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January 20, 1989

Speculation Narrows As Bok Nears Dean Choice

By Chris Crain
Managing Editor

Harvard University President Derek Bok '54 is expected to announce the law school's next dean when he returns from a working vacation later this month. The decision will come after months of controversy and speculation, now focusing on at least five potential selections.



President Derek Bok '54 is expected to announce his choice next month.

Members of the Faculty Dean Search Committee (FDSC) held their last formal meeting with Bok on Jan. 2 to provide the President with their individual recommendations, according to FDSC Spokesman Laurence Tribe '66.

Tribe said the faculty never intended the committee to vote for a consensus recommendation and instead expected individual members to relate their choices to Bok. Tribe refused further comment pending Bok's decision, expected sometime after he returns Jan. 23 from a visit with relatives on the west coast.

Sources within the faculty and others close to the proceedings identify among the finalists three current faculty members, Richard Stewart '66, Lance Liebman '67 and Stephen Breyer '64, and two outsiders, Robert Prichard and Gerhard Casper.

Several other faculty members have also been mentioned as possibly still under consideration, including Robert Clark '72, Phillip Heymann '60, Frank Michelman '60 and Alvin Warren.

Prichard, dean of the University of Toronto Law School since 1984, confirmed that he has recently withdrawn himself from consideration for the post, although he declined to comment on

his reasons. Prichard was a visiting professor at HLS in 1984 until his appointment at Toronto.

Casper is currently a professor at the Law School at University of Chicago and served as its dean from 1978 to 1987. One source familiar with the dean search said Casper has already been offered the position by Bok but chose to decline. Casper declined to comment when questioned about his interest in the deanship.

Although there have been several published reports that Liebman has also withdrawn himself from consideration, he refused to confirm such a decision. Sources familiar with the process claim that Liebman declined an invitation to participate in initial talks with the FDSC but agreed to be interviewed by the committee in December.

The controversial Student Dean Search Committee (SDSC), appointed last fall by the Law School Council (LSC) amid complaints that the SDSC did not adequately represent conservative and other students, also met with Bok several times over the course of the fall semester, according to Tom Higley, 3L, one of its members.

Higley said that although Bok was

receptive to the SDSC report of general student concerns, he seemed especially bothered by the strong divergence between faculty opinion as reported by the FDSC and student opinion as related by the SDSC.

That divergence was at its strongest in negative student comments concerning the possible selection of Stewart and

(continued on back)



Prof. Lance Liebman '67 is among those considered a finalist for the post.

LIPP Loan Changes Frustrate Student Plans

By Sally Johnson
Staff Writer

The financial aid committee's recent changes in the coverage of replacement loans by the Low Income Protection Plan (LIPP) may result in reduced student assistance by the program, which was designed to relieve the burden of repayments of educational loans for graduates in low-paying, law-related jobs.

Replacement loans are provided by the law school to cover the difference between parental contributions, summer savings or other resources imputed to the student by the financial aid office, and those resources actually available to the student. In the Sept. 30 edition of the RECORD, Sally Donahue, director of financial aid, stated that nearly half of all HLS students will receive replacement loans, averaging \$2,259 per student.

On Nov. 30, the financial aid committee, comprised of three faculty members, three administrators and three students, announced that replacement loans for student resources or imputed summer savings taken out after July 1, 1988, are no longer eligible for LIPP assistance.

Of greater concern to students was the committee's decision to modify LIPP coverage of replacement borrowing after July 1 for imputed parental contributions. Under last year's program replacement loans, as all other loans, were entirely forgiven over the ten years of the program's coverage.

Following the changes, repayment of replacement loans will now be covered by additional loans provided by LIPP in the first three years, and then the loans

will gradually be forgiven over the remaining seven years, assuming that one remains eligible for program assistance during that period.

