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Dean Recommendation Due In December

By Dan Kroll
Features Editor

The faculty dean search committee has announced a self-imposed mid-December deadline, as speculation increases over its possible recommendations. Concerns about the deanship dominated an open forum on Nov. 16, which included nine professors, several of whom are rumored to be among the possible choices. Harvard University President Derek Bok '54 has said he hopes to make his final decision in January.

Many of the concerns expressed at the forum mirrored those expressed in a report of the results of a student poll conducted by the Student Dean Search Committee (SDSC).

The forum, hosted by SDSC and entitled "The Dean Search and the Future of Harvard Law School," featured Profs. Laurence Tribe '66 (chair of the faculty dean search committee), Robert Clark '72 (a member of the committee), Richard Stewart '66, Lance Liebman '67, Derrick Bell, Terry Fisher '82, Philip Heymann '60, Frank Michelman '60 and Todd Rakoff '75. Dean of Students Sarah Wald moderated the discussion.

Many of the panel members were mentioned in the SDSC report in connection with the deanship. Of students who

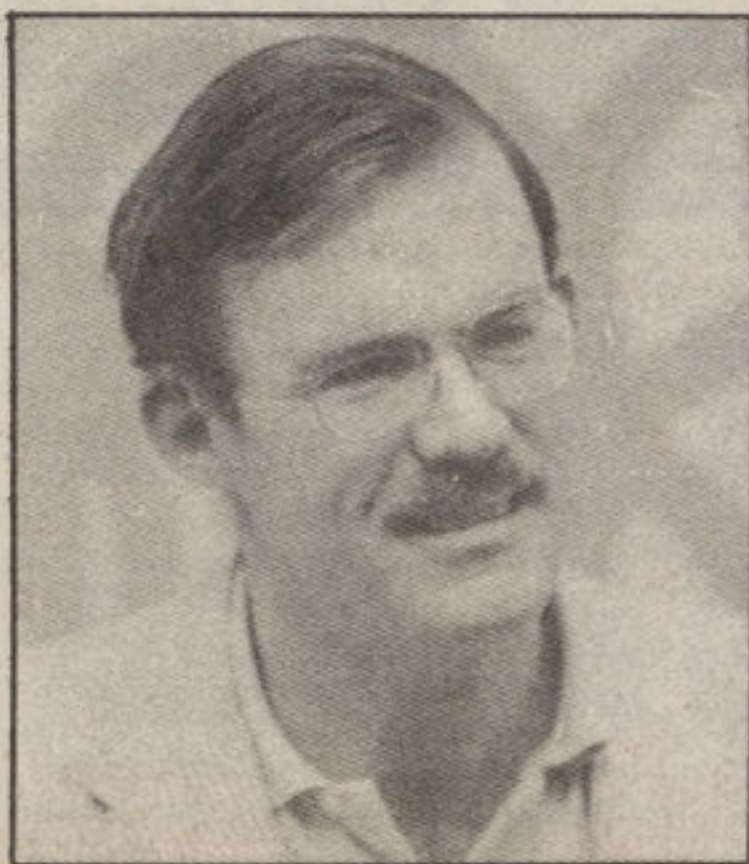
offered comments on specific individuals, many favored Bell and disfavored Stewart for the position. A lesser number mentioned Liebman, who received generally negative comments from students. Several students spoke favorably of Heymann and Rakoff, and Clark received mixed reviews.

Although students have discussed many individuals as possible dean candidates, there is still no confirmed word

as to which candidates the faculty dean search committee is considering. Unsubstantiated rumors include Stewart and the current dean of the University of Toronto law school among the leading candidates.

An article in the Nov. 14 issue of the *Harvard Crimson* reported that professors and other sources familiar with the search have indicated that the dean

(continued on back page)



Prof. Richard Stewart '66

File Photo



Prof. Laurence Tribe '66

File Photo

Justice Powell Gives A Peek Inside the Court

By Liz Askey
Staff Writer

Offering anecdotes about the Supreme Court and some free career advice, former Supreme Court Justice Lewis F. Powell, Jr. LLM '32 addressed HLS students on Nov. 17 in Austin North. Justice Powell was at HLS to judge the final round of the Ames Moot Court Competition.

Powell prefaced his comments about the Court by addressing the perception

that there is a "new Supreme Court." Powell said that whenever there is a change of even one justice on the Court, it can be considered a new court because one justice can be the deciding vote. Powell emphasized that he is "very happy to have [Justice Anthony Kennedy '61] as my successor." He said Kennedy is "very well-trained" and added that he looks like a basketball player.

In regard to Chief Justice William

Rehnquist, whom he called a "close friend," Powell said that, although he didn't always agree with Rehnquist, he always admired him. Powell said Rehnquist runs the Court very efficiently, and disputed the suggestion that Rehnquist often seeks to be in the majority so he can control the opinion assignments. Powell emphasized that Rehnquist votes his convictions, and Powell stressed that it is very difficult for a Chief Justice to control eight other justices.

Powell also had high praise for former Chief Justice Warren Burger, whom he said has "probably done more for the system as a whole than any Chief Justice," citing as an example Burger's creation of an administrative office for the state courts similar to that which exists for the federal courts.

In a humorous aside, Powell mentioned that while he and Rehnquist were sworn in on the same day, Powell outranked Rehnquist by 30 seconds. This was important, he said, because the junior justice on the Court was responsible for keeping minutes at conferences (although, he said, the other justices always kept their own and didn't fully trust him), and he also had the responsibility of getting coffee, tea, and cookies at break time. Powell's remarks evoked a chuckle in the audience when he said that the justices agreed to delegate this duty to one of their messengers just before Justice Sandra Day O'Connor came to the Court.

Powell also commented on the health of the justices, saying, "They're all healthier than I am." Powell resigned at age 80. He said Justice William Brennan '31, who is 82, is "very spirited" and travels a lot. Powell said Justice Thurgood Marshall, whom he called "very humorous," doesn't diet or exercise and brags that the most exercise he gets is making the two steps up to the bench. Powell speculated that Marshall has a few joke books, relating an incident on the bench when Marshall leaned over to

(continued on back page)

Women's Project Helps The Abused

By Gretchen von Helms
Staff Writer

Seventy-eight people have signed up for the Battered Women's Advocacy Project, a new organization which helps battered women obtain restraining orders against their attackers in local courts.

"The [student] response has been phenomenal," said Sarah Buel, 2L, founder and co-chair of the HLS Battered Women's Advocacy Project. Buel admitted that the program did not expect as many people to be interested. 67 women and 11 men have signed up for the program and attended the first training session, she said, and 15 to 20 more have expressed interest in attending the second training program to be held at the beginning of the spring semester.

According to Buel, the program was organized to meet a need in the courts for students to represent abused women.

The program, which is advised by Professor Martha Minow and which is co-sponsored by the Women's Law Association (WLA) and the Children and Family Rights Project, will allow its members to begin going to court on the behalf of battered women in the first part of the spring semester. The organizations spent most of the fall semester organizing the project, contacting hospitals and shelters for referrals, and recruiting law students to serve as advocates, Buel said.

