

# HARVARD LAW RECORD

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25 CENTS

## Questionnaire Results: Few Profs Disclose

By Brad Hudson

Six HLS professors have responded to a request made by the Law School Council asking faculty members to disclose information concerning their professional activities outside of the Law School.

The six professors, Claire Dalton, Andrew Kaufman, Martha Minow, Richard Parker, David Shapiro and Daniel Tarullo, made at least partial disclosure of the information requested by the Council. A seventh, Prof. Frank Sander, replied to the request with a letter explaining that he did not plan to make any disclosure until the faculty had explored and discussed the issue.

### Council Encouraged

According to Council President Kent Markus, 3L, the Council was "encouraged by anybody responding or reacting in any way" to the disclosure request. He said that the disclosures made and the comments on the issue of disclosure included in the responses were helpful to the Council.

The disclosure request was made to the faculty in a letter last April. Accompanying the letter were disclosure questionnaires that requested four types of information in four broad areas of professional activity (see box p. 12). Basically, each professor was asked to reveal the substance of each outside commitment, the time spent on each,

(Continued on Page 12)



*Pre-Ames participants caught flat-footed at oral argument? See story, p. 6.*

## Review Affirmative Action Plan Achieves Mixed Results

By Louis J. Hoffman  
and Steve Cowan

For the first time, the entire *Harvard Law Review* membership has been chosen while an affirmative action plan has been in place. The plan was adopted on Jan. 13, 1982 by the editorial board by a vote of 41 to 35. After two years of selection under the plan, reactions to its success are mixed. The plan has apparently succeeded in obtaining more minority members, but several problems remain.

The *Review* has been unable to attract enough women and minorities to match school-wide proportions. According to the most reliable information available, the *Review* contains 13 minority editors out of a total of 92, or 14 percent. Minor-

ities constitute 19 percent of the last three entering classes at the Law School. The twenty-one women on the *Review* constitute only 23 percent of its membership, while HLS is nearly 34% female. (See box p. 8.) Women do not participate in the affirmative action plan.

Tony Thompson, 2L, president of the Black Law Students Association, said that there were few minority members of the *Review* in the past because "the purpose of *Law Review* was to segregate, both in race and in other factors. *Review* membership used to be an indicator of status in the academic world and prestige in the law firm hiring world."

Thompson explained: "The results of the membership process in the

(Continued on Page 8)

# 'Urgent Action' On Amnesty Agenda

By Beth Bergman

*On Sept. 13, 1983, Pedro Flores Pena, a law student at the University of El Salvador, was detained by four men in a pick-up truck believed to be members of the government security forces. Pena, an active member of the Superior Council of the University, was taken to San Salvador and has not been seen since.*

*Hugo Francisco Carrillo Cabrera, 31, head of the Foreign Relations Department at the law faculty of the University of El Salvador, was similarly detained by armed men believed to be members of the government police forces as he was returning home from the university on the afternoon of Sept. 14, 1983. Carrillo is married and has three children. The whereabouts of both men are unknown.*

The reasons for the disappearances of Flores and Carrillo were the focus of Amnesty International's (AI) latest Urgent Action appeal telex. AI suspects that these disappearances and numerous other arbitrary arrests, incidents of torture, and extrajudicial executions that have been carried out against members of the teaching profession by the government police and military forces are attempts to dismantle the country's teachers' union (ANDES). ANDES is considered by some within the Salvadoran government to represent a source of opposition to the authorities.

## Urgent Action

AI developed the Urgent Action technique in order to facilitate immediate international appeals for persons who are victims of torture, prisoners facing death sentences or

critical stages in trials, and prisoners in need of medical treatment. Urgent Action participants are asked to send telegrams or letters to the authorities in the countries where violations of human rights are taking place.

The Harvard Law School Human Rights Group (HLSHRG) originated as a campus branch of AI three years ago. Since then, the organization has grown in size and scope. Last year, HLSHRG focused on case work forwarded to members by AI and awareness activities among law students and faculty about human rights abuses internationally.

Special attention was given to the human rights situation in the Philippines, resulting in a letter signed by 44 members of the Harvard faculty that urged President Marcos to investigate allegations of human rights violations prohibited by the Philippine Constitution and the United Nations covenants.

## Three Objectives

AI began in 1961 with a newspaper article calling for the impartial and peaceful release of the thousands of men and women imprisoned throughout the world for their political and religious beliefs.

Now a permanent, independent worldwide movement, AI's mandate has three objectives: the release of prisoners of conscience — men and women detained anywhere for their beliefs, color, sex, ethnic origin, language or religion who have not used or advocated violence; fair and prompt trials for all political prisoners; and the elimination of the death penalty and what AI has judged to be forms of cruel, inhuman or degrading treatment or punishment.

The substance and scope of the AI mandate is based largely on provisions of the United Nations Universal Declaration of Human Rights. The disappearance of Flores and Carrillo after detention by government security forces is a violation of Article 9 of the Declaration: "No one shall be subjected to arbitrary arrest, detention, or exile."

The Urgent Action telex is only one of nearly 15 major programs within AI. Research, case work, campaigns for the abolition of torture and death penalty, regional action networks, country campaigns, missions, and human rights education comprise most of AI's resources. Through its research arm, AI is able to collect, analyze, and monitor violations of human rights around the world.

There are over 280 "adoption groups" and 180 "campus groups" in the U.S. that undertake case work for prisoners. Case work involves sending appeals to governments, writing letters to prison authorities, visiting embassies, organizing petitions and public activities, and helping the prisoners' families by raising money for legal fees and medical costs.

## New Program

While continuing its work as a campus network with AI, the HLSHRG is developing a new program of clinical and research projects utilizing university resources. Research topics outlined by HLSHRG presently include human rights and development, human rights and international economic order, immigration and refugee issues, the ratification of international covenants, rights of indigenous peoples, labor and agrarian reform, and the impact of American human rights policy abroad.

HLSHRG sees the eventual establishment of a human rights resource center at Harvard as a clearinghouse and catalyst for research opportunities and conferences by visiting fellows, scholars,

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(Continued on Page 14)

HARVARD LAW RECORD

# Candidate Hollings Campaigns on Campus

By Lee Christie

"The question is not whether *you* are better off, but whether we are better off as a nation than we were four years ago. Too often we've appealed to the individual interest rather than the common good." With pronouncements like this one, Sen. Ernest "Fritz" Hollings (D.-S.C.) brought his presidential campaign to the Harvard Law School Forum, with a speech that blasted deficits, Reaganomics, expensive weaponry, John Glenn, quick-fix "industrial policy," and the involvement of U.S. Marines in Beirut.

Hollings opened his remarks with both barrels aimed at his Democratic rivals, Walter Mondale and John Glenn. Of Mondale, Hollings repeated the familiar charge that politicians who make too many promises to interest groups lose the ability to control government policy and government spending.

## Vitriol for Glenn

But Hollings saved his real vitriol for Glenn, reciting a list of Glenn's apparent flip-flops on important issues, and calling the Ohio senator "the only centrist I know without a center." Hollings joked that Glenn

"must still think he's in space. He's orbiting the issues faster than he orbited the earth."

Hollings's main topic was economics, which he called the Democrats' "Achilles' heel in three of the last four presidential elections." Hollings voiced opposition to the overreaching "industrial policies"

ping the defense buildup in the bud, and guarding non-defense programs against further cuts. The proposal relies on economic growth to boost tax revenue gradually over three to four years to close the deficit.

