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25 CENTS



Joe Wrinn

Rev. Jesse Jackson addresses crowd at divestment rally.

Supreme Court Appointments: Rees Defends Ideological Tests

By John David Dyche

Professor Grover Rees III of the University of Texas Law School lectured on "The *Roe v. Wade* Litmus Test: Picking the Next Supreme Court" Thursday, April 4, in Pound Hall of Harvard Law School. The address was part of the John M. Olin Lectures in law sponsored by the Harvard Society for Law & Public Policy. The lecture was followed by comment from Harvard Law professors Paul Bator and Randall Kennedy and questions from those in attendance.

Rees is an instructor in Constitutional Law on the Austin campus and was formerly a staff member on the U.S. Senate Committee on Separation of Powers. In that ca-

capacity he advised legislators on the questioning of nominees to the Supreme Court. In his address Prof. Rees defended the propriety of using a judicial nominee's position on a single case as a litmus test for appointment. Rees contended that *Roe v. Wade* is at present such a case as much for the style of Constitutional construction it represents as for its holding on a specific set of facts. According to Rees, the *Roe* case is the "flagship of non-interpretive jurisprudence." Rees likened *Roe v. Wade*'s representation of a broad Constitutional philosophy in this era to that of *Lochner v. New York* and *Brown v. Board of Education* in past decades.

(Continued on Page 19)

Jackson Condemns Immoral Investment

By Maurice S. Kane and
Kerry Osborne

On April 4 Dr. Martin Luther King, Jr.'s assassination and his dream were juxtaposed to the oppression of black South Africans and the hope for an end to apartheid. That day witnessed the largest rally against apartheid and for divestment ever held on the Harvard University campus. Organizers purposefully planned to hold the event on the 17th anniversary of the assassination of Dr. King.

Among the featured speakers was the Reverend Jesse Jackson who joined about nine other speakers in calling for an end to apartheid and economic sanctions against South Africa. Both Harvard University's policy of "intensive dialogue" and the Reagan administration's policy of "constructive engagement" came under fire.

Other speakers in addition to Jackson were African National

*Students camp out
to protest Harvard's
policies. See page 14.*

Congress Director of International Development Mfanafuthi J. "Johnny" Makhatim, who is exiled from his homeland, former Boston mayoral candidate and former state legislator, Mel King and Rabbi Ben-Zion Gold of Harvard Hillel. Senator Ted Kennedy, who could not attend the rally, sent his nephew Michael Kennedy to deliver his message of support. Harvard University students who spoke included Michael

(Continued on Page 14)

Edley, Reynolds Debate Civil Rights Record

By Paul Weisenfeld

On April 3, the Ripon Society sponsored a debate between William Bradford Reynolds, Assistant Attorney General for Civil Rights, and Christopher Edley, Assistant Professor of Law at Harvard. The subject of the debate was "Reagan's Record On Civil Rights." The Ripon Society is a national organization for moderate views in the Republican party.

Each participant made a ten-minute presentation followed by questions from three student panelists. The panelists were: Stephanie Moore, 3L, representing the Harvard Black Law Students Association; Jeffrey Tobin, 2L, representing the Harvard Law Review; and Joshua Davidson, 3L, representing the Harvard Society for Law and Public Policy.

Reynolds opened by saying that many have criticized the present administration for its non-enforcement of civil rights rules. However, Reynolds asserted that the Civil Rights Division (CRD) has been more effective under the Reagan administration than in the past. "We have surpassed our predecessors on every front — in terms of numbers of school housing and voting cases, and in terms of rights for prisoners and patients in mental institutions."

Criticisms of CRD

Some criticize the CRD's enforcement of civil rights laws because it has abandoned traditional notions of affirmative action. Reynolds said the principle of race neutrality is embodied in the 14th amendment and thus cases have been brought

where institutions have allocated a specific number of spots for persons on the basis of race. Discrimination violates one's civil rights regardless of one's race, said Reynolds.

Edley, on the other hand, declared that, listening to the Reagan administration, one would think the only kind of discrimination worthy of concern is that against white males and this just ignores U.S. history. "The claim that now we should proceed as a race neutral society is both 200 years too late and two generations too early," Edley asserted.

The role of the CRD, said Edley, is not to be a court and decide that now we are going to have a race neutral, just society. The role of the CRD is to be a civil rights advocate for groups which have historically been denied a voice in the political arena.

In response to a question from Stephanie Moore about his stance on affirmative action, Reynolds responded that a policy which entitles people to opportunities, who have not themselves been victims of discrimination, is not constitutional within the existing civil rights laws.

Racing a Wheelchair

Edley responded that he does not agree with this constitutional interpretation and "being blind to differences that continue to have great importance in social reality is oppressive," it is like "standing at the bottom of a staircase and saying to someone in a wheelchair, I'll race you to the top."

"When a white applies for a job," said Edley, "and his chances are diminished because the employer wants to hire a minority, that is an injustice which I would condemn in a race-neutral, perfect world but the strength of that claim is not borne out when generation after generation there continue to be no minorities in jobs and the problem is left to the good will of employers."

Reynolds said that the use of a quota system does not account for minorities who apply for a job after the quota has been filled. Consequently, Reynolds argued that more minorities have been brought into positions because of the Reagan administration's policy of race-neutral affirmative action. Reynolds ended by saying that the CRD is not the advocate for one single downtrodden group, it is the advocate of anyone who has experienced discrimination.

Edley ended by saying that every administration until now has viewed the CRD as the champion of the underrepresented, underemployed groups of people who are the objects of discrimination.

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Future Of CLS: Growth Or Passing Fad?

By Mike Sturm

An overflowing crowd of students and professors recently gathered at a Society for Law and Public Policy forum to hear Prof. Phillip Johnson of Boalt and Profs. Clare Dalton and Richard Parker of HLS address the question, "Do Critical Legal Scholars Belong on Law School Faculties?" All of the members of the panel ultimately agreed that Critical Legal Studies (CLS) professors do belong on faculties, but there was clearly no agreement among those present on the ultimate value of CLS as a mode of legal thought.

Johnson began by reviewing the allegations of an article written by Dean Paul Carrington of Duke University Law School. In that article, Carrington argued that those who believe in the tenets of CLS, to the extent that their beliefs are synonymous with nihilism, have an ethical duty to resign from law school faculties. (See "Of Law And the River," 34 *Journal of Legal Education* 222-228, June, 1984. See also Carrington, Letter to the Editor, p. 11). Johnson then characterized CLS as having an intensely skeptical view of doctrine and as premised on the belief that there is an answer for every argument. He said these views are combined with a romantic left-wing radicalism or utopianism.

Johnson argued that CLS is merely symptomatic of the breakdown of liberal philosophy, and that despite its leftist orientation, it is more likely to harm liberal positions through its demystification of doctrine.

Johnson's presentation included numerous attacks on those within the CLS movement, most notably on HLS professor Duncan Kennedy. Johnson concluded that CLS would prove to be just a passing fad and that CLS professors should probably be allowed on faculties because they would soon see the error of their ways and return to more traditional legal scholarship.

Profs. Parker and Dalton argued that while the ultimate judgment

on CLS lies in the future, CLS has already gone beyond legal realism to a deeper, more systematic analysis of doctrine. Parker compared the reception of CLS scholars to the reception of the legal realists several decades ago. At that time, he said, Harvard's faculty sought to keep the realists out, and as a result Harvard lost its preeminent position in the legal world. Yale, which was receptive to the realists, moved forward. Now, with many of the leading CLS scholars on the HLS faculty, "Harvard is where things are happening" in legal scholarship, said Parker.

While there was substantial (or, more accurately, total) disagreement on where CLS may lead, the speakers seemed to agree that more scholarly engagement is needed

across the CLS/non-CLS boundary. Johnson predicted that CLS will fold in the face of conservative challenge, while Dalton and Parker suggested that such a challenge will result in continued growth of the movement.

In the midst of the highly theoretical debate, a 1L brought the room briefly back to more practical matters with a question concerning how he was supposed to "learn the law" while engulfed in this great ideological battle. The answer came from another student — "There's always one great middle-of-the-roader: Steven Emmanuel."

(Note: For the uninitiated, Steven Emmanuel is the author of an outline series much used by students preparing for classes in the first year.)

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Sohn Reviews Record Of U.N.

By Maurice S. Kane

International law expert Louis Sohn, a man present at the creation of the United Nations, delivered an address on "The United Nations at 40" on April 5 in Pound Hall.

At the outset, Sohn dealt with criticisms made of the fledgling international organization four decades ago: (1) the League of Nations, an earlier association of sovereign

states, collapsed when the Axis powers of Germany, Italy, and Japan withdrew, and it was deemed likely that a similar fate would befall the UN, (2) the UN Charter was a poorly drafted document incapable of promoting cooperation, and (3) a Third World War would not be prevented in light of great power antagonism.

(Continued on Page 20)



HARVARD LAW SCHOOL CAMBRIDGE, MASSACHUSETTS



Announcing the Law School's 17th Program of Instruction for Lawyers, (June 16-29, 1985), which will include more than thirty in depth courses and four colloquia of more general interest taught by members of the Faculty of the Harvard Law School.

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2L/3L Day: Coping With Life After Law

By Burlette Carter

On Saturday, March 16, HLS sponsored its second annual 2L-3L Saturday. The program, initiated last year, is intended to present a forum for the discussion of life in the working world. This year invited panelists and participants discussed balancing one's personal and professional life and the opportunities for pro bono work in the private and public sectors.

