't

know about it, we don't care." Still others "played fast and loose" with the request, stating that they would never discriminate in violation of the law, a position that is not inconsistent with discrimination on the basis of sexual preference.

One respondent eschewed any such subtle approach. The senior partner wrote that the Committee "wheedles me to provide a happy and caring work environment for buggers and other artists of lubricity, as if the personal predilections, however squalid or eccentric, of an employee are of trivial concern in a law office," continuing that COGLLI and "these epicene apologists for your Faculty" are "claiming some privilege of overt, offensive deportment," and concluding that "in that respect, your School is both stupid and sordid." That firm is now off the Placement lists.

If gay and lesbian attorneys had only to worry about such occasional extremist beliefs, there would be no problem in general. But there remains a climate of apprehension where an interviewer's question about what topic a student did his thesis on, or an innocuous Monday-morning question to an associate of "What did you do last weekend?" creates anxiety.

Few Inquiries

The Placement Office reports that it receives few inquiries from students worried about whether they should conceal their sexual orientation in job interviews and résumés. This is not surprising, since even the most visible and vocal members of COGLLI generally do not even consider listing such information.

Placement officials don't know what they can do to overcome any existing prejudice, but Ben Schatz of COGLLI says the time has come when "the Law School has to decide whether to take a stronger stance when this situation continues in spite of the school's espoused non-discrimination policy."

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Building On Last Year's Protests

(Continued from Page 1)

"to better the legal education process not only for yourselves but for future generations."

The major pitfall, Nader cautioned, is believing that "at Harvard you become sharp by being narrow."

"Break out of your routines," he encouraged, "even if it's only for three or four hours. Wander around the prisons voluntarily, go to some factories, go to some agencies, the poor areas, the docks — and see what it does for you."

"No one has a ton of empathy. You've got to replenish it every once in a while."

Nader also warned of pitfalls in the attitudes of HLS students which may endanger the development of the learning process. "You guys have got it made the minute you get into this law school," Nader said, "and when you think you've got it made, you're done for . . . unless you can get yourself out of it. There's nothing worse than not to have a risk experience. Otherwise, you'll

never pioneer or break new ground."

As for the protests of the 1982-83 school year ("which most people in the country did not understand"), Nader saw students as "grappling" with former Dean Griswold's question of why students come to Harvard so idealistic and leave so much less so.

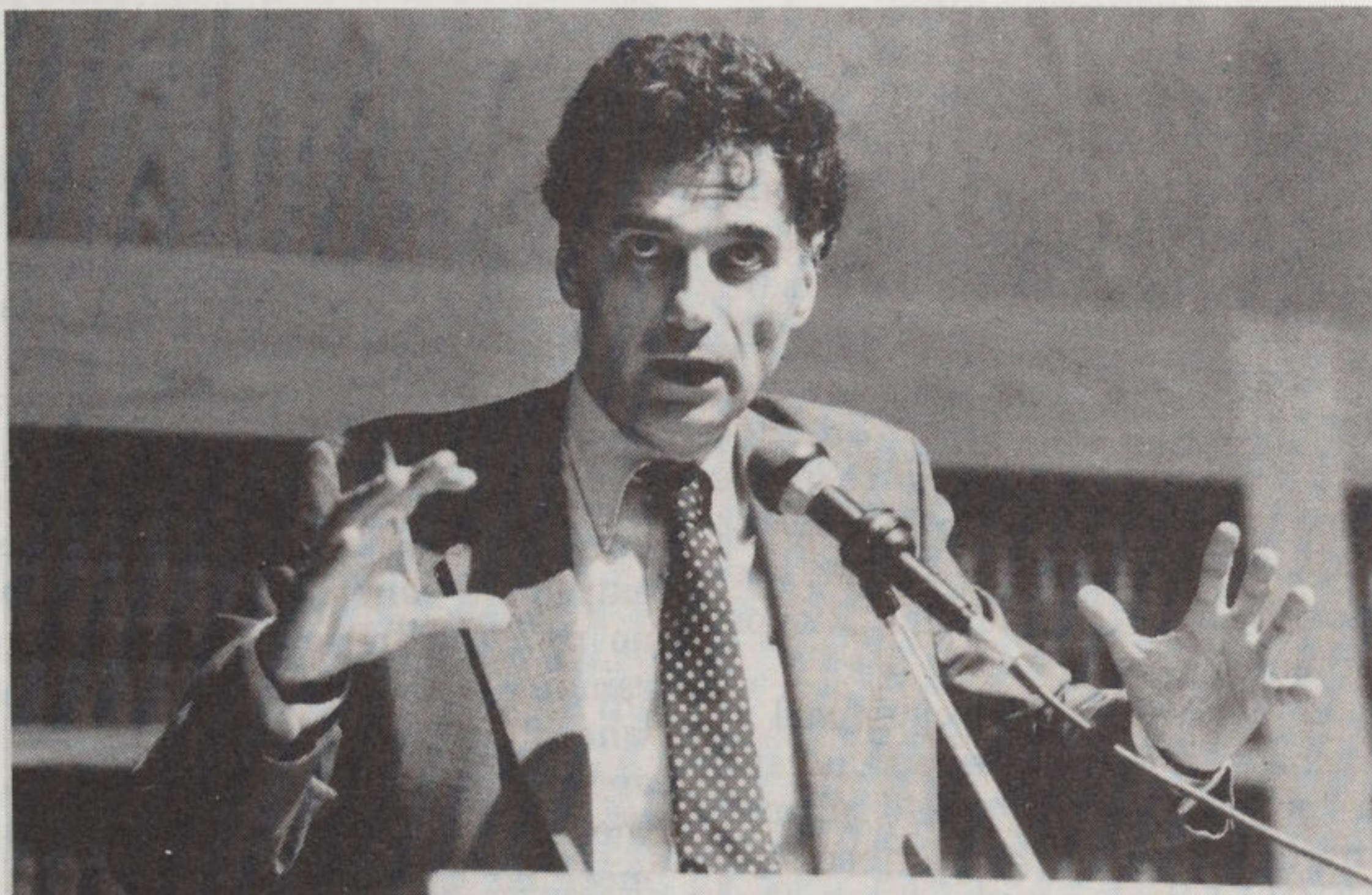
Nader said the desire for change only appears in cycles and "what students do about [the protests] in the next year will probably be all that's done in the next ten years."