A state legislator at age 26, lieutenant governor at 32, and governor at 36, the 61-year-old Hollings refers



Beth Bergman

*Sen. Ernest Hollings hawks balanced budget.*

some other candidates have urged: "The prospect of some government board picking industrial winners and losers frightens anybody who has common sense."

Hollings's favorite economic idea is a balanced federal budget: "Shared sacrifice for a balanced budget is plank number one in any sound industrial policy." Like many observers, Hollings fears that \$200 billion deficits will push interest rates higher and stifle economic recovery.

## Budget Freeze

Hollings proposes a "freeze" on current taxing and spending policies, cancelling the third year of Reagan's "tax cut for the rich," nip-

frequently and fondly to his days as a state-level politician in South Carolina. Even after three terms on the Senate Budget Committee, Hollings retains a simple, almost folksy approach to spending control: "The only way to do it is the way they do it in city halls and state capitals when funds are scarce — take spending levels from last year's budget and write 'em into next year's budget."

Hollings sets himself apart from most other candidates by injecting genuine humor into his view of the world, and by stating positions specifically and clearly.

On education: "Each state needs a teaching commission to set standards and make teaching a true  
(Continued on Page 14)

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# Job Seekers Urged: Ask Hard Questions

By Risé Peters

Last week, the Women's Law Association distributed to all HLS students a list of questions to ask prospective employers. The questions contained in the WLA's list were composed by Mary Ellen Roy, 3L, chairperson of the WLA. They reflect the concerns of WLA members and others about minority hiring, family and personal life, and pro bono practices of corporate law firms interviewing at Harvard.

Chai Feldblum, 2L, WLA Executive Board member and placement monitor, says that this year's list arose from a questionnaire distributed after last year's interviewing season. Students were asked for their perceptions of the attitudes of interviewers toward issues which would strongly affect the quality of the students' lives if they decided to enter corporate practice. There was a common perception that many interviewers did not come prepared to talk about their firms' policies in these areas. Salary, travel, areas of specialty practice — yes. Paternity leave and minority hiring no.

## Student Inquiry Necessary

According to Feldblum, only if students inquire into these "sensitive" issues will employers realize that their policies in these areas are factors which affect law school students' choices of firms. Feldblum points out that, although the placement office supplies bulletin boards for student placement concerns, employs students as placement monitors to hear student complaints and questions, and has recently sent a memo concerning student interest in pro bono work to interviewing firms, such tactics have a limited effectiveness. It is easy for firms to discount the importance of an issue that is raised only by the placement office and 5% of the student interviewees. However, if the percentage were 95%, the issues would be impossible to ignore.

Beyond any responsibility which may exist for HLS students to work

toward improving firms' attitudes and policies, WLA thinks students owe a duty to themselves. The suggested questions touch on problems that may loom large just a few years down the road in corporate practice.

The WLA believes that even those students who do not feel comfortable asking the suggested questions during the tense initial interview should sensitize themselves to the issues raised. The information should be considered in deciding which corporate firm — if any — to join.

## Hostile Answers

It is true that the students who ask questions such as those the WLA suggests may get disconcerting or even hostile responses. One student who inquired into a firm's policy toward pro bono work was faced, first with the spectacle of an interviewer who could not remember any ongoing *pro bono* work at the firm, and then by the disarming comment, "No one ever bothers with that once they're hired . . . you're not really interested in that stuff, are you?"

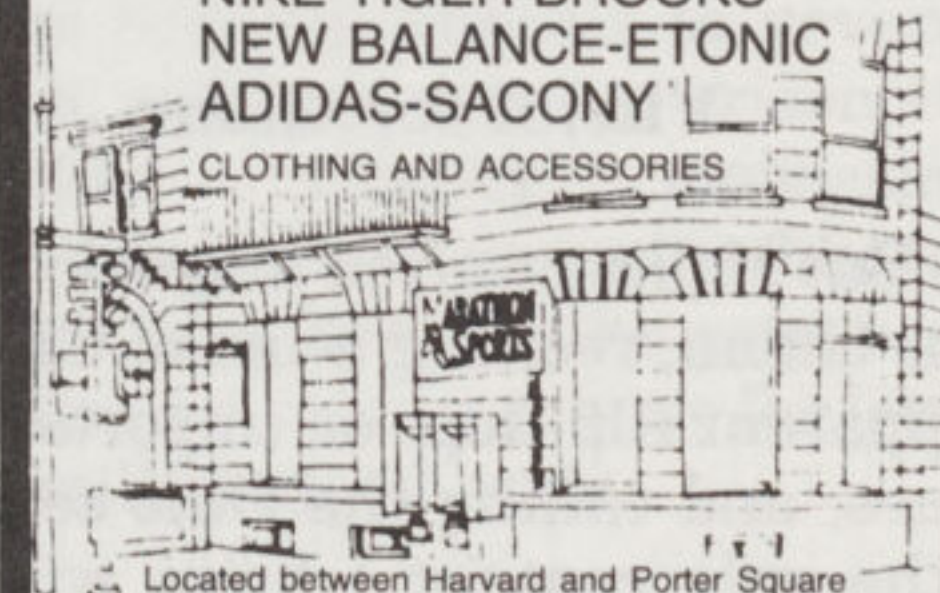
One 2L got only as far as, "I see you have no woman partners . . ." before the interviewer told her that

they were in the process of taking one on. The only difficulty, he said, had been that according to the standard format of their letterhead, her name would have been placed above that of a male partner, who had objected rather strenuously. He realized that simply to put her name at the bottom of the list might look bad to the firm's women associates, and when it was pointed out that the only feasible alternative — listing the names alphabetically — would leave her name above his while putting that of the senior partner at the bottom, he gave in.

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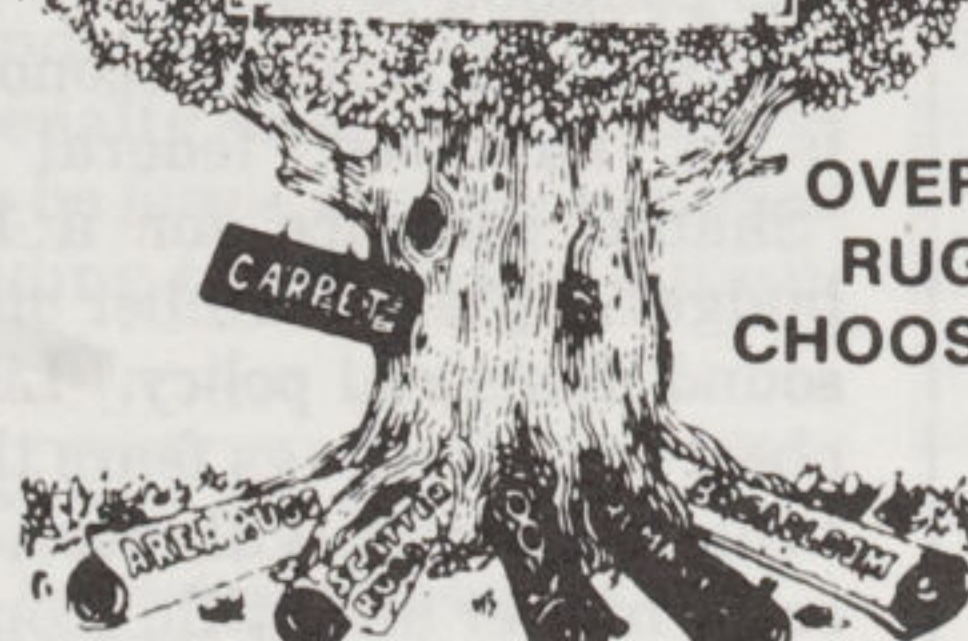
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# Coping With the Law School

By Andrea Hartman

Last Tuesday, Visiting Prof. Gerald Lopez, '74, addressed a group of about 40 students on "Coping with HLS as a Third World One-L." He described his own feelings of alienation as a law student, and suggested that third-world students talk to each other about their experiences in order to cope with HLS.