Mary Magnuson, senior student financial coordinator and administrator of LIPP, cites increased costs resulting from a rise in participation as the primary impetus for "refining" LIPP. Magnuson points out that from 1979-80, the fiscal year LIPP in its first form was implemented, through 1986-87, a total of \$63,000 was spent in forgiveness. In contrast, with the expansion of the plan in 1987-88 to include total forgiveness for all financial aid loans, student participation nearly doubled and \$355,000 was spent on forgiveness during that fiscal year alone. Steve Crawford, 2L, Law School Council secretary, remarked that "the program worked too well, prompting the administration to cut back."

Victor Bolden, 3L, a member of the financial aid committee, charged the committee with failing to "make a sufficient effort to fine-tune" the new replacement loan policy for parental contributions. In Bolden's view, the committee, motivated both by the fear that students would "abuse" LIPP by taking out replacement loans in excess of their true need — with the expectation that such loans would be forgiven under LIPP — and an "undue emphasis on financial considerations," took a "hit-everybody approach." The committee "could have reached a far more equitable solution," Bolden said, by targeting particular student groups.

Bolden further accused the committee of having a "great degree of disre-

gard" for student concerns about the financial aid office's method of arriving at imputed parental contributions, an issue that Bolden believes bears directly on LIPP policy.

He observed that the financial aid office may not accurately assess the annual expenses incurred by students' parents. As a result, some parents

cannot meet their imputed contributions. Moreover, for various reasons, some parents may refuse to contribute at required levels. In any event, through no fault of their own, the students of such parents are forced to take out replacement loans, now given "special treatment" by LIPP, Bolden explained.

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Third Year Students Choose Their Four Class Marshals

By Thomas C. Bilello
Commentary Editor

The Class of 1989 elected four fellow students as class marshals in a widely contested election. Those elected were: First Marshal John Vein; Second Marshal Melvin Williams; Third Marshal Alan Jenkins; and Fourth Marshal Natalie Hanlon. The four were chosen by the 3L class from a field of eighteen candidates.

However, the election did not come off without a hitch. Only three statements of candidacy were received by the original deadline filing date. Because of this minimal showing, the vote was delayed and the nominations reopened. With the extended deadline, fifteen additional candidates entered the field.

The marshals will lead their class in the graduation ceremonies, with First Marshal Vein bedecked in the traditional top hat and tails. Together with the class committee, the marshals will

plan the graduation ceremony and 3L social events between the end of classes and graduation. The class committee is comprised of two representatives from each of the four original 3L sections. Each section has a budget of \$400 according to Brian Melendez, 2L, Law School Council President.

Graduation, however, will not discharge the marshals of their responsibilities to the class. The marshals will also be in charge of alumni fund-raisers and class reunions.

In addition to these traditional functions, Vein hopes the '89 class marshals will sponsor other activities, such as a comedy night or jazz night, before the year's end. "If anyone has any suggestions on events during the graduation ceremonies or before, they should put a note in one of the marshals' boxes," said Vein. "We're here not just to bring in our own ideas or agendas but to make our last semester here as fun and memorable as possible."

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Two Visiting Women Professors Take On Tough Topics

Williams Teaches On American Indian Law

By Liz Askey
Staff Writer

One of the advantages of winter term at HLS is that it allows students to experience the fresh perspectives of professors who are able to "visit" during the month of January. "American Indian Law" and "Gender Discrimination" are two courses being taught by visiting professors this term at HLS.

Nine years after being involved in the original effort to get American Indian Law taught at HLS, Susan M. Williams '81 is back to teach it. In 1980 students convened an extracurricular course as

"Problems among American Indians stem from efforts to make Indian people deny what is Indian in them."

the first step towards getting American Indian Law incorporated into the HLS curriculum. Williams was delighted to see that approximately 30 students had signed up for the course this year, noting that the enthusiasm about American Indian Law "speaks well for the school."

Williams said that no member of the permanent faculty teaches American Indian Law but stressed the importance of a practitioner's perspective for teaching the subject. An understanding of the "practical realities" and "contemporary issues" facing American Indians is "crucial," she said, adding that the particular circumstances of each individual case are very important and that the cases often turn on questions of morality or equity.

