



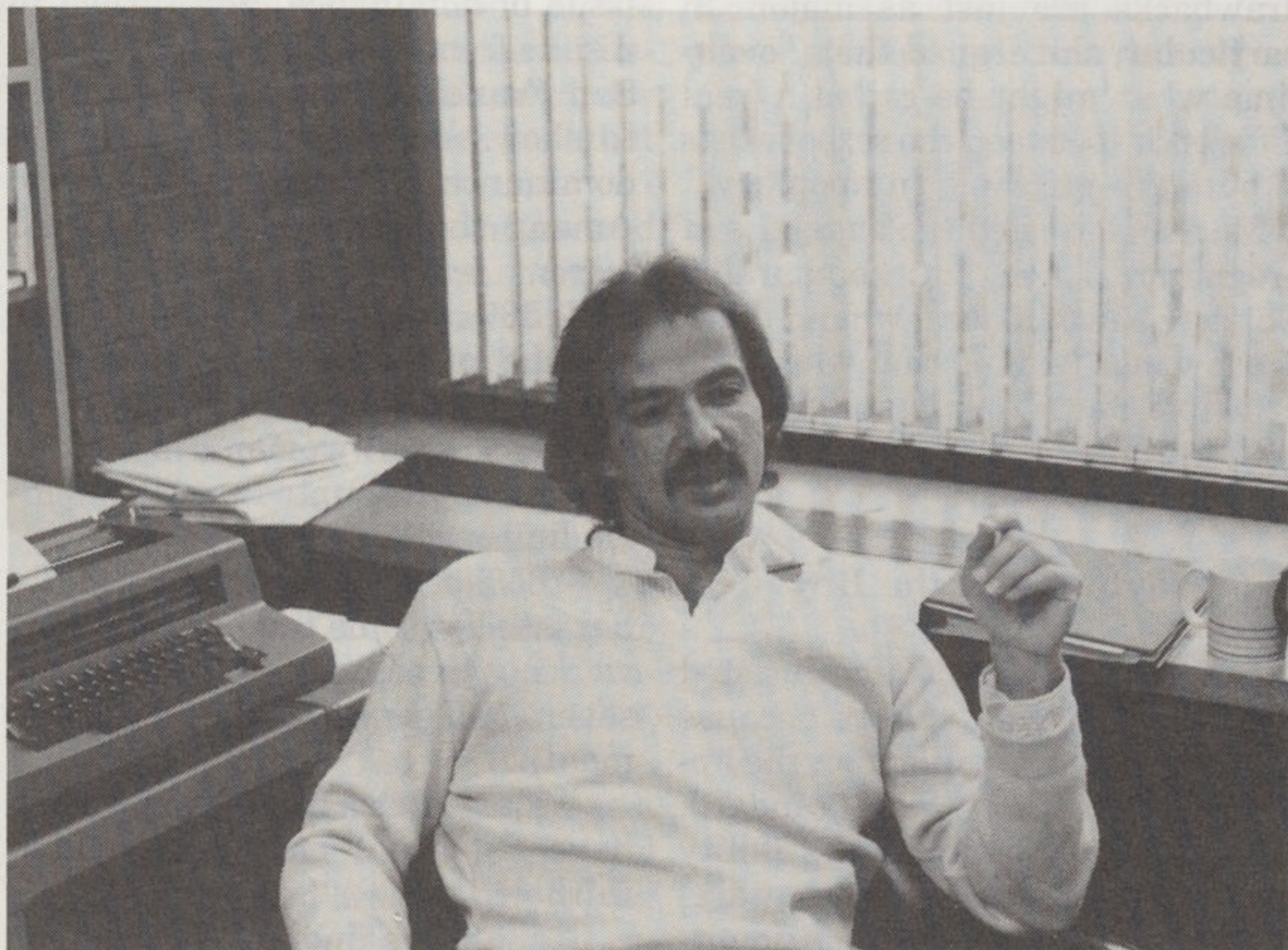
Harvard Law Record

America's Oldest Law School Newspaper

VOL. 79, NO. 6

NOVEMBER 16, 1984

25 CENTS



Ed Lopez

Gerald Lopez is considering the Law School's offer of a tenured position.

Lopez Offered Tenured Position

By Steve Cowan

Last week the University's Joint Committee on Appointments gave its formal approval to Dean James Vorenberg's recommendation and the faculty's vote of October 17 by offering Gerald Lopez, '74, a tenured professorship.

Lopez, who was a visiting professor at Harvard last year and is currently visiting at Stanford, is a tenured professor at UCLA. If he accepts the offer, Lopez will be the only tenured minority faculty member at HLS.

"I think it's a fine appointment," said Vorenberg, "and I hope he'll accept [our offer]. . . . He would add intellectually and would also bring

the benefit of his experience," added the dean.

Born and raised in East Los Angeles, Lopez received his bachelor's degree from the University of Southern California. After his graduation from the law school he clerked for a district judge in San Diego.

Along with an HLS classmate, Lopez then opened a small community law office in San Diego. This office was involved in a number of activities, including a certain amount of civil rights litigation.

Although he left that office to start teaching at California Western Law School, Lopez has continued

(Continued on Page 17)

Trespasser Masquerades As 1L

By Stephanie Young
and Greg Klima

On October 24, 1984, Dean of Students Mary Upton and Lieutenant Murphy of the Harvard Police Department ordered Steven Travis off the campus of the Harvard Law School. Travis had been attempting to sidestep the admissions process by attending classes and behaving as a regularly enrolled student, although he had never been admitted or enrolled.

Only by accident was his charade brought to an end. Travis had previously attempted to gain admission to HLS through the normal admissions process. He had applied for admission on three earlier occasions. Each time his application was rejected.

Evidently, Travis decided to attempt another means of admission. Travis simply began attending class. He told his professors that he had been admitted late from the waiting list and that his name had been added to the seating charts. "It wasn't even an issue with me," said Criminal Law Professor Charles Nesson. Nesson explained that the seating chart is an unofficial document and that students are free to change their place in class. Apparently, Travis simply added his name to the chart.

Travis attended all of the Section One classes, including Legal Meth-

(Continued on Page 14)

MacKinnon Blasts Male Domination

By Bruce Kelly

On October 23, University of Minnesota Law Professor Catharine MacKinnon presented her views on the proper approach to analyzing sexual inequality.

MacKinnon is known for her book on sexual harassment of working women and for her co-authorship of a controversial anti-pornography ordinance.

MacKinnon argued that the gender question is basically a question of the dominance of men over women. According to MacKinnon, effective social solutions to the problem must assess the issue from this perspective.

MacKinnon began her analysis of sexual equality by posing the question, "What is the 'gender question' a question of?" According to MacKinnon, "The historically, legally, and socially dominant answer is that the gender question is a question of difference." Within this view, said MacKinnon, there are two variants, which she labeled "sameness" and "differences" principles: "Women either are the same as or different from men."

But MacKinnon said that a second response could be made to the question. That is that, "the gender question is a question of dominance." She argued, "[T]he primary quality [of the gender question] is not difference, but that one [sex] is more than the other, on top of the other, better than the other."

MacKinnon criticized the sameness and difference perspectives as, "two different ways of holding man as the standard for women. You can be the same as man, up to the standard, or different from man, divergent from the standard. You also see men as setting the standards."

According to MacKinnon, the way that one approaches gender determines how one views the problem of sexual inequality. "If you see gender as difference," she stated, "the problem is sexism. If you see gender as dominance, male supremacy is the problem."

MacKinnon argued that the "sameness" principle appears most

often in the, "guise of gender neutrality." She said, "If you are a woman arguing under this view [you say], 'We can do anything you can do, . . . just get out of our way' . . . It is the single standard for both sexes."

Although she acknowledged that major legal battles have been won with this view, she insisted that its drawbacks are just as major. In particular, she argued that, "every time what might be called a 'real difference' [between the sexes] exists it puts the principle in apoplexy."

MacKinnon cited the examples of pregnancy leave and comparable worth wages in jobs where there are few men, saying that where the principle has no male standard by which to judge it cannot dictate a response.

Playing with the Boys

But, more basically, she insisted that the principle suffers because it has no ability to question the appropriateness of the male standard. "It provides women with the ability to play with the boys, but [they are] not able to question competition itself."

MacKinnon then addressed the "differences principle" which, she suggested, values the qualities of women as distinct from those of men. Again, MacKinnon recognized the contributions of this view to the feminist movement, particularly in elevating the consciousness of women and men and increasing pride in women's history and art.

But she said that one fault of this approach is that it tends to relegate women to the roles, voices, and attitudes imposed on them by male supremacy. "When you affirm a

difference where difference has been the way dominance has gotten up, you affirm the way dominance is," MacKinnon asserted. "The standard doesn't give you the dignity of [the] 'sameness' [standard]. The difference is a cover-up for the dominance."

MacKinnon insisted that sexual equality must be examined as an issue of dominance. She turned to results from a random survey of 900 San Francisco households in order to show the relationship between dominance and sexual inequality. Among the findings she reported were:

- 38% of all female minors are victims of some form of sexual abuse;

- 44% of all women are victims of rape or attempted rape, not including marital rape;

- 85% of all women are sexually harassed at some time during their working lives, with 15-25% in the severe category of physical harassment;

- altogether, only 7.8% of women have *not* been sexually assaulted in their lives.

Citing these findings, MacKinnon argued, "Nothing is being done about this. Is being targeted for this kind of difference what it means to be different from men? The status wherein we can be used and abused and humiliated . . . is not what some of us have in mind about sexual equality."