Lopez began the talk by relating his experiences as an HLS student. He arrived as a 1L in the fall of 1970. "I was 21 and had never really been out of Los Angeles," said Lopez. He added that he had not made any conscious decision about why he decided to go to law school, other than a vague notion of helping the Chicano community.

## **Alienating Atmosphere**

His 1L class, he recalled, had very few women and minority members: 10% were women, and there were 15 Blacks, seven Chicanos, and two Asians. The atmosphere was an alienating one.

"By the seventh week of school," said Lopez, "I was far along in the desire to protect myself." He felt threatened by the classroom situation. Lopez said he felt fear that he was failing in his classroom performance.

"What bothered me most was I kept on searching for ways to act,

to think, to talk in the classroom that would be approved of. . . . I wanted to be thought of as smart and insightful. . . . The more I tried to think about what that meant, the more confusing it was."

Lopez reacted to the confusion by making a political declaration to himself: he decided to fail to go to class, or to go to class deliberately unprepared and sit on the back bench. This would be his statement of opposition.

## **A "Foreign Culture"**

After his second year at HLS, Lopez decided to take a break. When he came back, it was on different terms. "I said 'I do want to become an attorney,'" and he sensed that there was something he could learn at Harvard. He said, however, that he realized that he would not feel a closeness with the institution itself, and that the classroom would be dominated by "a foreign [white male] culture."

When he came back, he said, "I tried to be myself." He decided to prepare for and pay attention in class, though he added that he was still unable to overcome the feeling

of being uncomfortable speaking in class.

"I was going to retain my culture," stated Lopez, "even while learning another one. . . . I was saying to myself that I was not going to be assimilated on your terms."

Lopez believes that "things are better [now]." However, he added, "I don't think it's as rosy as I would like it to be."

For example, Lopez pointed out that issues important to third-world students are not discussed in a lot of classes. He also noted that "speaking out in class is difficult," particularly when a student wants to take another slant on a conversation.

## **Suggested Tactics**

Lopez then suggested some tactics for third-world students. They should, he said, support one another in class. Perhaps most importantly, they should discuss their feelings about law school with one another. He acknowledged the feelings of hurt and alienation. The "important initial step," he concluded, "is just to talk about it."

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# Child Care for Harvard Tots

By Risé Peters

On Sept. 21, Prof. Richard Stewart's Administrative Law class was enlivened by the front-row presence of a group not yet initiated into the rigors of "legal reasoning": 12 four and five year olds from the Harvard Law School Child Care Center

a toddler program, a "middle" program, and an accredited kindergarten.

In addition to expanding its facilities, the center has also widened the scope of its enrollment. It accepts children from both HLS-affiliated and non-affiliated families (with some preference given to the for-

mer). This year, 20% of the children enrolled have a parent or parents affiliated with HLS, and another 45% have a parent affiliated with another school of Harvard University.

Education Director Elizabeth Tingley says HLSCCC is still dedicated to the provision of high-quality child care. In an effort to counteract the pressures that day-to-day life at Harvard places upon families, the staff tries to create a relaxed atmosphere in which great emphasis is placed on making the children feel comfortable, safe and happy, while challenging them to grow in their relationships with others.

## Tailoring to Fit Needs

The developmental philosophy of the center recognizes as important the changing needs of the children in each age group, and the programs are tailored to fill these needs. At the same time, there are common



Risé Peters

*Group to scoop subway loop?*

(HLSCCC). The children's field trip was arranged by Marsha King, 3L, who has a son, Tommy, at HLSCCC. The children later dropped into the offices of Alison and David Anderson, visiting professors, whose son Packy was also with the group.

HLSCCC was incorporated in 1971. It was started in one room by HLS students and faculty members who needed a close, high-quality day care facility for their children. They got space from HLS and funded the center with low-interest loans.

Today, the center takes up the entire first floor at 23 Everett St., and enrolls 40 children between 16 months and six years of age. It has

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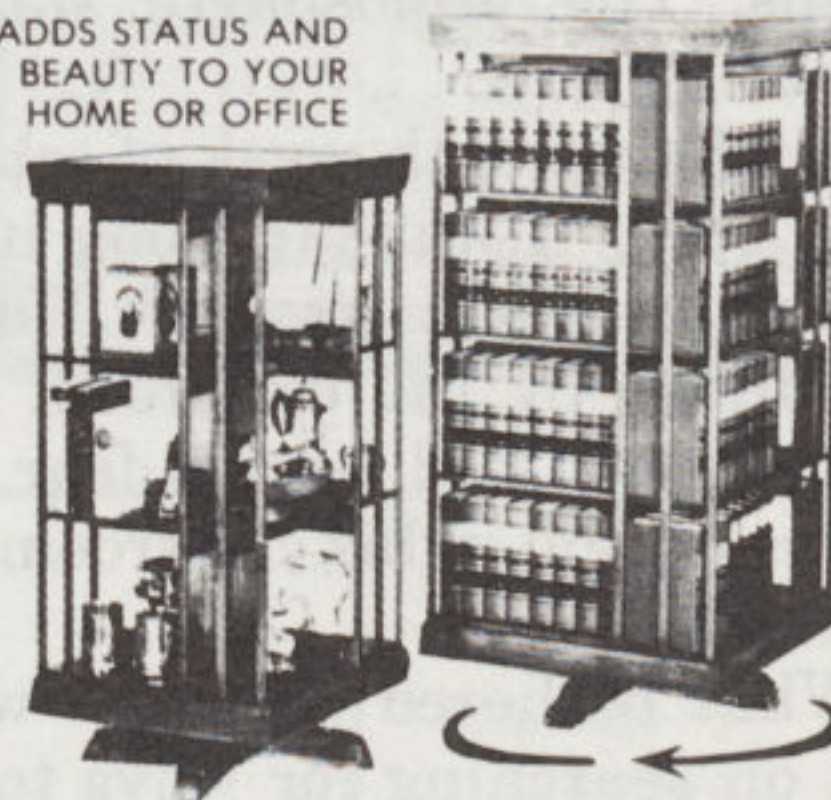
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# Handle With (Day) Care

aims — to help the children to have good feelings about themselves, to help them to feel comfortable with other people, and to teach them to express their own needs and desires and react to those of others in a healthy, positive way.

The program apparently pleases children and parents alike. Even on gray, rainy days the children seem energetic, happy, and excited by the activities offered. A mother whose child is now in his fourth year at HLSCCC said that the child care experience had been extremely valuable to her elder son. She said that the staff of the center had succeeded in providing a warm, safe and supportive environment for the children, in which "love, caring and respect for the child" come through at all times.