Williams, a member of the Sisseton-Wahpeton Band of the Sioux, is a partner at Gover, Stetson, Williams & West, an Indian-owned law firm in Albuquerque, New Mexico and Washington, D.C. which focuses on practicing Indian law

and lobbying. She also teaches on an adjunct basis at the University of New Mexico Law School and Arizona State Law School.

Her firm is dedicated, she said, to the preservation of tribal culture and tribal communities. Williams said that "the high rate of poverty and related problems [among American Indians stem] from federal efforts to make Indian people deny what is Indian in them." Williams studied economics as an undergraduate at Harvard College because she believed many of the social ills plaguing American Indians (high rates of poverty, alcoholism, domestic violence, and low education rates) were the result of the destruction of the reservation economy. She decided to go to law school she said, because "questions of power" remained.

Williams' course focuses on the interface of Indian tribal law and constitutional law and the contours of the relationship between federal, state, and tribal governments. Williams stressed the importance of federal Indian law, which she said is on the "cutting edge" of the development of constitutional law.

Issues affecting tribal governments regularly arise under the supremacy clause, interstate commerce clause, and first amendment, she said.

Steven Emery, 3L, co-president of the American Indian Law Students Association (AILS) is very enthusiastic about Williams being on campus this term, noting that "our organization certainly supported her candidacy for the position from the beginning." In addition to working with AILSA while she is here, Williams will be working with the Environmental Law Society in connection with amendments to water protection laws relating to the status of tribal government. She also had a brown-bag lunch with the Women's Law Association to discuss the case of *Santa Clara Pueblo v. Martinez* which upheld the right of Indian tribes to discriminate against women in terms of tribal membership (as a matter of internal tribal affairs).

Schneider Brings Litigation Experience

By Liz Askey
Staff Writer

When Gender Discrimination was not among the courses listed for 1988-89, primarily because of the absence of Professor Susan Estrich '77 while she worked on the Dukakis campaign, Stacy Brustin, 3L, presented Dean James Vorenberg '51 with a petition signed by approximately 200 students asking that the administration find a way to offer the course this year. The result has been the teaching of the course this winter term by Elizabeth M. Schneider, Professor of Law at Brooklyn Law School.

"The ability to think creatively and rigorously about law has to be thought about in the context of real life."

Schneider graduated from New York University School of Law in 1973.

Schneider, who also teaches constitutional law and civil procedure, has been teaching "Women in the Law" at Brooklyn Law School since 1974. "Issues of gender discrimination and feminist legal theory are very important today," she said. Schneider said she has enjoyed teaching here and has been pleased with the "warm reception" she has gotten from other members of the faculty at HLS who are interested in integrating some of the issues raised in her class into their own courses.

Schneider brings extensive practical experience to the classroom where she emphasizes the interrelationship of theory and practice and engages students in "lawyering exercises." From 1973-1980 she was a litigator at the Center for Constitutional Rights in New York and from 1980-1983 she worked at and directed the Constitutional Litigation Clinic at Rutgers Law School.

As a litigator she was involved both directly and through *amicus* briefs in a wide array of civil liberties and civil

rights cases. The women's rights cases in which she has been involved have included issues of sex discrimination (including *Wetnberger v. Wiesenfeld*), employment-related sterilization policies (*Marshall v. American Cyanamid*), self-defense (*State of Washington v. Wanrow*), and battered women's defense, among others.

Schneider emphasized how important her experience as a litigator and clinical teacher has been in shaping her teaching and in shaping her ideas about teaching in general. Schneider said that "dichotomies are prob-

lematic in legal education" citing the common contrast between intellectual rigor and more emotional experience-based (or "touchy-feely") approaches.

Schneider said that "the ability to think creatively and rigorously about law has to be thought about in the context of real life." Schneider stresses the importance of incorporating personal experience into legal argumentation. She sees the exploration of "the role of law in the context of social change and in terms of human values" as an important goal for legal education. In addition to articles on legal education, Schneider has written extensively on issues in the areas of civil rights, legal education, the legal profession, and women's rights.