According to Buel, the organizers of the project did not expect the high level of student interest and hence are depending on WLA and the Children and Family Rights Project for funding. Charlotte Gibberman, 2L, who handles the administrative and financial aspects of the program, hopes to get additional funding from

(continued on page 3)

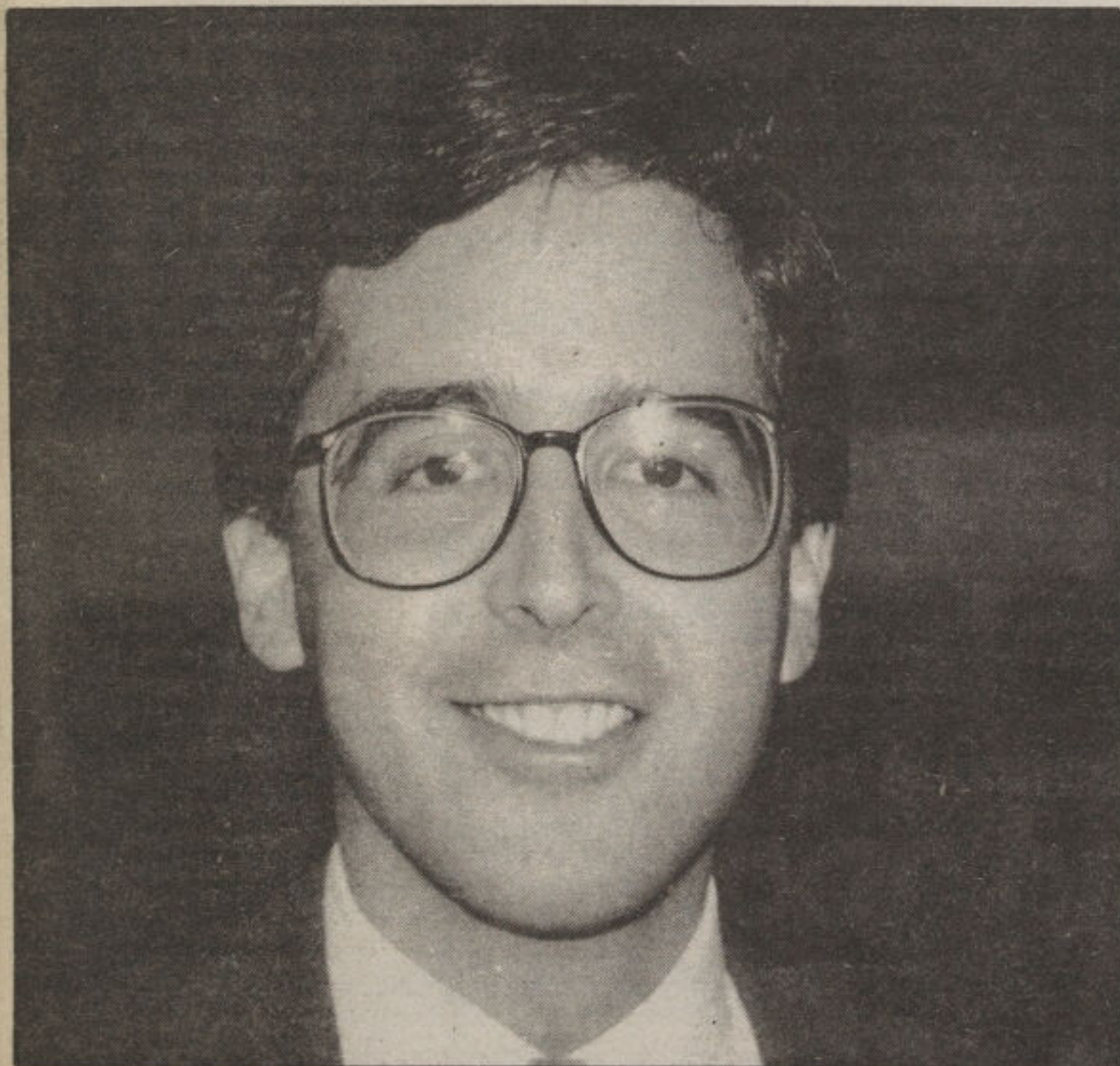
Chris Johnson: 1963-88

Michael C. "Chris" Johnson, 3L, of Norman, Oklahoma passed away on Nov. 17 at Deaconess Hospital after a long illness. Johnson was 25 years old.

Johnson planned to graduate from HLS in January. He was originally scheduled to receive a degree in Spring 1988, and walked through graduation ceremonies last June.

Johnson leaves behind two parents, a sister and two brothers. Johnson was an American Indian and a graduate of the University of Oklahoma. He had spent summers at Ropes & Gray in Boston and at Jones Day Reavis & Pogue in Washington, D.C.

A scholarship has been established in Johnson's name at HLS. Contributions to the "Michael Christopher Johnson fund" can be made through Lisa Chertkov at the Harvard University Health Service at 75 Mt. Auburn St., Cambridge MA 02138.



Peter Babej

Richard Rochman, 3L, was named best oralist in this year's Ames Moot Court Finals. His "Freund" team also emerged victorious (see story, page 3).

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Ames Finale Draws Large Crowd And Media Coverage

By Jeff Gershowitz
Editor-in-Chief

In front of a packed Ames Courtroom audience, an overflow video crowd (including a *New York Times* reporter) throughout Austin Hall, and a broadcast crew from the C-SPAN cable network, the Paul Freund team captured the 1988 Ames Moot Court championship on Nov. 17.

The Freund squad, consisting of 3Ls Steve Demm, Meir Feder, Greg Nevins, Richard Rochman, Alicia Strohl and Jeffrey Wintner, was awarded best team honors, with Rochman being named best oralist. Their opponents, the Karl and Doug Llewellyn Team of John Bush, Arthur Greenspan, Joseph Kearney, Stuart Levey, Robert Miller and Mark Nielsen, all 3Ls, were awarded the best brief honor.

"Your briefs and oral argument was at least as good as what I saw before the Supreme Court."

"We were all very happy for Rich. We thought the other team was very good, and we were very thankful to win," Nevins said. "We thought that everyone did real well," added Wintner.

"I'm happy I don't have to work anymore," commented Wintner. "It was a lot of fun, in retrospect," he said, "though when we were doing it it wasn't as much fun."

The Freund team represented petitioner in the fictional case of *Rathburn v. U.S.*, seeking a declaration that the federal sentencing guidelines, created by Congress and delegated to a special commission for drafting, are void as unconstitutional. The Llewellyn squad represented the U.S. government and argued the law's validity. The Ames judicial panel does not rule on the merit of the substantive argument, only the teams' performances.

The three-judge panel assembled by the Board of Student Advisors, the event's sponsor, to hear the case had high praise for all the participants.

"I have never sat on a moot court where the briefs and orals possessed the high quality yours had," said former U.S. Supreme Court Justice Lewis F. Powell, Jr. LL.M '32, who served as presiding justice at the finals. "Your briefs would

be viewed as excellent wherever and whenever the court was," he added.

Federal Court of Appeals Judges Patricia Wald and Juan Torruella also complimented the teams. Wald, who noted that questioning at oral arguments is "the only fun we [judges] get," said the four oralists (Rochman, Feder, Miller and Nielsen) "reinforced my notion of how important oral argument is." Torruella compared the Ames performance to the actual Supreme Court argument of *U.S. v. Mistrella*, the case *Rathburn* was based on, and stated "your briefs and the quality of the oral argument was at least as good as what I saw before the Supreme Court."

Best oralist Rochman was the initial speaker and based his argument on the premise that the Sentencing Commission was created by an unconstitutional

delegation of power. The Congress' grant of power to the commission "is as unconstitutional as it is unprecedented," he claimed, since the guidelines involved "decisions so central to the legislative function." Responding to Wald's questioning, Rochman stated that criminal punishment is "society acting as a whole" and thus a distinctively legislative expression of popular will.

Feder argued that the law unconstitutionally thrusts the commission judges into the task of "naked policymaking at large." He also "disappointed" Wald, and elicited a large share of audience laughter, by responding to a lengthy question by contradicting her very premise that a substance/procedure distinction is invalid.

Miller countered Rochman by arguing that Congress' power is delegable, and illustrated the complexity of the sentencing guidelines by trying to explain its elaborate "matrix" system. Nielsen, arguing against Feder's separation of powers claim, encountered the most judicial questioning, including a string of hypotheticals from Torruella.

Comments on the Ames final came from near and far and ranged from the sublime to the ridiculous. Roger Nober, 3L, apartment-mate of Rochman, Nev-

ins and Wintner, said "I can just feel the greatness oozing. And I share the same bathroom!" The *Times* article, appearing in the Nov. 1 edition, dealt both with the argument itself and the campus environment surrounding the event. The *Times* piece spoke with a number of HLS students at and around the finals, and also gave a meticulous description of the oralists' attire, for those who may have missed the argument but are interested in such things.