The first panel consisted of John Payton, partner at Wilmer, Cutler & Pickering, Jane Luxton, senior associate at Steptoe & Johnson, Dr. Jessica Oesterheld, psychiatrist, Harvard University Health Services and Dwight Golann, Chief of the Consumer Protection Division, Massachusetts Attorney General's office.

Stress in the Working World

Much of the panelists' comments focused on the lives of those who choose to work with law firms and a constant theme was stress. (More than 90% of HLS students pursue the firm route.) Golann compared firm life to life in the public sector, saying that many of the stresses of firm life are not present. But he added that the public sector offers relatively less security. Luxton, who moved from the public sector to the firm, echoed the differences in the stress. Payton told the audience that law firms need generally to discuss the stresses of firm life and how they affect the relationships and ultimately the environment of the firm. He mentioned the need of some to glee in bossing non-legal personnel around as a manifestation of stress. He noted that associates feel less inhibited these days about speaking up when they are discontented and said that the effect of the stresses of firm life is now fair game for discussion among firm members.

Oesterheld said that the literature on the subject of stress reveals that white men who are married suffer less stress than single white males, married or single black men

and women, and single or married white women. Overall, general data suggest women experience more stress than men.

She also revealed her study of first year associates in New York and Boston firms, which indicates that stress in or change in one's life largely depends on one's perception of personal control and on the desirability of the change. She said, for example, that those people who feel they are sick of being students will suffer less stress in a move to the working world than those who long for one more year of school.

Stress Producers, Stress Buffers

Oesterheld spoke of nine categories of stress producers which her survey revealed: the long and inflexible hours of firm life coupled with associates' anxiety over the quantity of work expected of them; stress which accompanies "knowing the ropes" — office procedure, associate competition and the like; the stress accompanying moving geographically; stress arising from unknown expectations of superiors. Fifth, she mentioned losses or changes in important relationships. She said this point was mentioned far more often by women than men.

Sixth, she mentioned the stress accompanying one's having "real responsibility" for money or property, possibly for the first time in one's life.

Seventh, she said, were the stresses related to learning lawyering skills; eighth, those associated with needing to dress up and act the part in one's "first real job"; and, ninth, inner doubts and psychological conflicts about one's abilities and choices.

Oesterheld said that her study also revealed the existence of stress buffers. The most popular buffer was talking to someone. While men in her study tended to talk to other associates, women tended to speak to lovers, husbands and other family members.

She also mentioned attitudinal buffers: keeping a sense of per-

spective, organizing one's time.

She noted that working "harder and longer and longer" was yet another buffer revealed by her survey. Men outnumbered women four to one in mentioning this phenomenon of working more and more in order to relieve stress. She also noted that men were the only ones who mentioned doing pro bono work as a stress reliever. On the other hand Oesterheld said women mentioned protecting their "private time" or time for themselves as a necessary buffer.

Exercise was yet another stress buffer — interestingly enough, mentioned by more women than men. While not a single woman mentioned drinking or drug usage as a buffer, many men mentioned these activities as ways they sought to relax and relieve stress.

Finally, Oesterheld said many in her survey mentioned that buying extra treats for themselves, such as a new home, was a stress buffer.

Parenthood on the Partnership Track

Oesterheld stated that it is probably true that stress of the seventh and eighth years is higher than of the preceding years (with the exception of the first) because of the anticipation of partnership decisions. Luxton agreed with this view. Luxton, who has children of her own, said she suggests that women who want to have children must realize the stress which accompanies the first year and the need in the senior associate years to work harder and make the "big push" in light of partnership decisions. She suggested that having children could create tremendous stress as one tries to deal with raising a newborn and meeting the demands of the job and that it may be the interim period which is more conducive to this combination of working and having children.

Dwight Golann reminded students that questions of maternity leave and paternity leave are not really the relevant questions to ask as far as the decision to have chil-

School

dren is concerned. He said that children need much more time than that. "Six weeks or six months (with a child) is kidding yourself." He said that "both men and women" should be aware of the fact and admit to themselves that "the child is not going to have as good a relationship with you as (he or she would have) if you were there."

Pushing for Pro Bono

The panel also discussed briefly the desires to do pro bono as they affect firm life. Payton told students that he had made up his mind to do some pro bono work from the start. He said pro bono work seemed not to have jeopardized his partnership chances. However, he admitted "these (decisions) can jeopardize you . . . you have to decide where . . . your values lie."

Luxton agreed with this point, adding that one can engage in pro bono work if he or she is efficient. She stressed that "efficiency is the key" to both relieving the stress factor and giving oneself time for outside projects.

However, Payton, Luxton and Golann all stated that pro bono work is not the bread and butter of private firms and that it is unrealistic for one to expect that he or she will be able to spend a tremendous amount of time on such projects.

Members of the second panel echoed this view. Those members were Sarah Ann Determan, a partner at Hogan and Hartson in Washington, Michael Posner, Executive Director of the Lawyers' Committee for Human Rights in New York, Scott Lewis, a partner with Palmer and Dodge in Boston and Marjorie Heins, Staff Attorney for the Massachusetts Civil Liberties Union Foundation.

Determan told students that, in contrast to the '60's, students of the '80's aren't pushing enough for pro bono work in the firms.

Determan cited her own firm as an example of a firm's commitment to pro bono work. Hogan and Hartson has a pro bono department with

(Continued on Page 16)

Legal Briefs

People

Prof. Derek Bell, who recently resigned his position as Dean of the University of Oregon Law School and is a former tenured member of the HLS faculty, will teach a three-credit course entitled "Constitutional Law: Supreme Court Decision Making" at HLS next Winter Term.

Congratulations to **Robert Ervin, 3L**, of the Harvard Defenders who on March 1 successfully argued a Habeas Corpus Petition before Justice Kent Smith of the Massachusetts Appeals Court.

Another Congratulations to **John Berck, 2L**, under the auspices of the Harvard Legal Aid Bureau, argued before the First Circuit in the case of *Crosby v. Social Security Administration* on April 4.

Steve Warren, 3L, who has won \$42,000 on the T.V. gameshow "Sale of the Century" is not the only gameshow whiz at HLS. **Georgette Chapman, 3L**, recently won \$23,000 in cold cash on "Scrabble."

Dr. William D. Cochran, Associate Clinical Professor of Pediatrics at the Harvard Medical School, has been awarded the C. Clyde Ferguson Award by the Association of Black Faculty and Administrators. The award is named in honor of the late **C. Clyde Ferguson, Jr.**, former Henry L. Stimson Professor of Law, and is awarded for significant contributions to the diversification of the Harvard Community.

Don Robinson, 3L, President of the Harvard Jewish Law Students Association recently represented HJLSA at the Annual Conference of the National Jewish Law Students Network in Philadelphia.

More People . . .

Pamela Moore, 2L, has been elected President of the Harvard Black Law Students Association. Moore traveled with other members of Harvard BLSA on March 20-21 to the National BLSA conference in San Francisco.

Yolanda Townsend, 2L, has been elected chair of the Board of Student Advisors. **Carolyn Cox, 2L**, was chosen to be vice-chair.

Prof. Alan Dershowitz recently debated Rabbi Meir Kahane, member of the Knesset, at the Old South Church in Boston.

The Spring session of the Board of Student Advisors' Elihu Root Lecture Series began recently. On March 12, **Richard Moran**, spoke on "The Execution of Thomas Barefoot by Lethal Injection: An Eyewitness Account." On April 2, **Visiting Prof. Deborah Rhode** spoke on "Regulating the Legal Profession." And on April 11, Massachusetts Assistant Attorney General and **Lecturer on Law John Cratsley** spoke on "Community Courts."

Marion W. Edelman delivered the Ralph E. Shikes Lecture April 9 on "The Status of Children in the 1980s." After her lecture, Edelman joined the Women's Law Association for a discussion of "Practice in the Non-Profit Sector." On April 8 she had attended a wine and cheese reception as the guest of the Children's Rights Project.

On Thursday, April 11, **Prof. Martha Field** joined the Women's Law Association in a discussion of "Faculty Hiring: Three Years on the Appointments Committee."

Also on April 11, NBC Newsman John Chancellor came to HLS as the guest of the Forum. He spoke on "Lawyers and Journalists: Similarities and Differences."

Dan Gordon, 2L, former U.S. representative of the Israeli Peace Now movement, spoke on "Prospects for Peace between Israelis and Palestinians" on April 8.

Assistant Prof. Christopher Edley joined **Prof. Nathan Glazer** and **Jack Pole**, Rhodes Prof. of American History and Institutions at Oxford University and author of *In Pursuit of Equality* at a forum on "Equality in Action" at the Kennedy School.

Publications

In our last issue, we reported the following articles as if they appeared in the *Harvard Women's Law Journal*. In fact, they appear in the *Harvard*

(Continued on Page 17)

HLS: International In Name, Provincial In Fact

John Stubbs

John Stubbs, LL.M. '79 is now a second year student at the Harvard Divinity School. The following opinion piece has been endorsed by the executive board of the Harvard Black Law Students Association.

1985. Roughly one hundred and fifty years since Justice Story taught law at Harvard: the case method has been in use for more than one hundred years; an interesting version (perversion?) of the Socratic method predominates, and all the tenured faculty are white.

Harvard Law School is an international law school in that students and scholars from all over the world come here to learn "the law" — not just American or Anglo-American or "common law" but "The Law." And all the tenured faculty are white.

An international law school — in a world that is seventy percent "colored" — and all the tenured faculty are. . . .

