



Harvard Law Record

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25 CENTS

Harvard Divests One Million

By Vincent Chang

Harvard University has fully divested from a corporation doing business in South Africa, unloading one million dollars worth of stock in the Baker International Corporation. After this move, President Derek Bok issued a statement explaining the University's efforts to challenge apartheid. (See statement, page 10.)

Recently, the University rejected total divestiture and adopted a policy of "intensive dialogue" in which Harvard divests from those com-

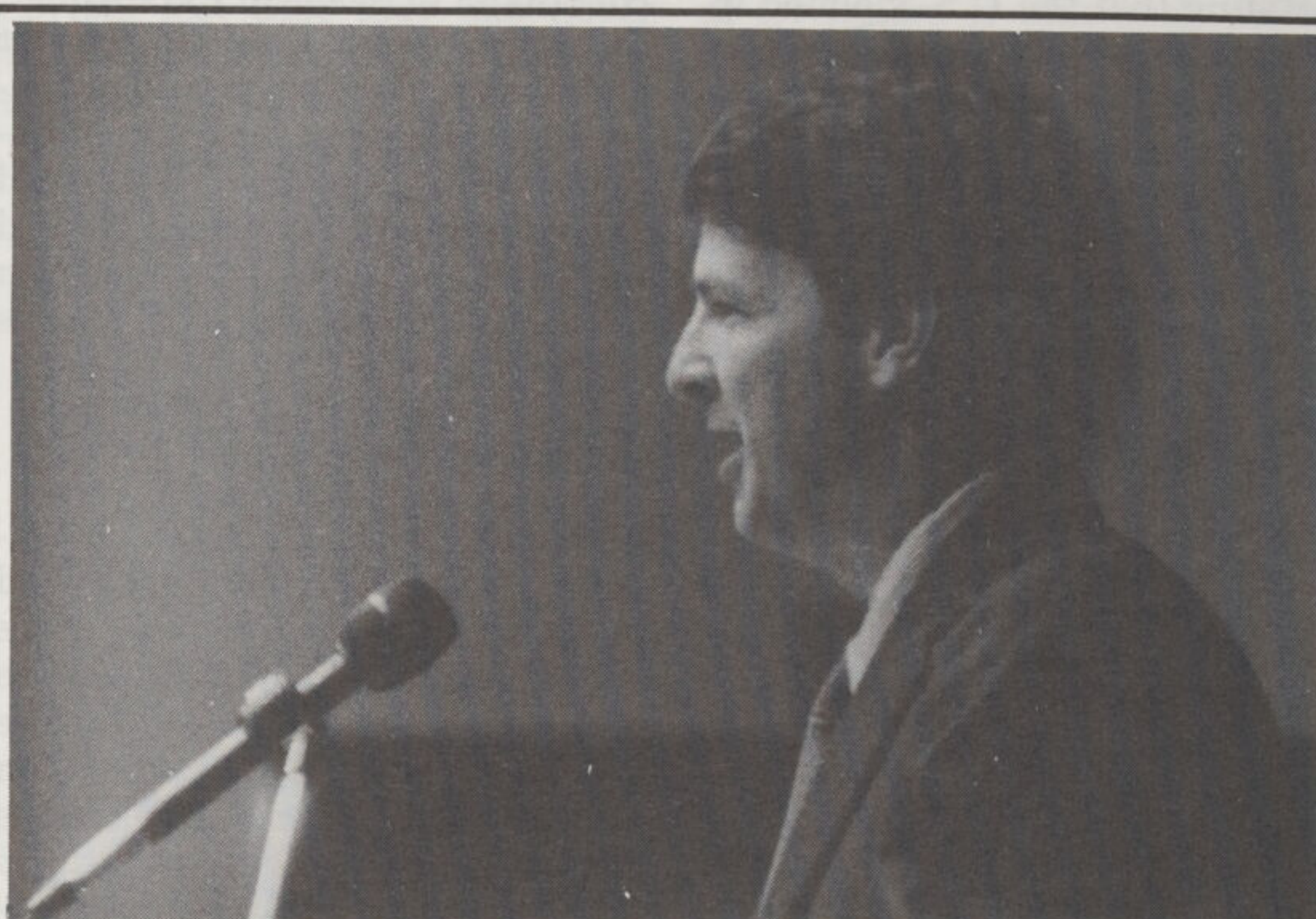
For President
Bok's statement
see page 10

panies which it concludes have not made significant efforts to improve conditions for South African blacks.

This intensive dialogue policy represents the partial success of a thirteen-year struggle by pro-divestiture forces at Harvard. That struggle was highlighted by a six-day occupation of Harvard administrative buildings by 34 persons in 1972 protesting Harvard ownership of Gulf Oil stock and a 3000-signature pro-divestiture petition drive in 1978.

In response to student pressure, Harvard's official Advisory Committee on Shareholder Responsibility recommended total divestiture, a proposal that the Corporate

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Judith Aidoo

Robert Gordon, '71, delivers the 25th Annual Oliver Wendell Holmes Lecture. (See story, page 4).

Bell Resigns Deanship of Oregon Cites Minority Hiring Failures

By George A. Golder

Former HLS professor Derrick A. Bell Jr. has announced that he will resign as Dean of the University of Oregon School of Law, raising the possibility that he may return to the HLS faculty.

In his position at Oregon, Bell was the first Black to be dean of a law school whose student body did not predominantly consist of minorities. The announcement of his intent to resign resulted from a faculty meeting at which the appointment of a Chinese-American woman to a teaching position was blocked by several faculty members.

Bell left HLS for the position at Oregon in 1981, after more than

ten years on the faculty here. [RECORD, Vol. 70, No. 5 (March 14, 1980)]. He had joined the HLS faculty in 1969, becoming the law school's first Black teacher. He was granted tenure in 1971.

During his time at HLS Bell was vocal in seeking the appointment of other minority faculty members. In the fall of 1974 he wrote a letter to the HLS faculty in which he threatened to resign unless the law school increased its efforts to recruit minorities to the faculty. [RECORD, Vol. 59 No. 8 (Nov. 22, 1974); Vol. 59 No. 10 (December 13, 1974)]. Within months of Bell's letter, Profs. Harry T. Edwards and C. Clyde Ferguson were appointed to the

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Administration Deserts World Court

By Paul Weisenfeld

On Jan. '18, the Reagan administration decided that the United States would no longer submit to the jurisdiction of the International Court of Justice (World Court) in the U.S.-Nicaraguan dispute.

The Nicaraguan government has filed a complaint with the Court claiming that the U.S. violated international law by mining Nicaraguan harbors and by providing military support to the "contras".

The contras are attempting to overthrow the Nicaraguan government from their bases in neighboring Honduras.

Jurisdiction Found

The Reagan administration's decision to walk out comes after the Court has already determined that it has a basis for exercising jurisdiction. The jurisdiction of the Court is based on consent.

The U.S. declaration consenting to the Court's jurisdiction contains three exceptions. One of these prohibits jurisdiction in disputes arising

under a multilateral treaty unless all parties to the treaty affected by the decision appear before the Court.

The United States had argued that El Salvador, a party to the Organization of American States (O.A.S.), would be greatly affected by the O.A.S. treaty because of the alleged movements of arms from Nicaragua to rebels in El Salvador. Therefore, under the U.S. consent declaration, the Court could not exercise jurisdiction. Since the jurisdiction issue depended on undecided factual premises, the Court reserved final determination of this question until the argument on the merits of the case.

Knew They Would Lose

Despite the Reagan administration's decision to pull out, the World Court still has authority to make a decision. Prof. Abram Chayes, one of the attorneys arguing the case for Nicaragua, says that a decision will probably be reached before the end of the year. Chayes also said that the Court had previously decided to hear a case despite a nation's non-cooperation. The Court did so during the Iranian hostage crisis at the insistence of the U.S.

(Continued on Page 15)

Lopez Declines HLS Offer

Prof. Gerald Lopez, '74, has declined the offer of a tenured position on the HLS faculty. Lopez is currently a Professor of Law at UCLA and a visiting member of the faculty of Stanford Law School.