While the two squads celebrated the completion of their grueling Ames en-

deavor, the BSA announced the winners of this year's Ames quarterfinals. These four teams of 2Ls will move into the spring semi-final round, with those semi-final winners eventually taking their place in next year's Ames finals: Alice Marris, Matthew Stevens, Pauline Scalvino and Marilyn Wiesen; Michael Dorf, David Blank, Michael Grossman and Matthew Kreeger; Anne Berleman, Karen Jacobs, Kathleen Mulligan and David Gormley; and David Zubkoff, Kevin Buehler, Melody Harris and Rhonda Moorman.

Battered Women Need Help

(Continued from page 1)

the law school if the program needs additional funds during the spring semester. The fall training program took up most of the program's funds because of the immense response.

The training, Buel said, was extensive, focusing on the statutory laws, the intake process, the referral process, the responsibilities of an advocate, the dynamics of family violence, the often hostile environment in which the victim lives and the typically non-supportive role of the criminal justice system.

Buel, who has 12 years of experience working with battered women, gathered most of the information for the training program, and Suzy Groisser, 1L and co-chair of the project, compiled and organized the data into a resource manual for the student advocates.

The manual focuses on some do's and don'ts for handling a battered woman's case in the local family courts. Groisser, who worked with abused and neglected children and their families for two years as a social worker in Philadelphia, said the manual is very complete. "Sarah put in every detail, even down to the room number of where to file the documents."

Groisser said she became involved in the project because "it's what makes law school worthwhile." She added that she enjoys helping people and is interested in a career in family law. Groisser said she is disturbed by the extent of emotional abuse and by the lack of immediate response. "In order for something to be done about it [the abuse], there have to be bruises."

Buel became interested in starting the program for similar reasons. The police are sometimes uncooperative and it is hard for the individual women to get restraining orders, she said. "These women feel very isolated," she added.

When the program gets in full swing, the advocates will take phone calls from shelters, the courts, the Children's Hospital, The Middlesex County District Attorney's Office, and the women themselves. The calls will be received by students working on intake in the WLA office, Buel said. She added that the intake students will call advocates (depending on class schedules) who will then go to court within a few hours or by the next day.

Buel noted that the WLA office will be staffed full-time during the day because it is important to respond to these women's needs right away. Battered women often change their minds about seeking action against their batterers, because they have a real fear of being harmed if they initiate action or if they try to leave the home, Buel said. She stressed that it is critical for advocates not to be judgmental of the women who choose to stay with their abusers, and even more critical that they do

not abandon their clients.

After taking a call, the student advocate will meet the woman client at court and fill out a detailed intake form about the incidents and history of abuse, any police and court responses and whether children or other parties are involved. The advocate then gives the woman referrals to different agencies and groups which can assist her.

The first legal action is the *ex parte* hearing, and 5 days later the follow-up hearing, called the "Five-Day Hearing," takes place. This second hearing is for "permanent" one-year orders stipulating support, compensation, custody and visitation (if children are involved), and/or restraining and vacate orders which monitor the batterer's presence around the home.

Buel said the program is necessary because of the "truly terrifying" information about family violence. Buel, who spent a year working as an advocate in the Seattle City Attorney's Family Violence Project, has written an article entitled "Mandatory Arrest for Domestic Violence" which appeared in the Spring 1988 issue of *Harvard Women's Law Journal* and which documents many of the statistics related to family violence.

"The number of repeat incidents decreases in states which institute the policy," she said, citing Duluth, Minnesota as an example. Duluth experienced a 47 percent reduction in the number of repeat incidence calls, she said.

Buel cited a 1985 Department of Youth Services Study on the Correlation between Family Violence and Juvenile Delinquency which indicated that children of violent families have seven times the likelihood of suicide attempts, a 50 percent likelihood of abusing drugs and alcohol, and are 23 times more likely to commit sexual assault crimes.

These children also have a 74 percent likelihood of committing crimes against the person, and 63 percent of young boys (age 11 to 20) that are in prison for homicides in the United States killed their mothers' batterer. Buel observed that young men seem to have taken on the task that the Criminal Justice system has failed to do.

Buel also noted that 95 percent of the women in Framingham Prison were battered. She pointed out that many battered women become homeless because they do not receive vacate orders, and many battered women turn to theft for means of support. These women also have problems with drugs and alcohol, Buel added. She said the Advocacy Project can have an impact on the lives of battered women and their children, 50 percent of whom are also abused by the batterer.

The project plans to have discussion sessions for the student advocates and guest speakers on Fridays during the spring semester.

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Happy Holidays From The RECORD



Harvard Law Record

Volume 87, No. 8

Jeff Gershowitz
Editor-in-Chief

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Editorials

Of Deans And Moonlighting

Since this is my last editorial of the fall term, I have decided to let loose with all those bits and pieces of editorial ideas that I have built up throughout the term but never developed into extended thoughts. Thus, these 'mini-editorials':

- As Thanksgiving approached, the rumor-mill around HLS overflowed with talk that the choice for the next HLS dean would be disclosed before the holiday. While this did not come to pass, it shows the heightened excitement and tension surrounding the decision on our rumor-starved campus. For this reason, among others, a decision should be made and announced as soon as possible, putting an end to the confusing speculation that inevitably arises in the smalltown HLS environment.

- While we are on the dean selection topic, I have a suggestion for the faculty committee considering recommendations and the upper echelon decision makers involved in the process. They should place high on their list of qualities the potential dean must possess the ability to assume a conciliatory role. While faculty relations have seemed relatively calm this academic year, rifts remain. Meanwhile, student divisions have become more obvious. In choosing the new dean HLS should strive to choose someone not overly identified with any extreme of ideological thought or sentiment, not because such a person might not be qualified for the role, but because his or her task would immediately be made that much more difficult. Were this the case, the entire HLS community would suffer. While this might be called ideological blackmail, I prefer to consider it pragmatism.

- "Harvard Watch," the Ralph Nader '58 initiated academic watchdog group, recently presented a report, "Scholar, Inc.: Harvard Academics In Service of Industry and Government." While I will not get into the details of its findings of great off-campus "moonlighting" by members of the university faculty, I think their findings about the Law School should be noted.

"The clandestine nature of Law School professors' outside work for private clients precludes an aggregate presentation, an objective measure, of their moonlighting," the report states, noting that, even in relation to other parts of Harvard, law professors' outside "activity is mired in secrecy and nearly impossible to document." Yet the report concludes that "there is no doubt that professors engage in extensive outside consulting."

Anyone associated with HLS easily recognizes this as the truth. While many faculty members take pains to make themselves accessible, many others seem to begrudge the few hours a week they must teach class and the infinitesimal amount of time they delegate to "office hours." While I will not comment on the accuracy of the following, I will always remember the sign I saw in my 1L year reading "Alan Dershowitz spent 7 years with Claus von Bulow and 7 minutes with your criminal law exam" (and that was in the pre-deli days).

In addition, there is the overhanging question of whether these outside roles influence what and how these faculty teach the subjects themselves. The spectre of a professor slanting the presentation of doctrine to accord with the advice she or he has given a client is something that should be openly discussed.

It is time for HLS to compel all faculty members to make public the exact extent of their moonlighting activities. Students and other faculty should be fully aware of how much time, and in what capacity, faculty members devote their professional abilities to government entities, private institutions and individuals. This would allow both the necessary disclosure of possible academic conflicts of interest and the requisite policing of professors' time commitments.