Some of Schneider's projects while at HLS will include addressing the Women's Law Association on the subject of battered women's access to the courts and brainstorming with other professors and students to assist Professor Frank Michelman '60 in the preparation of his *amicus* brief in the *Webster* abortion case.

Authorities Hope To Address Campus Crime Concerns

By Dawn Ross
Staff Writer

HLS students have recently expressed concern over campus security. These fears were inspired by last semester's rape in the Science Center, a threatening note received by an HLS student, and several other incidents.

One issue of concern is the fear felt by students who find themselves on campus after dark. One security measure being contemplated is the initiation of a Harvard University-operated evening shuttle bus service. The proposed route would take the shuttle around the campus and through parts of Cambridge and Somerville.

The proposed shuttle service follows the response to a survey conducted by the Law School Council late last year to gauge student interest. Students residing in Somerville indicated that they would use such a shuttle service, if available. Simone Reagor, administrative dean, stated that students' interest in the shuttle merits its further consideration, and that the proposal will next be taken up at the University level. Additionally, the plan would have to be approved by the City of Cambridge before implementation. Reagor believes that operating the shuttle on a trial basis would be an effective way to judge the need for the program.

Reagor stated that "there is never enough security" to allay all of students' fears. She noted that educational institutions such as HLS are extremely vulnerable, but that security measures around the campus "have improved over the last few years as much as possible." These improvements include more and better lighting, improved locks, additional security guards, and a general increase in students'

awareness of safety issues and precautionary measures.

Both Reagor and a spokesperson from the Harvard University Police stated that the number of incidents is currently at a very low level. The "numbers are actually miniscule," according to Deputy Jack Morse of the University Police. "Things have been pretty quiet." Very few dorm room thefts have been reported, even though the Christmas holiday season is usually a time when such occurrences increase, he added. Morse attributes the decrease in dorm thefts to students' taking additional safety precautions seriously.

Both Morse and Reagor attribute the relative safety of the campus to the increased security measures and more importantly, to heightened awareness on the part of students.

Additionally, while noting that it is not cause for relaxation of security, Morse stated that a suspect has been arrested in connection with the Science Center rape incident. The suspect is currently in San Francisco, awaiting extradition to Cambridge.

The Women's Law Association (WLA) is currently studying ways to make the campus safer. Alison Burdette, 3L, stated that several specific concerns are being discussed with Reagor and Frank Lamentea, Director of Building Operations, and some measures for remedying the problems are underway. A major concern of WLA is that the tunnels are unsafe and are becoming a harbor for the homeless.

A plan to install combination locks (like those used in the dormitories) on the doors to women's bathrooms in the tunnels, particularly those under Austin Hall, is close to approval. In addition, Burdette stated that the WLA has pro-

posed that a blue security phone be placed in the tunnels beneath Austin, because of the isolated location.

Another specific concern that the WLA would like to have addressed is the accessibility of the tunnels to outsiders after normal hours. Controlling access points to the tunnels by locking Austin, Griswold and the Harkness Commons after 5:00 p.m. is being considered.

Burdette believes that access problems may best be remedied by placing a guard to check identification at the ILS entrance after hours and locking other access points. However, she noted, that implementation of such a plan is dependent on other factors, such as ensuring that adequate access will still be available for the handicapped.

When asked about students' concerns over homeless people taking shelter in the Law School tunnels, Reagor said that she was not aware of any specific occurrences, but that it would not be unusual, given the cold weather and the campus' urban location and proximity to Harvard Square. Morse acknowledged that such incidents are not uncommon around several Harvard University areas, particularly Holyoke Center and the Science Center, although he was not aware of any specific reports of problems in the tunnels.

"I cannot stress enough how important it is for faculty, staff and students to serve as the eyes and ears of the campus," Reagor said. "It would be an enormous help if everyone cooperated by reporting any security problems."