It has not always been that way. In 1972, Harvard made a significant break with its nearly century and half long tradition and tenured one American black: Prof. Derrick Bell. Not long thereafter two other blacks earned and received tenure — Prof. Harry Edwards, and the late Prof. C. Clyde Ferguson, Jr. Prof. Edwards had earned tenure at the University of Michigan School of Law, came to Harvard, and later returned to Michigan before his appointment to the federal bench. Prof. Bell accepted the Deanship at the University of Oregon School of Law; and recently resigned in the midst of a controversy involving that School's demonstrated lack of commitment to hiring qualified minority faculty. Prof. Ferguson died tragically and suddenly, leaving a void which perhaps can never be adequately filled but which remains distressingly *unattended*.

At one time it appeared that the Law School was dedicated to hiring and promoting faculty persons on the basis of their accomplishments in scholarship, teaching, the legal

profession and, more generally, to the larger society. Accordingly, it was with great pride and anticipation that we saw our school invite two distinguished legal scholars to this campus. These individuals, Prof. Gerald Lopez and Prof. Linda Green, were born among folk who are, in America, referred to as racial "minorities."

The Law School extended Prof. Lopez an offer of tenure, as it was obliged to do, in all fairness, based "on the record." He declined the offer.

Professor Greene brought to the Law School an exceptional scholarly portfolio, excellent teaching credentials, an outstanding record of legal advocacy, and consistently fruitful contributions to the larger community. Moreover, while at Harvard she was an advisor for several *Law Review* articles, ready confidant for students, and a superb role model of how one may sensitively yet uncompromisingly present all sides of volatile legal, social, political, and moral issues.

. . . Third World Coalition representatives have had at least three meetings with the Dean of the Law School in the past semester alone regarding the hiring and promotion of highly qualified faculty members — especially persons who are members of America's racial minority groups.

The students of Prof. Greene's Constitutional Law class prepared and presented a petition to the administration requesting that the School grant the tenure which her accomplishments require. Formally and informally by letter, word of mouth and other inquiry students have sought to express their support and concern in this particular case. More generally, we know little regarding the Law School's secretive faculty decision making process — which so intimately impacts our lives.

By any fair and objective standard, the Law School is obliged to extend an offer of tenure to Prof.

Greene — "on the merits." The Law School has inexplicably refrained from doing so.

In this context, further disturbing historical facts cause concern — concern which lays the groundwork for more cynical interpretations of the motivations underlying the silence surrounding this appointment. For example, the Harvard Law School has never in its venerable history had even one tenured female person from one of America's racial minority groups. The Law School has, through its *actions so far*, said that the tenured ranks are here reserved. A *de facto* quota exists: for at least ninety percent of the tenured slots, at *this* international law school, have always gone to white males. A few token black males have occasionally been invited. The School has recently tenured two white females out of a total "tenured population" of fifty-five.

Mirror, Mirror . . .

The Harvard Law School, like much of *academe*, has "standards" for determining who obtains tenure. Until this very day those standards remain mystical, mysterious and indeed, mystifying. "Scholarship", "teaching ability", "professional experience", "promise", "collegiality". Words and phrases which different persons interpret differently. Or as stated so poignantly in Lewis Carroll's *Through the Looking Glass*:

"When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean — neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master — that's all."

And what does the "word" mean when applied to the person of a scholar such as Professor Greene

(Continued on Page 19)

Fewer Shoot For Harvard Law Admission

By George M. Borkowski

Applications for the 1985 entering class at HLS dropped to an estimated 5,600 from the previous year's 6,145, a total decrease of 8%. The magnitude of this drop is emphasized by the fact that there were 7,483 applicants for admission in 1982.

In an interview, Director of Admissions Molly Geraghty told the RECORD that while this year's decrease was "reasonably uniform" overall, there was special concern because "the drop in [Black applicants] seems greater than any of the other categories." Geraghty said that the decline in HLS applicants parallels a nationwide trend of an approximately 10% decrease in law school applications.

Geraghty cites four factors as causes of the drop, although she admits that these factors do not account for the "significant drop of 20% over two years." One reason is simply that the "Baby Boomer" generation has finally grown beyond the age at which most people apply to law school.

Another factor Geraghty identified was the perceived lawyer glut, which creates a notion that one can no longer get a job in the legal

profession. "However, this is not a Harvard problem," Geraghty said.

Geraghty also mentioned the cost of legal education as a partial cause of the decline. Geraghty feels that there's a perception problem regarding financial aid: "The perception is that there are no funds available for law school." This is untrue, Geraghty said, especially since "nothing very significant has been put through [Congress] yet." Geraghty blamed the prevailing political climate for this misperception. "I don't know why Reagan does it," she said. "It isn't saving any money, and it isn't gaining him any votes."

Competition for Students

The final factor which Geraghty feels may help explain the drop in applicants is that "many in college make their career decisions early, and these choices are vocationally oriented — they don't want to go to yet another school." In addition, Geraghty went on, "the jobs people are getting out of college are terrific and pay a lot of money." Companies are especially interested in the traditional law school pool of liberal arts majors, Geraghty feels, since they want to mold new minds into

the company image. Companies "don't like academics teaching [students] about business," Geraghty said, noting that "this competition for the brightest will hit Harvard."

Geraghty concedes that if the decline in applicants continues into the 1990's, the pool of bright applicants will drop, decreasing the quality of law students. She does feel, however, that Harvard will be less affected by this than most other schools.

Women, Blacks Affected

At the same time, Geraghty is unsure how a continuing decline will affect certain groups in the application pool. Geraghty does not feel that women will be particularly affected at HLS, as she claims that Harvard's admission process is sex-blind. "Maybe even, in the back of our minds, women get a *tiny* boost," Geraghty said. She emphasized, however, that any such boost was "tiny."

Insofar as Blacks are concerned, Geraghty presented one theory that "with a declining pool, it is easier to get in, and so more minorities are admitted." She emphasized, however, that she was worried about Black applications, since in reality their applications to HLS were down, and "the number admitted next year will drop." Yet this may not be as totally negative as it seems, Geraghty said, since "we are coming off three outstanding years with regard to the Black quality pool," and that a drop was perhaps inevitable after a period of such strong Black applicants. In addition, not only does HLS have the biggest recruitment program in the country, according to Geraghty, but "we recruit primarily for minorities."

Open Enrollment

Geraghty noted that when medical schools experienced the same problem four to five years ago, they cut their enrollments. "I don't see the legal establishment doing this,"

(Continued on Page 16)

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Student Guide Grades HLS Profs

By Bruce R. Kelly

According to an inside source, its publication each spring is used to settle bets made among professors in the previous semester. Some students peruse it seeking subtle tips on how to make the next year of law school more pleasant. It prompted one faculty member to declare, Nixon-like, "I am not a pigeon-holer."

The catalyst for this activity is the Board of Student Advisers' (BSA) annual *Course Evaluation Guide*.

Published each spring for the past ten years, the BSA Guide "contains compilations of numerical data and summaries of written comments received from students evaluating law school courses," and is primarily intended to assist students in selecting classes.

The BSA recognizes that the surveying process by which their information is gathered has some defects. Frequently students complete surveys hurriedly at the end of class, and completed surveys are often received from only a small proportion of those enrolled. In addition, by focusing on extremes, less acute levels of brilliance (or mediocrity) may be ignored.

The 1984-85 edition contains as-

sessments of 177 classes. This article presents some of the highlights (and low-lights) found in that mass of reports. (Courses where less than twenty students completed questionnaires have been omitted.)

— *Nice Guys Finish Last* on this list of the lowest scorers (on a scale of 1-7) for the question "Professor was sensitive to students in class": Frug, Contract, 3.3; Byse, Contracts, 3.5; Herwitz, Business Planning B, 3.7; Brudney, Corporations, 3.85.

Tops in the Professor Sensitivity item were: Kobrick, Federal Litigation, 6.9; Warren, Corporate Taxation, 6.8; Michelman, Property, 6.75.

— *Teach Your Children Well* — highest averages on the "Overall, professor was an effective teacher" question: Warren, Corporate Taxation, 6.85; Kobrick, Federal Litigation; Miller, Civil Procedure; Parker, Criminal Law; Tribe, Constitutional Law; and Warren, Taxation, all at 6.6.

Low on the Teaching Effectiveness scale: Trautman, Accounting, 3.6; Andrews, Taxation: Partners and Partnership, 3.6; Baeza, New Technology and the Law, 3.8; Edley, Administrative Law, 4.0; Kaplow, Ethics and the Legal Profession, 4.1; Countryman, Commercial Transactions, 4.2.