MacKinnon concluded, "The 'sameness' doctrine has confined women to seeking only what men have. The 'differences' doctrine only lets women confirm the roles men have imposed. I want to get their foot off our necks, and then we'll see in what tongue women speak."

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617) 495-4418. Subscription price: \$8.00 year mailed; \$10.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass.

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

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Benn Suggests Socialist Alternative for Britain

By John Fellas

The Right Honourable Tony Benn, a leading British socialist politician, was the guest speaker of the Harvard Law Forum on Nov. 8. Benn addressed the topic "Can Socialism Survive Reagan, Thatcher and Kohl?"

The outspoken Benn entered the House of Commons in 1950 at the age of 25 when he was elected Labour Member of Parliament for Bristol South East. He has held that seat for 33 years.

A controversy which threatened his political career first brought Benn to public attention in 1960. Upon his father's death he inherited the title Lord Stansgate. However, two constitutional rules made his title and his seat incompatible: the first, that peerages are inalienable; the second that a peer can sit only in the House of Lords. Having no desire to leave the House of Commons, Benn stood firm. But in 1961, he was expelled.

Following expulsion, he ran as a disqualified candidate in Bristol South East and was re-elected by a large majority. He was again expelled, but as a result of subsequent legislation, Benn was able to renounce his title and finally in 1963 he was again elected as the Member of Parliament for Bristol South East.

As a result of Prime Minister Margaret Thatcher's landslide victory in the June 1983 General Election, Benn again lost his seat. But he was not to be kept out of Parliament for long. Only nine

months after the General Election, he returned to the Commons as Labour Member of Parliament for Chesterfield.

On November 22, 1960, just after Lord Stansgate died and the controversy over Benn's peerage first arose, *The London Times* wrote of Benn, "[N]obody questions that if he is able to keep his place in the Commons, he is marked out for a distinguished political career."



Greg Peterson

Tony Benn

Benn started his talk by noting that the successes of Thatcher in England, of Reagan in America and of Kohl in West Germany have given the impression that Western political opinion favors right-wing views. He then identified what he believed were the constituent elements of these views.

First, said Benn, are the notions that enterprise has been bogged down by state bureaucracy, that unions are much too strong, that too much of the government's budget is committed to welfare payments and that union power and social welfare expenditures must be reduced if the rate of inflation is to be reduced. According to Benn, these views also urge more emphasis on law and order and insist that there exists a Marxist threat to the West which must be countered by military strength.

Benn presented the democratic socialist alternative as a challenge to these views.

Addressing the question of threats to the West, Benn asked his audience "Do you believe that the Soviet Union has ever intended to invade Western Europe?" Benn's answer to the question was "no."

Pointing out that such an invasion would set off a World War, Benn stressed the costs involved.

"[Until] the day I die I will never forget that 22 million Russians [died] to beat Fascism in Europe." Benn suggested that the USSR has built great military strength because it feels threatened by the USA, by China and by Western Europe.

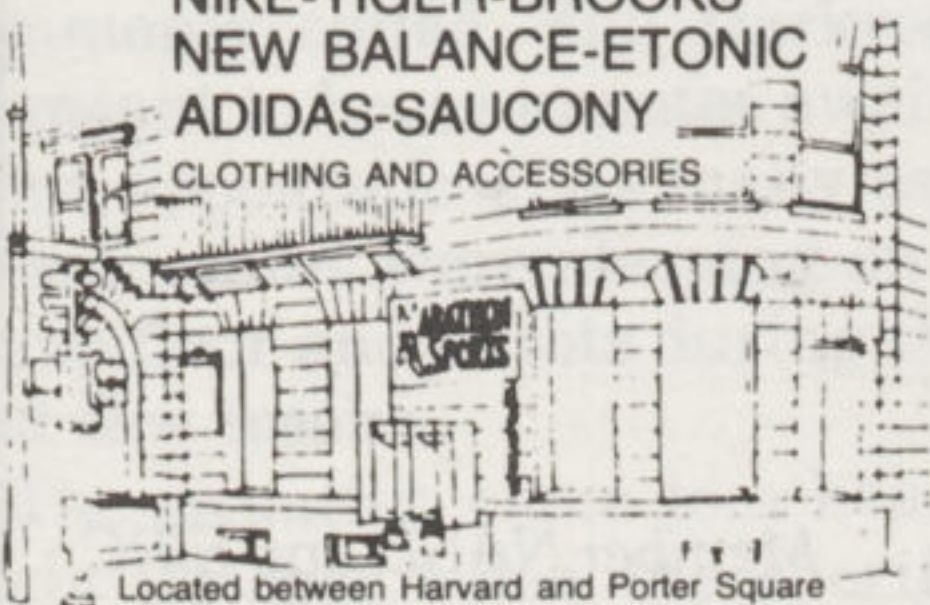
Citing the invasion of Afghanistan as an incident which those who perceive a Soviet threat often employ, Benn argued that one cannot conclude merely from the invasion of Afghanistan that the USSR aspires to world control. Benn insisted that there are reasons why a superpower will interfere with a country close to her borders which do not include the desire of that superpower to dominate the world.

Benn said that his point was supported by the United States' foreign

(Continued on Page 20)

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Faculty Hold First "Open" Meeting

By Steve Cowan

On November 14, two months into this academic year, the faculty held its first meeting to which students were admitted. Even these students, admitted by lottery, however, were excluded from part of the meeting.

The faculty first addressed the issue of complaints from a number of minority students concerning their fear that the Placement Office had scheduled black students to interview in segregated time blocks. June Thompson, the director of placement, described the issue and assured the faculty that her office had never scheduled students according to race, and, indeed, does not even have the capacity to do so.

The faculty next considered Steven Travis, the trespasser who has been impersonating a first-year student (see story page 1). Mary Upton related the events up to and including HUPD's abortive attempt to arrest Travis, and her fears about the security of the law school community.

She noted, however, that there remained some concern among the student body regarding the actions of the campus police.

Learning Experience

Upton reported that she had met with members of Black Law Students' Association and the Law School Council about how to avoid

a repetition of this incident. Dean James Vorenberg added his concern noting this was "an event all of us regret." Vorenberg expressed his hope, however, that it would prove to be a learning experience.

One suggestion was that in future inspections security personnel be accompanied by a member of the administration.

The final issue considered with students present concerned the Harvard Law Review's proposed new selection procedure. According to this new plan, the journal will eliminate its present recruiting system. Instead it will employ a single round writing competition. All students who seek membership will be required to participate in this competition. Half of the magazine's new editors will be selected on the basis of the writing competition alone. The remainder will be judged 70% on the basis of grades and 30% on the basis of their ability as editors.

Various members of the faculty

aired a range of views and asked a number of questions concerning the new plan and suggested alternatives.

The two primary issues of concern to the faculty were the timing of the journal's competition, and the relative de-emphasis of grades. Some professors were concerned that the writing competition was an inadequate index of ability. Others expressed the view that this was a step in the right direction.

In accord with the magazine's editors', these professors said their hope was that this would diminish the pressure on first year students and help to remove the Law Review from the business of certifying the four top students from each section.

Professor Abram Chayes wondered why supervision of a student organization was being discussed at a faculty meeting at all. Vorenberg responded that he felt it was an issue of enough concern to the faculty that it should be discussed by them.

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"BETTER BUYS AT BRINE'S"

SJC Declares Emergency at Suffolk County Jail

By Raoul Cantero

On October 26, Justice Paul J. Liacos of the Massachusetts Supreme Judicial Court issued a ruling designed to alleviate the deplorable conditions at the Suffolk County Jail. Justice Liacos declared that "an emergency presently exists" due to overcrowding at the jail and a shortage of space at other detention facilities throughout the state.

The ruling represents another segment in a long and tragic legal saga now in its twelfth year. In 1973, United States District Court Judge Arthur Garrity ordered that the conditions at the jail (also known as the Charles Street Jail) be drastically improved in order to meet constitutional requirements.

Among other things, the Judge ordered that occupancy be limited to one inmate per cell, or a maximum of 266 inmates at the jail. Previously, two inmates shared a cell twenty square feet smaller than the smallest law school dorm rooms. Judge Robert Keeton, who occasionally teaches at the law school, now monitors the case.

In order to conform with the court order, the sheriff of Suffolk County occasionally sent pre-trial detainees to state prisons while awaiting trial, or to other county jails within the state. Until recently, those detention centers had no problem accepting Suffolk County's surplus of inmates.

Within the last few months, however, the county has had an inordinate number of inmates awaiting trial, so many that other prisons and jails throughout the state reached capacity and could no longer house the county's excess detainees. Inmates were being housed in the small holding cell at the new courthouse building — commonly called "the Darkroom" — meant to house inmates awaiting court appearances. As many as fifteen inmates were sleeping on the damp floor and in cots during these last few weeks.

The situation came to a head in early October when the sheriff of Suffolk County refused to accept any

further inmates at the Charles Street Jail so as not to exceed the maximum number of inmates allowed by Garrity's court order. The attorney general sued the sheriff in the Supreme Judicial Court to compel the sheriff to accept the inmates. The sheriff in turn sued the mayor and City Council of Boston and the Commissioner of the Department of Correction, asking for funds and facilities in which to house prisoners.

As a tentative solution to the problem, Justice Liacos has ordered bail review hearings for inmates held on less than \$500 bond. Liacos allowed the Massachusetts House of Corrections at Deer Island to be used temporarily as a pre-trial detention center as well as a prison

for convicts.