According to Reagor, security problems which should be reported include not only the obvious occurrences, such as assault, rape or robbery, but also other things which could improve

everyone's safety but which are often overlooked. Reporting burned-out or broken lighting, windows or doors which do not work or show evidence of tampering, and even calling attention to areas where shrubs or inadequate lighting provide a place for an assailant to lurk are all necessary to make the campus a safer place.

Another important aspect of campus safety is the free escort service provided by the Harvard University Police for those students finding themselves on campus after dark. Additionally, Reagor suggests that students leaving the library at closing time could organize informally in groups according to the direction students are walking.

Both Reagor and Morse express optimism that students' attentiveness to personal safety and diligence in reporting any strange occurrences will enable students to continue to feel comfortable in their dorms and use the law school facilities during the evening hours in relative safety.

According to Burdette, the WLA is gearing up for a major awareness program to begin in February with the distribution of free security whistles and safety information. WLA will also sponsor a series of brown-bag lunches to make students aware of how they can protect themselves, and also to encourage that suggestions for improvements be offered. As both Burdette and Reagor noted, members of the law school community can help improve safety for everyone who uses the campus by taking appropriate precautions and bringing problems and potential problems to the attention of the Harvard University Police, the Law School Administration, and WLA.



Harvard Law Record

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Editorials

Provide Bar Exam Info

Around this time of year a lot of people, namely 3Ls, begin to realize that looming large in their very near futures is the inevitable bar examination. Those making this discovery and desiring more information about these state-required tests of legal competence are soon in for another discovery. They will find out, if they did not already know, that HLS is sadly deficient in providing students with information and awareness about one area of law that affects virtually every graduate.

For the first two years of law school the bar exam does not really enter into your plans, if it is even thought about at all. (And why should it be? The exam, if you're even aware that it exists, is a long way off.) You may not know where you'll be heading to set up shop after your fun-filled years in Cambridge.

Then, however, comes 3L year, and the notion starts to dawn on you that this bar exam thing coming up is pretty darn important. Interviewers mention it. Friends who have graduated talk about hellish summer days and nights spent pouring over obscure and picayune points of state law. You realize that, in spite of having invested three years of study (and about \$40,000 in tuition) and landing the job of your dreams, you won't be a 'real' attorney until you pass this exam.

It is often around this time that the student becomes a might bit curious, anxious and nervous about what to do. You want more information — and you realize you need it soon. At this point HLS should be there for the student. But it simply isn't.

Don't misunderstand — HLS clearly does go out of its way in helping its students find a place for themselves in the outside legal world.

It's just that when it comes to the bar exam, when all of these types of services are needed, no such structure exists.

HLS does not provide a specific "bar exam" office, administrator or seminar. The student seeking information must turn elsewhere to see if an alternative source of knowledge exists. And it does — the free market. Filling in this yawning ignorance gap are the various professional bar review preparation courses, who, in addition to providing information about the examination, naturally take the opportunity to also provide information about *their* courses. Unfortunately, it is often difficult to distinguish between these two types of enlightenment, for in this market the line between education and advertisement is thin indeed.

The law school must do something to plug up this hole in its preparation of students. This does not require turning the HLS curriculum into a three-year bar review course or performing any such drastic measure. Simply, it means alerting students earlier-on that the bar is something to think about. It means clearly establishing one person or office as the source for information and assistance concerning all questions that arise concerning the bar exam. It means making the answers to often-asked questions and little known, yet pertinent, trouble spots available. And most importantly, it means letting the students know where they can go for advice. That's all that is really missing now, and that is really not much to remedy.

J.A.G.

Paying LIPP Service

HLS led the way in supporting low-paying, often public interest, work in the legal field with its Low Income Protection Plan (LIPP). The LIPP forgives students' education loans if they enter a low-paying, law-related job after graduating. HLS sent a message: Choose HLS, and your interest in public interest law can become a reality.

Many students trusted HLS and relied on the recruiting pitch in planning their futures. Students understand that HLS can open many doors for them, but oppressive debt can shut those same doors. The LIPP can keep the doors open.