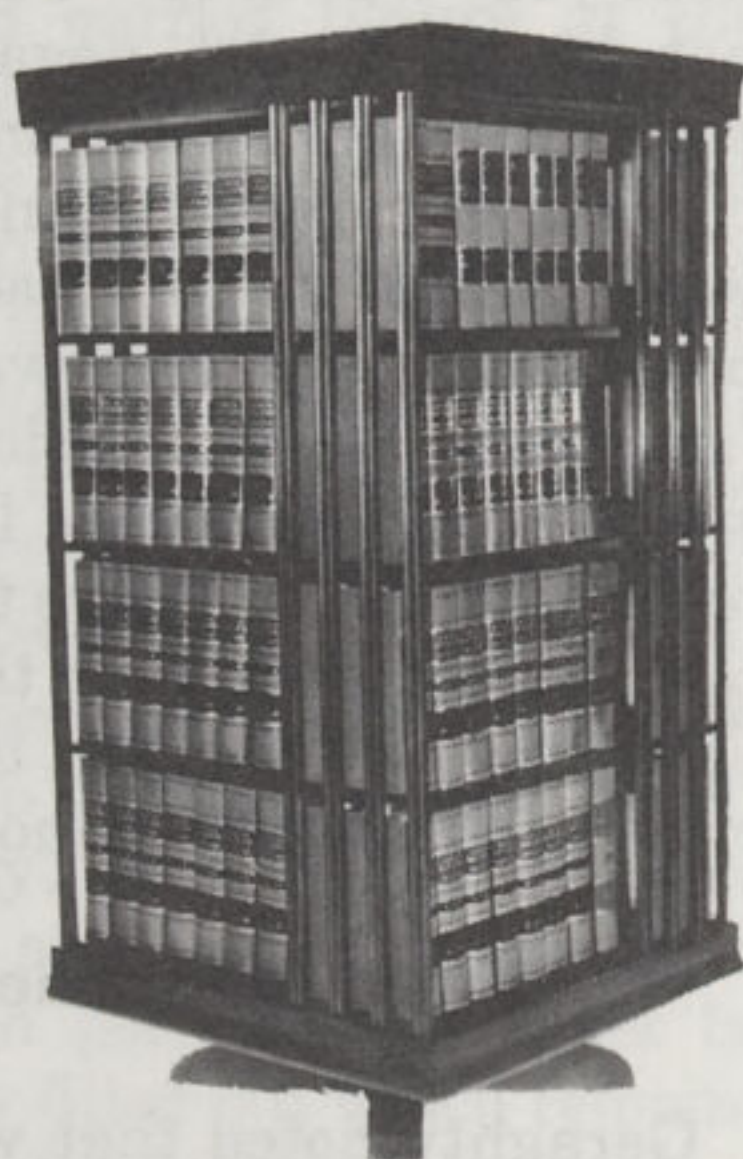
— *No Class* — lowest scores to question "Class attendance was important to an understanding of the course" (clinical courses excluded): Trautman, Accounting, 2.8; Vorenberg, Legal Profession, 3.7; Stern, Legal Profession, 4.0; Edley, Administrative Law, 4.1; Westfall, Property, 4.1.

Highest on the Class Attendance rating: Fisher, Negotiation Workshop, 6.7; Murray, Trial Advocacy Workshop, 6.6; Warren, Corporate Taxation, 6.5; Dershowitz, Criminal Law, 6.4; Horwitz, Torts, 6.4; Littlefield, Trial Advocacy Workshop, 6.4.

— *Take My Advice* — tops on the question "Overall, I'm glad I took this course from this professor and would recommend it to other students": Miller, Civil Procedure, 6.8; Kobrick, Federal Litigation, 6.75; Fisher, Negotiation Workshop; Littlefield, Trial Advocacy Workshop; Parker, Criminal Law; Payton and Ogunlesi, Developing Countries & Transnational Investment; Tribe, Constitutional Law; and Warren, Corporate Taxation, all at 6.7.

Lows on the Recommend to Others item: Trautman, Accounting, 3.4; Andrews, Taxation: Partners and Partnership, 3.7; Edley, Ad-

(Continued on Page 13)



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Play Review: Reflections On Patent Shoes

By Janine Dlutowski

"Do Patent Leather Shoes Really Reflect Up?" Wilbur Theatre. Musical in two acts by John F. Powers. Adapted from novel by John F. Powers. Directed by Joe Leonardo, choreography by Ronna Kaye, score by James Quinn and Alaric Jans.

"This is a show about a way of life, not a religion," says John F. Powers of *"Do Black Patent Leather Shoes Really Reflect Up?"* Based on his first two novels (his third, *The Unoriginal Sinner and the Ice Cream God*, may also be produced someday) and sixteen years of Catholic school education, "Patent Leather Shoes" opened March 14 at the Wilbur Theater. Is it accurately described by its creator? Well . . . he hedged just a bit. "Patent Leather Shoes" is about a way of life: the Catholic way.

First produced in Chicago in 1979, the play has had successful runs there, in Detroit, Philadelphia, and Washington, D.C. Its 1982 attempt at Broadway fame and glory was short-lived: brutal reviews in the *N.Y. Times* and elsewhere (Powers called them "scathing — and that's mild") forced an early closing. Unimpressed with the *Times'* taste, Powers picked up his troupe, appointed himself producer, and returned to Philadelphia for a second successful stint. The play now faces mixed reviews and happy audiences in Boston.

In the two-act musical (score by James Quinn and Alaric Jans), Eddie Ryan visits his elementary

school, St. Bastion's, and re-lives choice moments from his schooldays there and at St. Patrick's High. Although a bit unevenly paced, with tender duets following fast-paced and sometimes raucous dialogue, the play leaves a good overall impression and a grinning audience.

If Father O'Reilly's brogue and Sister Lee's cane seem type-cast, the sin is easily forgiven. The two characters set the tone of St. Bastion's: no nonsense Catholic (bordering on military) training, where sex-education consists of the warning "Don't pay attention to your Private Parts."

The traditional milestones are treated with kindness and wry humor: a first Confession is terrifying for Eddie, sleep-inducing for Father O'Reilly (Wally Engelhardy); crusty old Sister Lee (Carol Estey) hobbles into classes and kicks up her heels at the onset of summer, but she has a soft spot for a "little fat girl" with a poor self-image.

The story is all the more effective when told from the viewpoint of the children, who fit neatly into categories. "Good boy" Eddie (Russ Thacker) and "fat girl" Becky (Eileen Blackman) lead the class, which counts among the girls a tomboy, an airhead, and pious Mary Kenny, and among the boys a class clown, a sex-obsessed nerd, and a cool kid with an oft-quoted older brother. Their evolving perceptions of their world, people (Catholic and "publics"), and each other inspire the comedy's funniest and most memorable moments.

The vast difference between el-

ementary school and high school, for instance, produces a dance scene of old friends newly shy. The class clown (Louie, played by Louis DiCrescenzo) hesitatingly approaches pious Mary with a halting request to dance and slides into the upbeat 50's-style "Doo-Waa, Doo-Wee," perhaps the best musical number of the show. Also, Mary's sudden adoration of his gyrating form is but a fleeting figment of Louie's imagination; in reality he blurts an unintended insult. She's miffed, he's embarrassed, and that's a high school dance.

No good growing-up tale is complete without a little romance; "Patent Leather Shoes" gives us the story of Becky and Eddie. Their friendship begins in early childhood, when young Eddie overhears Becky sighing "Does God love little fat girls, too?" The romance follows the familiar lines of boy-meets-girl, boy-loses-girl, boy-. . . I won't ruin it for you, but on the whole, unhappy endings are not included in this lighthearted night's entertainment.

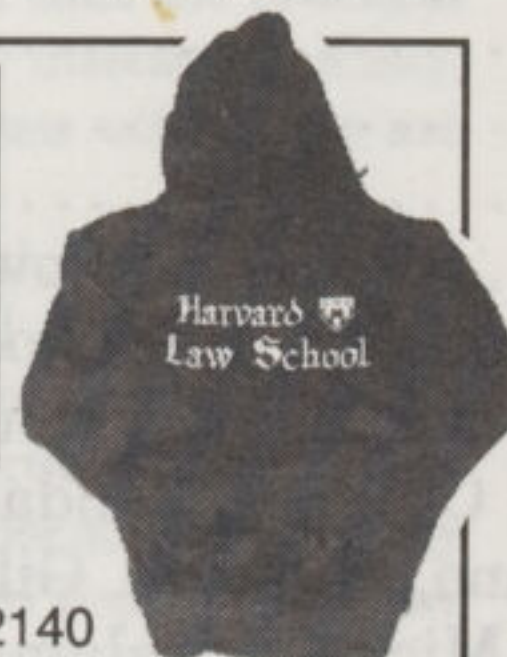
Powers is especially skillful at handling Catholic inside-joke material, although familiarity is not a prerequisite to enjoyment. The Confession scenes definitely evoke a certain response from Catholics, but everyone recognizes the humor in Eddie's adolescent admission of "seven impure thoughts: one a day, all day." And in spite of all the fun poked at Catholic quirks, like the teasing of a close friend "Patent Leather Shoes" is clearly not meant to offend but to convey a genuine sign of affection.

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High Stakes

Harvard University students recently organized the largest rally against apartheid and for divestiture in the history of the University. Harvard students, like other students at other colleges and universities, have continually organized and strategized protests and marches to voice opposition to apartheid and support for economic sanctions against South Africa. At Harvard, and at colleges and universities across the country, students are calling for accountability and for serious confrontation of the policies which exploit the disenfranchised and powerless.

Some argue that students agitate because they have very little at risk and little else better to do. Others say that these movements have therapeutic value — they enable students to let off the steam generated by the *real* issues which frustrate them: courses, teachers, financial aid and the like. Such arguments unjustifiably ignore the political commitments which drive student protests. Yet, it must be admitted that, like all other movements, student movements too involve their share of frustrated people looking for something to do.

Criticisms which doubt the seriousness of student movements contain some food for thought, despite their inaccuracies. A student's life is a short one, a preface to a much longer life and many more years in which to protest — and learn. Students at elite institutions like Harvard might well consider this point as they graduate and as they enter the very structures of power which now resist their calls for change. What shape their political fervor will take when these same students are university presidents, deans and professors, corporate counsel, businesspeople, officials of the United States government is worth considering. How they will view the protests of future generations — with support, disdain, or simply the attitude one whose "been in the world a while and knows it's not so simple" will be equally telling.