- As exam time nears, and 1Ls especially begin to worry about this mysterious beast that is the law school exam, I feel a number of things should be addressed. First, the issue of grades and their alleged "randomness." Are grades random? Yes. If so, should you study? Yes, because the people who talk the loudest about grades being random are the ones most likely to be studying the most. Are law students nervous about tests? No more than a defendant in a paternity suit is about his blood test. Should they be? No. All students pass, if they want. What personal advice do I have to add? Good luck, everyone.

J.A.G.

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The RECORD welcomes letters to the editor on any subject from students, alumni and interested members of the law school community. Letters are printed as space provides, and are edited for space and clarity. All letters should include the name(s) and phone number(s) of the author(s). All letters submitted become the property of the RECORD.

All opinions included in letters to the editor, as with editorial cartoons and editorials, belong to their authors and do not necessarily represent the opinions of the RECORD staff.

Slur Apology Demanded

To the Editor:

Although our views on the "Fairness Amendment" range across the spectrum, we all find appalling the vulgar personal attacks made on Sam Levy, 3L, during the debate, particularly those recounted in the RECORD's last issue.

In a letter to Levy, quoted in the RECORD, Luke Cole, 3L, wrote: "I think you and your untermenschen are full of it. Kindly fuck off."

This language is racist in general and anti-Semitic in particular. The term "untermenschen" (German for "subhuman") was coined by the Nazis to denote Jews, Blacks, and other non-Aryans during the period leading up to and

including the Holocaust.

Those who profess sensitivity to ethnic/racial and gender concerns reveal themselves as insincere hypocrites when they stoop to the level of racial slurs.

For Luke Cole to call someone who is Jewish an untermensch only promotes an atmosphere of hatred and intolerance on this campus. We hope that he will think twice before similarly slurring members of other ethnic/racial groups.

Luke, apologize — now!

A Broadly Diverse Group of Sixty HLS Students Cutting Across Boundaries of Race, Ethnicity, Gender and Political Views

RECORD Should Print Names

To the Editor:

Luke Cole and Jeff Selbin both sent letters to Sam Levy, a third year law student, that were very abusive and, in at least one place, blatantly anti-Semitic. Excerpts of both letters were quoted in the RECORD's Nov. 18 issue.

What the RECORD failed to mention were Cole's and Selbin's names. This was in large part due to Selbin's having threatened legal action if their names appeared in connection with the quotes. Selbin was concerned about his pending applications for judicial clerkships.

It also seems no coincidence that Luke Cole is a member of the RECORD's staff.

What do these two, who purport to be such diligent truth seekers, have to hide? They certainly did not seem too concerned when they wrote and signed those letters to Levy. The RECORD should not succumb to these external pressures. Cole's and Selbin's hypocrisy should be revealed to readers who rely, to a large extent, on the RECORD for campus news.

Jon F. Vein, 3L

Open Season On Free Speech

To the Editor:

I have known Sam Levy for the past two years. Sam is widely regarded by his peers as a highly sensitive and intelligent individual. Few students at Harvard Law School embrace the principle of free speech with the same enthusiasm as he. It is with these facts in mind that I believe the treatment that Sam received from two of his classmates was despicable and should not be ignored by the Harvard administration. The offensive notes received by Sam are troubling in the following respects: First, the notes were by most accounts patently anti-Semitic. For Harvard to ignore this episode would be tantamount

to its condoning the expression of such revolting sentiments. Second, the notes were aimed at both harassing and intimidating Sam. If the administration does not discipline this type of behavior, it will be open season for students to send notes filled with profanity to students with whom they disagree politically. Finally, the notes attempt to stifle Sam's right to free speech. If Harvard places the same premium on the free debate of ideas as does Sam, it should act immediately — lest talented individuals like Sam Levy seek out law schools that will act.

Fortunately, the authors of the notes were arrogant enough to identify themselves. (The RECORD has been remiss in not mentioning this fact.) As Sam's classmate, I urge Deans Vorenberg and Wald to act quickly against Messrs. Luke Cole and Jeff Selbin, who signed the notes. If they will not, I will urge Sam to contact the Harvard Police Department and request that an end be put to such egregious harassment.

Charlie Danaher, 3L

Letters To The Editor

Dumb Things At HLS

To the Editor:

What's the dumbest thing about HLS? I say it's the fact that at any time in November, one third of all 2Ls are travelling to interviews, while the other two thirds are desperately trying to catch up after missing class and falling behind because of the interview process. Meanwhile, professors are disgruntled because students are poorly prepared and seemingly lethargic.

The result is more than an inconvenience to the Harvard community. Harvard students do not learn as much or as well as they could. For example, this month I have missed classes on hearsay and on 14th Amendment incorporation of rights not enumerated in the Bill of Rights. Maybe I can track down some class notes, but I'd be far better served by having attended and participated in Professors Kennedy and Tribe's classes.

This isn't a necessary evil of the recruiting process. The problem could easily be resolved by next year or the following year at the latest.

Harvard should give students a week off to pursue jobs without having to miss class time. I for one would gladly begin school a week earlier, or give up three class days plus Veterans and Columbus Days, or take exams after Christmas.

Yale and Stanford students enjoy such a recruiting week. Chicago gives students several isolated days off for interviewing.

This idea deserves prompt adoption. The current non-response imposes a serious burden on our education for no reason, and the solution is obvious and easily attainable.

David Jones, 2L

Code Critical Pressure-Free

To the Editor:

Code Critical's "Firm Commitment" program allowing 2Ls and 3Ls to aid the homeless by leveraging their prospective employers sounds fabulous.

I'm sorry to hear some students feel peer pressure to participate. How could it be anything but mild, however, compared to the peer pressure to go after those big firm jobs in the first place?

Amy Shapiro '88

Student Claims All Diversity Is Intellectual, Explains Comment

To the Editor:

Last Wednesday, Nov. 16, I made a comment that apparently offended several members of the Law School community. The comment was part of a question I posed to Professors Michelman and Tribe at the Faculty's open forum on the dean selection process. The purpose of this letter is twofold. First, I want to apologize for any injury that I may have caused. Second, I want to explain why I believe my comment was profoundly misconstrued — construed, in fact, as very nearly the opposite of what I said.

Let me recount the context. The Student Dean Search Committee had just asked the nine Faculty panelists what the panelists thought the incoming dean's "priorities" should be with respect to increasing diversity in their own ranks. Professor Michelman said that the hiring of more blacks and more women should be the foremost concern. But he did not leave his comment at that. He went on to say that "ideological" diversity should not be a concern. Professor Tribe, in his comments, largely concurred. I found both professors' responses unsatisfactory. They betray a false premise and a subtle prejudice.

My comment attempted to explain this point. As I said at the time, the professors' responses mirrored the famous line in George Orwell's *Animal Farm*: they seem to think that "some forms of diversity are more 'diverse' than others." Some measures of diversity, they

believe, merit attention; others do not. Such reasoning cannot withstand scrutiny. Blacks and women — as well as a multitude of ethnic groups — are severely underrepresented on our Faculty, and our education suffers as a result. But certain intellectual approaches and ideological viewpoints are also severely underrepresented. And our education also suffers from that disparity. It should therefore be the goal of the next dean to diversify the Faculty on all of these fronts *simultaneously*. What Professors Michelman and Tribe fallaciously implied is that this cannot and should not be done. But the various categories of diversity are not mutually exclusive. Not all blacks and women share the same intellectual or ideological leanings, and it is prejudicial to suggest otherwise. If the Faculty lacks blacks and women, then it should hire a qualified black over a qualified white, and a qualified woman over a qualified man. It should also hire a qualified black woman over a qualified black man. Carrying the argument further, if the Faculty also underrepresents certain ideological views, then it should hire a qualified black with such a view over a qualified black without such a view. All else being equal among competing candidates, the Faculty should try to maximize diversity in all respects. To pursue some types of diversity to the exclusion of others is to pervert the true meaning of diversity itself.