Lopez cited family considerations and his personal desire to be in a community with a significant Chicano population as the reasons for his decision.

In discussing the offer with the RECORD in November, Lopez said that the offer pleased him but that the decision would be a difficult one. He noted then his concern about the absence of a Chicano culture in Boston but added that the friendship of HLS students which he encountered as a visiting member of the HLS faculty had offered a strong support network.

Dean James Vorenberg expressed "regret" at the decision. He told the RECORD, however, that Lopez was given an open invitation to reconsider the offer at any time. Had Lopez accepted he would have been HLS's only tenured minority faculty member.

Legal Aid Represents Indigents

By David Zensky

Discussing the Harvard Legal Aid Bureau, President Countess Williams said, "It's not merely an extracurricular activity — it's running a law office." Bureau member Leslie Callahan agreed, "People take it very seriously."

The Bureau, currently comprised of sixty full-time 2L and 3L volunteers and six half-time attorneys, is the oldest student-run legal aid bureau in the country. It is one of the few student-run bureaus that work directly with the low-income community instead of with the student population.

The Bureau represents indigent

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Jennings Urges Closer Look At Soviet Union

By George A. Golder

In a speech on Feb. 21 before a full house in the Ames Courtroom, ABC News Anchor Peter Jennings asserted that "there is a genuine lack of interest in America about our adversary," the Soviet Union, and called for a deeper knowledge of that country in the United States.

This is important, he said, because "it is up to us to define what sort of a relationship we will have" with the Soviet Union.

Jennings attributed at least some of the blame for this situation to the news business. "In general," he said, the U.S. media "has done a very bad job of exploring the Soviet Union." He asserted that the U.S. media should break its habit of portraying the Soviets as constant villains.

Jennings noted that an ordinary American's view of the Soviets will probably be shaped by that person's role in American society. If one is a bureaucrat, Jennings said, he tends to see the Soviets as bureaucrats also; if he is a businessman, he will see them mainly as businessmen; and if he is in the U.S. military establishment, his view will be influenced by a "the Reds are coming" perspective.

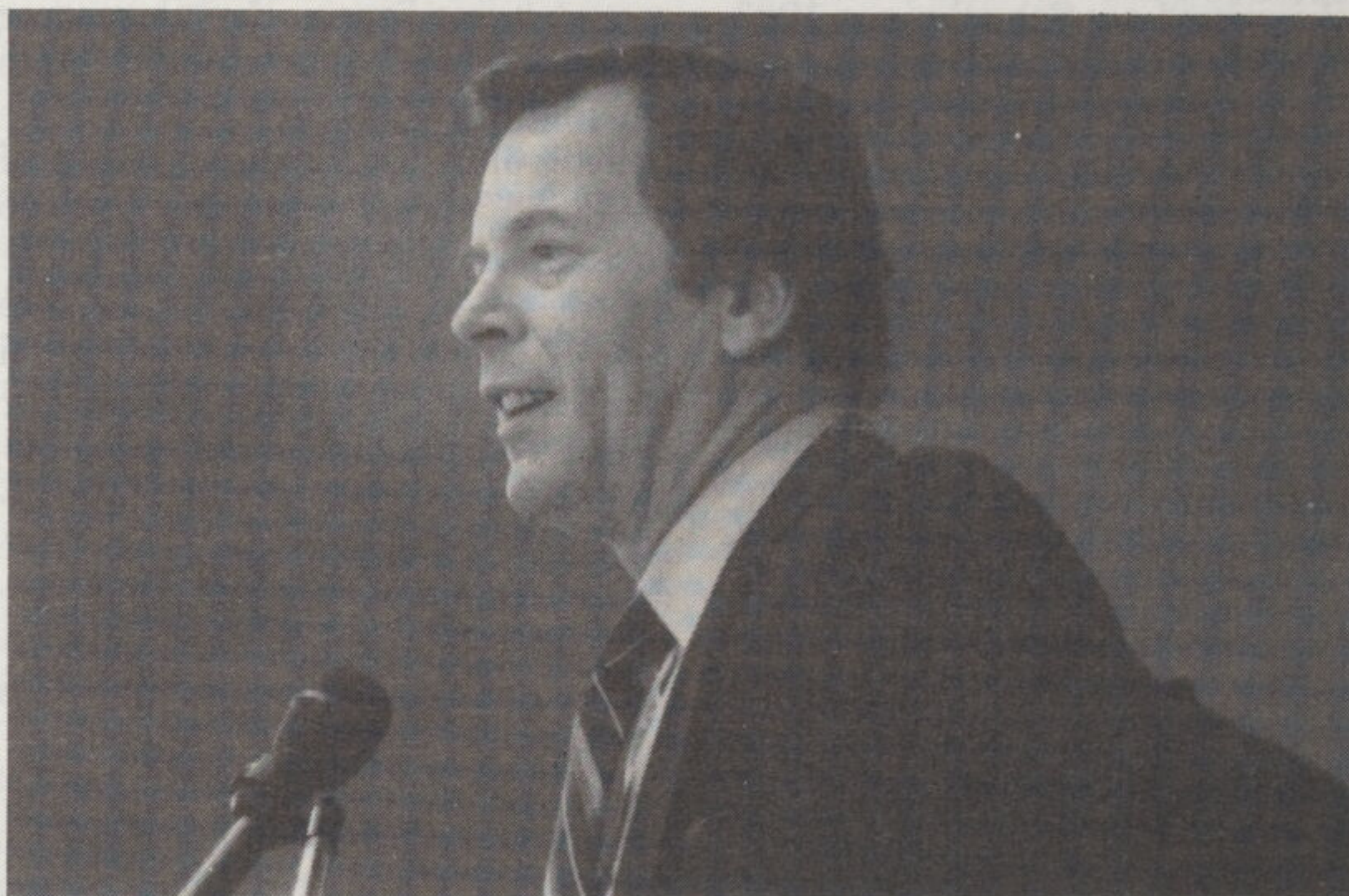
Jennings' own view of the Soviets is more complex. They are first, especially the leaders, a proud people. Their country is a superpower, and it is important to them that it stay

that way. The desire to keep the Soviet empire together is their overriding motivation. According to Jennings, this is more important to the Soviet leadership than the material or personal well-being of the country's people, or even than continuing their "revolution."

This emphasis influences Soviet foreign policy, Jennings said. The Soviets feel that they can never have too much security. Moreover, their conception of security extends

Soviet society, and is essential for anyone with political ambition, he said.

In addition to being proud and sometimes cynical, the Soviets are also an extremely xenophobic people, Jennings asserted. This affects their international behavior by amplifying their commitment to security. Jennings said that a fear of foreigners is constantly drilled into the Soviet mentality, especially through references to the Soviet



Lori Nuckolls

ABC Anchorperson Peter Jennings addresses an HLS forum crowd on Feb. 21.

beyond their immediate borders. They have, said Jennings, an almost Kissinger-like belief in the need to "balance" their adversary's power in the world.

experience in World War II, their Great Patriotic War.

Despite this concentration on foreigners, Jennings believes the Soviet perception of the U.S. is no more complete than the American perception of the the Soviet Union. As the U.S. understanding of the U.S.S.R. is hindered by the American media, the Soviet understanding of the United States is limited by the Soviet media's presentation of the U.S., which tends to empha-

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Ambition Before Revolution

Ordinary Soviets, Jennings suggested, are often cynical. Like the leadership, there are goals more important to them than "revolution." Indeed, membership in the Communist Party is viewed primarily as a path to perquisites in

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Robert Gordon Gives Twenty Fifth Holmes Lecture:

By W. Burlette Carter

On Tuesday, Feb. 19, Robert Gordon, '71, became the 25th lecturer in the annual Oliver Wendell Holmes lecture series. Gordon delivered two lectures on consecutive nights to a capacity crowd in the James Barr Ames Courtroom. That crowd included members of the HLS community as well as visiting members of the Boston Bar.

