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25 CENTS

Appointments Committee Balks At Dalton Tenure

By Vincent Chang

On Wednesday, April 10, the faculty's Appointments Committee voted inconclusively on the question of whether to offer tenure to Assistant Prof. Clare Dalton. Reportedly, the six-member committee split by a vote of 2-2-2. Two professors — Profs. Todd Rakoff and Frank Michelman — voted to offer Dalton tenure. Two others — Profs. Lloyd Weinreb and Alvin Warren — voted to deny her tenure. Dean James Vorenberg and Prof. Paul Weiler voted to postpone the tenure decision. The issue now moves on to the full faculty for ultimate disposition — probably in a scheduled April 24 meeting.

The Dalton tenure decision — or non-decision — has aroused particular controversy because only two

tenured women — Elizabeth Bartholet and Martha Field — are currently on the faculty. Within days of the decision, 500 law students and faculty had signed a petition circulated by the Women's Law Association [WLA]. The petition expressed support for Dalton's credentials and called for the faculty to offer her tenure.

WLA President Chai Feldblum, 3L, emphasized that "we don't want to intrude on the internal faculty process or on the privacy of faculty

members; we want to have all due respect for the process. But we don't want to forsake our responsibility to express our views and our responsibility as students to speak out about how we feel about women on the faculty because it directly affects our experience here."

Dean Vorenberg met with several WLA members on April 12 to speak about the Dalton decision. Feldblum praised Vorenberg's cooperation,

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Conference Considers Plight Of Refugees

By Kerry Osborne and Paul Weisenfeld

On April 12 and 13, the HLS Human Rights Program, in cooperation

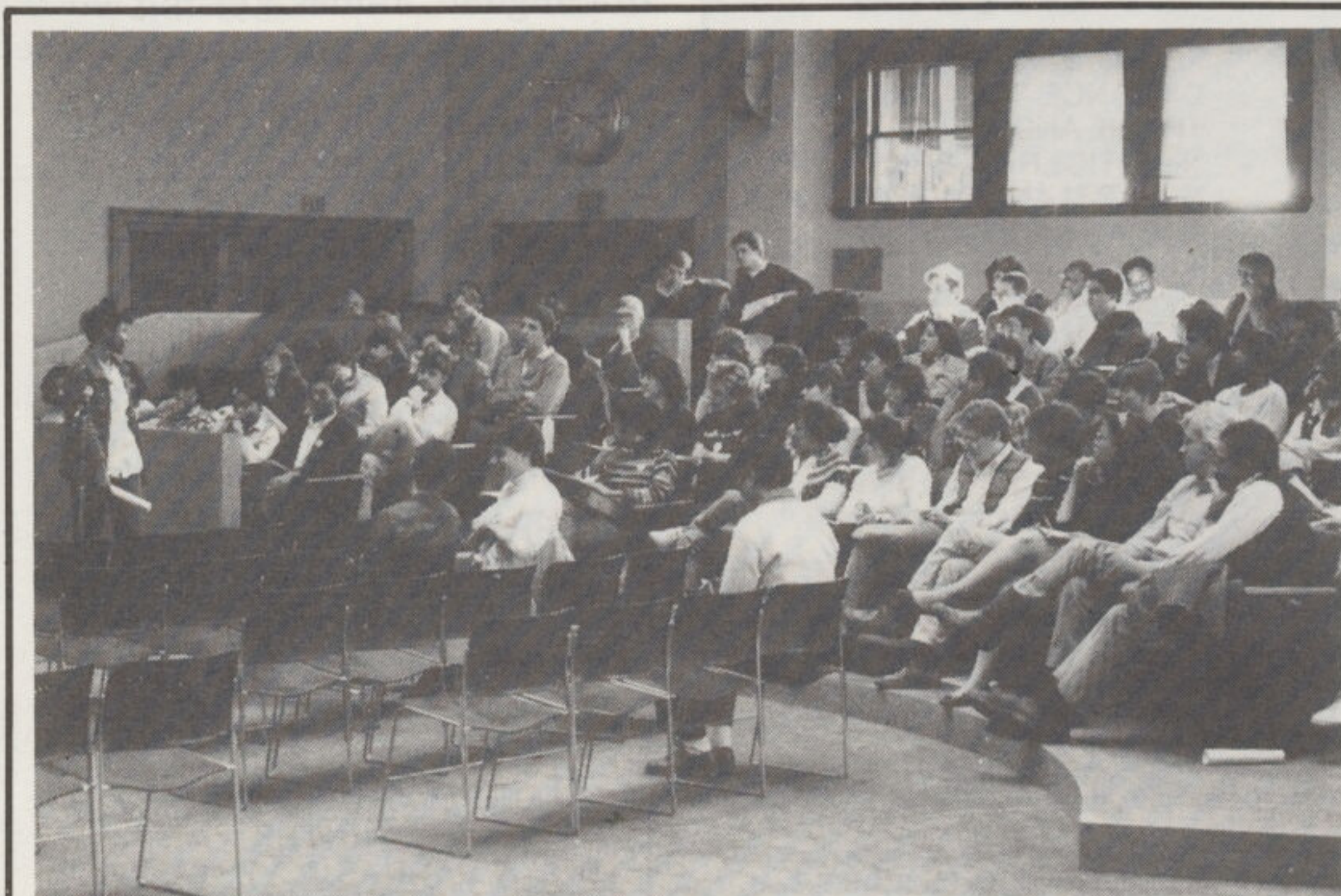
with the Legal Support Network of Amnesty International, U.S.A., presented a conference on Refugee Asylum and Protection in the U.S. The Human Rights Program which grew from the efforts of the late Prof. C. Clyde Ferguson, Jr., is committed to the promotion of international human rights teaching and scholarship at HLS. Amnesty International is an organization dedicated to the preservation of human rights around the world.

More than 300 persons registered for the conference, which opened with a showing of "El Norte," a film about the plight of two Guatemalan refugees fleeing political oppression.

Joachim Henkel, Senior Protection Officer, Office of the U.N. High Commissioner for Refugees, gave a keynote address which provided an historical overview of the modern concepts of asylum and protection.

The first panel discussion focused on the legal treatment of groups

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Greg Peterson

Students and faculty confront hiring issues at last week's TWC forum. See story on Page 3.

Ames Semifinalists Take Brief Breather

With the Ames semifinal arguments behind them, students who participated in this round of the Ames Moot Court competition are now taking a breather. The arguments in the semi-final round took place on March 19 and 20 in the James Barr Ames Courtroom. But that two hours or so of argument on each night revealed only a brief glimpse of the work which the participating students put into the project.

The semifinal round matched four teams in two arguments. In the first, *John Collins v. State of Ames*, the Myra Bradwell Team of Ralph Berman (oralist), Rick Chessen, Roberta Harding, Stephen Kennedy, Lorin Reisner (oralist) and Edward Yorkgitis, Jr. faced the John T. Scopes team of Samuel Boxerman, Daniel Goldstein (oralist), Michael Gruskin, Stuart Levi, Kevin Lewis and James Veltrop (oralist).

Collins v. Ames involved a challenge to a marital rape statute. The issues included (a) whether a state has standing to question the validity of its own statute, (b) whether the marital rape exemption violated equal protection and due process by distinguishing between married and unmarried women and by limiting the married woman's right to privacy, and (c) whether a judicial decision expanding the scope of a criminal statute can be applied retroactively to a person who was expressly exempted from the operation of the statute at the time of the incident.

The panel of judges serving on the Supreme Court that day consisted of Judge Judith Rodgers, District of Columbia Court of Appeals, Judge Herbert Wilkins, Massachusetts Supreme Judicial

Court, and Judge James Lynch, Massachusetts Superior Court.

The Myra Bradwell team emerged victorious and also collected Best Brief honors. Team member Lorin Reisner was named Best Oralist by the judges.

No Alcohol Advertisements?