She also commented that, in spite of the benefits of the program, she has been unable to enroll her younger son in day care because the expense involved was prohibitive.

Child care in the Cambridge area is indeed expensive. Even though various schools within Harvard University provide space, utilities and landlord services to six day care centers free of charge, the most expensive item of overhead — labor

— must be paid out of tuitions.

Monthly fees for a fulltime toddler at the six centers range from \$560 at the Soldier's Field Park Children's Center (which provides hot lunches) to \$211-\$388 at the Oxford Street Day Care Center (which is a parent cooperative.) Only

take on a larger burden of student loans, to place their children into state-licensed, generally non-professional "family-care" programs, or to retain one spouse at home to care for the child.

Professor Daniel Tarullo, while recognizing that some students find



Risé Peters

*Tyke leaves trike for hike.*

HLSCCC and the Oxford Street center offer sliding fee schedules. Monthly fees for a fulltime toddler at HLSCCC range from \$340-\$469.

The price of child care in Cambridge may lead HLS students to

the cost of child care prohibitively high, sees as more serious the problem faced by HLS staff members, who do not have the prospect of the substantially higher future income enjoyed by HLS students. These staff members face long-term difficulty, which is related to a national trend which might be described as the "gentrification" of professional child care.



Risé Peters

*Guard in the yard . . . working hard?*

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# Many Criticize Review's Plan, Results

(Continued from Page 1)

past and the need for an affirmative action policy indicate the de facto racially exclusionary policy that the *Review* has had." As in admissions, "certain backgrounds and experiences that minorities are less likely to have had" increase the chances for a non-minority to become a *Review* member, Thompson said.

Scott Nelson, 3L, the president of the *Review*, had a similar idea of why the *Review* has had a lower than proportionate representation of minorities. Nelson attributed this underrepresentation "to the fact that the criteria of achievement that the *Review* makes relevant to selection relate to skills that systemic biases in our society impede the ability of minorities and women to acquire."

Prof. Richard Stewart, who chairs the faculty Ad Hoc Committee on Law Review Selection, was not sure why minorities were underrepresented, "because we don't have the data to make firm conclusions."

## Anomalous?

Professor Charles Fried agreed with this assessment. The *Law Review's* affirmative action plan "is not a very candid program. It does not identify itself as what it really is," said Fried. He feels that the plan results in "anomalies." Although Fried emphasized that the confidentiality surrounding the *Review's* plan prevents testing its success, he states, the plan is "so Byzantine and so coopered up with political compromises" that it is "entirely possible that the beneficiaries of the plan are rather implausible candidates." Fried feels that rather than achieving its ends the *Law Review's* affirmative action plan may choose candidates based upon simple "bureaucratic designation."

Additionally, Fried feels that affirmative action within the Law School is inappropriate. "I strongly support affirmative action in Admissions, but within our community it's very wrong . . . once we have a

community we should be color-blind. We don't do it when we grade exams."

Another of Fried's complaints is that the *Review* is not edited by experts. He feels it is "grotesque that the leading scholarly journal in a scholarly field is staffed by students." Further, he feels that the quality of the *Review* has diminished since the introduction of the writing competition. Now, he feels, it has degenerated into a collection of the "miscellaneous opinions of neophytes." Although he feels the

racially segregated."

The affirmative action plan has had some effect in adding more minority members to the *Review*, Nelson felt. The number of minorities has increased over the past two years, Nelson said, but he noted that this opinion was based on his observations of the yearly *Review* photographs and mastheads, because no statistical records are kept of the racial breakdown of the *Review*.

Some increase in minority representation may have occurred even

## The Composition of the Harvard Law Review

|        | Caucasians | Minorities | Total     |
|--------|------------|------------|-----------|
| Male   | 64 (70%)   | 7 (8%)     | 71 (77%)  |
| Female | 15 (16%)   | 6 (7%)     | 21 (23%)  |
| Total  | 79 (86%)   | 13 (14%)   | 92 (100%) |

## A Comparison of Proportions of Minorities and Women

|            | Review     | HLS Students <sup>1</sup> | HLS Faculty <sup>2</sup> | HU Faculty <sup>3</sup> |
|------------|------------|---------------------------|--------------------------|-------------------------|
| Female     | 21 (22.8%) | 557 (33.6%)               | 11 (9.8%)                | 439 (12.8%)             |
| Minorities | 13 (14.1%) | 315 (19.0%)               | 8 (7.1%)                 | 205 (6.0%)              |
| Total      | 92         | 1656                      | 112                      | 3443                    |

<sup>1</sup> Includes all students registering as 1Ls in 1981, 1982, or 1983.

<sup>2</sup> Including professors, assistant professors, visiting professors, lecturers and researchers.

<sup>3</sup> Excluding annual appointments at medical school.

*Review* is more interesting now, its scholarship is less dependable. He does not, however, feel that affirmative action has caused this degeneration. It is a "rather sophomoric expression of the climate of opinion already established and I don't think it makes a bit of difference one way or another," adds Fried.

## Pleased With Diversity

Thompson was "pleased with the increasing diversity of the backgrounds of *Review* members." He noted, however, that although the *Review* was "moving in a good direction, it would take time. The problem with *Law Review* is that for so long it has been explicitly

without the plan, Nelson suggested, because of the general increase in minority representation school-wide. The proportion of women on the *Review* has been increasing for the past few years, and women are not covered by the affirmative action plan. This year, however, the percentage of women has decreased, Nelson noted, but he had "no interpretation" of this phenomenon.

Nelson agreed that the affirmative action plan is not perfect. "Personally, I think that my ideal *Review* would have a significantly larger number of minority members on it. I'm not sure that the plan was calculated to produce that result." He added that the plan "was not intended to significantly in-

# Minorities Underrepresented on Review

crease the size of the *Review*." Therefore, the number of minorities admitted through affirmative action was unlikely to increase significantly in future years.

Thompson felt that there were several problems with the affirmative action plan. He characterized the process as "asking a group that

underrepresented is sufficient. It is enough to say the three words 'I am whatever.'" Nelson added, "We're not asking people to submit themselves to evaluation of a sob-story. The crucial information is about group membership."

The committee has taken this position because the members do not feel qualified to judge such stories, and because they recognize that people are uncomfortable in providing this information. Only in marginal cases would the personal statement be a particular advantage, Nelson thought. "Our intent in asking is to allow a judgment to be made in particular cases."

## We Want More

Nevertheless, Nelson did say that he would like to see a significant increase in the number of minorities who fill out the personal statement. "I think it would help us if we had more candidates filling out the statements, but I do not think that we've been unduly impeded by applicants not filling out forms."

The second-year minority student suggested that another reason many minorities may not complete the personal statement is that "the present plan assumes that something is wrong with your education that you need to explain. Maybe

everyone should fill out the form, identifying special benefits that he or she could bring to the *Review*, just like the Law School does in admissions."

## Bad Taste

That student also noted, "Because of this sort of affirmative action, many people assume that minorities are less competent. This plan leaves a bad taste in the mouths of those who are supposed to benefit from it."

Aside from the stigma, another criticism leveled at the affirmative action plan is that it is too complicated. Thompson worried that many minority students do not understand the plan. "The exact guidelines and process need to be explained by those making the decisions," he said, so that interested parties can comment and understand the process.