To combat inactive phases of the cycle, students must institutionalize a process of reform by creating a continuous group, Nader explained. Yet, while shaping HLS, students should simultaneously expand its significance to the outside world. If not, internal strife may serve to tarnish the school's reputation.

Reform, in Nader's view, can be enhanced by reflecting on students' potential role toward society as well as students' potential roles for themselves and how students can broaden the "definition of knowledge" inherent in the law school curriculum.

Nader admitted that "there's a bit of metabolism built up from last year," and encouraged HLS students to act upon it for the purpose of building a legacy "so the people that come after you can build on your legacy and you will have instituted a process where students participate in shaping the educational opportunities, objectives, and experiences

(Continued on Page 15)



Adam Eisgrau

Former HARVARD LAW RECORD President Ralph Nader addresses a capacity Forum audience.

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Nader to Students: "Pressure Firms"

(Continued from Page 14)
of the Law School."

While commenting on his proposed general plan for progress, Nader also addressed several specific controversial issues existing at HLS.

On the topic of the student inquiries into faculty commitments, Nader said that "you have every right to find out where your professor is moonlighting." He questioned how professors can hold more than one job, "when they are primarily teachers of the law."

Legal writing and clinical education are issues which Nader considers important. He finds it puzzling that people who initiate these types of programs have to defend and justify their actions to a much greater extent than do those who initiate traditional courses. According to Nader, "If you can't institutionalize [legal writing and clinical education courses] in law school, then something more profound is wrong."

Nader's sharpest criticism was reserved for the practice of recruiting for summer internships by pri-

vate law firms.

"The summer jobs that second-year people are getting are clearly one of the most ingenious ways to undermine their public commitments ever devised. When you pay students \$900 a week, and they're in debt, it's very hard for them to say, 'I don't want \$900 a week, I want \$200 a week instead.'"

Nader suggested HLS should "put more pressure on law firms" who want to recruit on campus by charging the firms for rent of facilities during their visits and then using the resulting revenues creatively. Citing the picketing of a Washington organization by students in the 1950s as well as the successful effort by students to force a major national law firm to increase its pro bono work, Nader said HLS students should not underestimate their impact on firms which interview here.

During questioning following the lecture, one interested spectator and former Nader classmate, David Nelson, '58, who works for a large Cleveland firm, said, "The reason we charge so much for our services

is because we pay too much for the services of people who come out of institutions like this one when they are not worth that much." He asked Nader whether law firms can hold down salaries and "still attract the quality of people we attract now." Nader responded: "I don't know."

The Tragedy of '58

"It was a tragedy," said Nader of the graduates of the HLS class of 1958, "to see most of these extraordinarily diligent and bright people coming out of law school and trivializing their future careers ... when at the time there were just umpteen challenges for their talents."

"Look at the problems we're building up today: urban deterioration, discriminatory housing, city hall corruption, inequities of the tax code, product hazards, behavioral problems such as alcohol and drug abuse ... and more. The defaults of the past have come rushing in on you, now, rushing with greater and greater momentum."

"Who is going to be doing this work," Nader asked, "if most of you, 87% of you, are going to go into private corporate practice?"