A Professor of Law at Stanford University Law School since 1983, Gordon is a noted legal scholar and a specialist in American Legal History. His writings include work on the history of contract law, corporation law, the legal profession and the legal uses of historical argument. He is currently working on a history of American corporation lawyers.

Like many alumni who return to HLS, Gordon could not help but reminisce about the "good old days." He proved himself a true "HLS product" when he told his audience that the minute he stepped on Harvard soil he began feeling "slightly infantile" and "mildly rebellious." He also paid tribute to his former professors, noting that many of them now sat in the audience awaiting his speech.

But Gordon put away all of these feelings for a time, and offered his audience a trip through the history and evolution of the legal profession, from a time when lawyers thought they had a special duty to engage

nobles nor men of letters and the people distrust the wealthy. Therefore, the lawyers form the upper class and the most intellectual section of society. . . . It is at the bar or bench that American aristocracy is found.

He noted that this famous passage from *Democracy in America* (which he said "has found a permanent place in the 'after dinner music' of the bar") is "often snatched ruthlessly from its context." By 'aristocracy,' said Gordon, de Tocqueville meant not a "specially talented or elevated class" but rather "a class capable of playing a particular political role." This role was that of "balance wheel," ensuring that no societal order encroached upon the privileges of any other order, the role of conservatively drawing all radical elements toward the center.

But Gordon reminded his audience that de Tocqueville's impressions of this "conservative" bar were drawn from observing its most elite segment — metropolitan, college-trained, mostly Federalist-Whig in politics.

Gordon also suggested that de Tocqueville caught his subjects in "a sour late autumn mood" when they were "increasingly inclined to emphasize their passive role as a restraint on the excesses of Jacksonian democracy."

More "self-confident" decades would follow, specifically from 1790 to 1830 when these lawyers developed "a more activist and constructive conception of their social proj-

domination of certain key institutions — Harvard College, the *North American Review*, *The American Jurist* — and later spreading this leadership out into the field." It was none other than Joseph Story who emerged (after what Gordon called "a wild Jeffersonian youth" as the ideology's most animated patron.

For a moment Gordon, the alumnus, slipped back into reflection: "In the entrance to Langdell Hall, Story sits raising an admonitory finger. What is he doing?" Gordon concluded that "most likely . . . [Story is] just stopping his audience from interrupting, for the fundamental article of faith among this legal elite was that if the obsessive torrent of highminded rhetoric were to dry up for just an instant the people's passions would take over and they would run amok."

For Story and others the bench and bar had been given a little (but significant) piece of the state so that overall public purposes might be achieved. Lawyers were the universal association of republican mediators "whose job it is to coordinate the self-seeking activities of all the other classes in civil society, to harmonize the pursuit of private interest with the universal interest of the whole."

The rise of commercialism with the attendant shifting of attention away from public affairs towards commercial calculation, and the "annihilation" of traditional social bonds and institutions offered lawyers even greater opportunities to fulfill their republican mediator roles. Law itself emerged as the thing which could supply much-needed virtue, and lawyers emerged as its great standard bearers.

Said Gordon, "Even in the course of adversary proceedings, the republican lawyer was advised to remember that in arguing law his primary role was the collegial one of helping the judge to reach a correct decision."

But by the 1830s many of the Federalist-Whig lawyers began to doubt the project of Story and others.

First, said Gordon, for many young lawyers who thought they

"Even in the course of adversary proceedings, the republican lawyer was advised to remember that . . . his primary role was . . . helping the judge to reach a correct decision."

in public service to the present, when, as Gordon argued, the corporate bar has acquiesced in becoming the tools of their clients without autonomous identity. He suggested, however, that despite its demise, politically engaged lawyering is still a realizable and desirable goal in our society.

Gordon began with Alexis de Tocqueville's famous observation of 1835: *In America there are neither*

ect." That conception insisted that lawyers were "uniquely situated and qualified to diffuse throughout society the culture of civic virtue" essential to capitalist democracy.

To the amusement of many in the audience, Gordon said the most fervent supporters of this gospel lodged in none other than "Federalist-Unitarian Boston." There lay the "ambitions for exercising national cultural leadership through

Traces the Tradition Of American Lawyers To Present

had chosen "the vocation of Ciceronian literary statesmen the dryness and triviality of the causes . . . the sudden narrowing of their world to getting clients and clearing calendars, was a nasty shock of disillusionment. . . ."

Second, the practicing bar did not embrace the science of theoretical argument based on principles but stubbornly clung to formbooks, casebooks and precedent.

Third, the republican legal culture was losing its grip outside of its strongholds. A new guard claimed that the old lawyer statesman's rhetoric was compromised by his support for slavery. The "tradition of oratory as a means of community-creation through education in republican values" faded into a bombastic tradition without an audience.

Fourth, the growing monetary appeal of private practice turned more and more lawyers away from the traditional goal of public office. "In America, it seemed, the top downtown lawyers were avoiding politics, avoiding judgeships and even resigning judgeships to become counsel to some railroad."

Gordon reminded his audience that "the Federalist-Whig theory of the corporation, of course, was that

law would keep the corporation, potentially a menace to the public, in the paths of virtue. . . ." But, he noted, "From the 1840s onward, the legal staffs of corporations became the most conspicuous symbols of their ability to convert economic power into political power."

Finally, in the midst of the general Jacksonian liberal transformation in social thought, an alter-

"From the 1840's onward, the legal staffs of corporations became the most conspicuous symbols of their ability to convert economic power into political power."

native vision of the lawyer's role rose up to challenge the republican ideal. It was the lawyer, "not as an intellectual but as a skilled craftsman, not as an agent of the public interest, but as a businessman who contracts to sell technical services to his client."

Instead of fusing the roles as did the republican model, the Jacksonian model precipitated out the public mission for "a separate sphere of action." Thus, in his private role the lawyer had a duty to advance his client's, and *only* his client's interest, yet there remained a duty to fill a public role, to aid in the construction of an effective legal

framework and to repair the loopholes which in one's private role one had opened up.

Lawyers in their private roles were so successful in advancing the interests of their corporate clients that the result was a legal framework in serious disrepair. This acknowledgement, in the first decade after the Civil War, led the profession's elite to fashion a series of

reforms aimed at salvaging that framework and, as Gordon put it, to "resurrect, in a somewhat altered form, the republican vision of their Federalist-Whig predecessors."

On the second night of his lectures, Gordon told his audience that reformers realized that they had to take "collective action to reclaim lawmaking institutions from corruption by special interests and to strengthen their capacity for general rights definition and impartial administration." The focus of the program was a series of Mugwump reforms with the goal of building strong legal institutions — the judiciary, commissions to draft uniform codes, bar association committees, and of course, law schools.

But this answer to the profession's problems was challenged by those who insisted that this framework was inadequate to regulate an economy typified by problems like urban squalor, labor struggles, other social struggles and dislocations. Thus, there arose a movement which stressed a need to look to other disciplines. Gordon called this movement "Progressive Purposivism" (following his colleague William Simon): the belief that there are imminent social purposes which can be efficiently achieved through a correct coordination of societal desires and interests.

The lawyer's new role was that of the generalist who, after consultation with experts in other fields, would be capable of "assim-

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The Forum Institute of Politics

VIOLENCE REVISITED

More than fifteen years have passed since three national commissions on crime and violence issued their reports. What have we learned since then?

- **Lynn A. Curtis**, president of the Eisenhower Foundation (moderator)
- **Sister Falaka Fattah**, founder of the House of Umoja, Philadelphia, the first Inner City Boys' Town in the United States.
- **David Ginsburg**, former executive director of the National Advisory Commission on Civil Disorders; senior partner, Ginsburg, Feldman, Weil & Bress.
- **Hubert Williams**, director, Newark Police Department; president-elect, The Police Foundation.

**Tuesday, March 5, 1985
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Armageddon Approaches! Aliens Invade HLS!

They're here! Among us! Beings from another planet attending classes at HLS!