As a last resort, he said in the order, the "Plant," a building at Deer Island that is presently abandoned, could be temporarily used to house detainees if it were brought into compliance with state and local standards and with Garrity's court order.

Declaring the holding cell at the new courthouse building, "unsafe," and, "an extreme risk to detainees of death from fire or smoke inhalation as well as danger of electrocution," Liacos refused permission to use it as an adjunct to the Suffolk County Jail.

In his 1973 order, Judge Garrity listed twenty violations of the Constitution in the maintenance and

(Continued on Page 15)

Profs. In Accord With Committee's Decree

By Vinny Pitaro, Shari Rabinowitz, and Stephanie Young

Last spring, the Legal Education Committee recommended that full-time faculty hold at least two hours of "office hours" each week. The Committee recommendation came on the heels of a spring 1983 survey by the Law School Council showing 92% of students seeking office hours for professors. Since then some students have expressed a concern that compliance with the Legal Education Committee decision has been only symbolic for some faculty members and non-existent with others. For example, one faculty member teaching a first-year section told his section earlier this fall that he did not keep official office hours, but was generally in his office.

Spot Check

An informal three-week spot check of a random selection of 16 faculty members, conducted by RECORD staff members, indicates that faculty members are desig-

nating reasonable office hours and almost uniformly abide by the hours they have set. The professors in our survey included Professors Areeda, (Harold) Berman, Byse, Clark, Dershowitz, Edley, Fallon, Miller, Shapiro, Tarullo, Tribe and Von Mehren.

The professors' designated hours range from a low of a two-hour period available by appointment only to three separate days with a total available time of 3 1/2 hours. Most professors appeared to set aside about two hours a week. Two hours is the *minimum* required by the Committee's vote.

RECORD staffers checked only to see whether each professor was in her or his office during each of the designated time slots. Almost every professor checked was available at the appointed times. Indeed, only one professor was not in during one of his two designated hour periods that week; on that particular day, he was not on campus at all for some unknown reason. Only one of the professors, Arthur Miller, had no posted office hours.

Just Desserts

Vincent Chang

"I can't believe I misspelled Rhoades [sic] scholarship on my resume," Drama Society member David Price, 2L, moaned as he prepared for a satirical job interview typical of the skits in *Just Desserts*, the HLS Drama Society's latest production.

Aside from parodying the interview process and Harvard Law life in general, *Just Desserts* presented a panoply of 20th century American music — songs ranging from show tunes to rock to country-western. Structured around a theme that producer Lou Fields, 2L, described as, "people getting their just deserts — what they want or deserve," the production attracted audiences averaging 100 people for each night it played (Nov. 7, 8, 9). The show played in the Ropes-Gray Room of Pound Hall.

With an energy that contrasted sharply with the languid atmosphere found normally in Pound Hall, *Just Desserts* proved to be a showcase for many of the law school's top performers. Producer Fields called this year's cast of the law school's annual musical review, "unusually talented," and the enthusiastic audiences seemed to agree.

Boney Fingers

In contrast to the 40-degree drizzle outside, the chorus' rendition of "Fun, Fun, Fun," complete with frisbees and beach balls, drew an enthusiastic reaction from the crowd. So too did the performance by Randy Eliason, 3L, and Nanette Schwersenz, 1L, of "Boney Fingers," a country-western number that would seem more appropriate in Nashville than at Harvard with its "refined Eastern sensibilities." An all female quintet's performance of "My Boyfriend's Back," which also met with wide audience approval, harked back to the early sixties.

Those skits which bore a direct relationship to law school life especially garnered plaudits. In particular, the skits "Law Trek" and "Mike Gavel, Private Lawyer," were extolled by those in attendance. Temple Dickinson, '84, and guitarist Charlie McGovern wrote "Law Trek," while Jan Miller, 3L, wrote "Mike Gavel."

"Law Trek" involved a satirical search for "Unger" on the planet Nylon. Captain Kirk, portrayed by Dan Daniels, 1L, and the rest of the crew chased Unger's lackies. The cast included three sets of twins

a well-written string of one-liners which starred Kerry Osborne, 1L. Osborne gave a strikingly professional performance as Mike Gavel, private lawyer. In his vaguely Bogartesque office, Mike is approached by Lola Palsgraf, played by Lauri Donahue, 2L, as he proclaims, "I make it a rule never to get involved with the clients." But after a passionate kiss from Lola, Gavel amended his statement, to the audience's delight, claiming, "Well, it's really more of a guideline than a rule."

Gavel proceeded in the skit to ex-



Francis Fitzpatrick

Drama Society members (l. to r.) Joe Tazewell, 2L, Barbara Overton, 3L, Tom Lorenzen, 3L, Stephen Koo, 1L, Jan Miller, 3L, and Susan Power, 2L, celebrate "Something's Coming" in the opening number of the fall revue.

("Everyone know we Nylons always come in pairs.") who could present both sides of any given issue. Thinking that such twins would make exemplary lawyers (double the billable hours), the Law Trek crew "rescued" some of Unger's subordinates, leaving Unger (Tom Lorenzen) free to escape through the, "subterranean tunnels — at the core of his philosophy."

Audience Favorite

The audience favorite of the show was unquestionably "Mike Gavel,"

plore some of the questions key to his profession: "What's the difference between ancillary and pendent jurisdiction? Why would someone name his kid Learned Hand? And why does this damned spotlight follow me wherever I go?" The skit ultimately revealed the "true" story behind the train station explosion which resulted in the obligatory Torts case of *Palsgraf*.

Other notable acts included the chorus' performance of "King of the World," a piece which cast member David Graber, 1L, described as giving the program, "a slight political

Just Desserts: A Real Treat

bent." According to Graber, "King of the World" attempted to drive home the point that, "the world must be careful because we could all destroy ourselves."

Graber himself appeared in a well-received solo of "The Best Man," a piece that complemented the crooning of Kyle-Beth Basson, 1L, in "Signing Off," the heart-rending rendition of "Cry me a River" by sultry Beth Bergman, 2L, "He Was Good to Me" by Andrea Stang, 3L, and "Brother, Can You Spare a Dime?" by Vic Patrick, 3L. All four soloists gave polished and expressive performances that were both powerful and emotional.

Passions

Ben Gibson

Passion: An Essay on Personality by Roberto Mangabeira Unger, published in hardback by The Free Press, 1984, ix 300 pp. \$14.95.

Professor Roberto Unger's *Passion: An Essay on Personality* is an inspirational response to the apathy, dissolution, and self-interest of the children of modernism. It is a book about living and growing with people without consuming or being consumed by them. Although Unger describes his powerful work as an existential project [by which he means "an individual's view of how he can live in a way that gives a measure of sense, unity, and value to the course of his life" (p.47)] one should not be deterred by the theoretical intensity or length of his introduction. The lively and original core of this book (pp. 95-271) discusses human passions and how they relate to the problems of liberty, personhood, and social reconstruction.

Personal Liberation

Unger distinguishes between two sorts of existence that people are

(Continued on Page 14)

Still the show was not without difficulties. A problem that frequently plagues revues — lack of continuity — hindered the show. Producer Fields admitted that the theme was chosen partially because, "it was broad enough to cover a lot of musical ideas." Sometimes, however, the transition between unconnected skits was jarring. In particular, the depression and contemplation of Patrick's solo, "Brother Can You Spare a Dime," did not connect smoothly with the show's next — and closing — act, "Fun, Fun, Fun."

In addition, many 1Ls complained that some of the jokes in the law-school related skits were aimed at 2Ls and 3Ls and were virtually indecipherable to first-year students. In particular, the frequent jabs at the Critical Legal Studies school passed over the heads of some 1Ls.

On the whole, though, audience reaction was overwhelmingly favorable, even more favorable, according to Fields, than the reaction to past Drama Society musical reviews. Cast member Graber said he felt gratified by the reaction, which he said made the hard work of rehearsal — six hours per day during the last week — worthwhile.

In fact, planning and rehearsing for *Just Desserts* began in May when

the production staff examined the possibilities for sketches and farmed out those sketches to writers, taking three meetings to weed out the themes and songs to construct a final program. In late September, 40 people auditioned for the show and 35 were eventually chosen. Rehearsals began almost immediately, occupying only a few hours of time per week per performer until the final week.

The final cast consisted of, "roughly one-third to one-half 1Ls," Fields said. This year's cast was unusual in that "we had a lot of new people, extremely good 1Ls," Fields remarked. Moreover, the Drama Society could count on a core of old members, "most of whom stay and are involved in most of our shows."

Fields hopes that most of the old and new members will help to put on the Drama Society's spring musical extravaganza, which will be totally student-written with original music and lyrics. This year's extravaganza will be based on a science fiction theme and is currently in the writing stage. Auditions will be in two weeks and the production itself will receive a budget, "somewhat higher," than the \$1000 spent on *Just Desserts*.

✽

Cambridge Eats: Top Dog

Justin Hughes

Harvard Square restaurants have an odd sort of style about them. If you've ever tried to find a good hamburger after Bartley's has closed for the evening you know most restaurants in the Square seem convinced that the only way to survive is to serve food that is trendy, healthy, and/or unusual. It is easier to find croissant sandwiches, calzones, and hummus strollers than a

cheeseburger and french fries.

Among the salad bars and cafes a little restaurant has just started that can take you back to what you considered haute cuisine when you were six. "Top Dog" opened three weeks ago at 83 Mount Auburn Street, a space that used to be occupied by a gourmet popcorn store. The popcorn store didn't last long; pineapple flavored popcorn was one of those fads which, thankfully, did not even catch on as a fad. Now the Square has "Top Dog" and it's a bit of fresh air in the silly tofu pretensions of Harvard.