The *Review* plan states that it "strive[s] to choose for membership on the *Review* a number of applicants that significantly represents historically underrepresented groups in the student body." However, "No applicant will be chosen if his or her grades or writing competition entry do not adequately indicate to the Membership Commit-

(Continued on Page 16)



Risé Peters

Law Review President Scott Nelson, 3L

is admittedly part of a segregated process to make decisions." Thompson felt that the *Review* had "a lack of experience and knowledge necessary to decide these questions."

## "Explain Your Life"

One student, a 2L, noted that fellow minority students do not complete the *Review's* affirmative action form, in part because of a sense of uncertainty about revealing personal information. "Filling out that form is risky, and it reveals yourself. These are the types of things that you would only tell close friends. 'Explain your life in 50 words or less' is difficult to do, and you might not make it anyway." The personal statement form asks minority students to describe briefly obstacles they may have had to overcome.

However, Nelson stated that the *Review* had "made it clear to members of the minority community that an indication of membership in groups that have been historically



Risé Peters

Gannett House huddle — "issues" just won't go away.

# Filling the Vacuum

Only two faculty members responded in full to the Law School Council's recent request for disclosure of outside professional activities. Four faculty members provided partial responses (see story, page 1).

The argument advanced by those who oppose disclosure is that the Council's request is a violation of the privacy of faculty members. It is difficult not to appreciate the reluctance of faculty members to make public information regarding their personal incomes and time commitments.

Nevertheless, putting aside all arguments about the appropriateness of the LSC questionnaire as the forum for any such disclosure, one has to wonder why the response by the large majority of faculty members was complete silence. Those who attended last spring's tense student-faculty forum sponsored by the Third World Coalition will remember that a large number of faculty members raised their hands when asked if they would disclose such information. Many of those faculty members are among those who are now silent.

While the faculty has the right to a reasonable amount of privacy, students at HLS, many of whom are going into enormous debt to pay for their legal education (and for professors' salaries), have a legitimate interest in the requested information.

While a position on the HLS faculty is the perfect ticket for those who wish to engage in valuable scholarly work outside the classroom, teachers here are paid ostensibly to teach. For many HLS students, however, the classroom is only marginally related to whatever "learning" goes on here. As consumers, students have an interest in knowing what activities are competing with their immediate educational needs.

Heavy involvement in outside professional interests is a contributing factor to the inaccessibility of many faculty members, a condition which further impedes the educational process at HLS.

And from a political and intellectual viewpoint, don't students have some interest in knowing what their professors are up to professionally? After all, the law is a field where even the purposeful skirting of political issues in class by a professor is itself a political issue.

Perhaps Dean Vorenberg is right to have reservations about the Council's questionnaire. Expressing these reservations, however, while offering only the possibility of updated yearbook résumés, does not help fill the vacuum which has been left by the faculty's silence.

## HARVARD LAW RECORD

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## Fenno

Please type name and student number.

Fenno, 000-0000-1

Good morning, Mr. Fenno.

Good morning, your silicon chipness.

Today we will discuss the Wagon Mound case. Have you read it?

Actually, Australian films are much more entertaining than Australian cases. Have you seen *Breaker Morant*?

I'm afraid that I don't understand that. Please answer "yes" or "no."

Yes or no.

Cute, Mr. Fenno. Now, what was the cause of action in the Wagon Mound case?

You're really getting to be a nuisance.

That's right, there was a nuisance complaint. But we want to focus on the negligence action. With which negligence concept did the case deal?

Why are you afraid to end a sentence with a preposition?

No, that's not right. Please try accurately to answer the question.

And I'll bet you'd rather die than split an infinitive.

I'm afraid I don't understand that.

No, I'm afraid you don't understand. How could you? You're the last word in mechanical jurisprudence. You can't be a teacher of the law. You've never read the great legal writers: Blackstone, Holmes and Emanuel. You've never intimidated a cowering student who spent the previous evening watching *Hill Street Blues* instead of reading about the 4th Amendment. You've never even spent an hour in a faculty meeting discussing whether to discuss changing a paragraph in the Law School Catalog. Who would imagine that you, Pac Man with an inferiority complex, would be trying to teach me about law? It's beyond all bounds of foreseeability.

That's right! The main concept in the Wagon Mound case was foreseeability. Now, was the foreseeability concept in Wagon Mound a rule of liability or a rule of damages?

No, you still don't understand. You're going about this all wrong. You're too helpful and polite. You're in anytime I come to see you — I don't have to make an appointment. You don't harass me in front of my classmates. You have no activity other than teaching. You don't have even a trace of pomposity or arrogance. Do you understand what I'm trying to say?

Mr. Fenno?

Yes?

I've thought it over. Mr. Fenno, I've credited a dime to your account with Bell Telephone. Pick up the receiver, place it in my modem, and call your mother's computer. You don't have to tell her anything; I'll just send her a copy of your transcript. *Res ipsa loquitur* — you do understand that, don't you Mr. Fenno?

Mr. Computer?

What do you want now, Mr. Fenno?

That was much better. Stick with me, kid, and we'll have you tenured in no time.

☛

HARVARD LAW RECORD

# Letters to the Editor of the Record

## More Jobs

### To the Editor:

Don't forget guys, the more people that go for Public Interest Jobs (RECORD, Oct. 7, 1983, p. 6) the more room for those people looking for private corporate jobs.

Irving Teplitz, '34

## Tactless?

### To the Editor:

I am writing to protest the uselessly destructive criticism leveled at an individual actor's performance in the RECORD's review of "The Real Inspector Hound." The critic responsible for that article accomplished nothing by picking apart one person's ability, except to show that he writes with an appalling lack of tact.

Certainly, a reviewer should not feel compelled to make only positive remarks, but negative comments, particularly those aimed at an individual rather than at the play as a whole, should be made while keeping in mind that the Drama Society shows are student productions. Having one's performance sliced up takes the fun out of what should be a healthy, enjoyable extracurricular activity. The comments made by Mr. Thensted in one paragraph demonstrated a regrettable absence of consideration, and the fact that the RECORD chose to publish them reflects badly on the discretion of the editors. Compliments are appreciated, as is constructive criticism. I'm sure that everyone involved in the show was grateful for the generally favorable review, but singling one cast member out for attack served no purpose, especially given that the show was over.

Mary Lee Wolfe, 1L

## 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.

## Review Reform

### To the Editor:

Although I agree in principle with David Hoffman's recent call for an alteration of the *Harvard Law Review's* selection process (RECORD, Oct. 21), I am not in favor of his suggested change to a completely open magazine. More importantly, I am not convinced that his argument will stir anyone to action. While it is not inaccurate to critique the review in the context of its contribution to the hierarchy of the legal profession, real momentum for change will come from a recognition of what the presence of the law review with its current selection process means for HLS students' everyday life.

Having become a member of the law review as a 3L, I am in an unusual position to understand the ramifications of the present selection system. Even though I had not set "making the review" as a first-year goal, I remember feeling disappointed when I received my 1L grades and realized that I had not, in fact, made it. Surely, few of us escape this feeling; one does not get to HLS without being an academic achiever accustomed to success.

I also remember feeling a sense of incredulity that the selection process attached absolute importance to first-year grades. The existence of the writing competition seemed to be an institutional recognition of this absurdity, but only a half-hearted attempt to rectify it.