Improbable? Stretching the bounds of credulity? The Harvard Law School Drama Society (HLSDS) will stretch those bounds to the breaking point during the next two weekends in *Starry Decisis*, its original science-fiction musical comedy.

The HLSDS has been working on the script music and lyrics for *Starry Decisis* for almost a year. The show is a parody of the science-fiction genre, from the B-movies of the '50's to the budget-busting extravaganzas of the '80's. It will be presented on March 7, 8, 9 and 14, 15, 16 at 8:00 P.M. in the Ropes-Gray Room of Pound Hall.

The story concerns three aliens, played by Eileen O'Hern, 1L, Tom Lorenzen, 3L, and Ed Murray, 3L, who accidentally stumble upon HLS. They are rescued from a nasty brush with the law by a determined young woman (Lee Rubin, 3L) from the Prison Legal Assistance Project (PLAP). Rubin introduces them to Vic Patrick, 3L, and other law students.

The students teach the aliens to act human — or at least like Harvard law students — in order to avoid falling into the hands of the ruthless and ambitious Assistant

Prof. Guccione (Jan Miller, 3L) who hopes to secure tenure by exploiting the aliens for the financial benefit of HLS. The Dean, Randy Eliason, 3L, and the faculty are begrudgingly grateful to the unpopular Guccione, for the Law School is on the brink of financial demise.

Then Guccione and the faculty discover something about the aliens, something even their law student friends do not fully understand. An ominous threat seems to hang over the law school, Cambridge, . . . perhaps the world!

Starry Decisis is produced by Ed Murray, 3L, and Francis Fitzpatrick, 2L. Andrea Stang, 3L, directs the project. The script was written by a group headed by Jay Handlin, 3L.

Roland Tec, an undergraduate of boundless promise, is music director and the choreographer is the multi-talented Marlene Wittman, whose association with HLS is shrouded in mystery.

Tentatively scheduled to make cameo appearances this year will be Dean of Students Mary Upton (March 7), Prof. Charles Haar and former Massachusetts Superior Court Judge Paul Garrity (March 8), Visiting Prof. Zipporah Wiseman and Prof. Lance Liebman (March 9), Prof. Richard Stewart (March 14), Prof. Daniel Tarullo (March 15),

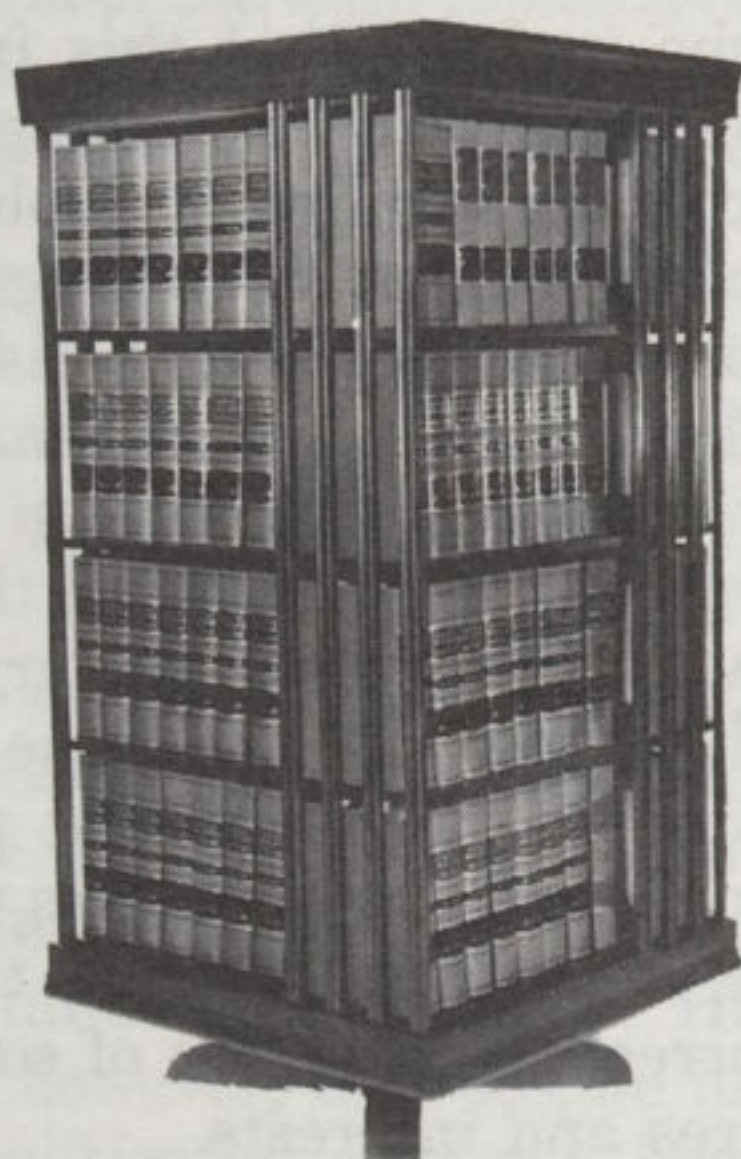
and Prof. Alvin Warren (March 16). In addition, another Visiting Professor may be appearing March 14.

This year's musical marks a quarter century of Law School shows. The First Annual Law School Show was the Dorm Council's "Variety Night" in 1961. The Show became bigger and more ambitious each year, and in 1965 the Drama Society was formed to handle the project. In 1966 the first full-fledged musical was performed, *Kid Me Not, or the Matter of Tot*. Shows in the late '60's included particularly memorable cameo appearances by Derek Bok (then a lowly dean of the law school), Profs. James Casner and W. Barton Leach and Prof. William Andrews.

In 1971 the Show found its home in the Ropes-Gray Room after a peripatetic existence in various Cambridge venues.

In recent years the Drama Society has expanded its activities to include a play and a revue during the Fall Term, increasing the variety of theatrical opportunities available to HLS students. However, the Spring Show remains the Drama Society's principal project each year.

Tickets may be reserved at a price of \$4.50 in Harkness Commons between 11 A.M. and 2 P.M. Tickets may also be available at the door. Group discounts are available. ☛



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Legal Briefs



PEOPLE

The RECORD reports with regret that **Prof. Gerald Lopez** has declined the offer to join the Harvard Law faculty. Lopez, Prof. of Law at UCLA and now a visiting Prof. at Stanford, was offered the tenured position in October of 1984. HLS remains without a tenured minority faculty member.

Derek Bell, once a tenured member of the HLS faculty, has resigned his position as Dean of the University of Oregon Law School.

Prof. Richard Parker joined members of the Dormitory and Student Affairs Council and other students for discussion in DSAC's Brown Bag Lunch Series on Fri., Feb. 15. **Vice Dean David Smith** was DSAC's guest on Tues., Feb. 19. **Prof. Bernard Wolfman** joined DSAC on Tues., Feb. 26.

On Monday, **Prof. Arthur Miller** argued a case for Phillips Petroleum before the U.S. Supreme Court. Later in the week, **Prof. Paul Bator** and former **Prof. Charles Fried**, only recently appointed to the post of Asst. Solicitor General, argued before the court as well.

Prof. Lance Liebman gave a talk to graduate students on "The Role of Courts in India" on Feb. 20. Liebman recently returned from a trip to that country.

Another congratulations to members of the Harvard Legal Aid Bureau, specifically **Jason Brown**, 3L, and **Theresa McHenry**, '84. In a case supervised by attorney Lee Goldstein, Brown and McHenry last year challenged the Arlington Housing Authority on behalf of several individual tenants alleging violations of the Executive Office for Communities and Development (EOCD) Tenant Transfer Regulations. The result of these violations, the complaint alleged, was that many tenants who should have been transferred were left underhoused. The Superior Court upheld the tenants' right to bring the action without exhausting administrative remedies, entering summary judgment based on the EOCD regulations. The Massachusetts Law Reform Institute Housing Information Memo to Housing Attorneys and Advocates throughout the state cited the case handled by Brown and McHenry as "a significant victory for tenants." See **Hauser, et al. v. Arlington Housing Authority and Joan Gross**, *Middlesex Superior Court Order No. 83-5281*.