The best evidence of what student commitment in the 1980s really amounts to may come in future years. We will see then whether the dedication to cause of the student years flows over into our professional lives. We will see what risks those who support a cause are willing to take, both when the stakes are low and when the stakes are raised such that the individual may very well have a great deal to lose by marching.



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Fenno

Finding course registration materials in your Hark box when you think you're going to graduate is a bad omen. It had happened to Fenno before, but this was the first time the Registrar had actually gone to the trouble of providing him with a gilt-edge, leather-bound hardback edition.

Fenno glanced at the course offerings — they all looked painfully familiar. There were however, a few he had vowed never to take: Kennedy's "Dividing up the Entire World into Two Parts," Parker's "Dividing up the Entire World into Four Parts," and Fried's pithy "Dividing up the World."

Fenno decided he would use the tried-and-true "objective" approach to picking courses. This meant going through the course offerings and crossing out words, and thus courses, he didn't like. The obvious words went first: finance, tax, business, corporations. Then went the mushy words: constitution, international, jurisprudence, law. Finally, there were the words that meant too much work: seminar, advanced, clinical, workshop. Fenno checked his list to find only one course unmarked: "Sex, Drugs, and the Federal Courts." Too bad he had already taken it.

Desperate, Fenno decided to see his old 1L faculty advisor. Fenno's advisor was a hard man to find, particularly because he always scheduled office hours when he knew he wouldn't be in his office. There was nothing wrong with office hours, Fenno's advisor had reasoned, it's just that they were always being interrupted by students. Still, Fenno's advisor prided himself on having more office hours than any other professor at HLS.

Fenno went to visit his advisor during non-office hours when he knew his advisor would be in.

"Fenno," said the professor blankly, "I think you should sign up for four courses with me next semester. Your academic abilities at HLS are well known, nevertheless I'd be happy to have you."

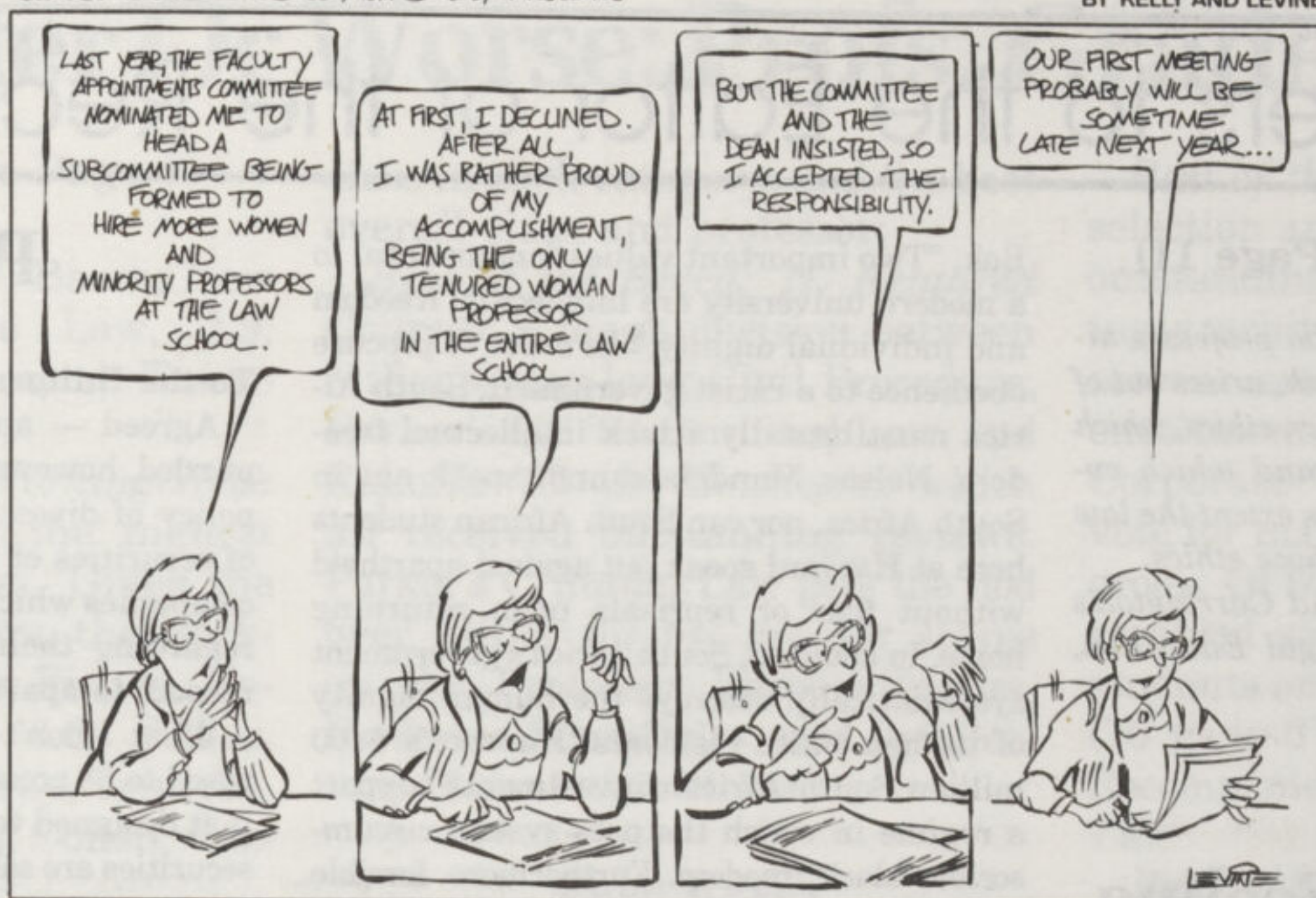
"Well, four is a bit . . ."

"Please Fenno," implored the professor, now on his knees, "No one ever takes any of my courses, I'll never get tenure, never, ever."

"But of course you'll get tenure," said Fenno, taken back by this turn of events. "If a lot of students signed up for your classes, it would only mean you weren't teaching *real* law, and you probably wouldn't get tenure. But if *nobody* signs up . . . well then you're undoubtedly the kind of prof HLS wants."

Fenno backed out the door — a narrow escape. He took his registration form and dropped it in the trash; dropping courses was always easier than adding them.





Letters to the Editor of the Record

A Better Response?

To the Editor:

I could respond to the recent uproar over Alan Dershowitz's comments [on the CBS Evening News] by noting that, while Mr. Dershowitz has painted a breathtakingly simplistic picture of black-Jewish relations at HLS, he is 100% correct in saying that some recent leaders of some Third World groups here have been anti-Semitic — indeed, strongly anti-Semitic. But it seems to me that a better response is to look carefully at the letters in the March 15th RECORD. While Jews and Third World people rail against each other (and while Jews battle among themselves), a white male Christian [?] writes in to suggest that blacks are naturally inferior to whites. This may serve as a reminder that fragmentation of the alliance that defeated Xerxes set the stage for Philip II.

Matthew H. Kramer, 3L

Nihilists, Not Radicals

To the Editor:

The RECORD editorialized on February 15 about a *National Law Journal* article describing correspondence between the undersigned and several other law professors [RECORD, Vol. 80, No. 2.] . . . [Y]our readers may, indeed, think that I hold all of the views attributed to me in your editorial. I write to report that I do not.

The quoted remarks in my brief speech to law professors on academic ethics were

a comment on nihilism, not radicalism. I admire radicals and am sometimes even said to be one; I have no interest in discouraging true radicals from criticizing the legal system, and enjoy that activity myself from time to time. Like the RECORD, I doubt that radical professors, or conservative ones, have much effect on the politics of their students.

The thrust of the quoted part of my speech is that there is a relation between professional ethics and our shared perception of the law. The law exists, if it exists, because professional persons take seriously their obligation to try to conform their conduct to the law's command. Professors of law who believe that there is and can be no law may therefore have a serious ethical dilemma. If they profess what they perceive to be the truth, their revelations may tend to be partly self-fulfilling. Moreover, to the extent that professional lawyers can be persuaded that there is and can be no law, there may be an increase in the risk to the public of injury at the hands of mendacious lawyers tempted in the belief that professional obligations in law are lightly regarded. The nihilist must therefore perhaps reckon that the practical consequences of his or her utterances, if any, are negative, even if those utterances are subjective truth.

In calling attention to this dilemma, I did evoke some concerns and maybe some hostility from persons I respect. I regret that, but make no apology for revealing a reality that may be inconvenient for some, but surely far from all, scholars who bear the banner of Critical Legal Studies.

Those who are interested in my views might wish to read the whole of my short speech, which appears in the *Journal of Legal Education*, or which I will supply on request. (It is not a bad speech; it was substantially written by Mark Twain.) The correspondence referred to by the *National Law Journal* will also appear soon in the same *Journal*

of *Legal Education*. I will warmly welcome the comments of readers of the RECORD who do me the honor of reading the whole of my speech.

Paul D. Carrington, LLB '55
Dean, Duke University Law School
Durham, N.C.

Dean Carrington here makes a distinction between "radicals" and "nihilists." The RECORD's editorial used the term "radicals" as a synonym for "nihilists," considering nihilism a form of radicalism. It is conceivable that this terminology may have misled readers into thinking that Dean Carrington's piece condemns all radicals. The RECORD regrets any such inference.

On the other hand, we stand by the intended point of the editorial, which was that the blame for training "crooks" should not rest

(Continued on Page 12)

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.

Letters to the Editor of the Record

(Continued from Page 11)

at the feet of the professor who professes nihilism. Such a notion, we think, arises out of a view of how law students learn ethics, which is much lifted from reality and which overemphasizes to a tremendous extent the law professor's role in shaping those ethics.