(Continued on Page 17)

Speakers Decry Feminization of Poverty

By Susan Gilles

The National Advisory Council on Economic Opportunities has projected that, before the year 2000, all other things being equal, the poverty population will be composed solely of women and their children. This "feminization" of poverty was challenged by several speakers in a conference on "The Feminization of Poverty" held at Harvard Law School, Nov. 2-3.

The conference featured several panel discussions and a series of workshops considering issues such as childcare, domestic violence, and housing.

The keynote speaker was Prof. Marion Darlington-Hope of the University of Massachusetts (U.Mass.). Noting the increasing numbers of women below the poverty line, she told conference participants, "My anger makes me committed, and by the end of this workshop I want you to be angry as well."

Darlington-Hope commented that for minority women, poverty is not a new issue. "Women of color have been in poverty all of their lives." The new aspect of the crisis, she

said, is that more and more women, once in the white middle class, are falling into poverty.

According to Darlington-Hope, the '60's dreams of career jobs for women and economic independence have turned sour. Women are still the "reserve army" she said, stuck in dead-end jobs at minimum wages.

Darlington-Hope, who was once herself a welfare mother, argued that the Reagan administration's policies have exacerbated the crisis. She said that 1981 changes in the AFDC eligibility requirement have had particularly harsh effects.

Her survey of women in Massachusetts terminated from AFDC benefits as a result of the changes found 25% now had no health care, most were working two minimum wage jobs, and many, unable to afford child care, were forced to leave their children unattended while they worked.

Yet she warned, that the issue is not just who is President. "We still have the same problems no matter who is in power."

Darlington-Hope argued that women who suffer a termination of benefits often feel that they are "powerless persons."

She discussed a U. Mass. training program for mothers receiving AFDC as one effort to counteract this feeling. The program enrolls participants in a one-year paralegal course along with other students with the goal of giving women the opportunity to get better jobs and to politicize them.

According to Darlington-Hope, such programs are superior to government programs that train women for "low paying electronic assembly jobs."

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Pendleton's Attitudes Deplorable

—Arturo Gonzalez

Shame on you, Mr. Pendleton.

Clarence Pendleton concedes that racism and sexism have historically prevented women and minorities from competing against white males in our society. He also agrees that it is because of this discriminatory treatment that women and minorities are currently disproportionately underrepresented in universities and professional occupations.

He does *not* believe, however, that remedial programs alleviate this unfortunate situation. Instead, Mr. Pendleton claims that such programs simply perpetuate stereotypic notions of inferiority and unconstitutionally discriminate against white males.

His solution of the disproportion dilemma is, quite simply, to do, "nothing." Why nothing? Because according to Mr. Pendleton, "you can never make up for past discrimination."

That was probably the most astonishing thing Mr. Pendleton said when he came to Harvard Law School as a guest of the Forum. Many of my friends had chosen not to attend Mr. Pendleton's presentation, because they, "couldn't take it." Couldn't take what, I wondered?

The following is a synopsis of Mr. Pendleton's position on affirmative action as he expressed it in his speech. It is important to keep in mind while reading this commentary that Clarence Pendleton is not simply a conservative Black man, but the Chair of the United States Commission on Civil Rights.

Mr. Pendleton advocates applying the Civil Rights Act of 1964 only to those *individuals* who can prove that they are the victims of discrimination. Until and unless this burden is met, "preferential treatment of any sort and for any reason is unconstitutional."

This interpretation raises numerous problems that Mr. Pendleton casually failed to address. First, how can we expect a low-income woman with three children to pay

for the right to challenge the corporation that refuses to hire her? One response may be "legal services," but President Reagan has reduced the budget for low-income legal representation by over 25%. Furthermore, even if representation *could* be obtained, how often would victims be able to *prove* that they were denied employment solely on the basis of race or sex?

Mr. Pendleton is unwilling to accept that at the very least, Blacks as a *group* should be granted some form of remedial compensation for the discrimination which they have suffered. His response is that because the so-called "disadvantaged" groups have become so large, affirmative action programs are now self-defeating. In fact, says Mr. Pendleton, over 90% of all Americans now qualify for affirmative action.

Even assuming that this proposition is true, why must Mr. Pendleton burn down the barn in order to kill the mice? If indeed 90% of our population qualifies for affirmative action, the proper response for the commission is *not* to take a self-defeatist attitude and say, "Well, we tried. Let's scrap the whole program." The proper way to rectify this problem is to define those groups who deserve remedial compensation.

Since Mr. Pendleton is apparently unable (or unwilling) to do this, let me help: Blacks, Latinos, Native Americans, Asians, and women. Why do I distinguish these groups from those which Mr. Pendleton mentions? Quite simply because the groups that deserve compensation have been victims of historically documented blatant discrimination (some of which continues to this day).

The groups of predominantly white males that Mr. Pendleton is concerned with, however, have never suffered comparable prejudice in this country. Indeed, we could note that even *with* affirmative ac-

tion programs, white males have continued to obtain jobs and admission to universities well in excess of their proportion to the population.

Another thing that bothers Mr. Pendleton about affirmative action is stigmatism. The argument is as follows: as long as we have affirmative action, everyone is going to think that all Blacks (and presumably women as well), who graduate from college or professional schools are "less qualified" than their white male classmates, who got accepted because of their grades and test scores and *not* on the basis of race or sex.

In fact, says Mr. Pendleton, Black people are better off without affirmative action because then people will know that they made it on the basis of their *qualifications*, instead of their race, hence removing all stigmas. Mr. Pendleton was even kind enough to give a hypothetical to illustrate the rationality behind his "stigma" theory:

Your child is bleeding and you need a doctor. You run to a hospital and see two doctors: one is a tall, handsome, preppy-looking white male with blond hair named John Smith. The other is a short, fat, Black woman with cornbread, woolly hair named Tayatta Muhammed. Who would you take your baby to?

This was the first thing Mr. Pendleton said that actually sent chills through my spine. Is this man really the Chairman of the Commission on Civil Rights? Why couldn't he have simply said a "white man and a Black woman?" Why was it necessary for him to describe the Black woman as he did? What do physical characteristics have to do with stigmatism? Putting these questions aside for the moment, let's briefly examine Mr. Pendleton's hypothetical.

First of all, I would not agree, as suggested by Mr. Pendleton's hypothetical, that a Black parent

(Continued on Page 19)

A Late But Laudable Offer

Professor Gerald Lopez has been offered a tenured position on the Harvard Law School faculty. If Lopez accepts, he will be the law school's sole tenured minority professor. If he does not, one must wonder how long it will take for the next offer to be extended to a minority scholar — and when such an offer will be accepted.

This offer to Lopez is a laudable step. While his refreshing and distinct perspective is important, this decision is not commendable merely because of Lopez' ethnicity, but also because as a teacher and a scholar he has gained the respect of both the students and faculty at HLS.

Along with this commendation, however, should come a reiteration of the clear and unwavering statement, from faculty, students and HLS graduates, that there are other highly qualified scholars like Gerald Lopez — and that we want and need them at Harvard Law School.

Those who understand the urgent need for more women and minorities in the HLS faculty are all too familiar with the now hackneyed excuses proffered to explain their absence. Such excuses fail to legitimize the faculty's present composition and inadequately explain the continuing void. Instead, these excuses betray the persistence of a dangerously narrow view of the world. It is precisely those who continue to advance these excuses who might benefit most from new perspectives.

For too long discussions of this issue have emphasized what appointments of women and minorities to the faculty of HLS could mean for these respective groups. Women professors, however, are not professors (for the women) at HLS. Minority professors do not teach only Blacks, Hispanics, Asians or Native Americans. The perspectives which such scholars bring, or could bring, are important and relevant for all of the HLS community. We can all learn from having such people among us.

Until the faculty is more reflective of the society about which it strives to teach, HLS will continue to fail in its educational mission. This school, which touts its distinguished faculty and prides itself in being a leader in legal education will this year, as in the past, graduate lawyers having presented to them each day for three years, an unbalanced and incomplete view of the world.



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Fenno

Several days had passed since the election, but Fenno was still feeling glum. Every one of the candidates he had voted for had lost, including the County Air Raid Officer who had run unopposed. Even the ring of the doorbell didn't cheer him up. He expected it to be another one of those law firm rejection notices sent Special Delivery. Having opened the door, Fenno saw a person cloaked in a mist, an apparition hidden by an eerie fog. This was particularly discomforting since Fenno's door only opened into a hallway.

"Mr. Fenno?" said the creature. "May I ask you a few questions?"

It seemed a bit late in the game for another campaign poll, but Fenno was happy to have a visitor, any visitor.

"We have you on record as having given \$40 and three box tops to a Pro-Life Organization. Is that true?"

"Well of course," replied Fenno. "When I heard that *Life* was coming out as a monthly, I had to re-subscribe. I don't really like magazines with words."

"Do you watch *Father Knows Best* reruns?"

"Yes, but only because it's on right before *Leave it to Beaver*."

"That's good enough. Are you attracted to the ideas of Dr. Spock?"

"No, not really, but I thought it was pretty neat the way he saved the *Enterprise* from the Klingons."

And with Fenno's last answer, the apparition disappeared into the fog, setting off the smoke detector in the hall.