Prof. Lloyd Weinreb will teach in a law program in Dublin this summer. The program is sponsored by the University of San Diego. Prof. Weinreb will teach a 3-credit course in International Jurisprudence. The course will examine a number of topics bearing on the foundations of international law and the differences and similarities among various legal systems.

Lecturer on Law Philip Alston presented papers at two symposia over the weekend of Feb. 23. The first was a symposium entitled "Economic Development as an Emerging Human Right" which was held in San Diego by the California Western International Law Journal in conjunction with the American Society of International Law. The second, "Poverty, Justice & the Law," was sponsored by the University of Santa Clara Department of Philosophy and School of Law.

SOCIAL EVENTS

On Feb. 22 HLS LLM students hailing from Canada joined forces to throw what they called "A Celebration of the Quebec Winter Carnival, (and the Great White North)." Both British and French Canadians were duly represented. The festivities were joined in by a number of other graduate students and JDs. Two Canadian beer companies donated free brew to the cause and our sources report that nary a drop was left at the end of the party. **Assistant Dean Fred Snyder** and the graduate program administrative staff joined in the festivities, which featured a film of Canada.

Meanwhile, just downstairs in the Back Bench Pub the residents of Hastings Hall were holding their own celebration, "a party with Hastings Hall and all of New England." The fun included a guest DJ and entertainment by vocalist Luke Hunsberger.

And yes, that very same Friday night yet another party. The students of Ames and Holmes Halls held the "253rd Annual Real Washington's Birthday Party" on the first floor of Holmes.

On Feb. 24, the Black Law Students Association sponsored "An Afternoon of Jazz" featuring Don Braden and the Harvard Jazz Ensemble with **Beth Bergman**, 2L. The "Street Corner Symphony" also performed. The event was held in Pound Hall.

EXHIBITS

The Black American Painter's Centuries of Creativity, an art exhibit in celebration of Black History Month, is on display Monday through Friday until March 6. The exhibit was prepared by **Joi Huckaby**, 3L, for the Harvard Black Law Students Association and features work by 15 artists.

The Langdell Library Level One wall case has an exhibition commemorating the 101st Anniversary of the birthday of the first woman judge in any District or Circuit Court, Florence Ellinwood Allen (1884-1966). Appointed to the Sixth Circuit Bench by President Roosevelt in 1934, Judge Allen was a true pioneer in the field of women's rights and a recognized authority on constitutional law and the law of patents.

PUBLICATIONS

Scheduled for publication this month is a "How to" trilogy by **Larry Graham**, 1L. Bantam Books will publish the books: *Your Ticket to Law School*, *Your Ticket to Business School*, and *Your Ticket to Dental School*. Graham is already the author of seven books.

Prof. Paul Bator's articles "Withdrawing Jurisdiction From Federal Courts," and "The Proper Scope of Judicial Decision-Making," appear in the *Journal of Law and Public Policy*, vol. 7, #1, Winter '84. The articles are part of a symposium entitled Judicial Activism: Problems and Responses.

The Bar's Dark Secret

Bar admission committees are perpetrating a fraud. In every state in the union law students applying for admission must present evidence that they possess "good moral character" and "fitness" to practice law. Thus comes the release of information delving into an applicant's personal life and an expansive waiver of legal rights in the event that the use of the information causes the applicant harm.

Yet, it seems that only the good moral character of its *applicants* interests the bar. When those who have already taken their oaths commit the sins which raise eyebrows in bar applications, the bar and the state look away.

Have you ever been divorced or had a marriage annulled? If your separation has been subject to legal proceedings attach copies of all documents.

What constitutes "bad moral character" and "unfitness" lies shrouded in mystery. In earlier days, the profession might have shared a common wisdom on the subject, however, broad application of such a term in today's society offers a dangerous avenue for harassing or even excluding those not in society's mainstream.

Have you ever belonged to an organization which advocates the violent overthrow of the US government or of any state? Have you ever personally advocated such overthrow? Do you still have such intent? Details please.

The key question is what has all of this to do with being a lawyer? If such issues address the essence of the profession, it seems the bar should practice what it preaches. A continuing duty to report any time one gets divorced, when a member of one's family gets in trouble, when one joins a "questionable" organization or when one changes one's underwear seems appropriate.

It might be that the question of what moral character standards a lawyer should meet, if any, can't be answered, at least not until the bar commits itself to examining what this business of lawyering is supposed to be all about. If it is not up to taking this step, it should at least stop fooling itself — for it certainly is not fooling the students who are applying for admission to its ranks.

In your affidavit recommending the applicant, please comment on the reputation of the applicant's family in the community. Do you think the applicant could be convinced to go against the "right" for money?



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Fenno

Having been caught tinkering with the computer in the Admissions Office, Fenno was sentenced by the Ad Board to take a group of zero-Ls on a tour of HLS. Ignoring the usual catcalls and obscenities — emanating almost entirely from the direction of the Dean's Office — Fenno pointed out all professors with the pomp and pretentiousness usually reserved for visiting foreign despots.

"Hey, I recognize that guy," shouted one of the zero-Ls. "Isn't that Groucho Marx?"

"Close, but no cigar," Fenno responded.

"I know who he is," said another (Fenno hadn't bothered to ask the zero-Ls if they had names). "He's on all the gameshows."

"He is very famous," admitted Fenno. "He's the only professor at HLS who has space permanently reserved in the Letters to the Editor section of the RECORD."

The professor, raging, stormed up to the now trembling group.

"Are you talking about me?" he interrogated. "You'd better not be talking about me. My opinions have been promulgated in an article in the *Central Altoona Sun*. I assume you've read them."

"Well, I . . ." stammered Fenno, and he grabbed a chunky zero-L as a potential offering.

"You're entitled to your opinions, and I'm entitled to mine," continued the professor. "But let's get one thing straight — mine are right and yours are wrong."

"Let's go, children," said Fenno, herding the zero-Ls away. "I'll show you where they store the emeritus professors."

"Watch out Mr. Fenno!" sang out the zero-Ls in unison. "He's coming at you with a hypodermic syringe!"

The professor lunged at Fenno, barely missing him. A Claus call, thought our hero. He tried to confront the professor, but the syringe had mysteriously disappeared.

"That was a pretty amazing trick," said Fenno, and the zero-Ls concurred. "Could you do it again?"

"What hypodermic syringe?" asked the professor. "Of course I could do it again. But it'll cost you \$600 an hour."

"That's a bit steep, and besides, the children still haven't seen the egos stored in formaldehyde in the Treasure Room."

"It's not that I need your support, of course. Justice has few supporters and nobody loves the underdog. Every crook in the country is out to get me: judges, opposing counsel, law school newspapers . . ."

"So why don't you give it up? You could always go back to teaching."

Before the professor could respond, Fenno pushed the zero-Ls towards the Hark, where he knew they'd be safe from roving faculty members.





Letters to the Editor of the Record

Good Work

To the Editor:

I was impressed by an item I saw recently in the HARVARD LAW RECORD which deserves praise and attention.

The November 16, 1984 issue [Vol. 79, No. 6] contained a commentary by Arturo Gonzalez that sharply criticized Clarence Pendleton, the current Chairman of the Equal Employment Opportunity Commission. Mr. Pendleton appeared at the law school recently, and Mr. Gonzalez commented on his appearance. The first half of the article was opinionated, and the reader is free to either agree or disagree with Gonzalez.

However, the second half appeared to be solid and factual, [and], if true, demands a followup.

The piece reported that Mr. Pendleton claimed that if Martin Luther King was alive, he would be opposed to affirmative action. The story contrasted Mr. Pendleton's assertions with a quote from a book by Dr. King, which strongly advocated affirmative action, in direct conflict with Mr. Pendleton's assertion.