Interested readers may find Carrington's article at 34 Journal of Legal Education, 222-228, June 1984.

Community Feeling

To the Editor:

A startling phenomenon occurred [on March 19]: the emergence of a single law school community. The occasion? A challenge by Boalt Professor Phil Johnson to the presence of CLS proponents on the faculty and CLS as part of legal education. Students and faculty turned out in overwhelming numbers (Pound 102 was packed and overflowing) to rise to the challenge: to exhort, criticize, etc.

What impressed me was not so much the content of what was said as the fact of the saying. Members of the school had gathered together to debate an issue of concern and interest to all. Suddenly, the "community" existed — whether because faculty and students alike were seated on chairs and the floor, or because everyone had to wait to speak, or because the challenger was an "outsider." Whatever the reason for its existence, let us hope this community (to speak) — re-emerges to stay.

Page Mailliard, 2L

To the Editor:

I. A system of laws reflects a society's ideals and aspirations. In South Africa, the laws underpinning apartheid comprise that country's distorted vision of how its society should be organized. The laws reflect South Africa's refusal to recognize the humanity of its non-white residents through enforced segregation along color lines. Exploitation of cheap black labor and South Africa's natural resources have enabled South Africa's white minority to live in western-style opulence while its black masses languish in poverty. The tenets of apartheid constitute institutionalized lawlessness because they lack the basic values of freedom and justice that serve to give laws moral force. Lacking a moral base, South African law is based on violence. Violence operates at all levels in South African society. The spectrum of violence runs from the premature death of a black South African child from malnutrition to the shooting of unarmed protestors.

II. According to Harvard's President, Derek

Bok, "Two important values fundamental to a modern university are intellectual freedom and individual dignity." In order to procure obedience to a racist government, South Africa must brutally attack intellectual freedom. Nelson Mandela cannot speak out in South Africa, nor can South African students here at Harvard speak out against apartheid without fear of reprisals upon returning home. In addition, South Africa's government systematically destroys the human dignity of its non-white residents. Harvard's \$400 million South African investments support a regime in which the pass system circumscribes black freedom. Furthermore, forcible resettlement of black families occurs daily and the simple act of peaceful dissent invites summary execution.

III. Apartheid will only last as long as we let it. When Harvard divests it will be following such institutions as Yale University, University of Wisconsin, Howard University, University of Michigan and New York University. Divestment will accomplish these objectives. First, it will align Harvard's investment strategy with the university's moral values. Secondly, it will contribute to a growing international groundswell of economic pressure on the South African regime. Thirdly, it will be symbolic renunciation of complicity by this university in the barbaric acts taking place in South Africa. South Africa must be deprived of its economically-based ability to govern through terror, in order for a system based on justice to take its place.

Thus, as black law students of Harvard University, we find South Africa's perversion of the law reprehensible. As Blacks we empathize with the plights of our South African brothers and sisters faced with oppression by a racist system beyond redemption. Hard experience has taught us that injustice can only be eradicated through a long term commitment to struggle.

A Luta Continua . . .

Harvard Black Law Students
Association

Encouraging Innovation

To the Editor:

As a reader of the HARVARD LAW RECORD for more than a quarter of a century, may I say that your new column — "Legal Briefs" — is the most significant and encouraging innovation in a quarter of a century.

Albert J. Beveridge, III, L.L.B., '62
Washington, D.C.

Puzzled

To the Editor:

Agreed — apartheid is despicable. I am puzzled, however, by one aspect of Harvard's policy of divesting its investment portfolio of securities of those South African-related companies which do not provide information regarding their views and activities with respect to apartheid.

What I don't understand is what is supposed to be accomplished by such divestiture. Is it designed to harm the companies whose securities are sold? How? The shares Harvard sells are presumably bought in most cases by another consenting adult investor, not by the offending company itself. Is Harvard's sale supposed to punish the company by depressing the price of its securities? Why? Such an effect would probably bring Harvard a lower price for the securities sold, and I doubt that the prudent men and women managing our endowment deliberately take actions intended to produce a lower sales price for securities sold by the portfolio.

Is our sale supposed to make corporate management feel bad or guilty? If so, I doubt that it will have that effect, since the evil management of a company that supports or goes along with apartheid probably will sleep better knowing that a potentially irritating shareholder like Harvard no longer owns the securities.

Or does Harvard simply not want to own securities of companies which by their actions or inactions support apartheid? How about securities of companies which sell liquor, cigarettes, MX missiles, sugar, fast foods, or ones whose factories are ugly or pollute the environment? Where does the line get drawn? Should Harvard manage its mighty portfolio on the basis on the social consciences of the firms in which it invests?

I don't know the answers to these questions. It seems to me, however, that Harvard might be able to accomplish more against apartheid, cigarette smoking, fast foods, ugliness, and pollution by retaining, not selling, securities of the worst corporate offenders, and using whatever leverage the imperfect machinery of corporate democracy affords to those ends.

Or am I missing the point? In any event, I hope that all this attention to social goals will not blind our investment managers to the investment merits and demerits of the securities in the portfolio. We wouldn't want the old school to go broke pursuing all those worthy social, political, and moral goals!

Peter J. Adolph, '57
Denver, Colorado

For Better Or Worse: Profs. Grades Are In

(Continued from Page 8)

ministrative Law, 3.8; Baeza, New Technology and the Law, 3.9; Countryman, Commercial Transactions, 3.9.

— *Welcome to the Working Week* — courses receiving the highest scored on the question "Given the number of credit hours, the workload is quite heavy": Fisher, Negotiation Workshop, 6.6; Fisher, Negotiation, 6.4; Murray, Trial Advocacy Workshop, 6.0; Cohen, Corporate Finance, 5.95.

Low in the Workload scale: Gopen, Legal Writer: Revising and Editing, 2.1; Lynch, Trial Practice, 2.5; Trautman, Accounting, 2.5; Charn, Poverty Law and Practice, 2.7; Dershowitz, Legal Profession, 2.9; Herwitz, Accounting, 2.9.

— *Top Dogs* — Based on the survey results, selections for the best

class in each category, and the best overall class and professor:

Best of the Breed: 1L Required Courses: a tough decision between Miller's year-long Civil Procedure, Parker's fall '84 Criminal Law, and Rakoff's '83-'84 Contracts, which all received outstanding reviews. Parker's Criminal Law gets the nod over Miller for his greater scores on the Professor Responsiveness, Professor Sensitivity, and Intellectual Stimulation items.

Fave Raves

Best of the Breed: 2L, 3L Recommended Courses: Tribe's Constitutional Law for the spring '84 semester narrowly edges out Warren's fall '84 Taxation, as a result of the greater appeal of the course material, not the teaching (where both were rated similarly).

Best of the Breed: Electives: Any selection among the at least fifteen outstanding possibilities is exceedingly arbitrary. Most of the high scorers are in classes with small enrollments. Warren's spring '84 Corporate Taxation class gets my vote for managing to please a large group. Of 80 respondents, the course received scores of 6 or 7 from 78 students on Teaching Effectiveness (70 gave 7's), and from 72 on the Recommend to Others scale (62 gave 7's).

Best of Show: Top performance, considering all classes taught by one professor: The top prize had to go to Professor Warren whose Taxation and Corporate Taxation classes, despite the dry subject matter, received rave reviews. Congratulations!!!

✽

Correction

In the March 15, 1985 issue of the RECORD, we incorrectly stated the holding in *Hishon v. King & Spaulding* and the position argued by Prof. Paul Bator for the Government in that case. In fact, a unanimous court upheld the Government's argument that Title VII is violated if a law firm discriminates on the basis of sex in its partnership practices. We regret the error.

✽

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"BETTER BUYS AT BRINE'S"

Reagan's South Africa Policy Denounced

(Continued from Page 1)

Anderson, 1L, of the Law School Divestment Committee and Anthony Ball of the Black Students Association of Harvard College and Kathy Schuyler of the South Africa Solidarity Committee.

Thousands Crowd Yard

The crowd of four to five thousand extended to the four corners of the "Tercentary Quad" in Harvard Yard: from Memorial Church where the speakers were seated to Widner Library, from University Hall to Sever Hall. Most of the thousands were students from the various schools within Harvard University.

The Banners in the crowd reflected the sentiment of most of those assembled: "Free Nelson and Winnie Mandela!" "Cut Ties with Apartheid Now!" "Health Workers and Students Against Apartheid!" Members of the United Radio and

Machine Workers of America were among the groups that carried signs condemning apartheid.

Members of the crowd enthusiastically endorsed the numerous speakers with their applause and cheers. Local media occupied a raised platform in the center of the crowd.

The rally was a high point of months of work by a joint committee of the Law School Divestment Committee and the Southern African Solidarity Committee (the undergraduate divestment committee.) These two committees are comprised of students who organize protest activities to accomplish the total divestment of Harvard's portfolio of stock in companies that do business in South Africa.

Intensive Dialogue

Harvard University's current position is that of "intensive dialogue." Under its current policy Harvard

University does not invest in companies that do a majority of their business in South Africa. It also avoids companies that have debt securities in banks that make loans to the South African government. Harvard University also requires companies in its portfolio to comply with the Sullivan Principles.

The policy has come under fire from those who claim that Harvard has not put pressure on companies as well as those who argue that dialogue is not working and that the situation of South Africans has become worse not better.

Jackson who arrived one hour into the rally was greeted with cheers and applause. He vigorously denounced apartheid and called upon Harvard to exercise "intellectual and moral credibility" by completely divesting. He called upon those countries who would "divest themselves for the Third Reich to now divest for the Fourth Reich."