The second of the semi-final arguments, *Federal Communications Commission v. National Association of Broadcasters*, pitted the Charles Sumner Team of Fredric Bellamy, Bennett Cooper (oralist), Benjamin Gibson, Mark Mathie, M. Gayle Robinson, and Richard Shearer (oralist) against the Rosa Parks Team of Neal Berinhout (oralist), Karl Fickensher, Paul Gallenberg, Josephine Staton (oralist), Janet Stevenson and Michael Weiner.

FCC v. NAB involved an FCC ruling which prohibited advertising alcoholic beverages on commercial TV and radio in the interest of protecting the public. The issues argued included (a) whether the first amendment bars such a ruling and (b) whether rulemaking norms and processes required that the record before the reviewing court include

evidence demonstrating that the FCC's processes were warped by clear bias and a mistaken view of governing law.

The Charles Sumner Team was awarded top honors in this argument, with team member Bennett Cooper winning Best Oralist honors.

The panel of judges consisted of the Judge Ruth Abrams, Massachusetts Supreme Judicial Court, Judge Marvin Katz, United States District Court, Eastern District of Pennsylvania, and Judge John Ferren, U.S. Court of Appeals for the District of Columbia Circuit.

Junk Food

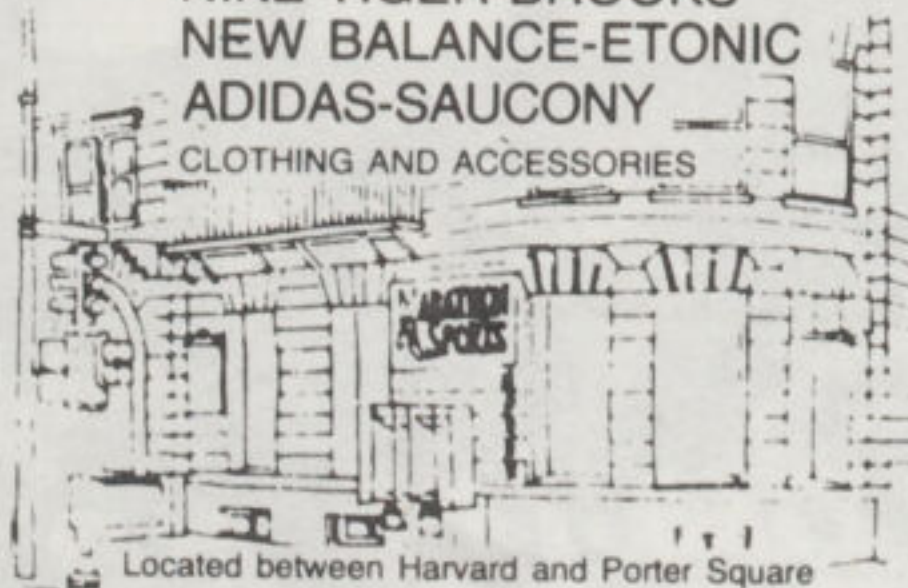
Members of the Semi-finalist teams became well acquainted with Langdell library — as if they weren't already too familiar with it. Rosa Parks team member Josephine Staton commented, "It seems I was there every time that I wasn't in class." All teams were allowed to pull all-nighters in Langdell, but they were suspiciously mum on whether they ate any food during their marathon sessions in the library. Eating in the library is a violation of Langdell rules.

When it gets late, people can get a little giddy. During one night which the John T. Scopes team spent in Langdell, James Veltrop left the library only to find himself locked

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TWC Forum: Same Questions And Answers

By Steven Cowan

On Wednesday, April 10, Harvard Law School's Third World Coalition sponsored the third annual Student Faculty Forum. Unlike its antecedents, Wednesday's forum was a relatively peaceful review of problems in HLS' faculty appointments process. The questions and answers, however, were remarkably similar to those in the last two years.

Approximately 150 students and a handful of faculty members attended the two hour meeting which began with speeches by TWC representative Douglas Jackson, 2L, and Dean James Vorenberg. These were followed by student questions to the present members of the appointments committee.

Jackson reviewed HLS' statistics on minority hiring and suggested that the reproduction of an all white, mostly male faculty might inspire a reexamination of the criteria employed in the appointments process.

New Criteria

Questioning whether law review membership and similar traditional credentials are accurate indicia of teaching ability, Jackson proposed a system of considering a wider range of accomplishment in the hiring process.

Vorenberg stressed that he too is devoted to increasing the diversity of the faculty. Although he stated there has been progress, he said, "I don't think [the] progress and accomplishments are enough. . . . I

think it's very troubling we have no tenured minority faculty, particularly in light of the leading role the school played in the 1970's."

Vorenberg stated that Derrick Bell, who has recently resigned as the Dean of the University of Oregon Law School, will return to teach a winter term course. The dean expressed his hope that Bell would enjoy his stay and would return to Harvard.

Student Frustration

As in past years, student questions revolved largely around their frustration at the school's lack of progress in minority hiring. Faculty members generally addressed this criticism by pointing to the efforts which they have made.

Students seemed dissatisfied with this response. "I'm a 4L," said one student, "and I've been listening to the dean's very reasonable statements for a long time. But I have to ask, how many years of effort without any result will it take before this process orientation will change. . . . [I]sn't the real problem that you're not giving enough offers to people of color?"

Other students asked what specific impediments resulted in the search committees' failure. Prof. Alvin Warren, who chairs the Appointments Committee, stated that many minority candidates find other options more attractive than teaching.

In addition, he stated that Harvard is even less attractive than

some other law schools because of its divisive atmosphere. On the one hand, said Warren, the tensions of the faculty here generally "have been a hindrance." More specifically, Warren stated that minority candidates are reluctant to teach at Harvard because "they do not want to become part of the issue."

Assistant Prof. Christopher Edley disagreed. If that's a problem, said Edley, "I'm not aware of it, and I've talked to all" of the minority candidates who have received offers. Edley questioned whether the school's difficulty lay instead in the limited number of offers given.

Edley concluded by asking Warren, "Are there any minority candidates among any of the candidates whom you are actively supporting?" Warren responded that he felt it "inappropriate to ask me how I rank" candidates.

Assistant Prof. Randall Kennedy also disagreed with Prof. Warren's statement concerning minority candidates' reluctance to teach at Harvard Law School. The difficulty in enticing people to come here "does not have to do with the turmoil." Said Kennedy, "In fact, I wanted to come to a faculty as vibrant as this one."

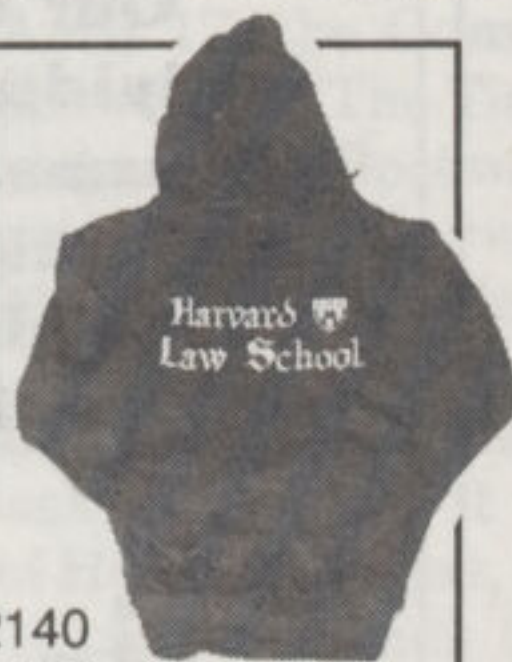
Rather than speaking to the faculty, one student asked her colleagues to ask of themselves what they could do to help. This sentiment was echoed by Prof. Abram Chayes who suggested that students are more effective in frequent individual meetings than in an annual fora. Chayes exhorted concerned students to get out there and "press some flesh."