If Mr. Pendleton misrepresented Dr. King's position, he should be shown Dr. King's quote, and he should be given a chance to present any other quotes or other evidence to support his own position. If Mr. Pendleton cannot do so, then he should admit that he is wrong and apologize to the family of Dr.

King and to the black community. If he refuses to apologize if proven wrong, then Congress ought to inquire into his qualifications and ability to serve as Chairman of the EEOC. This issue is not nit-picking or academic; the issue of affirmative action is vital to the work of the EEOC, and the Chairman must have a firm, if not complete, understanding of that issue.

I have sent copies of the article from the RECORD, . . . to Mr. Pendleton and to my congressman, and I will share any responses I receive with the RECORD. In the meantime, I would like to congratulate Arturo Gonzalez for a good piece of research and commentary.

Patrick Kelly, '80
St. Louis, MO

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which 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 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. All letters submitted become the property of the HARVARD LAW RECORD Corporation.

30 Years Ago At HLS

RECORD, Vol. 20, No. 5 (March 3, 1955)

Paul M. Bator, 2L, of New York City, was elected the new president of the *Harvard Law Review* Monday morning after more than 30 hours of balloting. A graduate of Groton School, Groton, Conn., and Princeton, he obtained an M.A. degree in history at Harvard in 1953. He is a member of Lincoln's Inn and Kent Club. His brother, Peter A. Bator, LL.B. '54, was also a member of *Law Review*.

Mr. Bator will succeed Dennis G. Lyons, 3L of Passaic, N.J., as president of the organization.

Nine other officers were selected by Bator to complete the hierarchy of the new *Review* staff. Taking over as case editors are Howard A. Shapiro, 2L of Albany, N.Y., and Walter F. Leinhardt, 2L of New York City. Note

editors for next year's volume will be Henry P. Sailer, 2L of Wellesley Hills, and Ray H. Greenblatt, 2L of Milwaukee, Wis. Selected as article editors were Albert I. Borowitz, 2L of Watertown, and Richard D. Esben-shade, 2L of Port Clinton, Ohio. Developments editor is W. Loeber Landau, 2L of New Orleans. Philip S. Winterer, of Short Hills, N.J., was named as treasurer and John H. Mansfield, 2L of San Francisco, was selected as book review editor.

The new officers will not officially take over until next year, although they will assume much of the responsibility for the last two issues. The term of office is designated by volume number, the tenure of the officers-elect being Volume 69.

Pres. Bok Endorses Progress Report on S. Africa:

Derek Bok, President of Harvard University, recently issued this statement along with a progress report regarding Harvard's efforts with respect to investment in companies doing business in South Africa. The statement is printed below in full.

I am pleased to share with the Harvard community the enclosed Progress Report just submitted to the Advisory Committee on Shareholder Responsibility. That report describes what the University has done during recent months with respect to its investments in American companies doing a small part of their business in South Africa.

Let me preface the report with a few words about Harvard's response to South Africa and apartheid. Two important values are fundamental to a modern university: intellectual freedom and individual dignity. A system of government that separates people on the basis of color, strips members of one race of their freedom and basic rights, and carries out these indignities through criminal law and police action is fundamentally inconsistent with these values. South African apartheid is such a system. South Africa's policies of racial discrimination are built into the constitution and laws and enforced through the civil and criminal courts. Blacks are denied citizenship, educational and economic opportunity, personal mobility, due process of law, and most civil rights and liberties. For these reasons, all of us unequivocally condemn apartheid.

In light of these convictions, Harvard has acted along two principal lines.

First, Harvard as an investor opposes apartheid through its activities in the management of its securities and other investments. For reasons clearly stated on many occasions, the University does not believe in divesting its shares in all American companies doing business in South Africa. But Harvard neither owns nor will own any shares in companies doing the majority of their business in South Africa, nor will it hold any debt securities in banks that loan to the South African

government. On two occasions Harvard has divested such debt securities. Harvard will also vote its shares and seek other means of persuasion to induce companies in its portfolio to implement each of the following anti-apartheid principles:

- elimination of all racial segregation in work facilities

- equal and fair employment practices for all employees, including permission for black and other non-white workers to bargain collectively on matters relating to wages and conditions of employment

- equal pay for equal work, with an adequate minimum wage

- development of training programs to prepare substantial numbers of blacks and other non-whites for supervisory, administrative, clerical, and technical jobs

- hiring of blacks and other nonwhites in management and supervisory positions

- improvements in the quality of employees' lives outside the workplace in such areas as housing, education, and community development

Last year Harvard initiated dialogues with nineteen companies to probe the extent of their active compliance with these basic anti-apartheid principles. The outcome of these dialogues, including those described in the accompanying Progress Report, is as follows. Seven companies initiated concrete steps to demonstrate compliance with the above mentioned principles. Four other companies provided the Corporation Committee on Shareholder Responsibility (CCSR) enough information on existing activities to satisfy the concerns that had led the CCSR to initiate the dialogue. Communications with three companies are still in progress, and Harvard disposed of the stock of four other companies in the normal course of business while communications were still going on. Finally, Harvard divested the shares of one company because persistent efforts to secure information concerning the firm's activities proved unavailing, and there seemed to be

no reasonable prospect that the management would supply evidence in the foreseeable future to demonstrate satisfactory progress. Harvard should soon have enough information to conclude whether any of the three companies with which dialogue is still in progress are so unresponsive to our efforts and show such slight prospects of improvement as to warrant similar action.

This year, as noted in the Progress Report, Harvard has also written to each company in its portfolio that is doing business in South Africa urging management to express active opposition to South Africa's influx control laws — the cornerstone of apartheid — and to undertake action to try to assure that black employees' families will be allowed to live with them near their places of work. In addition, the University has begun to seek information on portfolio companies' sales to the South African government, with special emphasis on sales to the police, military, and other agencies directly enforcing apartheid.

Harvard has likewise joined with fifteen other universities and colleges in urging the American Chamber of Commerce in South Africa to mount active and sustained opposition to the influx control laws integral to the maintenance of apartheid.

In addition to its actions as a shareholder, Harvard continues to make special efforts as an institution of learning to provide educational opportunities to South African blacks. For the past four years Harvard has offered full scholarships and travel grants to nonwhite

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Claims Companies Heed Harvard's Voice

South Africans for a year of graduate or professional study in a variety of fields, including law, business, health, and education. Next year, we expect to offer such assistance to five such students, and others are likely to study at Harvard under separate auspices or different programs. Over the years, I am aware of no other American university that has educated as many nonwhite South Africans. It is our hope that these efforts will help in developing leaders who will play a significant role in furthering the goals of black people and promoting their welfare in South Africa.

Seeking Advice

In pursuit of the same ends, I have served since its inception as chairman of the National Council of the South African Education

Program (SAEP) which brings each year 80-90 nonwhite South Africans to begin studying in the United States. The scholarship recipients and their fields of study are determined by a committee in South Africa chaired by Bishop Desmond Tutu. Almost 225 such students are currently enrolled in American universities under the SAEP program. Through our efforts, approximately six million dollars are being raised annually for this purpose from U.S. corporations, universities, and the federal government.

Finally, Harvard and SAEP are currently seeking the advice of people in South Africa opposed to apartheid to explore other ways by which to help in fields of critical importance to the welfare of black South Africans. Among the alternatives under consideration are efforts to assist black unions in the

use of mediation and arbitration, opportunities to assist in teacher training or curriculum development, possibilities for improving medical education, and methods for helping integrated private schools in South Africa.

The Spirit of Plessy

Almost ninety years ago, Justice John Marshall Harlan wrote a prophetic dissent to the Supreme Court decision in *Plessy v. Ferguson*, upholding state-imposed segregation in the United States. Harlan condemned mandated segregation as "inconsistent not only with that equality of rights which pertains to citizenship, but with the personal liberty enjoyed by everyone in the United States The destinies of the races in this country are indissolubly linked together, and the common government of all shall not permit the seeds of race hate to be placed under the sanction of law." The spirit of Harlan's dissent underlies our commitment as a university to oppose discrimination and exploitation based on race and to express that opposition in ways appropriate to an educational institution.