Presumably, Professors Michelman and Tribe believe — as I do — that there are a number of qualified black and female candidates. Do they believe that all of those candidates share the same ideological leanings? If not, what arguments can they give for refusing to favor those who adhere to schools of thought currently underrepresented on our Faculty? Do they not agree that certain schools of thought are underrepresented here? Or do they just personally prefer

selves but the immanent results of having such attributes that can contribute so importantly to education and social breadth. Understood in this light, distinctions between "types of diversity" fall of their own force: all diversity is intellectual diversity.

It is therefore not enough to say that Candidate X is a good candidate because she is a woman or because she is black. Candidate X is a good candidate because she has a black woman's per-

"There is nothing about ovaries or melanin *per se* that contributes value to education."

the imbalance?

In my attempt to raise these questions, I said roughly the following:

"There is nothing about ovaries or melanin *per se* that contributes value to education. It is the social and cultural experiences that people with those physical attributes have tended to have that is important. Given that the distinction between physical and intellectual diversity therefore seems forced, why do [and how can] you seek the former without regard to the latter?"

It is this statement that some have found objectionable, and I apologize to anyone who did. But I believe that many who took offense will, upon reflection, find the statement innocuous if not agreeable. It is the professors' suggestion that blacks and women are desirable as Faculty members simply by virtue of their physical traits that I find troubling. Harvard Law School should not pursue a candidate because they are black or female *per se*, but rather because their intellectual development and perspective — largely the products of their race and sex — are valuable, enriching, and instructive to others. *It is not the physical attributes them-*

spective and a black woman's experience, both of which she articulates in her scholarship and in her classroom discussions. The distinction is all-important. In evaluating Candidate X, the Faculty can and should consider *nothing but* her intellectual development. Race and sex are a part of that, but so is ideology. It is folly (if not insulting) to suggest that the various elements of one's being are separable. The Faculty must look at the whole person. To hire a black or female professor and to say that ideological concerns did not bear upon the decision is therefore either dishonest or disrespectful. It is to denigrate that professor's moral perspective and to suggest that physical traits alone — as I perhaps too bluntly stated — are what we value.

The cause of no minority is advanced when the complexity of humanity is reduced to the flatness of a comic book sketch. When hiring professors, the Faculty *does* look at what those professors believe. We must not let them facilely tell us otherwise. And we must not let them forget their obligation to present the broadest possible array of intellectual viewpoints.

Allan B. Moore, 2L

Letters To The Editor

Professor Says Affirmative Action For Race, Gender Worth Costs

To the Editor:

Allan Moore, author of the above letter, supplied a copy of his letter to Professor Michelman so he could respond.

Mr. Moore's letter charges me with having advanced at least three positions that I myself consider to be quite wrong. The letter casts me as having (1) suggested that "blacks and women are desirable as Faculty members simply by virtue of their physical traits;" (2) stated that "ideological diversity should not be a concern" and that it does not "merit attention;" and (3) implied that "all blacks and women share the same intellectual or ideological leanings."

These simply are not accurate accounts of what I said at the forum. (1) At no time did I come close to intimating that physical traits are what's important. I spoke, emphatically and repeatedly, of the distinctions of experience, perspective, and sensibility associated with social identity as a woman or minority person in American life. What's more, in direct response to Mr. Moore's own question I again explicitly said that in my understanding "woman" and "minority" refer, in the context of affirmative action discussions, to social phenomena and not biological ones. (2) I affirmatively said — again repeatedly and again in response to Mr. Moore's own question — that there were other dimensions of diversity (I called them "political" dimensions) to which we should try to be generally sensitive in our appointments work (for example, by attending to them when resolving close calls in individual cases), although we should not make "political balance" anything like a programmatic objective in our appointments process. Point (3) I take up towards the close of this letter.

Mr. Moore sees it as inconsistent or contradictory to assert (as I did) that the proper concern of academic diversification by affirmative action is not physique but intellect (using that term broadly to include perspective, sensibility, and tacit knowledge), but at the same time say (as I also did) that while better diversification by race and gender are proper and urgent program-

matic objectives for this school now, political (or ideological) balance is not one. So he may think that in order for my various statements at the forum to define a consistent position, I must thus have meant what he says I said, and that these meanings of what I said present a fair target for criticism.

But that won't quite do. In my statements at the forum I explicitly dealt with the question of the consistency of my positions. Perhaps my defense of them as jointly held positions was too simple to make an impression. I said that affirmative action to diversify our faculty intellectually (in my broad sense) by altering its race and gender balances is an objective so urgent as to be worth the associated costs and risks, but that affirmative action for other "political balance" is too costly and risky to be undertaken. That is the stand I expressly took at the forum, and therefore the only stand on which I'm fairly open to attack for what I said there.

It is also a stand that I'm ready and proud to defend. Let's take first the question of affirmative, programmatic pursuit of "political balance" in appointments decisions. Speaking both in principle and from experience, I cannot think of anything more poisonous to academic society or more hostile to its foundational commitments. I don't think any lengthy explanation is required. But for starters (and this only scratches the surface) just try to imagine an academic world in which it is widely understood — by younger entrants still in their formative stages, and also by other ambitious people hopeful of bettering their lots — that one's chances of landing a secure position at one's institution(s) of choice turn significantly on how closely the political or ideological slants reflected in one's teachings and writings (including choice of subject matter and methodology) appear to correspond with whatever slants are currently regarded as "under-represented."

Programmatic commitment to diversification of academic faculties by race and gender just does not involve the

same profound danger of distortive pressure (overt or subtle) on teachers' and scholars' pursuits and professions of true understanding. It does not involve the same profound danger of sanitizing the practice of judgmental inquiry by academic peers and colleagues into one another's politics. It

sensibility associated with social identity and experience as a woman or minority person in American life. I believe that those distinctions go quite beneath and beyond the matters of political ideology on which Mr. Moore would have us concentrate. I so stated at the forum. So I haven't implied, as

"Affirmative action for 'political balance' is too costly and risky to be undertaken."

does not open the door to attacks by the powerful on academic freedom, masquerading as complaints about political "imbalance" (a kind of happening that is not, alas, unknown to American history). To be sure, race- and gender-based affirmative action does involve different dangers — of stigmatization, and perhaps of over-enthusiasm producing inappropriate appointments (which I don't for a moment think have occurred here, or come close to occurring). Those dangers are real, but they don't attack the academic enterprise at the roots, and they are sufficiently controllable that they ought not be allowed to stand in the way of urgent efforts towards adding substantially to the numbers of women and minorities on our faculty.

The diversification thus sought has nothing to do with biology. It has to do (it's worth repeating myself on this point) with distinctions of perspective and

Mr. Moore's letter charges me with having done, that "all blacks and women share the same ideological leanings." I do believe, as I said, that many (or most, or all) women and persons of color do share some important things — experiences, perspectives, sensibilities — that he or I will not hear or see or feel, or learn to hear and see and feel (although we ought and need to), without their presence here among us, in numbers.

I'll end by recalling with pain that I was once — thankfully now a long time ago — involved in a decision to set aside consideration of an appointment for a Black prospect because he was thought to be, politically speaking, not a "real" Black. That was a case of over-attending to "political balance" in an appointments context. It was also an enormity that I do not ever again intend to repeat, as we did it then or in the reverse political direction.

Frank I. Michelman '60

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Alumnus Praises HLS Guatemala Effort

To the Editor:

I have to disagree with Jean Marie Simon's opposition to Harvard Law School assistance to the Guatemalan judicial reform program.

I view that program from the perspective of one who has lived and worked in Central America, including Guatemala, at various times since 1969, first as a U.S. foreign service officer, and since 1984 as a consultant. I am intimately familiar with the Guatemalan judicial reform effort and Harvard's assistance thereto. I was a consultant to the U.S. Agency for International Development in design of a complementary project. I have also worked with similar judicial reform activities in Costa Rica and El Salvador.

To say that the current Guatemalan government and its judiciary are not worthy of U.S. or Harvard Law School support gives insufficient credit to recent changes in Guatemala. Guatemala does not compare favorably with the United Kingdom, Switzerland or even Costa Rica in the strength of its democratic institutions, but it is clearly moving in the right direction.