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2L Challenges Social Security Delays Before

By George A. Golder

On Thursday, April 4, Jonathan Berck, 2L, of the Harvard Legal Aid Bureau appeared before the United States Court of Appeals for the First Circuit. He argued an appeal from a District Court decision dismissing the case of *Crosby v. Social Security Administration*. *Crosby* is a class action on behalf of claimants of Social Security disability benefits. The claimants seek to compel the Social Security Administration to expedite its process for reviewing initial denial of benefits.

Crosby v. Social Security Administration had its origins in 1981 when the named plaintiff, Carol Crosby, came to the Legal Aid Bureau for help in securing disability benefits the Social Security Administration had denied her.

In handling Crosby's case, Legal Aid Bureau member Robert Morton, '82, became concerned that the Social Security Administration was dilatory in deciding Crosby's appeal. Morton's investigation revealed a large number of Social Security claimants whose appeals from denial of disability benefits were taking a long time to be decided.

Berck pointed out that such delay was disturbing not only because it involved a large number of people, but because more than sixty per cent of the initial denials were overturned when the appeals were finally decided. *Crosby* is not a suit on behalf of a "few fringe cases," Berck asserted. "These are not the cheats and the frauds."

Morton filed *Crosby* early in the spring of 1981, seeking an order compelling the Social Security Administration to expedite its procedures for the review of denials of disability benefits.

Crosby was certified as a class action in May 1981. The class included all present and future Massachusetts residents whose disability benefits had been denied and whose appeals were delayed beyond a certain length of time. It is one of several similar class suits against the Social Security Admin-

istration arising out of this problem.

On November 16, 1982 the District Court for the District of Massachusetts granted the *Crosby* plaintiffs' motion for summary judgment. The court ordered the Social Security Administration to adjudicate appeals from denial of Social Security disability benefits within 180 days of the request for hearing in the case. It based its decision on its finding that the defendant's delays in making decisions upon Social Security appeals deprived the plaintiffs of rights they had under the Social Security Act. The court's order also provided that if the decision was not made within that period, the claimant was entitled to interim benefits.

Relief Blocked

The government appealed from its loss in the District Court. However, the First Circuit stayed its proceedings in *Crosby* pending the Supreme Court's review of an order

like that granted by the District Court to the *Crosby* plaintiffs in a very similar case, *Heckler v. Day*.

Day was decided in May 1984. The Supreme Court held that it was improper for the District Court to impose the class relief — i.e. a deadline for decisions — it had imposed on the Social Security Administration in *Day*.

Given the *Day* holding, the First Circuit vacated the lower court's decision in *Crosby* and remanded the case for further proceedings. Last fall the government moved that *Crosby* be dismissed under Federal Rule of Civil Procedure 12(b)(6) — arguing that, since *Day*, the plaintiffs' suit failed to state a claim on which relief could be granted. On November 7, without hearing oral argument, the District Court dismissed the case. It reasoned *Day* precluded the relief requested.

Berck's argument before the First Circuit early this month was the *Crosby* plaintiffs' appeal of the District Court's dismissal of their suit. His central argument was that

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though the Supreme Court had proscribed a particular form of class relief, the District Court's dismissal of the suit was inappropriate because other methods of class relief still existed. Therefore, he suggested, the dismissal should be vacated and the case remanded to the District Court for consideration of alternative forms of relief.

Delay Disclosure Recommended

Specifically, Berck proposed that the District Court impose some form of a "reporting requirement" on the Social Security Administration to require it to disclose the cases outstanding in which substantial delay existed. Then such "problem cases" could be dealt with on an individual basis.

The government's argument, according to Berck, was that the relief prohibited by *Day* is the only possible class-wide relief, and therefore that there should be no class actions on this issue at all.

Crosby is presently the leading case among the various class actions filed against the Social Security Administration over its delays in processing appeals from denials of disability benefits. It is the first appeal on the issue of whether *Day* requires that the class suits be dismissed. Several of the other class suits were also dismissed in the wake of that decision, and the others are on hold pending the outcome of the *Crosby* appeal.

Berck indicated that he is currently the person at the Legal Aid Bureau with primary responsibility for the *Crosby* case. He said he spends probably eighty percent of his time at the Bureau on that case. He devoted Winter Term this year, during which he had a clinical placement at the Legal Aid Bureau, working on the brief for the *Crosby* appeal. In March, after receiving the government's brief, he wrote the reply brief.

Berck received assistance in his work on the briefs for the case from

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Legal Briefs

People

It has been announced that **Paul Volker**, Chairman of the Federal Reserve Board, will speak at Harvard's graduation this Spring.

Steve Grygiel, 2L, placed 15th in the Boston Marathon this past Monday, April 15. His time in the Patriot's Day classic was 2:27:04.

Karl Fickensher, 2L, has been chosen as the new President of the **Harvard Law School Forum**. Other new Forum officers include **Leah Hanlon, JD-MBA**, Vice President for Programming; **Loulan Pitre, 2L**, Vice President for Finance; **Beverly Norwood, 2L**, Vice President for Promotion; **Peter Ganz, 1L**, Vice President for Administration; **Victor Rivera, 1L**, Secretary; **Jeff Hellman, 2L**, Treasurer. New members of the Forum's Board are **Andy Bouchard, 2L**, **Paul Galleberg, 2L**, **Doug Hagerman, 2L**, **Mark Rabe, 2L**, and **Jim Peck-Gray, 1L**.

The **Harvard Jewish Law Students' Association** has chosen **Dan Gordon, 2L**, to be its new President, **Sharon Vinick, 1L**, as its Vice President, **Michael Feldman, 1L**, as Secretary, and **Elissa Stein, 1L**, as Treasurer.

The **Harvard Law School Drama Society** has also chosen its leadership for next year. Its officers will include **Rosemary Fei, 2L**, President; **Melissa Plotsky, 2L**, and **Lou Fields, 2L**, Fall Producers; **Dan Daniels, 1L**, and **Francis Fitzpatrick, 2L**, Spring Producers; **Steve Kennedy, 2L**, Technical Director; **Dionne Christian, 1L**, Advertising and Business Manager; **Eileen O'Hern, 1L**, Secretary; and **Adele Hendrix, 1L**, and **Roberta Rubin, 1L**, Publicity Managers.

Speakers

On April 12, the **Ripon Society** sponsored a talk titled "Representing Reagan: Reflections on Government Service." Speaking were **HLS Prof. Paul Bator**, former Deputy Solicitor General, and **Roger A. Moore**, General Counsel, Republican National Committee.

On Tuesday, April 16, the **Harvard Forum on Real Estate and Urban Development** presented Mr. Robert Rosenberg, General Manager of Starret City, Inc., of Brooklyn, N.Y., who discussed "Race Conscious Tenant Selection to Prevent White Flight: Reverse Discrimination or Integration Maintenance."

Also on Tuesday April 16, **Prof. Paul Bator** spoke on "Reagan and the U.S. Supreme Court," as part of the **Board of Student Advisors' Elihu Root Lecture Series**.

Events

On Wednesday, April 17, the **Committee on Gay and Lesbian Legal Issues** sponsored a showing of "The Times of Harvey Milk." The presentation of the film was introduced by Boston City Councillor David Scondras.

On Thursday, April 18, the **Harvard Law Guild** hosted a discussion on the issue "Is There Really Anti-Semitism Anymore? At Harvard? Elsewhere?"

The "Third Annual HLS Texas Party" took place last Saturday night, April 13, at the Backbench Pub. It was sponsored by the **Texas Club**, **Vinson and Elkins of Houston, Texas**, the **Dormitory and Student Affairs Council**, and the Dean of Students Office.

Weinreb Condemns BSA, Urges Faculty Control

By W. Burlette Carter

A letter from Prof. Lloyd Weinreb circulated to the HLS faculty proposed major changes in the selection of the Board of Student Advisers (BSA). That letter proposes that the faculty take charge of the selection of BSA's members and that the BSA abandon all "social activities" which it sponsors for 1Ls during the first part of the fall semester. It also proposes that membership on the Board be limited to students who meet specific limited criteria.