The enclosed report helps document our recent activities toward that end. We recognize that Harvard cannot claim with certainty that its efforts have "caused" the improvement made by various of our portfolio companies to comply with the ethical standards we have supported. But our voice has been clearly heard and presumably played a part. The one divestment earlier represents a failure in our efforts at persuasion but reinforces our stated commitment to abandon situations where we see no hope of bringing about positive improvements. Through these efforts as a shareholder and as an educational institution, we will continue to do what we can in a positive way to contribute to the welfare of nonwhites in South Africa in their struggle toward freedom and self-determination.

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Student Wins Case In Mass. High Court

(Continued from Page 2)

clients from Suffolk and Middlesex Counties. Its work centers around four major areas of law: housing, including landlord-tenant law and government-assisted housing; family law; government benefits programs, including A.F.D.C., social security and veterans' benefits; and consumer law. The Bureau is not involved in criminal defense work.

According to Williams, members appear "at every level of court in Massachusetts," including Federal District Court. As an example, she pointed to Glenn Falk, 3L, who recently won an unemployment compensation case in the Massachusetts Supreme Judicial Court. The student lawyers do everything from research and brief writing to argument and appeal when warranted.

Each spring, the Bureau selects its members by lottery from the first-year class. The process includes affirmative action policies for women and minorities. Members serve out a two-year tenure until graduation, keeping up a caseload of three to five cases per student. This entails an average time commitment of twenty hours each week. Both Williams and Callahan said that while the time commitment may seem large to potentially-interested 1Ls, "it's not a hurdle," because the change in priorities and emphasis after the first year make it "reasonably easy" to work out.

Although most of the Bureau's work centers around representing

individual clients, the Bureau is involved in four "impact" areas, where multiple clients are represented as a class. For example, the Bureau acts as monitor of a consent decree governing landlord-tenant relations at Rindge Towers. In the family law area, the Bureau has organized three clinics that enable clients to file their own divorces in simple cases and avoid the usual twelve-month waiting period for individual representation. Williams said the impact projects are student-generated, and that the Bureau is always looking for community needs that should be addressed.

The student lawyers often deal with members of the local bar, who are "pretty accepting" said Williams. She also noted that the Bureau does not take any work away from the private bar, and pointed out that all lawyers would agree that some representation is better than none.

Williams said that students are motivated to join the Bureau be-

cause of a desire to help those less well-off and because of the fantastic learning opportunity that the position offers. Participating students, said Callahan, learn about substantive areas of law and "develop skills that most graduating law students don't necessarily have."

The Bureau will begin recruiting in March. Interested 1Ls should watch for notices of informal meetings and an open-house scheduled for the spring.

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Resignation Sparks Speculation of Bell's Return

(Continued from Page 1)

faculty. Edwards was subsequently appointed to the D.C. Circuit. Ferguson died in December 1983, leaving HLS with no tenured Black faculty members.

Although he intends to stay at the University of Oregon for the time being, Bell has indicated that it is possible he will return to the HLS faculty.

Bell was quoted in the *National Law Journal*, February 25, 1985, at 4, as saying "It's a distinct possibility that I will return to Har-

vard." Although he told the *RECORD* that he did not remember making that statement, he acknowledged there "certainly is some possibility" that he will come back to HLS. However, Bell said that he "plans no decision any time soon," and indicated that any choice on his part would not be forthcoming for at least a year.

Welcome Back

Bell added that the HLS faculty has been "warm in their indication that they would welcome my return." In response to a *RECORD* question, he said it was "fair to say" that a spot was open for him on the faculty if he decides to take it. He noted that while HLS has not ap-

proached him with a specific offer since the announcement of his resignation at Oregon, he has received indications all along that he would be welcome here.

HLS Dean James Vorenberg, when asked if Bell had received an offer to rejoin the faculty, said he was "not at liberty to talk about faculty votes on appointment matters" until formal action has been taken. He added, however, that personally he "would be pleased to have him." Bell is an "enormously respected person around this faculty," Vorenberg added.

♦♦♦

MATH TEACHING FELLOWS NEEDED

Teaching fellows are needed for the Department of Mathematics Pre Calculus Course, "Math Ar" in the fall of 1985. Two years of Calculus are necessary.

There will be an informational meeting at 8 p.m. in the Science Center A on Sunday, March 3rd. Contact Joel Poholsky for more information. Phone: 495-9373 (days) or 498-7153 (evenings).

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HLS Unloads Baker Stock

(Continued from Page 1)

Committee on Shareholder Responsibility (C.C.S.R.) vetoed when it implemented the intensive dialogue policy.

The Baker International divestiture leaves Harvard with \$565 million worth of stock invested in South Africa-related companies. At least three other corporations in Harvard's portfolio have failed to become signatories of the Sullivan principles, a set of minimum ethical standards designed to improve conditions for non-whites in South Africa.

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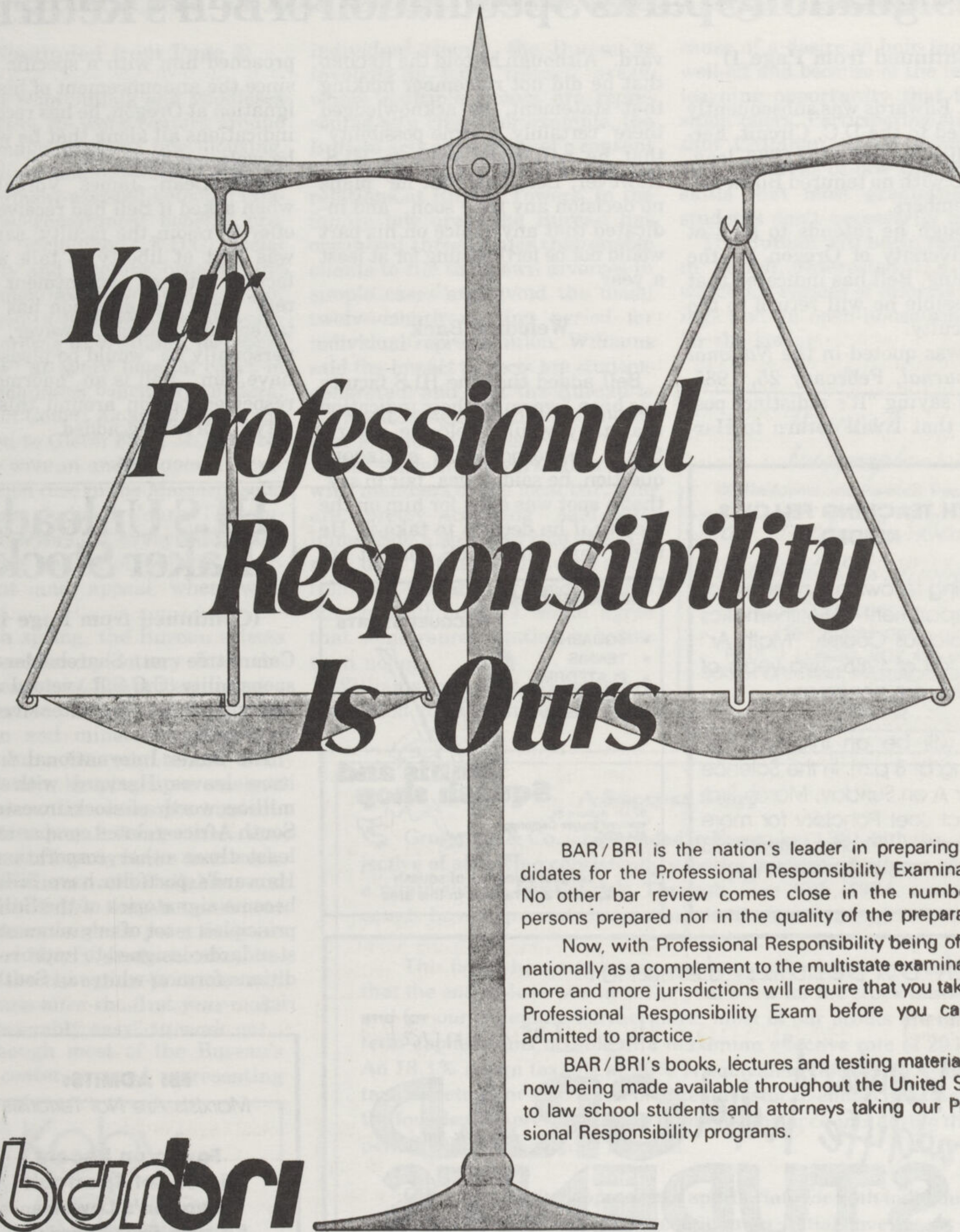
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Jennings Calls For Informed Foreign Policy

(Continued from Page 3)

size only the negative aspects of the United States, he said.