I was living in Guatemala during the free and democratic process which led to President Cerezo's election. He was not the favored candidate of his military predecessors or of the oligarchy. De-

spite winning a substantial majority, he still has had to make some concessions to the military, including amnesty for human rights violations under the previous regime. He was more concerned for avoidance of human rights abuse in the future than for avenging such abuses in the past. Such accommodations are among the hard facts of survival in third world politics.

The Guatemalan military is hardly a monolithic institution, however. In the attempted coup of May 1988 the current military leadership supported President Cerezo against military elements aligned with the far right of the oligarchy. Thus within certain limits of tolerance the current military leadership will support civilian government; and such limits of tolerance allow an active program of respect for human rights including reform and reorganization of the police as well as the judiciary.

In judging performance of less developed countries in the human rights area in particular, we should be watchful lest we attribute to malevolence that which may more properly be attributable to incompetence. From experience

in El Salvador as well as Guatemala, I know that among major obstacles to prosecution of human rights offenses are correctable systemic deficiencies of the judiciary as well as lack of police investigative expertise. These in turn reflect inadequacy of the system in dealing with common crimes. When the criminal justice system can deal well with the routine cases, it will be in a better position to handle the extraordinary cases. I believe that is what Harvard's work in Guatemala is all about.

Also by bolstering capacity of the Guatemalan criminal justice system to deal with common crime, the Harvard Law School project will strengthen the credibility of the democratically elected civilian government. As apparent from our own recent election, the citizens' con-

cern for common crime can be an important factor influencing their votes.

Some who know Guatemala well believe the distribution of wealth to be so skewed that only a total revolution can rectify the imbalance. For them the attempt at evolutionary reform represented by the Cerezo government may seem a futile half measure that only delays the inevitable day of reckoning.

Concern for the human cost of civil war, of which Guatemala has already suffered its share, leads me to disagree. I believe that, despite varying shades of gray in its character and performance, the current government of Guatemala is well deserving of our support for judicial reform. I applaud Harvard Law School, Professor Heymann and his colleagues for their involvement.

Arthur Mudge '56

1L Too Hasty In Judgment

To the Editor:

As somewhat of an oddity here at Harvard Law School, an apolitical, asexual, amoral student, I tend to stay away from most frays not out of circumspection but out of indolence. Nonetheless, as one of the few genuinely indifferent members of the law school community, I felt that an impartial, disinterested appraisal of the conservative alienation issue was in order (it must be a full moon). As with any generalization on an emotionally-charged topic, Mr. Rosenstein's claim of conservative alienation and inhibition (Oct. 21 RECORD) is ripe for attack. But for the most part I find that his charges have a ring of truth. For whatever reason, Harvard Law School students are openly hostile to the views of those who hew to the political line right of center. Conservatives

are treated with scorn, derision, and contempt, not constructive tolerance. In a Section II Criminal Law class last year, the "open-minded" majority so verbally bludgeoned a conservative's views that one of the few enlightened liberals in the class felt compelled to comment on the conservative's right to express his opinion. This type of incident is routine here at the "ideological meltingpot."

Maybe in his 2 1/2 month Harvard experience Mr. Sanders (Nov. 18 RECORD) has not witnessed a grisly crucifixion of a conservative. But please, Mr. Sanders! I spent last weekend in New York City and was neither assaulted nor accosted by an indigent. Does it naturally follow that New York City is crime-free and egalitarian? If your answer is yes, lots of luck on finals!

Jim Godey, 2L



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Graduate Aids The Elderly 'The United Way'

By Tony Ferullo
Special to the RECORD

Before Susan Lennox '75 could even pronounce the word "tragedy," she experienced it. Twice.

When Lennox was born, her mother fell into a coma and died of encephalitis three days later. When she was four years old, her father died of leukemia. Despite losing the two most precious people in her life, Lennox, an only child, was fortunate to have someone help mend her broken heart and wipe away all the tears.

"I was raised by my grandmother," said Lennox, 40, of Winchester. "She had to serve the role of both mother and father to me."

Five years ago, Lennox's grandmother died of Alzheimer's Disease at the age of 86. The relationship the two had shared was unique and special.

Today, Lennox can relive some of those cherished moments by serving as a United Way volunteer, specifically as a member of the Citizens' Review Committee on Visiting Nurse and Home Care Services.

"This is my second year working as a United Way volunteer and it still brings back a lot of memories," said Lennox. "Before my grandmother passed away, she spent some time at the Windsor House in Cambridge. It was like a day care center for the elderly. The bus would pick her up in the morning and drop her off in the afternoon. The place was just wonderful. I think it added two good years to her life."

As a United Way volunteer, some of the tasks Lennox and her peers are responsible for include: carefully reviewing the requests from each United Way agency; evaluating each agency's goals; visiting agencies to observe and evaluate various programs; assuring each agency is

well managed; scrutinizing agency budgets to ensure economic efficiency; and deciding how your dollars can have the greatest impact on your community's human service needs.

"I have found the whole United Way process to be a fascinating one and amazingly effective," said Lennox. "Everyone works together so well, and that's really saying something because there are so many diverse people on our committee — people with incredible backgrounds."

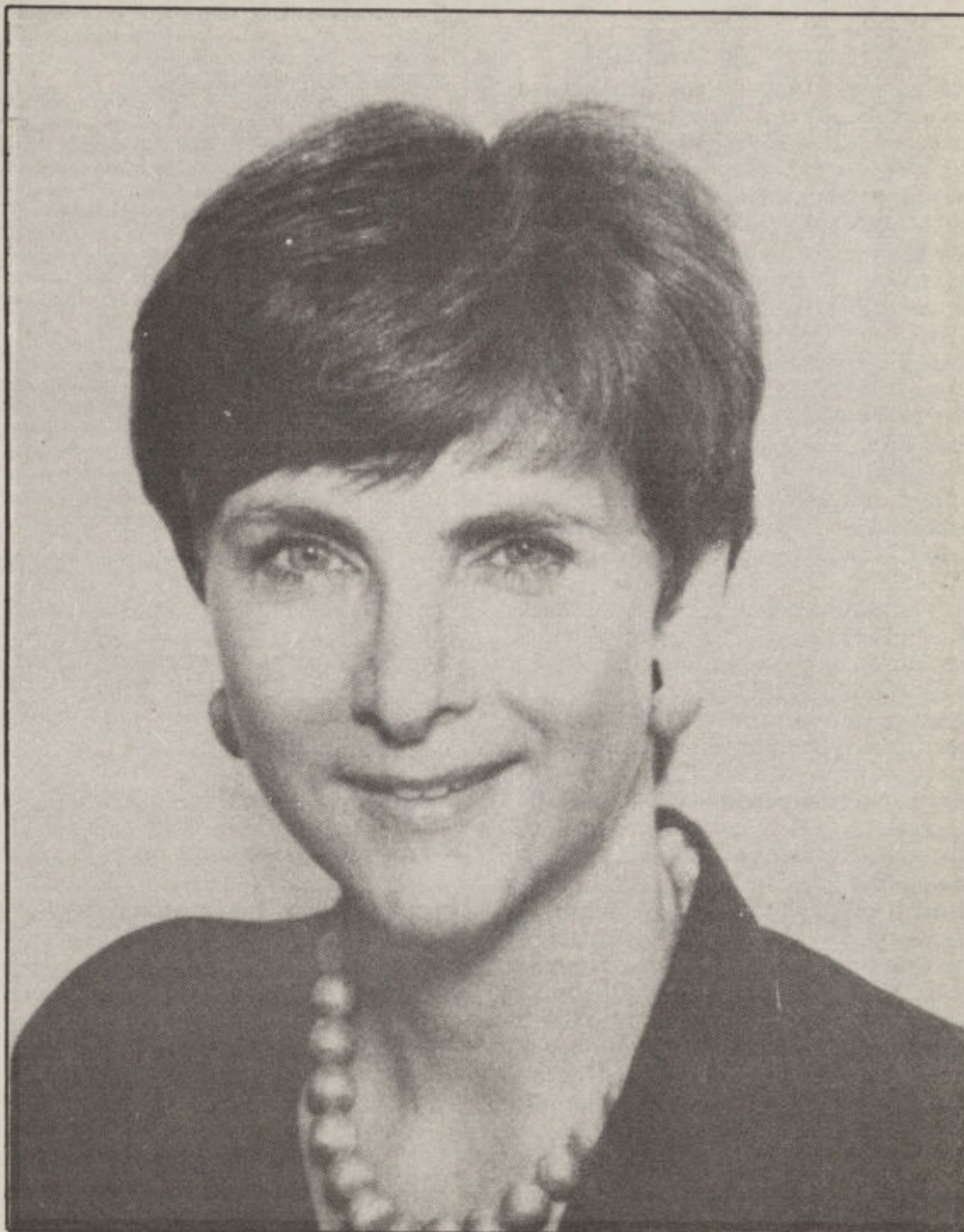
Lennox fits nicely into that latter category. She is a management employment lawyer and co-administrator in the labor and employment law department of Peabody & Brown in Boston. She's been active in the labor law section of the American Bar Association, the Massachusetts Bar Association, and the Boston Bar Association. She also has published various articles on current developments in employment law, and has lectured widely to management groups on labor law issues.