Having originally sent the April 4 letter to Prof. David Shapiro, who chairs the faculty committee which oversees BSA activities, Weinreb distributed the letter on April 8 to the full faculty because he felt it "may be useful to distribute it more widely."

The Board of Student Advisers is currently composed of 44 students. Its most well-known duty is probably the organization of both the first year and upper round Ames Moot Court Competitions. In addition, the board oversees one component of legal research training for first year students, dividing them into "O-groups" of about ten students. Each O-group is headed by a BSA member.

The board also sponsors the Elihu Root lecture series and is the main group which organizes orientation activities for first year students. These often include social gatherings with other students and professors.

Presently, new BSA members are selected by the current membership. Students file applications which include grades and recommendations. Current BSA members also conduct interviews of applicants.

The contents of the Weinreb letter, which apparently Weinreb only intended to distribute to the faculty, leaked out late last week. Weinreb notes therein that conversations with other faculty members about the BSA prompted him to write the letter. Noting what he called the faculty's "casual attitude" towards the board, he wrote "Everyone is agreed, I think, that the current operation of the Board is in need of change. Nothing happens because no one cares to make it an issue."

Faculty Should Select

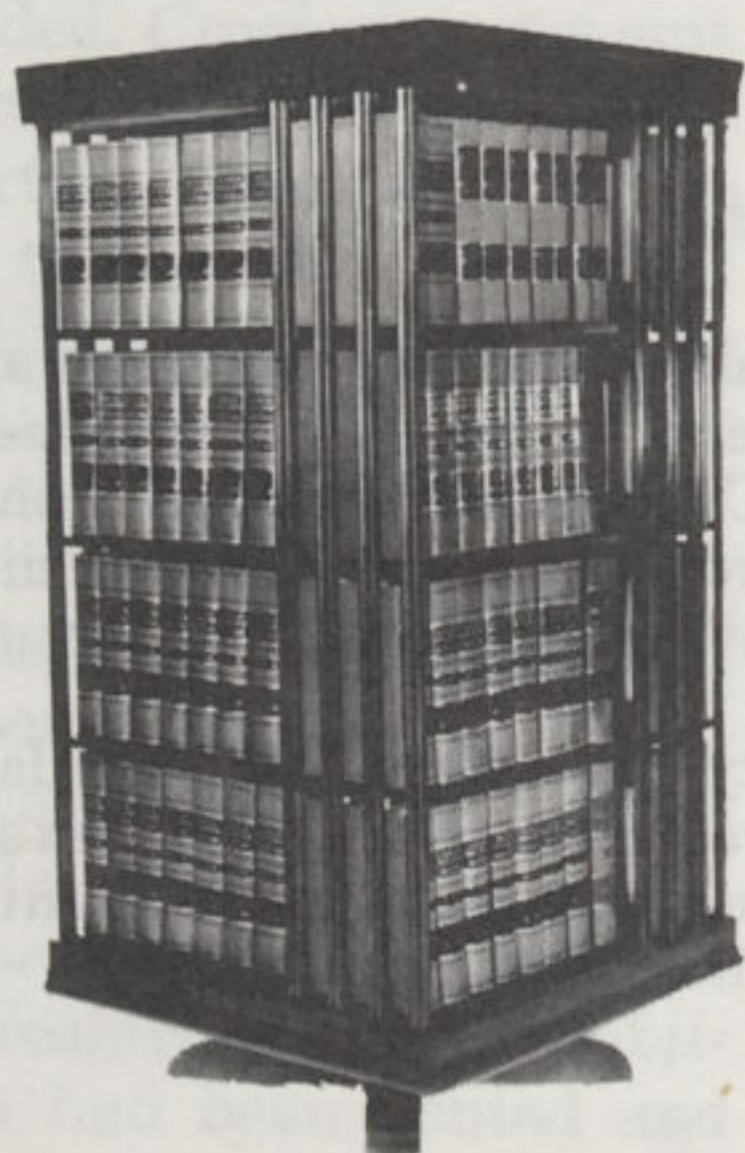
Weinreb offered a number of specific proposals for changes in the selection of students to the Board of Student Advisers. First, he proposed that "[t]he selection of BSA members should be placed entirely

in the hands of the faculty and be based entirely on evidence of the ability to do the work required." The letter stated "[I]t is agreed by everyone that the instruction and advice that BSA members give to first-year students during the Ames Competition is, on the whole, terrible."

While noting that "[t]here are, of course, highly qualified members of the Board, who do excellent work," and that "I do not suggest that there is none who is competent," Weinreb alleged that there are some board members who are not qualified to serve in the BSA's ranks, and he obviously thinks this incompetence rampant enough to warrant a total revamping of the selection process. "It is incomprehensible that its members should be chosen with so little regard for their ability to carry out [their duties]."

Weinreb also alleged that the "present selection process gives a group of students the power to dispense a considerable financial benefit [presumably the stipend paid to board members] with scarcely any control of the faculty." He alleged that some BSA members have taken their duties lightly and that in se-

(Continued on Page 16)



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Chancellor Sees New Era Of Activist Journalism

By David Zensky

NBC News Commentator John Chancellor addressed an HLS Forum crowd last Thursday, April 11. Chancellor spoke on various topics including generational differences among journalists, the public's perception of the media, television in the courts, and the recent spate of libel actions by public figures.

Although the stated topic of Chancellor's short talk was "Lawyers and Journalists: Differences and Similarities," his comments were predominantly about journalists — the kind of people who become journalists and the reasons they do so. Chancellor said that he and other journalists of his generation went into journalism because it was fun, exciting, adventurous, and provided a good deal of freedom. "Nobody did it for money

because newspaper salaries were so low . . . [and] nobody did it for prestige," said Chancellor.

Today, however, Chancellor said, many people go into journalism for different reasons. Noting that applications to journalism schools rose dramatically after the release of "All the President's Men," a movie detailing *The Washington Post's* coverage of Watergate, Chancellor asserted that many students and teenagers found reporters Woodward and Bernstein to be attractive role models and went into journalism "to knock off a president or at least uncover wrongdoing."

A second group, he said, went into journalism desiring to become "rich and famous," despite the fact that aside from a "handful of superstars," most journalists earn blue-collar wages. And some, said Chancellor, enter the profession only because "no other vocational call is clear."

Switching focus, Chancellor described how most journalists "grow up," a process in which daily exposure to "death, violence, hunger, and corruption" leads to the conclusion that "action is better than inaction." As a result of this, he said, "if there is a bias in the press . . . it is not a bias toward liberalism; it's a bias towards activism."

Shortly after they reach this conclusion, Chancellor said, journalists who thought they were going into a "fun" profession realize that in fact they are in a very serious profession. He said, "The trick in [growing up] is to shoulder the responsibility without losing a sense of the fun and freedom that got you into all of this in the first place."

Chancellor said that many Americans think the media have become too powerful, or "too big for [their] britches." He attributed this in part to newspeople believing that they, as opposed to their jobs, are important, and the tough treatment given the past several presidents and other public officials at live press conferences. "Reporters asking hard questions . . . are seen by a lot of Americans to be rude," and by trying to contradict or tear down the President, reporters are thought of as "arrogant leftists," said Chancellor.

In response to this perceived lack of credibility, Chancellor said he is currently working on a program for NBC explaining who journalists are and how they work. "The American press is something that we ought to be just terribly proud of," said Chancellor, "but I don't think we've told our own story."

Chancellor seemed well prepared to mix it up with law students as he jumped at the opportunity to discuss recent libel cases and the "actual malice" standard of *Times v. Sullivan*. He said that while the *Sullivan* decision seemed pretty good to journalists at the time, it has turned out to be pretty bad, and has caused problems by undermining or qualifying the immunity and freedom it sought to protect. Chancellor said that today

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An Open Letter

TO THE FACULTY:

As you may remember, three years ago the Third World Coalition (TWC) held its first student-faculty forum. The forum came on the crest of nasty confrontations between students and faculty over the issue of faculty hiring.