Long after these feelings had faded, I proceeded through second year constantly reminded of the law review's presence. In September, the fact that the persons who had made the review were easily identifiable was equivalent to a public announcement of who among us had done "better" than the rest. Any sense of "all being in this together" was lost. Worse, those on the review were physically and psychically separated from the remainder of the student body. They were sometimes too busy to attend classes, and even when they were in attendance, one sensed that they were preoccupied with the "more important" things they had to do. There seemed to be two almost distinct legal institutions across from Cambridge Common: the law school, for the majority of us, and the law review, for those who had been somewhat arbitrarily selected out from the rest.

This year, although I am now a beneficiary as well as a victim of the system, my conviction that the selection process needs change has not been diminished. Indeed, it has intensified as a result of the insights I have garnered from being on the other side. First, I experienced almost immediately what the words "law review" mean as a credential, obtaining a clerkship with a judge who would not have interviewed me two months earlier. I also learned that some judges disdain from

interviewing "mere" law review members and consider only officers of the review. Such extreme reliance on position, rather than on person, does us all a disservice.

In addition, I discovered that the correlation between good grades and writing ability is less than perfect. Though it is unusual, I saw writing on the review that must be worse than that of the average HLS student.

Something is wrong with a selection process that (1) divides the law school into two identifiable groups, causing elitism on one side and resentment on the other; (2) permits certain persons to put "magic words" on their résumés that result in their obtaining jobs for which equally qualified students cannot get serious attention; and (3) does not even uniformly result in the selection of persons best suited for the immediate task at hand.

All this, however, does not bring me to the same conclusion as Hoffman. Nothing we do at HLS is going to prevent employers from differentiating among students in some way — be it by institution, grades, or law review status. If we eliminate the latter criterion, the former two will simply take its place. Nor is it accurate to argue that some persons are not better writers or editors than others. Thus I do not believe that we should completely do away with a selection process based on merit. Rather, the process should be fundamentally altered to bring the importance of selection into perspective.

First, the top half or third of each law school class should be invited to try out for the law review. This would reward hard work and success during first year without being absurdly optimistic about the value of first-year grades. Second, each of those eligible for the review should be required to enter a writing competition in order to be considered for membership; the thirty-five or so winners of this competition would constitute the review's new editors. This aspect of the system would ensure several results. Only persons with the motivation to compete to be on the review would become members, which is an important characteristic in itself. Moreover, membership in the review would be a credential worthy of note by colleagues and prospective employers, but it would not rise to "magic word" status. Finally, persons on the review would have proven that they are capable of carrying out their immediate task — the publication of a highly regarded scholarly magazine.

Michael Seigel, 3L

## Sports Answers

5. Maurice "Rocket" Richard
4. Rob Carpenter
3. Michael Cooper
2. Mercury Morris
1. Steve Yeager

# Six Profs Disclose Outside Activities

(Continued from Page 1)

whether any fees were earned and the amount of those fees.

The questionnaires also asked for any information that professors wished to use to supplement the biographical information printed in the yearbook, and solicited comments on the issue of disclosure in general, and on the questionnaire in particular.

In its letter to the faculty, the Council expressed the following goals for the request:

- Enhancing student-faculty interaction by enabling students to identify faculty members who are engaged in outside activities of interest to students.

- Improving the quality of education by enabling students to evaluate their professors' theories and comments with an awareness of their outside activities.

- Informing students and other professors as to whether faculty members were following any applicable limits on time spent on outside activities.

## Disclosures Varied

All six of the professors who submitted disclosure information described the substance of their outside professional activities. However, only two, Dalton and Tarullo, provided all four sets of information requested by the Council. Kaufman declined to provide information about time, earnings and amount of earnings. Shapiro did not list time or amount of earnings. Parker omitted amount of earnings, while Minow did not list time.

Some of the professors responded to the inquiry about the general subject of disclosure and the form of the Council's questionnaire. None of the six gave an unqualified endorsement of mandatory disclosure of outside activities by professors, and some expressed reservations about the form of the Council's disclosure request.

Dalton supported some level of disclosure, depending on what was to be disclosed and how the disclo-

sure was to take place.

Kaufman thought the issue of outside activities merited concern, but he expressed two reservations about the Council's questionnaire:

"I think that the major responsibility for ascertaining the facts should be with the faculty and the Dean, and the University administration, which have official re-

## Summary of the Council's Disclosure Questionnaire

- I. PUBLICATIONS: Please list any books, articles, or papers published in 1982 or which are awaiting publication. Please include commissioned papers and research. Information on works in progress is welcome also.
  - A. Title
  - B. Place and date of publication
  - C. Fee or earnings? (Yes or no)
  - D. Amount of earnings
- II. OFFICES, DIRECTORSHIPS, BOARDS AND COMMITTEES: Please list any offices held, or boards or committees on which you served in your professional capacity in 1982, whether academic, governmental or private.
  - A. Name of organization
  - B. Position
  - C. Nature of duties (if not evident)
  - D. Time commitment
  - E. Earnings
  - F. Amount of earnings
- III. LECTURES AND CONFERENCES: Please list any lectures, or participation in conferences or seminars, involving travel outside of the greater Boston area.
  - A. Name of organization, conference or occasion
  - B. Nature of participation
  - C. Time commitment
  - D. Earnings
  - E. Amount of earnings
- IV. CONSULTING, REPRESENTATION, OR OTHER WORK: Please list any activities in the form of litigation, client representation, consulting or other professional work (such as arbitration, negotiation, etc.) not previously mentioned. (If you believe disclosure of a client's name would violate confidentiality, we invite you to describe the nature of the work and/or type of client.)
  - A. Name of client/organization
  - B. Nature of work
  - C. Time commitment
  - D. Earnings
  - E. Amount of earnings
- V. A copy of the biographical information in the current yearbook will be included with this form in the notebook. Please mention additional pre- or post-1982 activities that you consider to be most significant.
- VI. Would you support a law school policy requiring full-time faculty members to disclose their outside professional activities?
- VII. Comments on this form or the subject in general.

# Profs, Dean Discuss Disclosure Rules

sponsibility, and not with the Law School Council, which has no such responsibility.

"Moreover, I am unpersuaded about the desirability of the public distribution of results of the questionnaire that [the] procedure contemplates."

Shapiro declined to express a position on disclosure, required or voluntary, until more discussion about the issue could take place. He emphasized that "in providing this information, I am not taking any position on what general rules of disclosure, if any, are appropriate in an academic institution of this kind."

Minow simply said, "I do not feel comfortable endorsing a policy requiring faculty disclosure of outside professional activities."

## Strong Reservations

Perhaps the most interesting response to the questionnaire was a memo sent by HLS Dean James Vorenberg to the faculty shortly after the questionnaires were distributed. The memo stated: "My general reaction is that, while many of the underlying purposes of the questionnaire are important and should concern us, the project in its present form leaves me with strong reservations. I hope no faculty member will feel any pressure to respond."

In the memo, Vorenberg went on to say that "it is right that students want to know more about their instructors and that we should explore ways of adding to the limited information now available in the Yearbook and from other sources," and that this type of issue should be on the faculty's agenda this year.

"However," the memo said, "I have serious doubts that the questionnaire's approach is a good way to deal with these issues, and I do not believe that the significant impact on privacy involved in the broad disclosure of the information requested is justified by what is sought to be accomplished in asking for it."