"Ever since I was a little girl, I wanted to become a career woman with a capital 'C,'" said Lennox, a graduate of Douglass College in New Brunswick, N.J. "My grandmother worked as a florist, so I had to learn early how to do things on my own. And I was determined to make something of myself."

Helping people is something that comes naturally for Lennox, and something that she takes pride in. But that's nothing new. In fact, the words under her high school yearbook picture reflect her aspirations of becoming a social worker one day.

She's extremely confident and takes her work very seriously," said Peg Ryan, director of Home Care Services for the United Way of Massachusetts Bay. "When she says she'll be there, she'll be there. She's very dedicated to the VNA's [Visiting Nurse Associations], and she

(continued on page 10)



File Photo

Susan L. Lennox '75, a partner at the Boston firm of Peabody & Brown, donates her time and effort to the United Way. In this way she recognizes the difficulties she endured in her past.

The above article was submitted by the United Way of Massachusetts Bay.



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United Way

(Continued from page 9)

really cares about all the people who have problems out there."

Those problems are especially alarming today, when 80 percent of people over age 65 have a chronic disease; when more than 20 percent of the elderly live near or below the poverty line; and when 15 percent of our local population will be over age 65 by 1990.

This year, the United Way of Massachusetts Bay has allocated more than \$2 million to health and rehabilitation services; \$1.7 million to 20 local VNA's; and over \$900,000 for homemaker services.

"The United Way gives everyone an opportunity to help others less fortunate in the community," said Lennox, who along with her husband, Mark Halperin, have two daughters—Jillian, 5, and Tess, 1 1/2. "Either by giving a few bucks, or giving your time, you can make a real contribution."

Last year, Lennox and her daughters were one of the families featured in a documentary entitled, "Day Care Dilemma," a show produced by WGBH-TV (Channel 2) in Boston and aired nationally on PBS's "Bodywatch" program. "It was both a lot of fun and a great experience," said Lennox, whose daughters are enrolled in the day care program at the Commonwealth Child Care Center in Boston.

When asked how she manages to do all that she does, Lennox, a member of the Winchester Personnel Board for the past three years, just smiled. "It's not easy," she chuckled. "I get my relaxation on Friday night by doing laundry and watching TV."

Despite the busy schedule she follows, Lennox is a woman who has her priorities in order. "My philosophy is to live every day to the fullest," she said. "I feel good about what I'm doing and that's very rewarding to me."

"Everyone should go after what they believe in. After all, life is too short."

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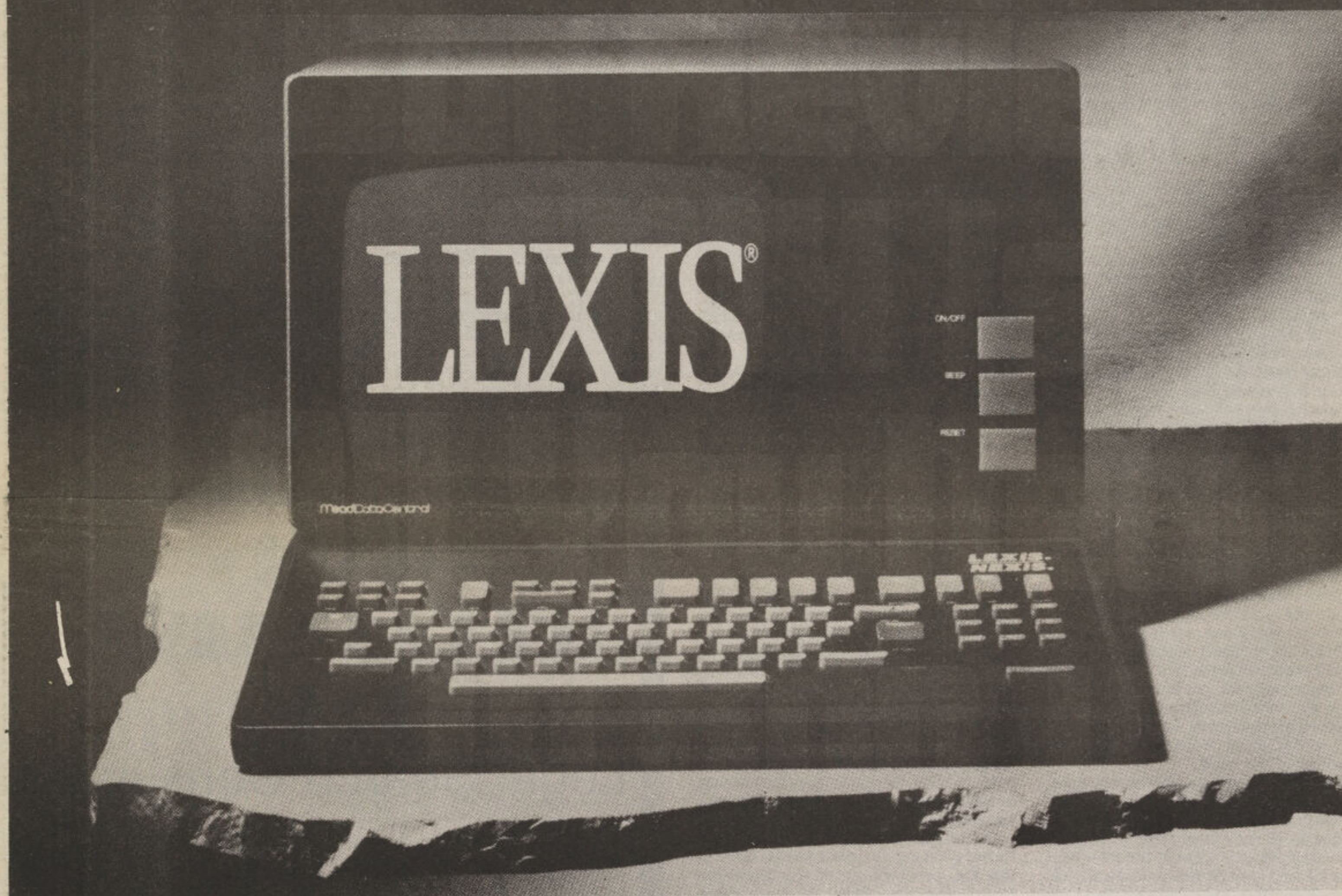
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Faculty Members Field Questions On New Dean

(Continued from page 1)

search has been narrowed to nine candidates, among them Profs. Gary Bellow '60, Clark, and Stewart. The *Crimson* article cited sources which have said that Liebman, once considered a top candidate for the post, has already withdrawn his name from consideration.