An unprecedented number of faculty members showed up at that event. The entire episode and the events that led up to it caused Prof. Clark Byse, who joined the faculty in the 1950s, to comment that it all filled his heart with sadness. Whether he knew it or not, the anger and vitriol exhibited that year made many students sad as well.

As you also may remember, the *next* year things were a bit calmer. Student organizers of the event took a more conciliatory approach to encouraging the faculty to step up its efforts to diversify its ranks. Things were not calm, but they were at least calmer. That year about half of the professors who had shown up the year before came to the forum.

This year, last week in fact, the TWC held its third student-faculty forum. The year has not been marked by the confrontations over faculty hiring which checkered the last two years — and last week, only a handful of faculty members showed up at the student-faculty forum.

Are you trying to send us a message?

We sincerely thank the faculty members who bothered to show up. Their presence indicated a willingness to discuss, at least, faculty diversity with the people most affected by it. We are grateful to them.

Yet, we would greatly appreciate some information on why an atmosphere of hell breaking loose brings so many faculty forward while a conciliatory one is virtually ignored. We are perplexed.

Contrary to what may be popular belief, we students did not apply to Harvard Law School so that we could protest. We came here to learn how to be lawyers. Carrying signs, writing letters, signing petitions and lobbying professors is very time consuming. We are very tired.

The faculty is in a position to effect a change in its pattern of hiring white males, both in the case of Asst. Prof. Clare Dalton and in future efforts to bring minorities and women into its tenured ranks. We urge you to do so. Please. Give us a break — and give yourselves a break too.



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Fenno

Fenno was sitting by a green brick road when he was approached by a young woman, a scarecrow and a rusty tin man, all happily skipping. This made Fenno nervous.

"Hi!" said the young woman, "My name's Dorothy, and these are my friends. We're off to see the Wizard of HLS. I'm told he can give Scarecrow wisdom and Tin Man a heart. I'm hoping he'll give me tenure. Want to come?"

Fenno was skeptical, but maybe, just maybe, this wizard could get him into Tribe's Con. Law class.

"OK," Fenno replied, and Dorothy, the scarecrow and the tin man immediately grabbed hands, started skipping, and burst into song.

"We're off to see the Wi . . ."

"What do you think you're doing?" said Fenno, much dismayed. "This is Cambridge. Do you want people to think you're undergrads?"

"Well," said Dorothy, "we have to do this. You don't get very far in the Land of HLS if you don't follow well-worn paths glassy-eyed and cheerful like a Moonie. Besides, this is the only way to the Wizard and tenure."

The threesome skipped off. Fenno decided to jog along behind, but was adamant about the singing. This continued for about thirty minutes, leaving Fenno quite ragged, but the original group was as cheery as ever. Suddenly, the Wicked Witch of Austin West appeared on the green brick road.

"So where do you think you're going, my pretty?" he said. "Give me your tenure piece!"

And he grabbed the article from Dorothy's hands, skimmed it quickly. "Communism!" he yelled, and set it on fire. The Wicked Witch chuckled — Fenno was disappointed that he didn't get to hear the traditional sinister laugh — and vanished.

"Don't worry, Dorothy," said the brainless scarecrow, "The great and powerful Wizard of HLS will still give you tenure."

The group skipped on until they reached the Great Chamber of the Wizard. It was guarded by a phalanx of secretaries.

"The Great Wizard of HLS won't see you today," said the secretaries, "or ever."

With bravery found only in dreams, Fenno rushed past the secretaries and opened a broom closet, wherein crouched a little man.

"Yes, you've found me, uh — the Great Wizard. Scarecrow, I can't give you a brain, but I can give you a Harvard diploma, so people will think you have one. And Tin Man, I can't give you a heart, but I can give you a job at Cravath, where you won't need one. But Dorothy, *you're a woman*. I won't give you tenure. You'll have to go back to Kansas."

"And Fenno, too?" asked Dorothy sadly.

"And Fenno, too."



Letters to the Editor of the Record

Think Like Lawyers

To the Editor:

Why so many HLS professors persist in clinging to the infamous Socratic method boggles the mind.

To begin with, prevalent use of the method — characterized predominantly by directing questions to students on isolated cases or statutory provisions with few, if any, clarifying lectures on the bigger doctrinal picture — seems to make many students bitter. They begin to believe that they are paying about \$9500.00 per year for the opportunity to be tested on Steven Emanuel's outline. Often they are right. Professors using the Socratic method frequently end up forcing students to simply reinvent the wheel. By making fragmented and unorganized comments on case after case, professors leave the students to "put it all together." But putting it all together is precisely what we thought we were paying an expert in the field to do. And to make matters worse, we are told by Socratically-minded professors to buy thick, expensive casebooks containing more unconnected questions with few, if any, useful explanations.

Moreover, prevalent use of the Socratic method makes many students lose respect for their professors. Almost anyone can endlessly ask questions. Sure, the Socratic method takes time and energy and, sure, some are much better at it than others. But one can't help but feel that the method is so prevalent because it is so easy. When using it, professors don't need to defend their views, or present their research, or give us their outlines of the course; they only need to keep asking questions. A little bit of work can go a long way.

The Socratic method is also often administered insensitively. Professors using it learn to rely on the fear of humiliation, rather than inspiration, as the primary means of motivating students — however insecure they may be. Some will argue that Kingsfield's questioning techniques teach students to "stand up under pressure." But let moot court and litigation classes teach such skills and limit contract class to teaching contract law.

Finally, the Socratic method often perpetuates a fraud. It purports to teach students to "think like lawyers" (which is supposedly what law school exams test,) when in fact it more often results in confusion. By focusing on isolated and often outdated trees, students are lulled into losing sight of the forest. Yet, a well-organized diagram of the forest, not the facts in *Keeble v. Hickeringill*, is ultimately what students need most (and what exams test most often.)

Perhaps all of this is simply a way of saying that we leave many HLS classes with very

little — very little understanding of where the law is going, how the doctrines are organized, how to analyze real client needs, or what the professor thinks or knows about the law. There are exceptions to be sure. Professor Sargentich (though perhaps too theoretical for some) and newer professors, like Terry Fisher, at least give you their own well-researched theories to take with you. But by and large the Langdellian Socratic method or newer CLS versions of it are well-entrenched.

I've enjoyed HLS very much, but many of the professors here sell the institution short. By spending so much time on individual pages of material, they never give us a part of themselves. In the opening address he gave almost three years ago to the incoming 1Ls, Dean Vorenberg was right: the most important asset HLS has to offer is . . . the other HLS students (and the extracurricular activities they run.) But it needn't always be that way. With newer and more useful ways of teaching, one day more of the classes we attend could, just could, be as enjoyable and educational as the students we attend them with.

Jeffrey Jones, 3L

Moral Taint

To the Editor:

That complicity with apartheid is morally reprehensible few of us would doubt. Thus, the question as to whether Harvard should divest lends itself to an easy answer. In fact, the question is much too easy to answer. To what degree are we willing to tolerate such complicity, however, is a more subtle and powerful question: subtle in that few of us would confront this question and powerful in that our answer to it has disturbing implications.

Many of the students calling for divestment are also the students who deck themselves out in pin striped suits offering themselves to organizations that give direct aid to companies investing in South Africa. We do not become morally sanctified because we favor divestment from South Africa. We only sleep better. The moral taint that comes with joining forces with the corporate elite is not washed away by the fact that we may wear a divestiture button on our lapel or participate in a divestiture rally.

This argument has no limiting principle. The corporate elites in our society are not only accomplices to the crime of apartheid, but are willing participants in violent crimes all over the world. Apartheid in South Africa and Harvard's solicitude for its racist policies, merely makes the issue of personal complicity and responsibility more poignant.