Discussing American foreign policy toward the U.S.S.R., Jennings advocated a combined effort to contain the Soviets and to reach diplomatic agreements with them. He asserted that a firm policy can be effective.

However, he vigorously decried attempts to "humiliate" or "punish" the Soviet Union. He was especially critical of the suggestion some have made that the U.S. can apply economic (and political) pressure to "drive [the Soviets] to their knees."

The U.S.S.R., Jennings explained, "is not some pipsqueak nation." He also contended that the Communist Party, while not bringing a pros-

perity to the Soviet people that in any way rivals the prosperity of Western nations, has kept its most basic promises. It has given the people national security, has fulfilled their basic physical needs (by, for example, providing lifetime health care), and has managed to bring them an increasing material standard of living.

Jennings criticized the claim, expressed most recently on the fortieth anniversary of the Yalta agreement by President Reagan, that the U.S. can force the Soviet Union to allow freedom to the nations of Eastern Europe.

"We have to keep reminding our-

selves," he said, "that we do not have the leverage to do anything about" the situation in Eastern Europe. He illustrated this point by noting that all the U.S. could do in response to the invasions of Hungary, in 1956, and Czechoslovakia, in 1968, was to protest verbally. He also noted the large number of Soviet troops stationed in Eastern Europe. "Remind me, I've forgotten," he said, "how many divisions do the Soviets have in Poland?"

Jennings summed up his call for a firm but informed American foreign policy by again reminding the audience that "the survival of the Soviet system is not in question." ❧

Reagan Walks, But Chayes Stays

(Continued from Page 2)

The Reagan administration has urged that the matter is inappropriate for determination by the World Court. However, the Court decided otherwise.

Noted Chayes in the RECORD, "Even the U.S. judge had voted against them." Chayes claimed that the administration "... did what they did because they thought they were going to lose." He asserted that international law puts restrictions on what one "can and cannot do and this administration wants to do what it wants to do" without

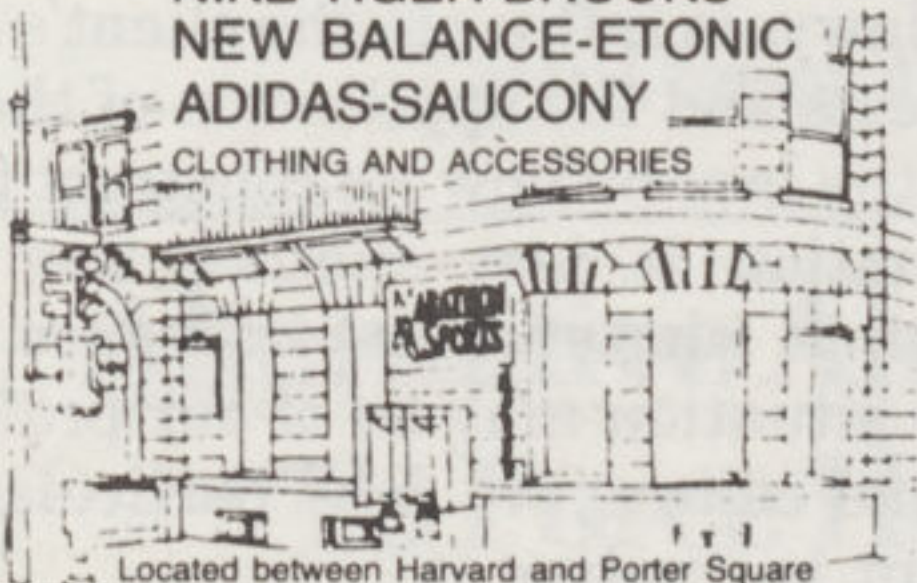
external constraints. Chayes feels that this position departs from what the U.S. has traditionally stood for.

If the Court decides against the U.S. Chayes says that the "administration will say it's a phony." According to Chayes, it will then become increasingly difficult for the Reagan administration to maintain support for its policy in Nicaragua, both within the U.S. and in the international community. Chayes said that both the Iranian situation and this present dispute with Nicaragua represent the Court's acceptance of a somewhat more active role in these kinds of controversies.

It remains to be seen how effective the Court will be, but Chayes argues that when it takes an active role it gains legitimacy and this is a positive step towards an international legal order. ❧

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Gordon Urges Return to Republican Vision

(Continued from Page 5)

ilating disparate bodies of specialized expertise, discerning the relation of each to the politics' general purposes and transforming diagnosis into social action through proposals for legislation and administration." Two of the most effective of the purposivists of the 1880s were Charles Francis Adams (LLB, 1892) and Louis Brandeis, (LLB, 1877).

The Progressive Purposivist lawyer could serve as the architect and administrator of state regulation mechanisms, as counselor to the corporation, directing private enterprise towards social-welfare-maximizing ends, or as a member of the independent intelligentsia, usually as a law professor.

But Gordon said the Progressive Purposivist movement was a minority movement within the elite bar as a whole. It also suffered internal conflict which crippled its

progress. Gordon thus had described a virtual disappearance of the politically engaged lawyer celebrated by republican vision.

Gordon noted one big exception to the private bar's withdrawal from public involvement: its mobilization against the New Deal. "Lawyers could certainly mobilize behind a political program if they wanted to," he observed. "Throughout most of this century they have not wanted to; have retreated into the role and rhetoric of the Jacksonian lawyer-technician, who simply sells his skill to facilitate the projects of his clients."

Gordon urged a revitalization of the republican notion of the politically engaged lawyer with an identity autonomous from his clients. He argued that lawyers should actively seek out opportunities to exercise judgment and to apply their counseling and planning skills.

He also rejected arguments which

suggest that today's firm structure makes such influence impossible (i.e., that lawyers' work is only filling in blanks and they only work on a small part of a project) and arguments that it is inappropriate for lawyers to exercise autonomous judgment, the proper role being implementation of the client's will.

He said roles of firm lawyers can be critically examined and practices which are routinized may be reformed or even abolished in favor of others. Said Gordon, "Lawyers, of course, have some control over definitions of their roles, particularly definitions that limit their capacity to exercise judgement."

He added, "a corporation is not monolithic ... [i]t is composed of people whose conceptions of what their company's true interests are may be shaped and transformed by, among other things, discussions with their lawyers."

He insisted that one cannot take seriously the claim that lawyers do not already affect client interests. Said Gordon, "The denial that we as lawyers influence the client's interests and the application of them to 'the law' by how we construct the situation is just another way of saying: whatever the influence on the situation may be of our professional culture, we don't particularly want to analyze it."

"We can refuse to analyze it," said Gordon, "but we can't refuse to have an effect."

Gordon pointed to a need for groups of lawyers to take collective action through meetings of groups of associates, factions of law faculties, public-interest law firms, little enclaves within bureaucracies, sections of the bar associations and the like where they can discuss their work and mobilize for reform.

Though he acknowledged that not everything about the traditions he discussed is admirable (their elitism, for example), he suggested that history can offer instructive lessons.

"Purposes may not inhere in the law," said Gordon, "but lawyers working together can help create cultures of common purposes."

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