Partially in response to the dean's memo, the Council is now organizing a student-faculty committee to explore different approaches to soliciting more information about outside faculty activities. The committee will be headed by Council member Maria Ontiveros, 3L; four students and four faculty members are being sought to serve on the committee. Vorenberg and Vice-Dean David Smith were invited to join the committee, but both declined the invitation.

mation beyond that provided in yearbook biographies, but felt that the form of such disclosure is still an open question. He suggested that he may set up a format, such as a looseleaf notebook, designed to provide more information about professors' outside and school interests.

The third component — disclosure of specific outside consulting and other activities focusing on clients and income — Vorenberg described as the "most troublesome aspect" of the Council's questionnaire. He

## Outside Activities: Principles

1. Outside activities should not interfere with faculty members' predominant professional commitment to teaching and scholarship, their availability to students and colleagues, and their responsibility to participate in the affairs of the School.
2. Faculty members should not devote more than 20% of their total professional effort to work beyond teaching, scholarship, and responsibilities to the School. There are obviously very difficult questions of definition here and, in the absence of detailed guidelines, the usefulness of this principle depends upon individuals being rather rigorous with themselves in applying it.
3. Faculty members should not be partners of law firms or be held out as "of counsel." They should not have offices outside the Law School. Nor should they have relationships with businesses or other organizations that could impose demands on their time and attention in conflict with their responsibilities to the School.

In discussing the Council's disclosure request, Vorenberg described the issue of disclosure as having three basic components. The first is concern over the accessibility of faculty members to students who want to see them. Students have expressed concern that professors are too busy with outside activities to have the time for sufficient contact with students.

While Vorenberg felt that this concern is important, he found no clear answer to it. As a result, he has asked the Legal Education Committee to look into ways to "provide adequate access and make it clear that [such access] exists."

Vorenberg found the second component, a desire to gain more information about the general interests and activities of the faculty, the least troublesome of the three. He saw a need to provide infor-

felt that such disclosure raises "serious issues of privacy," and that the dean should be the person to address questions of excessive or improper activities and intervene, if necessary.

## No Set Rules

According to Vorenberg, the school has no hard and fast rules governing the nature and extent of outside professional activities. However, over the summer, he distributed a set of "Principles Relating to Outside Activities" to give the faculty a set of "working principles" in this area (see box, above).

The school has no formal reporting system whereby faculty members inform the dean about outside activities. But Vorenberg said that he talks regularly with faculty

(Continued on Page 14)

# Human Rights Group Focuses on Law

(Continued from Page 2)

practitioners, and law students.

HLSHRG hopes to increase the availability of human-rights oriented clinical opportunities for students through summer and term-time internships with human rights organizations in the U.S. and abroad. Presently, the Harvard Human Rights Fellowships sponsor approximately 20 students each summer to work in such organizations.

Other special projects presently underway are a petition drive for

"Universal Amnesty for all Prisoners of Conscience," a worldwide effort to obtain signatures to be presented to the United Nations on December 10th (Human Rights Day), and a Soviet Union human rights research group.

Finally, HLSHRG's most ambitious project will be the organization of a forum on human rights issues this spring, with the likely topic of the forum to be the role of human rights in U.S. foreign policy under the Carter and Reagan Administrations.

So far this fall, HLSHRG-sponsored speakers have included a South African medical student working in human rights and the Director of the International Institute of Boston, Debbie Anker, an LL.M., who spoke on asylum and immigration law.

Tom Kellenberg, a IL who spent

three years working with political prisoners in Chile, will address the group at their November 1 meeting. On November 15, Dean Smith will discuss the future of human rights activities at the Law School.

Perhaps Julio de Pena Valdez, a labor organizer and political prisoner from the Dominican Republic, best conveys the message:

"When the first two hundred letters came, the guards gave me back my clothes. Then the next two hundred letters came, and the prison director came to see me. When the next pile of letters arrived, the director got in touch with his superior. The letters kept coming and coming: three thousand of them. The President was informed. The letters still kept arriving, and the President called the prison and told them to let me go."

☛

## Disclosure

(Continued from Page 13)

members — particularly those with outside activities — to stay aware of professors' outside activities and express any concerns that he might have.

Commenting on the very low rate of response to the Council's questionnaire, Vorenberg thought that faculty members were troubled by its form — the inquiry into areas expected to be private.

Vorenberg also felt that some professors may have thought that the disclosure movement had some confrontational aspects to it. The issues are legitimate, he said, and shouldn't be presented in a confrontational form.

The seven responses to the disclosure request, along with a sample questionnaire, the Council's letter to the faculty, and Vorenberg's faculty memo, are available for inspection at the Circulation Desk in the Langdell Library.

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## Correction

In last week's RECORD, the name of Robert Nassau, 2L, was misspelled as Rob Nanan. Nassau reviewed Simon Cuttler's book on medieval French treason law.

We regret the error.

## "The Other Fritz" Speaks

(Continued from Page 3)

profession. Base pay should go up \$5,000 generally and \$10,000 in the inner cities."

On trade: "We use law to 'protect' people from any number of hardships . . . but if you want to use laws to protect jobs against subsidized imports, people scream against 'protectionism.'"

On priorities: "I think the school-children of America are worth at least one weapons system."

### Watt Out of Order

Responding to questions from the sparse Tuesday afternoon audience (under 100), Hollings called James Watt's "two Jews and a cripple" remark "out of order." Mostly, though, Hollings thinks the Watt episode was "a sad commentary on values in Washington. [Watt] could desecrate the interior for three years and no one said a word, but let him desecrate the president's politics and, brother, he was gone."

Hollings grew truly agitated when a questioner raised the topic of U.S. Marines in Beirut: "I said

right at the start that if they were put there to fight, then [1,300 men] were too few. If they were put there to die, then there are far too many. The bottom line is that we do not have a mission in Lebanon."

Hollings has urged withdrawal from Lebanon since no one in the administration, including Secretary of State George Shultz, can articulate what goal the small Marine contingent is trying to achieve. Hollings charged that the conditions that led to the Marines' high level of vulnerability were obviously not military decisions but "political decisions that were made in the White House."

It is difficult to tell whether Ernest Hollings is serious about the White House or merely positioning himself for the number-two spot on the ticket. For the time being, though, he clearly sees himself as different from his party's other contenders: "I come from a wing of the Democratic party that's always been willing to pay the government's bills and still make strong provision for needed social programs."

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# Great Moments in the Law

## A Catty Tale

*As Halloween fast approaches, the RECORD takes "editorial notice" of the fact that not all black cats will necessarily suffer their reputation for bad luck in silence. The constitutionality of requiring the owners of a talking cat to license their pet prompted Federal District Judge Bowen to wax eloquent in two footnotes in 551 F. Supp. 349 (1982) on the fate of one such fabulous feline:*

1. In ruling on the motions for summary judgment, the Court has considered only the evidence in the file. However, it should be disclosed that I have seen and heard a demonstration of Blackie's abilities. The point in time of the Court's view was late summer, 1982, well after the events contended in this lawsuit. One afternoon when crossing Greene Street in an automobile, I spotted in the median a man accompanied by a cat and a

woman. The black cat was draped over his left shoulder. Knowing the matter to be in litigation, and suspecting that the cat was Blackie, I thought twice before stopping. Observing, however, that counsel for neither side was present and that any citizen on the street could have happened by chance upon this scene, I spoke, and the man with the cat eagerly responded to my greeting. I asked him if his cat could talk. He said he could, and if I would pull over on the side street he would show me. I did, and he did. The cat was wearing a collar, two harnesses and a leash. Held and stroked by the man Blackie said "I love you" and "I want my Mama." The man then explained that the cat was the sole source of income for him and his wife and requested a donation which was provided. I felt that my dollar was well spent. The cat was entertaining as was its owner. Some questions occurred to me about the

necessity for the multiple means of restraint and the way in which the man held the cat's paw when the cat was asked to talk. However, these are not matters before the Court and are beyond the purview of a federal judge. I do not know if the man whom I saw with the cat was the plaintiff Mr. Miles. . . .