Carrying a "HARVARD OUT OF SOUTH AFRICA" sign is easy; facing up to the hard personal choice of whether we shall ally ourselves with the bad guys is more difficult.

Dan Williams, 2L

Top Honors

To the Editor:

Your article, "Student Guide Grades HLS Profs," treated me (and several of my male colleagues) too kindly in reporting us as having the "highest averages" in the teaching effectiveness (6.6) and overall course recommendation (6.7) categories. Professor Kathleen Sullivan, who joined the faculty as an Assistant Professor in July 1984, received ratings of 6.7 and 6.8 in those categories — an achievement all the more remarkable for someone teaching her first class here.

Laurence H. Tribe

Ralph S. Tyler, Jr. Professor of Law

We regret the error and appreciate the correction — Ed.

Selective Amnesia

To the Editor:

Readers who judge books by their covers (and photos) may mistake Harvard Law School's coverage of its most recent graduation in its commencement bulletin for sim-

(Continued on Page 10)

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.

Legal Aid Bureau Argues Class Action

(Continued from Page 5)

others at the Legal Aid Bureau, specifically Virginia Veltrop, 2L, and Paul Collier, his supervisor and the attorney of record in the case.

Practice Arguments

He also received a great deal of support and assistance in his preparation for the argument before the First Circuit. Before the actual argument, on April 4, he went through two mock arguments. The first was before a panel consisting of Paul Collier, Marc Lauritsen, HLS Director of Clinical Programs, and Glen Falk, 3L, who worked on *Crosby* last summer and who had been through an appellate argument himself in the Massachusetts courts. The second panel consisted

of Collier and HLS profs. Martha Minow and Todd Rakoff.

Additionally, Profs. Gary Bellow, Archibald Cox, and David Shapiro also provided advice and assistance throughout the process of the appeal.

Berck said his practice arguments were invaluable preparation. They "helped a great deal, especially the criticism I got after them."

In fact, Berck said he was much better prepared than the other side. He attributed this to the great support he received in his preparation, and to the fact that he had probably been able to put more time in on his preparation than the Assistant U.S. Attorney who argued for the government.

The argument itself "went very well," Berck felt. He said he was interrupted with questions within

a minute and a half of beginning and, after that, "questions poured in." He felt the First Circuit panel, composed of Judge Breyer, Chief Judge Coffin, and Judge Torruella, "understood the logic of the argument," and "probed me for the premises."

"Of course," Berck added, "as I go over it in my head — roughly once every fifteen minutes — there are things I would have said differently or done better."

"But on the whole, I was very pleased," he concluded.

Berck said the argument "was fun." "It was scary at first, but I really enjoyed doing it," he said.

In summarizing what he learned from his experience, Berck emphasized the importance of the advice and assistance he received from others in the course of the appeal process. The "case has benefited tremendously from all the first-rate criticism I have been able to put to use," he said.

Berck does not expect a decision from the First Circuit until summer. Nonetheless, win or lose, he said, work in *Crosby* is far from over. If the First Circuit rules for the plaintiffs, the government might appeal, and in any case there will be work formulating a new injunction to propose to the District Court. If the decision is against the plaintiffs, the suit might well be refiled at the District Court level, with a reformed class and a request for different relief than was awarded the first time around.

"Either way, [*Crosby*] will probably outlive my tenure at the Bureau," Berck concluded.

Letters to the Editor

(Continued from Page 9)

ple realism. Current events in the pages of Harvard's *Law Review* give the lie to the pictorial assertion that the institution coddles its minority students. The *Review's* treatment of two of Harvard's most distinguished graduates — Charles Hamilton Houston and Clarence Clyde Ferguson — indicates the frightening extent to which winners' historicism, selective amnesia, and (alas, the old battle-cry still rings true) racism pervade legal education at Harvard.

Please read both pieces. By so doing, you are likely to learn more about the fundamental contradictions that have generated our nation's legal system than your faculty are willing or able to teach. But don't stop there. The pieces themselves are mere fragments of larger puzzles. Both represent the outcome of struggle. Harvard's *Law Review* underwent considerable anguish in their production. Such was to be expected; the editors could not have had much experience recognizing the triumphs and tragedies of black lawyers. Exceedingly few (I could discover only two) editors even knew who Charles Hamilton Houston was. And although no student could remain immune to the influence of Clarence Clyde Ferguson, it is regrettably true as well that no one fully appreciated his greatness.

How could we? These men devoted their lives to causes that Harvard has segregated

into so many penumbras far distant from the core of legal education. The core on which students are fed is rotten, hardly the stuff with which to nourish minds, bodies, hearts, and souls of good people. The maxims of false necessity that Harvard drills into students' heads pave the way (as do so many "good intentions") to hell, insanity, badness, call it what you please. Alternative examples — people like Charles Hamilton Houston and Clarence Clyde Ferguson — fortunately abound. Unfortunately, they tend to die.

It may come as a surprise to you to learn that you hold the power of life and death not only over forgotten heroes, but over yourselves as well. I have watched Harvard cut, slash and chop many a human being into the paper dolls — the Barbis and Kens and Raggedy Anns and Andys — in whose production it specializes. The transformation of flesh and blood into waste paper may be emblematic of our age, but only cowards submit to it as inevitable. By resisting and renouncing the fictions foisted on you by those who know no better, by daring rather to serve than to be served, you may begin the task of penning your own decisions. Whither these may lead is anybody's guess, but I suspect, and hope, and pray that they take you off the Harvard-Cravath express escalator.

Bob Riggle, '84

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Dalton: Rejection Would Be First Since '60s

(Continued from Page 1)

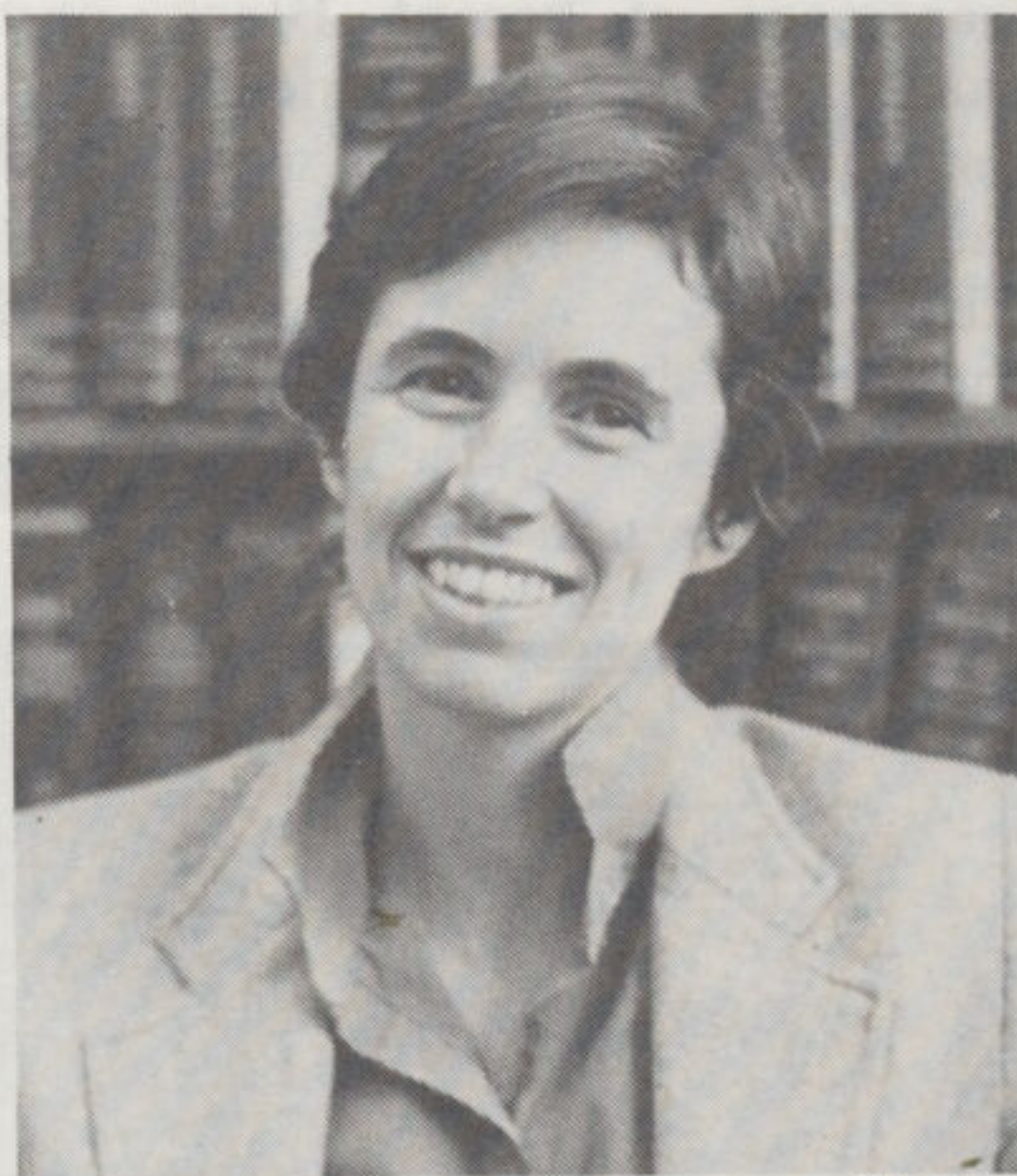
saying, "During February and March we met with each member of the appointments committee. They've always been open and sympathetic; they've always listened." She expressed the hope that the final decision on the Dalton matter would be a positive one.