Recently, however, HLS quietly changed the LIPP resting on the small print in the financial aid manual to justify the "refinement." Although HLS deserves credit for its innovative program, the students deserve respect from HLS.

Students come to HLS with high aspirations that deserve careful consideration even when important and pressing financial concerns arise. First, those students who entered HLS relying on the LIPP should leave HLS under the same LIPP as when they entered. Second, HLS should examine to what extent the school supports public interest work. Finally, HLS should be more up front and honest about future changes, in order to include students' views since they are the ones affected.

E.H.

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Letters Policy

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.

Alumnus Disgusted By Squabbles

To the Editor:

The events reported on page one of your Nov. 18 issue ["Threatening Note Sparks Investigation," "Fairness' Amendment Defeated Amidst Rancorous Debate"] left me feeling nauseated. The level of disrespect which HLS students display toward each other, and apparently toward people with different opinions generally, is intolerable.

To remedy the situation, HLS should start with a reevaluation of its admissions procedures and criteria. Dean Vorenberg, in his Dec. letter to alumni on the state of the school, reported that "Again this year more than 7,000 men and women applied for 540 places." No doubt far more than 540 of these 7,000+

have the intellectual capacity to attend HLS. I suspect that far more than 540 combine with that intellectual capacity the emotional maturity which the legal profession, if not the larger society, should require of its members.

Yet for whatever reason, the admissions procedures do not result in the selection of a student body which combines these attributes to a sufficient degree. It should become the mission of the admissions committee to develop procedures which will allow them to select only those applicants who combine these attributes.

Jeff Kichaven '80

Roommates Defend Cole

To the Editor:

This letter is a response to recent accusations of anti-Semitism directed at Luke Cole in the Harvard Law RECORD. We are Luke's roommates. We are both Jewish, and we are dismayed at the idea that Luke would be accused of anti-Semitism. Luke is no anti-Semite. On the contrary, Luke has devoted his academic and working life to fighting oppression in its many forms.

From providing legal service for migrant farm workers in North Carolina to

documenting human rights violations in South Africa, Luke has displayed inspiring commitment to social justice.

It is right to be upset when someone uses oppressive language or engages in oppressive behavior. But before we publicly censure someone, we should be careful our accusations are deserved. To accuse Luke Cole of being anti-Semitic is plainly unjust.

Scott Lewis
Matthew Simon

Debate Encourages Learning About The Holocaust's Meaning

To the Editor:

Re: Luke Cole's use of the Holocaust.

One very positive outcome of this sad incident would be if the resulting public controversy would cause Harvard Law School to at last inaugurate a course of study of the Holocaust, a subject fraught with the most disturbing implications for the legal profession and a reality not just of history and language but of the most profound shame for each human conscience for all time to come. This course must be as thorough-going as Corporations or Torts or any other offering, indeed more so.

Luke Cole has used the occasion of a public letter [see this issue, page 6] to the community to continue the political dialogue that reigns in the tunnels and classrooms and at the mailboxes. This is one limited, although doubtless constructive action to take on the public level, and I am also somewhat relieved he has expressed publicly his repentance for having uttered the unspeakable term he did and for the purpose he chose. I have wanted to learn about this term, and what I have learned is that it has always really meant an incitement to murder, whether accompanied or not with a defense plea of personal ignorance or any other personal pressure.

The greatest repentance is the most private, and has the power to lead to the greatest conversion, a conversion that

operates exclusively on the level of conscience, with all the existential decisiveness of a real, an inner, indeed an immortal dialogue, the language of conscience which is not distorted, which continuously, uniquely, speaks to each of us, which delivers us up in fear and guilt and shame no matter how hard we try to keep ourselves, our private and public selves, a secret behind a mask; by which we continuously evolve our always frightening capacity for determined action toward good or toward evil and by which our humanity may either be preserved, indeed saved, or else lost at horrendous, inestimable cost, the cost that is full of tears and darkness.