The next day Fenno had all but forgotten his strange nocturnal visitor. Interview season was interview season, and he was desperately in need of getting that first flyout, let alone an actual job. He was the only person he had ever known who hadn't gotten a flyout; though a firm in Somerville had once promised to pay half his bus fare if he could find another firm to pick up the rest of the tab.

The phone rang. Oh no, he thought, now they're not even willing to pay postage.

"Mr. Fenno?" said a strangely familiar voice on the other end of the line. "I'd like to offer you a judgeship with a very, very high court. In fact, the highest court in the land. What do you say?"

"Sounds interesting," responded Fenno. "But don't I first get a free round trip flight on Eastern, get wine and dine at the overpriced restaurant of my choice, and receive a hotel room at one of those places where the soap is wrapped up and the toilet is sealed for your protection? I bet you won't even pay for my bar review course."

"Well, I'm afraid not," said the voice. "But it's a very, very powerful position... Reminds me of the time I took a drive down the coast in a time capsule."



Rat Race

by Gimm E. Ajobb



Letters to the Editor of the Record

White House?

To the Editor:

In September of this year, the [Harvard] *Law Review* held its annual writing competition. One of the more disturbing results of this contest was that no Blacks were admitted to the Review. The Review's affirmative-action program, I am told, is still in place; the only problem, apparently, is that it does not admit Blacks. It is surely a mere coincidence that Black entrants in the writing competition were voted down 3-2, with three white men on one side and two women (one Asian, one Black) on the other. This was done purely on the merits and had nothing to do with unconscious biases. As one *Law Review* member put it, Blacks are simply "not in the ballpark" when it comes to qualifying for the *Law Review*. This may seem curious, given that Black students were perfectly capable of qualifying for the *Review*

last year, but the white men at Gannett House know their business.

What is more disturbing than the institutional racism of the *Law Review* is the silence that has shrouded the results of September's writing competition. Not even those members of the *Review* who style themselves "progressive" have done anything to bring this matter to the attention of the Law School community. Has everyone at Gannett House become a complacent minion of our so-called meritocracy?

Matthew H. Kramer, 3L

Editors Naive

To the Editor:

The *Law Review* and the students working on the "poison pill" note were somewhat na-

ive in taking advice from Wachtell, Lipton.

The *Law Review* should have disclosed the relationship between the students writing the note and Wachtell, Lipton, as well as the latter's involvement in the preparation of the note.

This should now be done so that the courts and counsel will be aware of all the facts if the note is cited as an authority.

Irwin Schneiderman, '48
New York, New York

Radical Chic

To the Editor:

This letter is directed to those members of the HLS community who have been so dedicated in their support of the Sandinista regime in Nicaragua, which support was recently reflected in the enthusiastic reception given to Comandante Daniel Ortega at the HLS Forum. To those of you who truly believe that totalitarianism is the best hope for Nicaragua, congratulations, you're on target with the Sandinistas. To the rest of you — hopefully the majority — who sincerely want freedom and democracy in Nicaragua, shame on you for letting the Sandinista con-men use you and HLS to aid their effort to impose Cuban-style communism on the unwilling people of Nicaragua.

I was in Managua at the time of Ortega's speech, and I read about it, not in the *RECORD*, but rather in the Sandinista propaganda sheets. I was disgusted, but not surprised (after three years of witnessing "radical chic" at HLS), to see the lead headline "Euphoric Support at Harvard" for Ortega and the Sandinistas. I read of the enthusiastic reception given by the students and faculty of a law school "considered one of the most prestigious in the United States . . . in the same auditorium where a year ago the United States Secretary of Defense, Caspar Weinberger, had been pelted with tomatoes." Although the Sandinistas are not noted for their honesty, their account of events at HLS sounds accurate.

How many of you truly believe that Nicaragua will have free and fair elections on
(Continued on Page 12)

10 Years Ago At HLS

Vol. 59, No. 8
November 22, 1974

Harvard Law School professor Derrick A. Bell, Jr. has threatened to resign at the end of the current academic year unless the Law School significantly improves its efforts to place minority teachers on the faculty, the *RECORD* has learned.

Bell's threat was contained in a letter which he sent to other members of the Harvard Law School faculty, according to extremely reliable sources.

Most faculty members contacted by the *RECORD* declined to comment on the matter. Bell said, "It's a matter between myself and the faculty, and I can't make any comment on it." Law School Dean Albert

Sacks remarked that, "It's an impossible thing to deal with from my point of view. It is similar to a question about appointments."

Bell and Sacks refused to confirm or deny the existence of the letter. Two members of the faculty who indicated that they did not wish to be identified, however, acknowledged that the letter had been written. Although refusing to comment further, one of them said, "It could be that the best thing that could happen would be for this to hit the *RECORD* and blow and cause a big controversy."

[Professor Bell, one of the few blacks ever tenured at HLS, eventually left the faculty during the 1980-81 school year to become Dean of the University of Oregon Law School — Ed.]

Letters to the Editor of the Record

(Continued from Page 11)

November 4? Granted, you didn't have the opportunity that I had to talk with opposition politicians whose campaign literature is censored and whose rallies are constantly broken up by bused-in Sandinista mobs armed with clubs, rocks and machetes. You also couldn't speak with fearful workers and peasants — many were afraid to talk at all — whose daily lives are closely monitored and regulated by the Cuban-style "Committees for the Defense of Sandinism (CDS)" and who must attend the designated Sandinista rallies and avoid those of the opposition in order to obtain the vital CDS approval on their ration cards. But you *can* read, and the Sandinistas have for years openly declared their rejection of democracy and support for totalitarianism.

On December 24, 1981, Sub-Comandante Rafael Solis declared that "the elections in Nicaragua will not be to dispute power, rather, to fortify the revolution." Comandante Jaime Wheelock proclaimed on November 28, 1983, that "there will be a Nicaragua Sandinist and revolutionary or there will not be a Nicaragua." Your good friend, Mr. Ortega, on December 5, 1983, declared that "the power of the people cannot be defeated with bullets or with votes." The clinchers are the statements of Comandante Bayardo Arce. In a secretly recorded private speech made in May of this year, excerpts from which have been published in various American newspapers, Arce declared that:

What a revolution needs is the power to enforce. This power to enforce is precisely what constitutes the defense of the dictatorship of the proletariat — the ability of the class to impose its will using the instruments at hand, without going into formal or bourgeois

details. From that point of view, the elections are bothersome to us, as bothersome as are a series of other things [including the continued existence of private enterprise].

As I observed in Managua, Arce is in charge of administering the elections for the Sandinistas.

This cast of characters from *Animal Farm* clearly has far more support among Western limousine liberals than among the Nicaraguan people, and for that reason the Sandinistas prefer campaigning at Harvard to campaigning in Managua. In 1979, the Nicaraguan people enthusiastically supported the Sandinistas in their armed struggle against the Somoza dictatorship, believing the promises of the Sandinistas that they would bring freedom and prosperity to Nicaragua. Today the Sandinistas are striving to stamp out what Arce calls "the facade of pluralism" and eliminate the last vestiges of freedom of speech, freedom of religion, freedom of assembly and free enterprise. The effect of these policies has been to leave the Nicaraguan people without human rights and without adequate food, medicine and consumer goods. And the Sandinistas are drafting Nicaraguan teenagers by the thousands, giving them minimal training and sending them into the mountains to kill and be killed by their countrymen who are rebelling against Sandinista repression.

You attribute the civil war now going on in Nicaragua to "external aggression," and cite the war as an excuse for Sandinista repression. But this repression, which began immediately after the Sandinistas' military victory over Somoza, when the Sandinistas enjoyed United States government support and millions of dollars of aid, is the cause of the civil war, as I was constantly reminded in Nicaragua. In the absence of the pressure caused by the civil war, the Sandinistas no doubt would already have achieved their goal of a fully regimented and totalitarian Nicaragua.

You, the HLS Sandinista fan club, no doubt blame the United States for the wretched state of affairs in Nicaragua. But the Nicaraguan people don't; they blame the Sandinistas. And the Sandinistas know it. It is for that reason that they don't risk free elections. They feel much more comfortable with a policy of sham elections and intimidation at home coupled with an international public relations campaign aimed at influencing Western — especially American — public opinion.

Luckily for this country and for the people of Nicaragua, the Sandinistas have succeeded in deceiving only naive intellectuals and not the American public and their non-intellectual President.

Robert B. Macaulay, '83
Miami, Florida

Unregenerate Liberalism

To the Editor:

It is singularly infuriating to the fugitive conservative here at the People's Law School, while never being able to escape the cacophony of sanctimonious protestations as to its moral superiority, to be continually subjected to the most striking examples of leftism at its worst. Consider, for example, the case of the sign-rippers. While unregenerate liberalism is even as I write being resoundingly rejected at the polls, HLS ideologues are singing dirges over the graves of civil liberty, pluralism, toleration, and (to borrow from Norman Lear) the American Way. The next four years, they say, will see the disintegration of the foundational ideals of this great nation that were laid down by our forefathers fifty years ago, but to a conservative at HLS, where continuous ideological inbreeding seems to bring out the most bizarre of liberalism's mutant strains, the eulogy rings hollow.

Case in point concerns the systematic, not anecdotal, the *systematic* practice by emotional incontinents of ripping down posters, stickers, and signs that offend the HLS orthodoxy. Perhaps this type of behavior is to be expected from adherents of a political world-view which draws much of its credibility from its emotional impact. One might understand (though not excuse) the repeated destruction of REAGAN signs by a few sore losers, but the problem is not limited to the current political context. The group to which I belong faces a constant battle to keep in place even the most innocuous public notices. It seems our very existence on this campus cannot be suffered by the silent sign rippers. This is not just the usual brand of capricious administrative discrimination, not merely an occasional classroom "hissing," this is the purest suppression of the purest political speech. Simple statements placed on quasi-private surfaces (lockers, assigned bulletin boards) are summarily destroyed simply because somebody doesn't like them. Amazing.