Feldblum and others have been urging the faculty to redouble its efforts to attract qualified women faculty members: "Whenever a woman is teaching, there's a kind of energy that comes up again and again. It's qualitatively different when there's a woman standing up there. And that's a message that hasn't gotten through to the faculty."

WLA member Stephanie Pollack, 3L, also emphasized that the Dalton decision raised larger issues. She claimed that "the most important thing is to see this in the overall context of moving toward a faculty with more diversity. We must next address the question of why the appointment committee has no women. We need to urge the dean to put women on the committee."

Feldblum, in addition, linked the Dalton issue to the whole issue of faculty hiring: "While good classic

credentials — law review, publication, Supreme Court clerkships — reflect a person interested in academics, the school is beginning to realize that people without classic credentials can be good teachers."



File Photo

Assistant Professor Clare Dalton

The breakdown of the committee's vote — 2-2-2 — seems to support one professor's analysis in a student-faculty forum on Feb. 22, 1984. (See RECORD Vol. 78, No. 3, p. 9.) At that time, Prof. Duncan Kennedy separated the faculty into 3 groups — the right, left and the center — and claimed that "No . . . tenured assistant professor or visiting profes-

sor can be appointed under the current regime without a 2/3 vote of the faculty . . . so minorities — sometimes left minorities, sometimes right minorities — have cast one third veto votes."

While the committee vote did not break down on strictly ideological lines, a heated battle appears likely when the issue goes to the full faculty. In that battle, some observers predict, Dalton's gender and what some consider to be her liberal political slant will be more decisive than her credentials in determining whether she gets tenure.

Credentials

Among the credentials the faculty will consider are Dalton's 1973 Harvard L.L.M., her service as an Associate Professor at American University, and her term as an attorney with Covington and Burling in Washington, D.C. from 1978-81.

In addition, Dalton has published several book reviews and two law journal articles, including a recent *Yale Law Journal* piece that presents a critical legal studies viewpoint on several major areas of contract law.

If the faculty does deny her tenure, the action will be at least to some extent unprecedented. Prof. Frank Michelman noted that since the late 1960's "I can't think of any cases in which the person has been denied tenure at the end of extended review."

Apparently, the last time HLS denied an assistant professor tenure was in 1969. Since then, the faculty has postponed its decisions on a number of assistant professors, but, since 1969, all of the "extended review cases" have resulted in tenure offers.

Thus, Feldblum expresses hope that Dalton's experience "will be no different from any others" even if she is not offered tenure immediately. In accord with this goal, Pollack exhorted students to write individual letters and to sign petitions because the "file is still open."

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Times v. Sullivan Hollow Victory For Press

(Continued from Page 7)

many reporters and editors are afraid to print even mildly critical stories, and are pulling back from hard-hitting investigative journalism. As a result, he said, readers and viewers all across the country are getting "screwed" because they are "getting less information and less fair comment than they ought to be getting."

"It's hard to be a journalist these days, I'm sorry to say, without having a lawyer at your side."

On the Westmoreland and Sharon libel cases, Chancellor said he thought that there was some basis for criticizing the press. "I was embarrassed for my own profession [with CBS's editing]." *Time* "was guilty of some sloppy reporting and sloppy checking." Yet despite his criticism of *Time* and CBS, Chancellor opined several times that the media should be absolutely immune from libel suits by public officials because as public officials criticism comes with the job, and because public officials themselves in the course of their duties are immune from such actions.

In response to a question about allowing television cameras in the courts, Chancellor said he disagrees

with those in favor of the idea because he thinks that trials should not be public property and because that allowing cameras in could have detrimental effects. In response to a question concerning the media's treatment of recent Black and women candidates, Chancellor said they are constantly referred to as the "first Black candidate" or the "first female candidate" because of the media's fascination with "firstism" and not because of any sexist or racist motivations.

Chancellor closed by commenting that the Senator Jesse Helms' recent call for conservatives to buy stock in CBS is really an attempt to "Europeanize" the American media. He said that such an attempt cannot succeed because any attempt to politically manipulate journalists would result in half of them quitting. "You cannot take a great mainstream news organization like CBS and change its compass orientation. It won't work," he said.



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Panel Debates Reagan Administration Record On

(Continued from Page 1)

seeking asylum in the U.S. The panelists included Arthur Helton, Director, Political Asylum Project, Lawyers Committee for International Human Rights; Michael Hooper, Director, National Coalition for Haitian Refugees; Maureen O'Sullivan, Director, National Immigration Project, National Lawyers Guild; Carolyn Waller, Director, Alien Rights Law Project, and Maurice Inman '56, Chief Counsel, U.S. Immigration and Naturalization Service (INS).

The panelists described the current quota system and asylum review process under the Refugee Act of 1980 as well as actual experiences of refugees and asylees in the U.S. Many of the panelists criticized the Reagan Administration record on granting asylum and refugee status to Latin Americans, Africans, and Haitians.

"Economic Refugees" Flee Political Persecution

O'Sullivan accused the Reagan Administration of using the "myth of economic refugees," those fleeing for economic reasons rather than from political persecution, to take the focus away from the political oppression and persecution which exists in Central America. "The Reagan Administration cares more that the governments of Guatemala and El Salvador remain anti-Communist than that they persecute their own people," she said.

Waller also addressed the myth of the economic refugee. Waller pointed to famine-ridden and war-torn Chad, Somalia, the Sudan and Ethiopia as examples of the correlation between economic and political problems. "Economic and political problems may be so inextricably linked that easy separation of refugees into one category or another is impossible," she explained. Waller called for a more generous asylum and refugee policy with higher quotas for Africa and programs to encourage the return of newly educated people to neigh-

boring countries.

Reagan Refugee Record Defended

Inman, representing the INS, defended the Reagan Administration record under the Refugee Act of 1980. He pointed to the fact that the U.S. has accepted more refugees than the rest of the world combined and said that the current administration has granted more requests for asylum than any other administration.

Hooper responded to Inman's statements by pointing out that the Refugee Act was passed under the Carter Administration, making it natural that the Reagan Administration should approve more applications than previous administrations.