At an informal meeting later that afternoon convened at Nader's request, Nader focused on the issues of coalition building, organizing strategies, and the co-opting powers of the liberal state. "This Law School serves one purpose," Nader informed the attentive group of about 50 students, "and that is to serve the corporate establishment of America."



Sports Quiz

Note: In recognition of the stellar performance in the World Series by previously unheralded Rick Dempsey of the champion Baltimore Orioles, this week's sports quiz asks you to identify relatively obscure major leaguers who rose to the occasion in the Fall Classic as well as the unsuspecting teams which were victimized by their heroic exploits. [Sorry, Ger & Nan]

1. In 1969, this utility infielder who had hit .215 with two home runs during the regular season capped his five for 11 Series performance with a 375-foot round-tripper to tie the fifth and deciding game. Name this member of the miraculous Mets and the powerhouse which was humbled by the amazing play of the New Yorkers.
2. A virtual unknown on a pitching staff led by Sandy Koufax and Don Drysdale, this rookie won two games while saving another two in the 1959 six-game triumph by the L.A. Dodgers. Name this right-hander and the Series loser which won its first pennant in 40 years that season.
3. Although this righty recorded only 11 shutouts over the course of his 14-year

major league career, he will always be remembered for the 27 batters he faced and retired with 97 pitches in game five of the 1956 Series won by the Yankees in seven games. Name this hurler and the team which he helped to dethrone.

4. This diminutive rookie, who had 10 singles in 39 games for the Yankees in 1978, replaced the injured Willie Randolph for the six games of the Series and led all hitters with a .438 batting average while driving in two runs and scoring four. Name this infielder who was back in the minor leagues the following season and the team which was forced to wait another three years for revenge.
5. In the 1954 World Series, this outfielder collected four hits and seven RBIs in six plate appearances, including three key safeties pinch hitting for Monte Irvin in each of the first three games. Name this career .253 hitter and the team which had amassed a record 111 victories during the regular season but was upset by the New York Giants in the four-game sweep.



(Answers on Page 9)

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Medieval Punishment Often Severe

(Continued from Page 4)

He outlines seven basic types, including trial by battle, trial of peers, and summary judgment. Just as the last should not be confused with F.R.C.P. 56, so too the punishments detailed for those found guilty of treason were not restricted by the Eighth Amendment.

Genitalibus Amputatis

Fortunately, some of the more gruesome accounts remain in untranslated Latin, although it does not take much linguistic imagination to turn "*genitalibus amputatis*" into English. Pages 116-119 should be skimmed by those weak of stomach.

Confiscation or forfeiture of property often went hand in hand with corporal punishment. This practice enhanced the power of the crown not so much by increasing its real wealth as by giving it bargaining chips to dispense as rewards to loyal subjects. It also helped keep the nobles — the most rebellious segment of the French population — tractable, by leaving them in constant fear of having their land seized.

One cannot help admiring the ruthless ingenuity of the crown: making an activity treasonous gave

it jurisdiction over the offender, and conviction brought to the crown his land, all of which naturally led to an increase in power. Cuttler develops this thesis brilliantly, although it is only in the second half of the book that the reader is able to see this pattern in practice.

It should be noted that although this book is first and foremost a work of scholarship, it is joyously bereft of those trappings which often make "intellectual" books unreadable. The book is a revised version of Cuttler's Oxford D.Phil. dissertation, and is designed as much for the curious, intelligent reader as for the "intelligentsia." As such, the footnotes limit themselves to source references (a glance at which demonstrates the massive research task this work entailed); the use of French and Latin, which too often clutters otherwise valuable books with unintelligible gibberish, is kept to a minimum.

Trove of Information

Furthermore, although the book's title implies a fairly limited audience, even the most "modern" law student can garner pleasure, insight and a trove of information from this work. The book opens up a new world: a world which is quite different from our own, but one of

which vestiges might still remain. The book is an introduction to a legal system foreign both in time and place to our own, and to a legal doctrine which has all but disappeared from American jurisprudence. One implication of the book — the *use* of law — is thought-provoking even in a contemporary setting.

Prosecution of Treason

Part II of the book traces the prosecution of treason in actual trials between 1328 and 1494. The dominant historical event of this period, the Hundred Years War, elicited various responses from the monarchs of France in terms of their use of treason as a device to suppress the long series of uprisings which occurred.

Through his narrative discussion Cuttler shows how the extent and nature of the crown's responses shed light not only on political relationships between the crown and other groups, but also on the characters and policies of individual kings.

In the final chapter on "political" treason Cuttler shows how, in the hands of Louis XI, treason became a devastating weapon. It was in part, Cuttler argues, the use of treason that made Louis XI the most feared of later medieval kings.

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