I don't mean to imply that all my colleagues with liberal convictions are like the vicious little brats who must destroy what displeases them, but I do feel that this problem is only a symptom of a deeper and more troubling reality at HLS. Put simply, it is daily evident to many of the dissenters among us that this the haven of toleration and civil liberty, the great "forum" of vigorous ideological debate, is in reality a marketplace of ideas that would not withstand the most rudimentary antitrust analysis.

Russell P. Reach, 3L

(Continued on Page 13)

HARVARD LAW RECORD

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 2:00 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.

Letters to the Editor of the Record

(Continued from Page 12)

Just the Facts

To the Editor:

I was happy to see that the RECORD reported on the survey that the Women's Law Association (WLA) sent to law firms and public interest organizations regarding employment policies of concern to women and men. The story, however, contained a serious omission and a somewhat unfortunate mischaracterization.

The omission concerned the groups that made the survey possible. WLA could *never* have sent out the survey by itself — we simply do not have the necessary financial or staff resources. The survey would never have become a reality had it not been for the involvement and assistance of two outside groups. June Thompson and Kathy Robinson of the Placement Office allowed us to include the survey in an information packet mailed during the summer to firms interviewing at Harvard. We would have been hard pressed, at WLA, to spend this postage money out of our own budget. Of even greater importance, the design of the final survey reflected the hard work of Leona Vogt, Director of the Program on the Legal Profession, as much as it reflected the work of WLA members. Over the summer, Ms. Vogt worked with me extensively to modify and refine the initial survey that Page Mailliard and I had developed. The program also paid for a compiled list of 1500 public interest organizations, and for the postage costs of

sending the survey to these groups. Interestingly, approximately 180 public interest organizations responded to the survey as compared to approximately 70 law firms. The program is therefore now paying for a follow-up survey to a selected number of law firms. The survey would have remained a mere brainchild had it not been for the assistance and involvement of these groups and individuals.

The slight mischaracterization concerned the title the RECORD chose for the article. Honestly, folks, not *everything* WLA does is confrontational. (On lots of things, I sure hope we are confrontational — just not on everything.) True, many firms did not respond to the survey. But many other firms did — and we received good feedback from

a number of firms that told us the survey was a catalyst for talking about these issues within their organizations and for actually developing new policies. Thus, the title "WLA Finds Law Firms Unresponsive" captures only half of the story — and reduces WLA's effectiveness in displaying real confrontation when the situation demands it.

Again, thank you for publishing the story — and for printing this letter to round out the facts.

Chai R. Feldblum, 3L
President
Women's Law Association

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Great Moments in the Law

The following is a portion from the oral argument before the U.S. Supreme Court in the case New Jersey v. T.L.O., No. 83-712, argued on October 2, 1984. The case concerns suppression of marijuana taken from the purse of a student after she was observed smoking in the restroom. Justice Rehnquist appears to suggest that it would be both constitutional and possibly desirable to install two-way mirrors in restrooms:

Justice Stevens: What about suspicion of smoking? Could they use two-way mirrors?

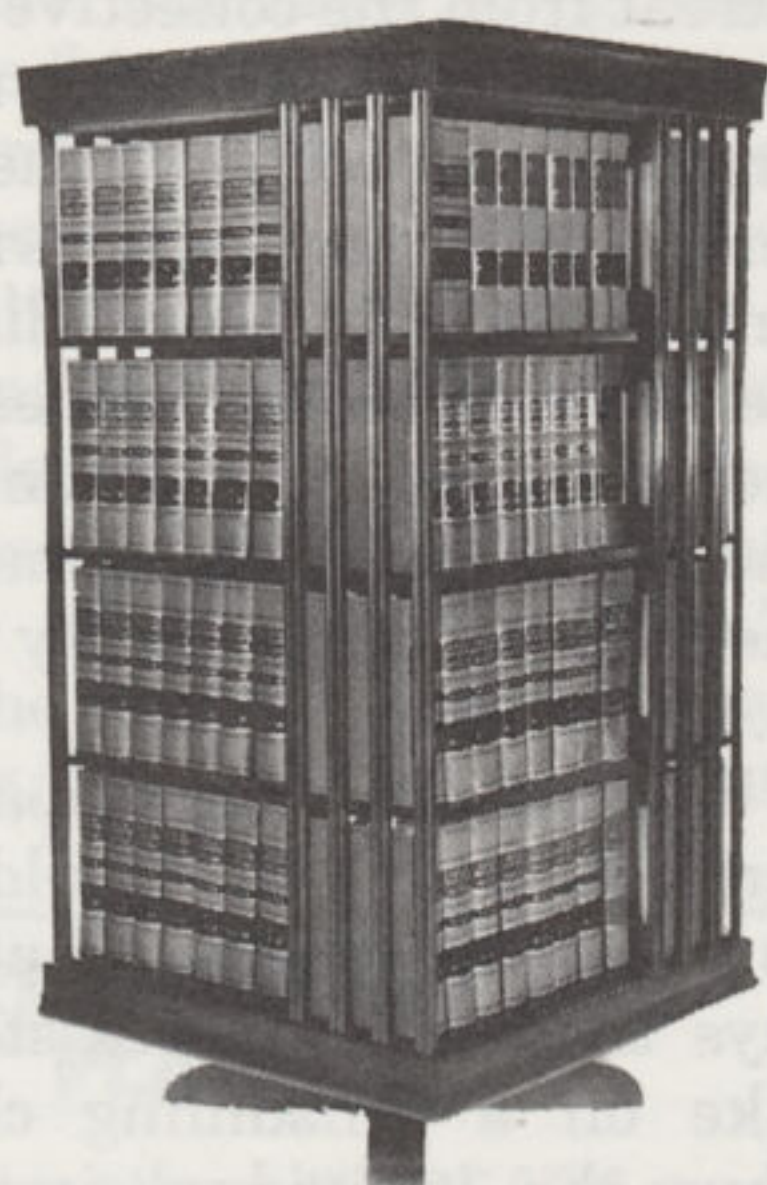
Nodes: Yes, this is also valid under the Fourth Amendment. They could even search the student before going into school.

Justice Rehnquist: Why is there a need for reasonable suspicion of anything to put two-way mirrors in the restroom? Why is that a violation of anything?

Nodes: I'm not sure it is.

Justice Rehnquist: I'm not sure either.

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Passion: Vulnerable Love Found in Interstices

(Continued from Page 7)

capable of living. In his "idyll of moral success" Unger tells an uplifting story about participation and personal liberation. "You involve yourself in a world of encounters that open you up to other people: that acknowledge your basic vulnerability and allow it to take on a wealth of concrete forms." (p.108) In contrast to this positive vision (which depends upon passions such as trust, faith, and hope) there is a lifestyle of common sense, "a countertake of failure [which] completes this view of the passions." (p.111) In this depressing existence, envy, jealousy, distrust and boredom prevail. "Boredom is in fact the weight of unused capacity, an intimation of the freedom from which the self has hidden. Yet it seems to be just the opposite: boredom seems to vindicate routine by its suggestion that there is really nothing worth doing in the world — nothing that could make up for abandoning the safety of habit." (p.112) It is the life of withdrawal, suspicion and routine that Unger finds disturbing: "The failed life is that life that alternates between the stagnation of routinized conduct and vision and the restless craving for momentary release." (p.113)

By allowing the passions of faith, hope, love, and trust to thrive, one will help to create a world with worthwhile endeavors. Trust (which is a willingness to accept vulnerability) underlies the development of a more open and mutually accommodating society. It is "the ordinary ground of any advance toward . . . reconciliation, the basis on which love and the passions connected with it can take hold and endure." (p.125) In love, Unger sees a transcendence of the incapacitating effect of retreat. "Love is an impulse toward acceptance of the other person, less in his distinctive physical and moral traits (which the lover may criticize and devalue) than in his whole individuality." (p.221)

Mutual vulnerability, which is implicit in the passion of love, lies at the heart of reconciliation in any

form. "It is in the interstices of mutual vulnerability that the experiences of faith, hope, and love have the best chance of taking hold. An institutionalized condition of shared vulnerability already represents, if only in a pale and distorted way, the net of actual involvements and potential reconciliations that is implied in the higher virtues." (p.247) Thus, when the individual begins to feel exposed, the possibilities for reconciliation and mutual growth finally begin to emerge.

Unger's critique of "the seduction of luxury" indicates the character of his probing analysis. Luxury is most significant because it represents a denial of vulnerability — "a refusal of dependence upon others." (p.138) While Unger does not dispute that "the happiness of luxury is real and, and in its way, irreplaceable and profound, for it rests on the tendency of some forms of individual fulfillment to disregard or subvert the attachments of society," (p.140) he asserts that melancholy often accompanies it. "As the very model of sensuality without sociability, it passes quickly and leaves a void in its wake." (p.138)

Thus in luxury the individual may find a release or pleasurable image or sensation of some sort — but the experience is a fleeting one. Active engagement in acts of luxury requires a rejection of social existence because it offers "a route to happiness that bypasses participation, alliance, and conflict. The individual can hope to be content even though he treats people around him as mere suppliers of pleasure." (p.139).