When one asks what is the lesson and who has learned it, I say that Luke Cole has the lesson and is learning it, in fact may be just beginning a real journey which is cause enough for wonder. But "doing homework" on the Holocaust should depend on much more than public retorts in sly debater fashion with philological derivations of the unspeakable based on the linguistic cruelties of Friedrich Nietzsche.

As for all the rest of us who must learn, I say to all our teachers you must learn to teach us all the meaning of Shoah. No longer can we attempt this in private or public isolation, as Luke Cole is now doing, at Harvard Law School.

Thompson E. Potter, Jr.
Staff Assistant, HLS

Humphrey Voter Remains Proud

To the Editor:

I just caught up with the letter of Nov. 18, 1988 by Jim Braden, class of '1980, who asks what would happen if we re-poll the students who in 1968 voted four to one in favor of Humphrey over Nixon. As one of those who was in law school in 1968, and who voted for Humphrey, I can assure Mr. Braden I would be happy to vote for Humphrey again.

The question is not what the Humphrey voters would do, but what would the Nixon supporters do? Would they still urge the election of the only man in history to resign from the presidency and who should have been convicted and jailed on account of his crimes? It is not the liberals who have anything to apologize for from that era. It is those who supported the Nixons of

the world who must answer for the killing in Vietnam, the terror of Cambodia, and the blood of the Kent State students.

Mr. Braden whines that law students are in a state of suspended animation indulging in "arrested adolescence." I submit that it is the Mr. Bradens of the world who are the adolescents. True maturity is learning that we do not live for ourselves. Is it mature to turn one's back on the homeless of America, the dying in El Salvador and the eroding environment, and pull the lever for George Bush and his cronies?

Yes, Mr. Braden, as one who voted for Humphrey in 1968, I stand by my vote. Let us see how you feel about your vote twenty years hence.

Lawrence A. Frolik '69

Student Politics Responsible For Any HLS Decline

To the Editor:

Two letters in your Sept. 23 issue provoke me to write.

To the Farley Eight: Has Harvard Law School indeed been in decline over the past several years? If it has, it is because of students whose all-consuming political agenda eclipses their desire to get an education and who attempt to rationalize unacceptable behavior on this basis. The real world tends to be rather unforgiving of such people.

To Professor Arthur S. Leonard: The *Harvard Law Review* I edited (volumes 91 and 92) never sidestepped daunting jobs. If the story you relate is true, how sad indeed.

Robert I. Kantowitz '79

HLS Graduates Comment On Newspaper

The Oldest, When It Arrives

To the Editor:

Congratulations on your new format. I'm glad to see you still call yourself America's Oldest Law School Newspaper, because by the time your Nov. 4 edition reached me on Dec. 9, it surely was.

George J. Grumbach, Jr. '65

Editor's Note

The *RECORD* apologizes to all readers who received their issues of last semester at a late date. Due to our change to a new printer and mailing house, personnel changes at the Alumni Association and a mix-up at the U.S. Post Office, some issues were mailed much too late. We apologize and promise to attempt to remedy the problem.

Delay Causes Problems

To the Editor:

As a member of the Law School Alumni, I very much enjoy receiving the *RECORD*. I note, however, that each issue is invariably delivered at least three or four weeks after the publication date and often as much as six-eight weeks later. Is there some reason why these issues cannot be mailed immediately upon publication so that a more timely delivery could be effected?

Occasionally, there is an item which deals with an upcoming event which, living in neighboring Connecticut, I might be interested in attending but the event is always long past by the time I am able to read about it in the *RECORD*. Additionally, news items which are reported, might move certain alumni to become involved in a particular situation and, once again, the lack of timeliness of the pertinent information is disappointing.

Joseph A. Broder '63

Original RECORD Staffer Offers Kudos

To the Editor:

As one who played a supporting role in the germination of the *RECORD*, I congratulate you on the new format. Please continue your efforts to improve the quality of the paper.

Charlie Porter '47 and Charlie Sweet '46 were the HLS students who had the most to do with the creation of the *RECORD* in the late '40s. They had a grand concept that their successors have carried forward.