Tragic Paradox

Reverend Jackson hearkened to the international moral and spiritual legacy of Dr. King and the tragic "paradox" that in this world "the innocent are crucified and the wicked prosper. The \$565 million that Harvard has invested in 99 companies which derive revenue from South Africa is, he argued, symptomatic or indicative of a "crisis not only in South Africa, but in our own national character."

The idea of reinvigorating integrity was a recurring theme in Jackson's speech. He linked military procurement programs (the MX missile, B1 Bomber, and Strategic Defense Initiative), the debilitation influence of alcohol, cocaine, and other drugs, and racism, sexism, and elitism as all threats and barriers to the integrity of humanity. He challenged today's generation to speak to the issues of today, among them starvation in Ethiopia, the sufferings of Central Americans, the plight of farmers in Minnesota and apartheid.

Vigil: Getting To Bok

By Kerry Osborne

Immediately following the April 4 Rally many of the protestors marched over to Mass. Hall (which houses President Bok's office) to begin a 24 hour encampment outside of the building. The encampment was planned to show the administration that "there is strong student support for divestment by making entry in to the building difficult, but not impossible," explained one member of the Law School Divestment Committee. For the remainder of the afternoon the group of about 40-50 students, faculty, and other supporters chanted, sang songs along with folk singers, and had dramatic poetry reading of South African Poets and Dissidents.

At 9:00 P.M., the group swelled to over 100 as supporters took part in a candle light vigil in which the protestors marched through the yard carrying the

names of 63 South Africans who had died in detention over the past 10 years. The signs were later planted in a mock graveyard adjacent to Mass. Hall. Throughout the night the nearly 40 remaining protestors sang and chanted outside Mass. Hall, many of them sleeping in the pouring rain while others retreated to nearby Harv. Hall. By 7:30 A.M. the group again enlarged to near fifty as the staff and college officers began arriving for work. With the doors watched closely by Harvard Police officers, many, including V. P. Steiner, waded through the crowd of protestors.

Shortly before 3:00 P.M. the protestors sang a song composed especially for the event and held a ceremony renaming the building Stephen Bantu Biko Hall, in honor of the martyred leader of the Black Consciousness Movement.



(Continued on Page 15)

Make Bok Uncomfortable Urges King

(Continued from Page 14)

Condemning "race glorification and vilification" in South Africa, Jackson summed up his Rainbow Coalition message saying "There is but one race — the human race. Everybody is somebody. All of us are the chosen race. . . . We must demand justice measured by one yardstick all over the world."

Take the Struggle to the Streets

Mel King also urged students to engage in self study. He challenged listeners to divest themselves of racism, sexism and elitism. He also called on supporters of divestment to take their struggle to the streets saying, "We must take this from here [Harvard Yard] to where they

are. Derek Bok is comfortable; you have to get to where he is!"

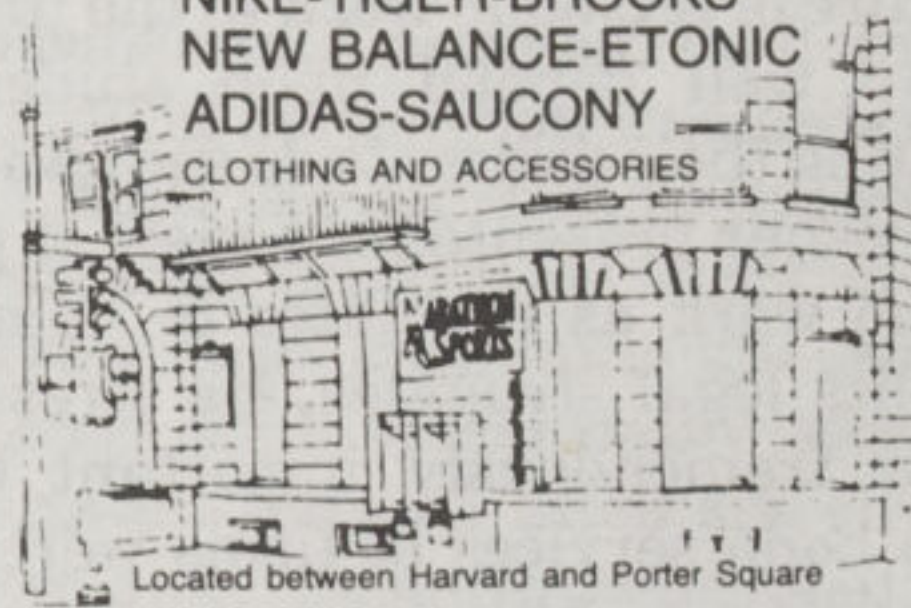
Speaking for his uncle, Michael Kennedy spoke of the Anti-Apartheid Act of 1985, a bill introduced by the Senator. That bill would among other things prohibit any new U.S. investments in South Africa, bank loans to the South African government, the sale of computers to the South African government and the disposition of the South African gold coin, the Krugerrand. In his personal capacity, Derek Bok has endorsed the legislation through a letter to Senator Kennedy. Similar legislation has been introduced in the House.

The April 4 rally was preceded by a week of marching and protest on both the Law School and Harvard College campuses. Members of the Law School Divestment Committee

held two protests in Harkness Commons, both of which ended in a march to Massachusetts Hall outside Bok's office. University Security during these marches and particularly during the rally was tight.

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Lunch: \$5.00

Registration is at 7:00 p.m. on April 12 and 8:30 a.m. on April 13.

Students Should Push For Pro Bono

(Continued from Page 5)

one partner whose sole responsibility is overseeing pro bono work. Also, one senior associate spends 18 months in the department and one junior associate rotates through it. She urged students committed to such work to make their voices known in interviews, pointing out that those who pushed in the 1960's now sit on management committees in many firms. She said that the future of pro bono work in the firms may well depend upon students stating their desires to do such work.

Posner presented his view of pro bono work as it relates to human rights legal struggles. He stressed how tremendously important the pro bono services of firms were to the success of his organization. He told students that they "don't need to think of pro bono work as litigating a major case. Forty hours or so of helping an individual" is a major contribution.

Posner said that he encourages people interested in pro bono work to experience the firm first and then move to organizations like his. His logic was "it helps us to have people . . . who've had their training on someone else's time and money." Like Determan, he urged associates to push for humane pro bono policies. While he said that three hours of a firm lawyer's time is significant, public interest groups don't need the hours from midnight to four in the morning.

Selecting A Firm By Pro Bono Policy

Lewis told students that they "need to be highly selective in the interviewing process. There is an enormous difference in the amount of firm support (for pro bono work) that you'll get."

He mentioned three things that students should look for. First, he told students to find out whether the associates who claim to be doing pro bono work actually do it and how much they are doing. He also urged students to ask about clients. Some firms will include in "pro

bono" work free work for museums and small businesses and orchestras and the like. These clients may not be the kind of "pro bono" clients the student has in mind.

Second, Lewis said it is important to look for institutional links between the work the firm does and where the cases come from. He said the best situation is where a firm has linkages with the community which produce case referrals. He added also that students need to find out how much flexibility the firm structure affords to meet the interests of new lawyers.

Third, he said students should find out how many and which partners are involved in pro bono work. "Firms that have no partners doing this may be firms which do not make partners out of people who do pro bono," Lewis warned.

Saying that "the bottom line is still billable hours," Lewis said that the profit motive is a barrier to pro bono work. A small solution, he said, is provisions for attorneys fees in

statutes which often form the basis for pro bono cases. In a recent case challenging the standards of health care prisoners in Walpole State Prison, Lewis and his colleagues won a \$235,000 statutory fee award which he said silenced grumblings of some that the case was an expensive one to have undertaken.

Another barrier is the perception of lack of interest which arises when students and associates fail to push for pro bono. He also cited conflict of interest because of current clients as a barrier to pro bono cases. Finally, Lewis said that philosophical differences often make accepting some pro bono cases difficult. He said that there are some issues which partners in the firm may feel strongly about and that such feelings will discourage pro bono work. As examples he indicated advocacy of gay rights and the application of the Equal Rights Amendment to private men's clubs as examples of

(Continued on Page 17)

Face Of Legal Profession To Change?

(Continued from Page 7)

Geraghty said. Furthermore, while applications declined 10% nationwide, some law schools experienced a "much greater" decrease. These two factors "raise some hard questions," Geraghty said. "Many law schools are now open enrollment schools." This fact raises problems of how these schools are to be administered.

Geraghty recalled that "admission used to occur in the first year," meaning that law schools' policy of failing about a third of each incoming class weeded out incapable applicants. Geraghty wondered if this system would return, or if all admitted students would be allowed to graduate, regardless of their capabilities and school performance. The latter possibility raises serious questions about the quality of the attorneys who would be entering the legal profession. "And let's not forget about the clients at the end of this food chain," Geraghty said.

Cuts In Faculty

Another possible result of the decline relates to law school faculties. In response to sagging enrollment, Golden Gate Law School in California has cut four faculty members. Since the firing was done on the basis of "last hired, first fired," Geraghty said, women and minorities were the first to go. Geraghty wondered if such cuts would not occur on a broader scale. She feels this would adversely affect law school graduates who wish to become professors of law.

Despite this foreboding view of the future, however, Geraghty states that "people [at HLS] don't get worked up because we won't get hurt." This is unfortunate, she feels, because if things continue the way they are currently heading, the result will be a "significant change on the face of the legal profession."



Legal Briefs (Contd.)