Art and Sex

Unger employs the example of luxury — sometimes manifested in art and sex — to reinforce the view that inner-directed, non-other regarding acts contribute to a less than complete, productive, and unified sense of self and society. Although Unger strongly defends the idea of individual integrity ["The most radical freedom is the freedom to be, to be a unique person in the

world as it is" (p.107–08)], he also maintains that it is only in a collective setting that an individual's true beauty and value will be realized. Thus in his discussion of love, Unger notes that the acceptance of, "otherness inhibits individuality [which] helps you discover and strengthen your own distinctive being. Through the affirmation of the other, you enter more fully into the possession of your self." (p.223)

It is possible to appreciate this work without explicitly locating its place in the history of Western philosophy or Christian theology or even within the context of Unger's previous contributions. However, those who are familiar with the brilliant and precocious career of this philosopher and social theorist (through such works as *Knowledge and Politics*, *Law in Modern Society*, and a 1983 Harvard Law Review article on Critical Legal Studies) sense that *Passion* is only one part of an emerging Ungerian social universe. Indeed, we are told that Unger is now completing a book that presents a comprehensive theory of society and social transformation. Much in *Passion* suggests some of the directions in which Unger may be headed.

Individual Retreat

Unger's disdain for individual retreat from the collective life foreshadows his vision of a more desirable body politic. "The more a person indulges a concern for defense, distancing, and disinvolvement, the more he denies himself the resources of self-construction and self-transformation; he becomes the master of an empty citadel." (p.125)

Unger regards participation as a central value — it should be seen as an end in itself — but he also says that collective existence can take on a consuming character. Thus the individual is urged to maintain a delicate balance: "There must be an attitude of holding back — a margin of skepticism, secrecy,

(Continued on Page 16)

County Jail Conditions Lamentable

(Continued from Page 5)

administration of the Charles Street Jail. Boston attorney Max Stern, who represented the inmates in 1973, says that the conditions at Charles Street remain, "substantially the same". The building has been in continuous use since 1848 and much of the internal structure, such as the plumbing, is antiquated and inadequate. The facility, says Stern, is, "impossible to renovate."

The situation is perpetuated because Boston is unwilling to appropriate funds for a facility it realizes must be condemned. The building is therefore held together, according to Judy Sanzo, Director of Human Services at the jail, through "band-aid maintenance."

Many of Garrity's complaints about the jail are still valid eleven years after his opinion. Defendants awaiting trial, presumptively innocent, remain there an average of eighteen months. Some have remained as long as two and a half years waiting for trial without ever having been convicted of a crime. Ironically in a facility meant to house defendants temporarily before their constitutionally-received speedy trial, many inmates have time to join the Book-of-the-Month Club.

"This place is a way to wear down a man's existence," admits Sanzo. She is there, she says, to "grease the wheels," to try to help the inmates in any way she can, including giving legal advice — usually the responsibility of defense lawyers.

According to Sanzo, the effect of the defendants' long pre-trial confinement is that, "most of them opt for a plea to stop wasting time." Inmates, she says, are eager to know the outcome of their case and want

to start serving time if they will eventually have to do so.

Inmates are still allowed out of their cells for only four hours every day, including shower time. Between September and June, moreover, inmates never see the outside world and, since there are no indoor exercise facilities, they remain without physical outlets for anxieties caused by pre-trial uncertainty. One consequence is the prevalence of violence and suicide attempts — so many that Sanzo's office had established a "Lifeline" program to counsel depressed inmates.

The situation for gays is even worse. They are automatically placed in "administrative lock-up" upon arriving at the jail. They may leave their 8' x 11' homes only for one hour every day. They may not eat with the rest of the inmates. Instead, food is brought to their cells.

Structural problems, of course, will always remain at the jail. Walls are damp and deteriorated, and betray several layers of chipped paint; inmates freeze in the winter due to inadequate heating and insulation; sinks, when they work, have no hot water; inmates must place newspapers and blankets under their mattresses to cushion the shock of the metal bars that serve as springs; roaches are as common as bad food.

Perhaps the most obvious structural defect is the uniformly unsanitary condition of the toilets in the individual cells. They are uncovered, rusty, filth-encrusted, and constantly overflowing with excre-

ment. One inmate complained that he would often lose his appetite while eating at the meal tables, which are located in front of the bottom row of cells, because of the strong stench of feces permeating the dining area.

Nor is Charles Street the only jail in Massachusetts that has problems conforming to constitutional standards. Greg Bialecki, of the Harvard Prison Legal Assistance Project, says that several jails throughout the state have recently been declared unconstitutional because of overcrowding.

The present conditions at the Charles Street Jail underscore Judge Garrity's conclusion that "constitutional requirements cannot be satisfied without construction of a new jail," and, according to a consent decree signed between the parties in 1979, the city will build a new, more modern facility.

Construction on that project, however, has not even begun, and Stern is now bringing motions to compel the city to act. According to Patty Garing, an attorney at Stern and Shapiro who is representing the inmates in the state case, the earliest to expect a new Suffolk County Jail is 1989.

The new facility is already inadequate, according to Sanzo. Although the new jail will house three hundred inmates, thirty-four more than the Charles Street Jail can presently hold, it will be too small to house those pretrial detainees that are currently being held in other jails and prisons throughout the state.

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Seeking Imposter, HUPD Accosts Black Students

(Continued from Page 1)

ods. According to fellow section members he was a vocal part of those classes. Dan A. Zariski, 1L, described him as, "outspoken. In every class he was willing to speak his mind . . . in rather verbose phrases. . . . He expressed himself very well." Other students in Section One commented that Travis was, "holding his own," and appeared to be meeting the challenges and demands of the course work.

The apparent fraud was discovered when some students were transferred to different Legal Methods sections. When the transfers were reported to the Registrar's office, it became apparent that Travis was not enrolled at all. After being called into Dean Upton's office, Travis argued for more than an hour that he should be admitted on the basis of his class participation and permitted to take exams in January. Upton disagreed and requested that he leave campus.

On October 30, Travis was reportedly seen in Langdell Library and then in the tunnels near the International Legal Studies building where Upton's office is located. Harvard Police were notified and given a discription of Travis: "a young black male in a dark suit."

A police officer stopped two 2Ls, Kenneth Lewis and Wyndell Wright, in the tunnels and asked to see their Harvard ID cards. Both students complained to Upton about the incident. They are disturbed that the description of Travis was

so vague and incomplete, particularly during interview season when a dark suit is common apparel. Both Lewis and Wright were unavailable for comment at this writing.

Harvard does not plan to take action against Travis, provided that he does not return to campus. If he does return, Travis will be subject to prosecution for criminal trespass, commented Upton.

His classmates described Travis as extremely polite and well-dressed. Some had mixed emotions on his being asked to leave. Zariski commented that, "it would have been nice if he could have been admitted — he had done the work, suffered through 'Economics and the Law' and had endured with the rest

of the class." Another student stated, "Steve made me realize that this place is not as elite as we might think. A lot of people could be here doing what we're doing. [Admissions] is all so arbitrary."

According to Upton, Travis will seek admission again next year. Upton stated that Travis does not have a bachelor's degree and that "there were serious problems with his application."

In response to the entire incident, Upton stressed concern for her safety, as it was she who ordered Travis to leave. "Steven was very hostile towards me," Upton said. "People are very much concerned about my safety."

✽

Restless Craving for Release

(Continued from Page 14)

and withdrawal — that coexists with even the most intense participation." (p.133) Indeed, in concluding his essay, Unger argues that people who are both ardent and gentle (which are regarded as distinctive virtues) "have learned how to be in the world without being entirely of it." (p.271) Thus, the admirable social and political participant will be self-engaged but engaging. He will search for guidance while retaining a sense of integrity. He will be vulnerable yet self-contained.

If there is any troublesome feature of *Passion*, it is that Unger peremptorily derides people whose lives he characterized, "the stagnation of routinized conduct" and "restless craving for momentary release." (p.113) "Routinized conduct" in the eyes of one person may be long-awaited security and predictability in the life of another. What Unger regards as "momentary release" may be productive and therapeutic relaxation in the eyes of another. While Unger argues persuasively that participation and alliance are essential parts of meaningful lives, one should not discount

the possibility that some people live happily and usefully as generally detached and autonomous beings.

A more decent social universe will certainly entail the breaking down of social divisions which prevent truly engaging discourse and conduct from occurring. "Imagine a society in which continued mass mobilization has destroyed the stranglehold of well-defined elites over supreme power and the hierarchical and communal divisions between people have been partly, though only partly, criticized, fragmented, and effaced." (p.216) Unger's more ideal universe will reject unsanctioned, non-collective power. "The exercise of dominion in any of its forms destroys the climate of mutual vulnerability." (p.257)

If you doubt the inevitability of your own life pattern, the nature and quality of your relationships with others, your sense of self, or your place in the realm of collectivity and possibilities for change, the experience of *Passion* may prove to be of unsurpassed self-(re)constructive and transformative value.

✽

Sports Answers

1. They won their last game of the year, beating the Cincinnati Bengals 20-14.
2. He pitched a perfect game, beating the Texas Rangers 1-0.
3. He hit a home run off Baltimore Oriole pitcher Jack Fisher.
4. He led the league in rushing with 1,544 yards.
5. He won the NBA championship.
6. They won the NFL title; moved to Los Angeles.
7. He dropped a sure touchdown pass in Nebraska's 31-30 loss to Miami in the 1984 Orange Bowl.

Lopez Undecided On Law School's Offer

(Continued from Page 1)

to work on a number of civil rights cases.