Inman also denied allegations that the Administration policies were too restrictive. "In South East Asia we are accepting around 90% [of the applicants]." However, he said 99% of requests for asylum result from someone being apprehended within this country or at the border seeking to enter illegally. He explained that the Act requires aliens seeking asylum to bear the burden of proof by preponderance of the evidence that the persecution from which they are fleeing will occur if they are returned to their country. This requirement, he asserted, poses great difficulty for some seeking asylum or refugee status.

Inman stated that on over 90% of the asylum claims by Salvadorans the "sum total of the evidence" is an application stating, "I seek asylum because of the war." Under the 1980 Act existing in a war zone does not give rise to either refugee status or asylum status.

Returnees Not Persecuted

Inman also said the administration follows up on every person who has been returned and that there was "not one bit of evidence that people we have returned [to El Salvador] have been persecuted."

The next event was a presentation on "United States Legislation and Court Decisions Regarding Refugees." Deborah Anker, Lecturer on Immigration and Asylum Law at HLS, spoke, and was followed by Ira Kuzban, a private attorney who has been in the forefront in Haitian refugee litigation.

Anker spoke on the history and treatment of refugees in the U.S. She noted that asylum determinations are viewed not in terms of human rights standards but in terms of national sovereignty. She also pointed out that the INS under the Reagan Administration has declared that to prove persecution a person must prove that their nation seeks to punish them.

Kuzban said that most people feel that the Refugee Act of 1980 is a major step forward in our treatment of refugees. However, continues Kuzban, "it has legitimated policy choices that the administration makes about which groups of refugees to accept and which to reject."

Detention of Refugees Called Discriminatory

Kuzban also spoke at length about imprisonment of refugees. In 1981, the Reagan Administration reinstituted a practice of "detaining" refugees which was discontinued in 1954. According to Kuzban the stated policy is that people attempting to enter the U.S. without documents will be detained. However, Kuzban argued recently before the Supreme Court that the government's detention policy was discriminatory in that the vast majority of detainees were Haitian.

The next event was a panel discussion on "Strategies for Providing Asylum and Protection for Refugees in the United States." The panelists were Wade Henderson, Legislative Counsel for the American Civil Liberties Union; Barnaby Zall, General Counsel for the Federation of American Immigration Reform; Victor Rostow, Associate General Counsel for the INS and Sister Kay Hauer, Co-chair of the Sanctuary Action Committee.

Political Refugees

Zall asserted that our borders are out of control and that the tremendous influx of aliens only hurts the poverty-stricken people in this country.

Rostow spoke about improvements that have been made in codifying and systematizing the arrest procedures followed by border patrol personnel.

Sanctuary Movement Not Civil Disobedience

Hauer defended the sanctuary movement, and spoke of her belief that it is a valid expression of the

exercise of religious freedom, administering comfort to the needy. "When civil law impedes the carrying out of our mission," she said, "we must stand on divine law."

Over 200 churches and 50,000 individuals are reported to be involved in the movement, the aim of which, according to Hauer, is to terminate the need for sanctuary. She vigorously disputed the claim that the movement is engaged in civil disobedience, saying that hers is "an obedience movement" whose members hold the law, when justly interpreted and fairly applied, in profound respect.

Ames (Cont.)

(Continued from Page 2)

out. He ended up throwing tiny rocks at the library windows from the outside in order to get the attention of his teammates so that they could let him back in.

Spending so much time together can place a strain on relationships. Bradwell team member Stephen Kennedy noted that one advantage his team had was that they were all friends before they undertook the project. Kennedy noted that "the disadvantage is that friendships can become strained . . . but luckily we got through."

Stanton echoed those sentiments. "We'd heard stories from previous years of people who ended up not speaking to each other." But despite "minor differences," she said "we ended up being great friends."

Kennedy's description of the Bradwell team's approach was typical of the way most teams approached the task of briefwriting. He said that Bradwell split into two halves, with each half addressing different issues. Every member of the team wrote a section of the brief. Afterward, the team held "writing conferences" to work on continuity. The team placed emphasis on making sure that there was no repetition, that the arguments made sense, and that each section followed logically from the others. Remembering the conferences, Kennedy said "We fought over every word."

Another aspect of the strain of Ames, which Stanton revealed to the RECORD, is its tendency to bring out abnormal behavior. For example, while Rosa Parks team member Neal Berinhout is a committed vegetarian, he went on a junk food binge every time the team pulled a late nighter: ice cream, M&Ms . . .; you name it.

The finalists, the Myra Bradwell team and the Charles Sumner team, will have a summer to recover from their exhausting endeavors. When the fall arrives, however, it will be back to Langdell, again, to prepare for the final round.

W.B.C.



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Weinreb Urges Abolition Of BSA Social Function

(Continued from Page 6)

lecting new members students sometimes offer BSA positions to "friends" and "likeminded students."

Only 3Ls

Weinreb proposed that the faculty committee which would under his proposal select the new BSA should base its decisions on limited criteria: "[M]embership in the Board should, so far as practicable, be limited to third-year students who have participated in the upper round of Ames. They should be selected by a small committee of the faculty on the basis of intellectual qualifications, including (1) written recommendations from professors, (2) submitted Ames briefs in the preparation of which the applicant participated, (3) grades and (4) writing and writing-teaching experience."

Weinreb stated that his proposed qualifications are appropriate for other duties which he presumed the Board would continue to perform. These included the preparation of the Course Evaluation Booklet, which summarizes student evaluations of courses they have taken. However, he questioned BSA's performance of this task as well and asked "Does anyone know whether the course descriptions are carefully and objectively prepared?"

Weinreb also proposed that "All 'social' activities of the Board should be eliminated."

Insisting that these activities "suggest to incoming students that they are children" and that "the only way to through [HLS] is to be taken on outings, stuffed with pretzels, bathed in beer, and gen-

erally held by the hand while they endure the indignities and rude inanities of their oppressors on the faculty," Weinreb called for an end to it all. He acknowledged that there exists "the strain of a large, rather impersonal place for the students — a small number, I think — who are unprepared for it; and we ought to be available to alleviate the strain." He insisted, however, that organizations like the Women's Law Association and the Black Law Student's Association that reach out to a specific group of students, and the various program organizations like the Harvard Defenders and the International Law Society are well suited for that work. "Perhaps we should encourage them and assist them more than we do."

Weinreb suggested that current policies "communicate to students that the whole law school experience is not 'worth it' and define [that experience] as something in desperate need of sweeteners." Wrote Weinreb, "... Of course, students should have parties, go to ball games, have picnics, tap a keg. ... Let them do it on their own, as they do before they arrive here."

Cancel Them All

Weinreb also questioned whether BSA members were "a likely group" to handle the orientation of new students. "Does anyone have *any* idea whether they communicate the values that we believe the School wants to foster? Do they affirm the value of intellect? The worth of the law? The worth of the Law School? The obligations of the profession? Do we have any idea what they affirm?"

Weinreb called for the elimination of "O-groups" and one-L section parties. Of the parties, he said, "We attend — under orders from the BSA — and stand around for an hour or two, making desultory small talk with little knots of students. Occasionally, there is an interesting conversation. Invariably it is a relief to leave." Said Weinreb, "No doubt there are other official social events of the same kind that I have forgotten. Cancel them all. We can keep on with the informal contacts with students that brighten their lives and ours, and do make a difference to them and to us. We do not need the BSA for that."

BSA Reaction

Newly elected BSA president Yolanda Townshend was reserved in her comments on the letter. "The letter being circulated is by one faculty member," she stressed. "... The BSA is always looking for ways to improve its programs and we do welcome suggestions."

She also said that she considered "some of the criticisms made in the letter to be overstated and overblown." Said Townshend, "... I would hope that the Harvard Law Community would not overreact to one comment made by one faculty member."

Prof. David Shapiro, who chairs the committee which oversees the BSA, said that he knows of no plans to act on any of Weinreb's suggestions. Townshend and Shapiro both stated that there are no immediate plans to make major changes in the board's operations.

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