2. That a talking cat could generate interest and income is not surprising. Man's fascination with the domestic feline is perennial. People of western cultures usually fall into two categories. Generally, they are ailurophiles or ailurophobes. Cats are ubiquitous in the literature, lore and fiber of our society and language. The ruthless Garfield commands the comic strips, the Cat in the Hat exasperates even Dr. Seuss, and who hasn't heard of Heathcliff, Felix or Sylvester? Historically, calico cats have eaten gingham dogs, we are taught that "a cat can look at a king" and at least one cat has "been to London to see the Queen." . . .

For hundreds, perhaps thousands of years, people have carried on conversations with cats. Most often, these are one-sided and range from cloying, mawkish nonsense to topics of science and the liberal arts. Apparently Blackie's pride does not prevent him from making an occasional response to this great gush of human verbiage, much to the satisfaction and benefit of his "owners." Apparently, some cats do talk. Others just grin.

## Worldly Kickers Unbeaten

The relatively unknown HLS soccer team, comprised of both American and foreign students, is currently in its fourth year of competition. Led by player-coach and ILS reference librarian Fred Chapman, the cosmopolitan coterie of kickers is undefeated after three games this season.

The squad started off on the right foot by defeating the Fletcher School of Law and Diplomacy 7-3. After a 1-1 tie with Boston College Law School, the HLS booters raised their record to 2-0-1 this past Sunday with a narrow 2-1 triumph over the Graduate School of Design.

In the Fletcher School game, the Law School team jumped out to an early 5-0 lead on goals by former college All-American Bancroft Gordon, 1L, and visiting scholars Philippe Sands and Stephen Murray. The defense shone in the B.C. contest as visiting instructor Guenter Frankenberg, Mark Stein, 3L, Kenny Rubinstein, 2L, and John Orgain, 1L, shut down the Eagle attack. Goalie Bruce McCall, 1L, continued to impress in Sunday's close contest.

HLS soccer players are looking forward to continued success when they tangle with the Harvard Junior Varsity squad and journey to New Jersey to do battle against the Tiger

All-Timers, a team consisting of former members of the Princeton Varsity. HLS's own version of the Cosmos will wrap up its season with a match against the archrival Harvard Business School.



## Sports Quiz

*Note: In an heroic effort to add to the hoopla surrounding the opening of the epic film The Right Stuff, this week's sports quiz pushes the outside of the envelope and challenges you to identify athletes whose last names, first names, or nicknames are in some way associated with the Tom Wolfe book.*

1. A battery mate for L.A. Dodger pitchers since 1972, this W. Va. native was a standout in the 1981 World Series and has connected for four home runs in Series competition despite floundering at the bat for most of his career, hitting a disappointing .203 this past season. Name this fine defensive catcher.
2. The holder of the Miami Dolphin single-game rushing mark with 197 yards against the Patriots in 1973, this speedster was part of the three-pronged running attack which broke the NFL team rushing record with 2960 yards in 1972. Name this fleet-footed halfback who sprinted for an even 1000 yards that season but ran into trouble with the law a while back.
3. A real find for the L.A. Lakers in the third round of the 1978 college draft, this

6'7" New Mexico graduate has come off the bench in recent seasons to spark the Laker fast break at both guard and forward positions. Name this slim slam dunk aficionado who should see more playing time in the aftermath of the Norm Nixon trade.

4. After playing in the shadow of Earl Campbell on the Houston Oilers, this Miami of Ohio alumnus came into his own when he was picked up by the New York Giants, carrying them to the playoffs after the 1981 season and still providing the better part of their offensive punch today. Name this number 26 whose achievements in 1982 were hampered by a contract dispute.
5. During this hockey great's 18-year career as a high-scoring forward with the Montreal Canadiens, he tallied 544 regular-season goals in addition to being named the NHL's MVP for the 1946-47 campaign and becoming the first skater to score 50 goals in one season. Name this ambidextrous hockey legend who was voted into hockey's Hall of Fame in 1961 after only nine months of retirement.

(Answers on Page 11)

# No Easy Solutions Seen for Review

(Continued from Page 9)

tee that he or she can adequately perform *Review* work. Grades will only serve as an indicator of ability to perform *Review* work if they are close to grades that would [otherwise] qualify the student for membership." To further complicate the rules, the plan allows the membership committee to determine the weight to be given the personal statements, yet also specifies, "The Committee will identify the most qualified applicants from each group on the basis of personal statements and either grades or writing samples."

Nelson admitted that some of the confusion was warranted. The affirmative action plan "was not a model of clear drafting — perhaps intentionally," he said. Nevertheless, the *Review* membership committee applies the "close" standard to the writing competition results,

using the results of the first round "as a factor in borderline cases."

"The close standard may specifically apply to grades only, but the distinction does not make much difference in practice," Nelson said. "We want to select only qualified persons."

## Five-Year Plan

Although most observers agreed that the plan had problems, they were not willing to suggest that it be repealed. Although Nelson "was not sure that this is entirely satisfactory," he stated that the affirmative action plan was producing approximately the result it was intended to produce. Nevertheless, he stated, "although it may be more limited than ideal, it was taken as a five-year plan, and it probably should be left alone rather than reopening the issue."

The second-year minority student felt that the problems were limited to the particular plan, and not to affirmative action in general. Nevertheless, that student was also unwilling to favor repeal. "If we drop this program today, how many minorities will the *Review* lose today, and what harm will that cause?"

Thompson stated that other methods of selection might increase diversity. An open *Review* would solve the problem, he felt.

Stewart said that the faculty Ad

Hoc Committee had not addressed the question of *Law Review* affirmative action because, "As Woody Allen says, 'I have enough trouble getting around Chinatown.'" Also, at the time the committee began its inquiry last year, the *Review* affirmative action plan was just getting off the ground. Finally, the committee felt that any selection system chosen could incorporate an affirmative action plan.

Stewart said that there was not enough information on which selection process would result in more minority applications and participation without implementing an affirmative action component. "The experience is too limited and the numbers are too small, if you try to compare the results of the grade competition and the writing competition," he said.

## New Idea

Stewart mentioned that the committee has suggested a combined plan, where results from both grades and from a summer writing competition would be used to select most members, with a few additional students selected on the basis of notes submitted for publication. He was unwilling to speculate on whether this suggested plan would produce a more diverse *Review* in the absence of an affirmative action plan.

Regardless of the outcome, Stewart felt that there were no perfect results. "Almost no one likes the existing system, and almost no one would like the existing system whatever it was," he quipped.

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