Lopez has not decided whether he will accept Harvard's offer, but he is very "happy" that it was extended. "It is nice and satisfying for me and for all who were very supportive," said Lopez.

One of the factors Lopez considers particularly important in deciding whether or not to accept this offer is, "the willingness of both the students and faculty to work hard at learning about what lawyering is."

Minorities Important

Another factor Lopez considers central to his decision are the numbers of women and minorities among both the faculty and the student body. Their presence "dramatically amends the nature of conversations both in and out of class . . . and improves the quality of life in untold ways."

Although he is not certain of the numbers, he feels that UCLA offers a more hospitable atmosphere in this respect. While Lopez says he understands why Black scholars might be reluctant to move to Boston or Cambridge, he says, "the hardest thing for a Chicano . . . is

to go to a place where it's not even a part of the culture."

In the absence of other support networks, Lopez stressed how important the friendship and collaboration of a number of students had been to him during his visit to Harvard.

Lopez feels, however, that Harvard's proximity to a diverse array of working class people in Cambridge and Boston provides it with great potential. "If the law school did a better job of extending itself into the working class community,

it could be an immensely rich place to work," said Lopez.

Faculty members ranging across HLS' political spectrum have contacted Lopez and have been very supportive and understanding. Above all, he says, "they have been respectful of the difficulty" of such a decision.

Lopez has only recently started considering this as a serious option, and does not foresee any decision until next year.

For more information about Lopez, see *RECORD* Vol. #77, No.3, p.5.

Hot Dogs: Warm and Human

(Continued from Page 7)

"Top Dog's fare is simple and fun: ten or more different styles of hot dogs (depending on how you count them), baked beans, onion rings, chili, and two kinds of french fries served three different ways.

This is not an eating place for the faint-hearted about what goes into a hot dog, but if you're going to get greasy calories anyway from a Harvard dining hall, why not enjoy them? Top Dog's hot dogs are tasty, kosher, all beef affairs. They are packed on rolls that are better than what you'd find in a baseball park. Based on this twosome, Top Dog creates more and better tasting options than you'd expect: a hot dog with cheddar cheese and bacon strips, a hot dog with roquefort dressing, a hot dog with sauteed onions, peppers, and tomato.

The supporting cast turns in a solid performance too. The french fries are excellent (although they could cut down on the grease) and the baked beans are great. If you don't want your hot dog adulterated by any of their creative combinations, the restaurant menu offers six kinds of mustard and five kinds of relish, although it can't be guaranteed they will actually have all the varieties.

Right now, the place is clearly on its shakedown cruise — oc-

asionally the food comes out much too hot or the staff doesn't notice you're there. Of course, the latter is par for the course with most Cambridge restaurants and Top Dog should at least get the benefit of the doubt that it will work out these problems. Top Dog's prices are reasonable, but don't think a Top Dog creation will be as cheap as the ultimate cheap meal, a hot-dog-in-wrapped bread from the Tastee. The prices of Top Dog creations range from \$1.50 to \$2.25. For 85 cents you can get a massive portion of wonderful french fries.

Although the restaurant has the professional look of a franchise, the place has a family affair atmosphere — warm and human. That in itself distinguishes Top Dog from most Cambridge eating places where professionalism has led to cool service instead of preventing cold food. Estelle Douvris, Top Dog's owner, is usually behind the counter. Her parents and friends frequent the place, giving it a "homier" feel than most quick eats places in the Square. Top Dog bills itself as a place "Where the World is going to the Dogs". Because Top Dog is such a fun and unabashedly honest place we can hope going to the dogs will suit Cambridge better than papaya-flavored popcorn.

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Pendleton Miscasts Dr. King's Policies

(Continued from Page 9)

would take the child to the white male doctor. Secondly, if a parent *did* take the child to the white male doctor, is it because of affirmative action?

Thirdly, Mr. Pendleton claims that 90% of all Americans qualify for affirmative action. If this is true, then why is it that only Blacks are stigmatized? I'll tell you why. Because stigmatism, if it exists, stems not from affirmative action, but from racism. This is why only Blacks, other minorities and women are stigmatized as being inferior.

If you really want to fight stigmatism, Mr. Pendleton, fight racism. Explain to people that when someone is admitted to a university under an affirmative action program, he or she must still meet the same graduation criteria as his or her Anglo peers. In the meantime, don't pride yourself in fighting to rid me and my people of our stigma, for in the process, you may also rid many of us of our jobs.

It didn't bother me when Mr. Pendleton quoted George Will and Justice Rehnquist in support of his

arguments. It *did* bother me, however, when he quoted Dr. Martin Luther King, Jr. According to Mr. Pendleton, Dr. King would be appalled by affirmative action, which runs counter to his dream that perhaps someday his daughter would be judged, "not by the color of her skin, but by the content of her character."

But those of us who understand Dr. King and his dream realize that he was referring to discrimination *against* his daughter and not remedial measures to compensate for what he and his ancestors had suffered. Mr. Pendleton has said that "all this crap about past discrimination, I ain't buying it." He is convinced that the elimination of blatant racism is sufficient for allowing Blacks the opportunity to succeed in America. He frequently cites himself as an example.

Well, perhaps someday the time *will* come when some form of racial parity is achieved and remedial measures are no longer needed. But until then, we must heed what Dr. King *really* said about affirmative action: *Among the many vital jobs to be done, the nation must not only radically readjust its attitude toward the Negro in the compelling present, but must incorporate in its planning some compensatory consideration for the handicaps he has inherited from the past. It is impossible to create a formula for the future which does not take into account that our society has been doing something special against the Negro for hundreds of years. How then can he be absorbed*

into the mainstream of American life if we do not do something special for him now, in order to balance the equation and equip him to compete on a just and equal basis?

Whenever this issue of compensatory or preferential treatment for the Negro is raised, some of our friends recoil in horror. The Negro should be granted equality, they agree; but he should ask nothing more. On the surface, this appears reasonable, but it is not realistic. For it is obvious that if a man is entered at the starting line in a race three hundred years after another man, the first would have to perform some impossible feat in order to catch up with his fellow runner. King, Why We Can't Wait, p.134 (1964).

Mr. Pendleton, if you disagree with Dr. King, then be honest with the American people and say so, but please do not continue to claim falsely that Dr. King agrees with your ideology. The writings which he left behind clearly indicate that he does not.

Indeed, if Dr. King were alive today, he would be appalled *not* by affirmative action, but by the fact that a person with your ideology has been appointed to fill the seat which he died trying to create, a seat which you are now using to dismantle the devices which have been created to help Dr. King's dream become reality.

I think I realize now why so many of my friends chose not to attend Mr. Pendleton's presentation.

Sports Quiz

Note: Topic of this week's quiz: "Saving the best for last."

1. In the final game of the 1983 NFL regular season, the Minnesota Vikings accomplished something they had not done since 1965. What was it?
2. In the final regular season game of the 1984 baseball season, Mike Witt of the California Angels did something no pitcher has ever done on the last day of the season. What did he do?
3. What did Ted Williams of the Boston Red Sox do in the final at bat of his career?
4. What did Jim Brown of the Cleveland Browns do in his last NFL season?
5. What did Bill Russell of the Boston Celtics do in his last NBA season?
6. What did the Cleveland Rams do in their last game in 1945? What did they do after that game?
7. What did Irving Fryar do with the last pass thrown to him in college?

(Answers on Page 16)

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Benn Supports Striking British Miners

(Continued from Page 3)

policy. He told his audience that the US has intervened in countries near its borders without having any desire to dominate the world.

Benn said that there is a highly orchestrated propaganda campaign to persuade the public that the Russians are going to invade. The campaign, he argued, is not triggered by concern about the Russians but rather by a fear that socialist ideology will spread.

A Democratic Socialist Society

Benn offered the audience his account of democratic socialism. According to Benn, it is not enough "to vote every two or four or six years and call that democracy." He argued that true democracy means that people have "control over the decisions that really matter to their lives."

Such decisions include whether factories are to be bought, sold or shut down, whether entire work forces are to be laid off, what news the media puts forward and whether the President of the United States can initiate a nuclear war by launching missiles from British soil. Benn drew strong applause when he encapsulated the latter point with the words "no annihilation without representation."

Benn said that the roots of his socialism lie, not in Moscow, but "in the teachings of Jesus." Said Benn, "[Christian teachings] ... played a very large part in the development in socialism, of the idea that there are inherent rights of people, by virtue of their birth, that [could] not be blanked out because they were poor and others were rich."

Benn further outlined his socialist ideals in his discussion of solutions to the problem of unemployment in

many Western countries. He drew parallels to the 1930s and brought into focus that the problem of unemployment in the '30's was solved by large public expenditure on rearmament. He suggested that the solution in the '80's was large public expenditure, not on rearmament, but on social needs.

The Miners' Strike

The latter part of Benn's speech focused on the miners' strike in Britain. Saying he was "one hundred per cent behind the miners," Benn painted a picture of a solid strike supported by a coalition of various political and social groups within the community.

He told stories of miners collecting money all over the country and collecting food outside supermarkets, of women providing food parcels for miners and of money pouring in from all over the world. He even solicited contributions from his audience.

Benn's position on the strike dominated the question and answer session. Some members of the audience implied that Benn's position on the miners was inconsistent with his views on democracy.

But Benn insisted that his position fit his ethos. In response to one questioner who asked if Benn could be "one hundred per cent behind the miners" who were in defiance of laws made by a democratically elected government, Benn replied that although there exists a legal obligation to obey laws, "there is no moral obligation to obey unjust laws."



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