Tribe would not comment on which candidates the committee is now considering, but he indicated to the RECORD that the committee will make a report to Bok soon.

"We'll be talking again with President Bok before mid-December," he said, adding that the committee may report on a number of candidates for dean rather than making a single recommendation of an individual for the position. Bok has said that he hopes to appoint a successor to outgoing Dean James Vorenberg '51 by January.

The members of the forum panel specifically requested that the questions not refer to specific candidates for the position. Consequently, most of the questions addressed to the panel focused on the four main categories of concerns cited in the SDSC report —

management abilities, dedication to improving the quality of legal education, policies on financial aid and views about diversity.

One question centered on the dean's leadership skills and "vision" — qualities which were considered vital to many students in the report. The question asked members of the panel to comment on the view shared by the vast majority of students in the report that the new dean should "act as a moderator/facilitator as well as maintain strong views and visions."

Bell, who served as dean of the University of Oregon Law School for five years before returning to HLS in 1986, commented that "all this stuff about vision doesn't mean very much. Most of the decisions are made by the faculty." Bell said that at Oregon he was often frustrated by "how hard it is to get the faculty to vote for anything except pay raises."

Fisher disagreed, saying that "the dean of this law school can exercise significant impact on the direction of this school," citing the dean's appointment powers and financial policies as examples.

Another student questioned how diversity concerns should be prioritized in the committee's consideration. Most of the professors on the panel agreed that the school should attempt to attract women and minority teachers but disagreed on the best way to achieve this goal.

Bell repeated his views that the faculty seems to hire minorities only in response to student protests and turmoil, and suggested that perhaps what the faculty needs to do is to set rigid goals. "Maybe what the law school should do is to say, for a period of maybe three years, that all we're going to do is hire women, for example," he said.

Clark disagreed that mechanical rules or objectives should be implemented. "Crisis may promote good," he said, "but so can an intensive deliberate search for the best person [for the job]."

Rakoff said that the attempt to institute diversity on the faculty cannot occur overnight. "You have to understand the slowness of it," he said, adding that the faculty, which he admitted is predominantly white and male, is very small and the turnover is slow. "I certainly don't propose firing the current professors," he said.

Tribe agreed. While admitting that HLS is "still basically a male institution," he said that the transition will be slow. "There aren't many of us; we don't die off quickly; and the presidents who might pick us off don't often get elected," he said.

Stewart was asked about "strident criticism" he received from some students in the SDSC report about his perceived lack of sensitivity to students and his perceived sexist attitude in the classroom. Stewart responded that he was "shocked" by the report, and explained that the criticisms may have been the result of his views on Judge Robert Bork and former Asst. Prof. Clare Dalton, LL.M. '73, as well as the bad "chemistry"

in a new course he taught.

Stewart also said that the negative comments may be somewhat unrepresentative, adding that the comments in the SDSC report were "six or seven times more negative" than the comments he received in the teaching evaluations for the course.

In response to a question about how seriously the faculty dean search committee is taking the results of the student surveys, Clark answered, "Very seriously." He said that the committee regards the report as "a very powerful affirmation that indeed, many things [at HLS] have not improved," adding that the committee, and Bok, are very interested in selecting candidates who are interested in improving the quality of education and of student life. Tribe assured students that they "have made it loud and clear how they feel."

Clark was also asked why students have not been told more about the candidates so they can provide more input. He answered that two concerns were "the fear that it would scare some [candidates] off if done prematurely" and "the fear that it would become the focus for lobbying efforts."

In response to a related question, Tribe explained that the decision not to allow students directly onto the search committee was based in part on the concern that it would inhibit faculty members from talking candidly about their peers, but he added that the main reason was that the committee had no authority to do so. He said he regarded the creation of the search committee as a step forward, however, considering that "the way it used to be was unilateral selection by the President without regard to the input of students or faculty."

Has Bok already made up his mind? "If he has," Clark responded, "he hasn't tipped any of us off yet." "Bok is struggling with this decision," Tribe said.

Powell Discusses His Votes

(Continued from page 1)

Powell during a securities case and said, "I'll trade you my vote in this case for a future draft case."

Powell summed up his remarks about the court by saying that whether "liberal" or "conservative," the justices are "all very able."

Powell offered students some free advice about where to practice law, along with his opinions about the legal profession in general. Powell said he would not be happy practicing law in "great cities" like Washington, D.C. and New York. He said that although "from a lawyer's perspective the money is in New York, Washington [and other such cities], the opportunity to be a citizen and take part in community life is very limited." Powell pointed out that there are 35-40,000 lawyers in Washington, D.C. alone.

Powell related some concerns he has about the practice of law. Large law firms, he said, place more emphasis on "billable hours than I would like to see." Powell criticized firms that give lawyers no opportunity for pro bono work and suggested that students ask firms about their pro bono policies. This is, he stated, part of "becoming a citizen in the true meaning of the word."

Powell also said the Court erred in allowing lawyers to advertise. He said he has "no objection to providing information to citizens for choosing lawyers, but when you see some of the ads, you wonder why any lawyer would subject himself to that kind of advertising."

Powell fielded questions from the audience, many of which dealt with his performance on the Court. When asked about his reputation as the centrist or "swing vote" on the Court, Powell responded, "I never really liked being called a swing vote. It implies I waited to see what the others were going to do and then took a middle position so I could control the Court."

In response to a student's suggestion that the liberals and conservatives on the Court based their votes on ideological convictions, he indicated that he was not "moved" by anything different than those labeled conservatives and liberals. He did say that about 90 percent of the time you can predict how a certain justice will decide before oral argument, based on his or her past decisions in the Supreme Court or lower courts.

One student asked Powell how he would morally justify to a Supreme Being his decision in *McCleskey v. Kemp* where the Court declined to reverse a death sentence based on the argument that blacks were statistically more likely to get the death sentence than whites. Powell responded, "I'm closer to meeting my Maker than I ever was before," and then said, "I didn't vote on the basis of whether I personally like capital punishment." Powell stressed that there was no question of *McCleskey's* guilt in

that case and that it was a "theoretical case based on statistics." He indicated he did not want to start down the road of deciding cases on that basis.

Powell was also quizzed on why he switched his deciding vote after conference in *Bowers v. Hardwick*, the 1986 decision in which the Court upheld Georgia's anti-sodomy statute as it applied to homosexuals. Powell said that he had originally thought the case could be decided on the basis of an earlier case decided on Eighth Amendment grounds, but that his law clerk pointed out that he "hadn't done his homework," since *Hardwick* sought a declaratory judgment. Powell said he realized that was an "unsatisfactory" answer.

Powell was asked about the future of *Roe v. Wade*, the Supreme Court case legalizing abortions before the current Court. Emphasizing that he is a "very strong believer in *stare decisis*," he said he didn't think it would be overruled.

When asked about the politicization of the Supreme Court appointment process, Powell said that to the extent that it was politicized he felt it was a "negative development." Asked if he had any concerns about President-elect George Bush's possible impact on the Court, he said he felt the fact that Democrats control the Senate Judiciary Committee was reason for caution.

Powell also said he felt there were "fairly good arguments against" televising the proceedings of the Supreme Court. For one thing, he said, there would be the danger of the media selecting only those portions of the proceedings it felt were of public interest, thereby not accurately reflecting the issues or the performance of counsel. On a humorous note he added, "Some of us would make a point to look real good and develop difficult questions to ask counsel."

Powell told students, "I'm still proud of being a lawyer." Quoting Harrison Tweed (of Milbank, Tweed, Hadley & McCloy) he said, "I like lawyers. They're better people to work with, play with, fight with, and drink with." Most importantly, he stressed, "The liberties guaranteed by the Constitution are protected and preserved by the judges and lawyers of our country."



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