(Continued from Page 5)

Journal on Legislation, vol. 22, #1, Winter 1985: "Action Specific Human Rights Legislation for El Salvador," by **Kenneth H. Anderson, 2L**; "A New Generation of State Tax and Expenditure Limitations," by **Justin J. T. Hughes, 2L**, and Garth B. Rieman; and "Sentencing by Death Qualified Juries and the Right to Jury Nullification," by **Bruce McCall, 2L**.

Exhibits

On display through April 29 in the Langdell Reading Room South Colonnade is an exhibit of 18 color photographs entitled "LIGHT: Dramatic Skies and Landscapes from North and South America, Europe, and Asia."

On the first floor of Pound Hall one will find an exhibition on the work of the Program on the Legal Profession and one on the work of the United Nations.

Also in Langdell, second floor, is an exhibit of the work of the *Harvard Women's Law Journal*.

Organizations

The HLS Drama Society recently wrapped up its spring production, *Starry Decisis*. By all accounts the production was a smashing success.

The **Harvard Law Guild** held a workshop on "Disabilities: Perceptions and Misperceptions" on April 10. Participants discussed problems which students face in dealing with social stereotypes about the handicapped and how these barriers might be overcome.

"Refugee Asylum and Protection in the U.S.: A Conference" opens tonight, Friday April 12 and continues tomorrow. It is sponsored by the Harvard Law School Human Rights Program in cooperation with the Legal Support Network of Amnesty International, USA.

Registration began this week for the Dormitory and Student Affairs Council's "Trivia Bowl '85." The trivia contest will be held in the Back Bench Pub between April 16 and 18.

On April 5, the International Law Society sponsored a talk by **Louis Sohn**, Bemis Prof. of International Law, Emeritus, at HLS and Woodruff Prof. of International Law at the University of Georgia, on "The United Nations at Forty."

On Wednesday April 3, the Ripon Society sponsored a debate between William Bradford Reynolds, Assistant U.S. Attorney General for Civil Rights, and HLS Prof. **Christopher Edley** on the topic of "Reagan's Record on Civil Rights."

The Harvard Society for Law and Public Policy hosted a talk on "The *Roe v. Wade* Litmus Test: Picking the Next Supreme Court" on Thursday April 4. The principal speaker was Grover Rees, III, of the University of Texas Law School. HLS Profs **Paul Bator** and **Randall Kennedy** commented on Rees' remarks. The talk was one of the Society for Law and Public Policy's John M. Olin Lectures in Law.



Pro Bono

(Continued from Page 16)

the types of cases which often run into opposition among firm members.

Lewis stressed the need for private firms to become involved in pro bono work in light of the serious cutback in legal services. Yet, he warned "Don't expect a firm to give you full-time pro bono. You won't find it." Those who wish for it "should go into full time into the public interest field."

Heins told a personal story of how in light of her pro bono commitment she made the decision to do just as Lewis had suggested: to leave the private firm and enter the public interest field. Interestingly enough, Heins is a former Palmer and Dodge associate. While she said that her experiences at the firm taught her a lot, her desire to do full time pro bono work made it necessary for her to leave private practice and join the ACLU.

Heins referred to herself as a '60's radical. She said that upon graduating from HLS her moral commitment was challenged by "temptations I'd never in my dreams imagined." These included "opportunities to make astounding amounts of money." Her decision to accept the offer of Palmer and Dodge did not, however, dilute her vision of her role as a lawyer and Heins spent a substantial amount of her time on pro bono projects while at the firm. Eventually, she made the move to the ACLU.

Heins stressed the importance of the volunteer work by private lawyers to the ACLU.



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Speakers Expose Myth Of Merit Selection

(Continued from Page 1)

In applying this view to the selection of the next Supreme Court, Rees approved of the questioning of prospective Justices as to their feelings on whether the abortion decision was rightly decided and how they would have voted on the *Roe* case had they been on the bench. He held the discussion of such policy questions to be proper and beneficial since it could be conducted with the understanding that no judge could promise a vote on any case and would naturally read briefs and consider the facts of any

individual case.

Much of Rees' discussion concerned the 1984 Republican platform plank which urged selection of jurists pledged to preservation of innocent human life and traditional family values and resultant criticism by the organized bar. Though dissatisfied with the plank's wording, Rees approved of its purpose. He maintained that the bar and liberal critics cloaked their criticism of ideologically based appointments in the guise of meritocratic, value-neutral arguments when their actual dissatisfaction stemmed from use of the "wrong ideology" as a

basis. It is, said Rees, impossible to know how another feels or thinks about Constitutional Law without reference to specific cases because terms like "activism," "restraint," and "limitation" are essentially meaningless in such a context. He cited examples from the confirmation hearings of Justices Brennan and Fortas to show how statements containing such slippery words may belie one's truly held Constitutional philosophy.

Neither Bator nor Kennedy disagreed with the proposition that ideological litmus tests are indeed employed in judicial selection and that selection on a meritocratic basis is essentially unrealistic. Professor Bator, recently returned to Harvard from a stint in the Solicitor General's office, characterized as "totally impudent" any current liberal agitation for non-ideological neutrality as a basis for judicial selection in view of historical liberal behavior to the contrary. Bator evidenced concern about the practice of questioning judicial nominees about their detailed views on particular cases. Such a practice, he felt, comes dangerously close to promising votes, and any nominee who would do so would violate basic and essential notions of the role of a judge in the American system. Bator concluded by saying that the President's judicial philosophy is wedded to the idea of a sharp reduction in the power of the federal judiciary but that such a fundamental change would not be easily attained.

Professor Randall Kennedy, a former clerk for Justice Marshall, asserted his likely disagreement with the political opinions of the preceding speakers. He did, however, concur in the proposition that talk of selection on the basis of judicial merit without reference to underlying policy is an illusion. Kennedy observed that the myth of evaluation of nominees on a neutral basis persists widely in the public and our legislative bodies. Exploring reasons for this persistence, Kennedy offered the need to sustain public confidence in an impartial judicial system as one possibility.

Appeal For Justice

(Continued from Page 6)

who does personify scholarship, teaching ability, professional experience, promise and collegiality? The Humpty Dumpty-like response of the Law School is (so far!) that since we are the Master, the word means "Yes, but no."

Yes, Professor Derrick Bell, a highly esteemed former member of the Harvard Law School faculty, highly recommended her. Yes, she personifies legal scholarship, teaching ability and an outstanding record of lawyering. Yes, she has a promising career before her. . . .

But, only if she had "opened up" more on a personal level. But only if she had written more. But only if she looked more the part. . . .

Therefore, no.

What reflection does the faculty perceive when it peers into the institutional looking glass? One can speculate regarding whether the image is viewed as reassuring or disturbing, inspiring or depressing. Whatever the faculty perception may be, the degree of physical homogeneity is overwhelming. Such homogeneity reinforces the institutional myth that those who look, think, and act like "us" are the

only ones worthy of the sacred trust.

Pathetic.

Based on the Law School's actions thus far, we have no choice but to conclude that the faculty lacks "vision." History teaches us that where vision is lacking, the people *perish*.

We are obtaining a vision of the future from this *total experience*. The vision is of a Law School which is international in name but provincial in fact. That is vision that need not and must not be!

The Law School stands at the crossroads. It has a choice. It can send a signal to the national and international legal community that it has failed to transcend the deeply rooted and pervasive versions of American race and sex prejudice. The School can deny tenure in the Greene case. Alternatively, the School can exercise leadership. Moving into the twenty-first century, the Law School can show that those who have demonstrated excellence of mind and spirit are rewarded.

Accordingly, we appeal to the Dean and Faculty of the Law School to let it be apparent that justice is being done. In other words, "Let justice run down as waters and righteousness as a mighty stream." **Amos 5:24** ☛

Forty Years Of Positive, Peaceful Change

(Continued from Page 3)

Sohn countered these objections by reference to history. "The purpose of the UN was to forestall a Third World War, and we have avoided war among the major powers for 40 years." He emphasized the adaptability of the UN Charter to changing circumstances, "much like the U.S. Constitution." For example, the Declaration of Relations in 1970 clarified Charter duties under the Article 2 "use of force" provision. Further work resulted in a definition of "aggression." As political

cleavages in the UN Security Council impeded the conduct of business, an abstention from voting on a resolution evolved into the functional equivalent of a concurring vote.

Moreover, in the 1984 session of the UN General Assembly, 140 out of 250 votes were adopted on the basis of consensus (in which the Assembly waits until actual or virtual unanimity has been attained before making a decision on a proposal). Sohn called consensus an elaborate process based on what Roger Fisher refers to as a "single

negotiating text" which is revised and supplemented in order to obtain either agreement or a pledge not to oppose.

In response to a question increasingly voiced in the United States — Is the UN needed? — Sohn asserted a vigorous affirmative for the following reasons: (1) the presence of globally destructive thermonuclear weaponry, (2) the interlinked phenomena of civil wars, insurrections, guerrilla warfare, and terrorism, which must be approached on domestic and international levels, and (3) the fact that advancements in telecommunications and transportation has brought the world closer together in positive (television, airplanes) and negative (environmental spoliation) ways.

According to Sohn, the United Nations can be improved through an expansion and alteration of American perspectives. First, he sees an undue emphasis on certain security arrangements such as the North Atlantic Treaty Organization to the exclusion of collective, UN sponsored peacekeeping.

Secondly, journalists in the United States spend an inordinate amount of print and broadcast space on "negative, sensational stories," such as Kirkpatrick's denunciations of the General Assembly, rather than areas of cooperation, even in such controversial UN-affiliated agencies as UNESCO (from which the US withdrew recently). And finally, most Americans "don't know or care about the UN."

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