Two carping comments: (1) The early issues of the *RECORD* contained king-size pages, not tabloid-size pages; and (2) My Oct. 21 issue arrived within the last fortnight.

In all other aspects, I'm delighted with what you've accomplished.

Nathaniel B. Taft '48

HLS, Inc.

By Luke Cole

JANUARY 15, 1929 - APRIL 4, 1968

MARTIN LUTHER KING, JR.

Every man must decide whether he will walk in the light of creative altruism or the darkness of destructive selfishness. This is the judgment. Life's most persistent and urgent question is, What are you doing for others?

Our freedom was not won a century ago, it is not won today; but some small part of it is in our hands, and we are marching no longer by ones and twos but in legions of thousands, convinced now it cannot be denied by any human force.

Today the question is not whether we shall be free but by what course we will win.

"I have a dream..."

DR. MARTIN LUTHER KING, JR. WOULD HAVE BEEN 60 ON JAN. 15.

We are prone to judge success by the index of our salaries or the size of our automobiles, rather than by the quality of our service and relationship to humanity.

...I don't know what will happen now. We've got some difficult days ahead. But it doesn't matter with me now, because I've been to the mountaintop. And I don't mind. Like anybody, I would like to live a long life; longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the promised land. I may not get there with you. But I want you to know tonight that we as a people will get to the promised land. And I'm happy tonight, I'm not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord.

-from Dr. King's last speech, the day before he was assassinated on April 4, 1968.

Fenno

Fenno rolled over in bed when he heard the phone ring. Fenno loved to sleep in during winter term - he only missed one class, anyway. Less guilt. Well, no guilt. There never was, anyway.

The phone stopped ringing. Fenno looked over to his loyal pet Rusty, who was snuggled under his orange-and-black Cincinnati Bengals Super Bowl blanket. The clock read 11 a.m., and Fenno sighed.

"Well class is lost today. Better luck tomorrow."

He was just about to roll over and renew his dreaming of Jessica Hahn and a bathtub full of Meister Brau when the telephone rang again. Fenno summoned all the spirit and energy he had left and lurched across the room. Rusty barely managed to dart out of the way as Fenno's bunny slippers made a resounding thud on his soft, comfy home.

"Is this you, my wise friend?" came the soft quiver on the other end of the line. Fenno recognized the voice. It was a voice with which he was all too familiar. The Clare decision. The Harvard Union of Clerical and Technical Workers snafu. The Anti-Apartheid nuisance. And always the same whine, whine, whine, plead, plead. Fenno knew what was at issue this time.

"Please, please, please. One last pearl. One last answer. Please. I need this one. This is different. Please. Choose for me."

"You know I hate it when you beg," Fenno said, the disgust now bleeding from his every word.

"I can't decide. The right wants one choice, the left wants somebody else. Who do I pick?"

The voice on the line was quivering, and at any second Fenno expected to hear the incessant sobbing to which he had become accustomed.

"This guy's hooked," he mused. A junkie in the true sense of the word. Paralyzed, addicted to the idea of man as deity; truth incarnate.

"This time he's got to learn the hard way," he thought. "This time I've got to let him make his own mistakes. After all, that's what I did with George, and there's no reason to change now, just because something more important is riding on it."

As he listened to the abject whimpering on the other end of the line, Fenno knew what he had to do. So why couldn't he muster up the strength of conviction gently to hang up the receiver on this pitiful voice?

With the scenes of a Tennessee Williams play flashing through his mind, Fenno broke down.

"All right, already! It's the Bengals by six. Now will you just pull yourself together?," Fenno shouted as he hung up the phone.

Dead Lines

By K A

Little Orphan Analysis

"The indeterminacy of perspective (yet despairing) relativism constantly threatens the neo-modern Christian-romantic view of narcissistic heretical contextualism transforming the iconoclastic elaboration of groundless prejudice into an apology for retrospective subjugation and retaliation." -ROBERTO UNGER

LEAPIN' LIZARDS!!!
DADDY LAWBUCKS, I KNOW HOW LAST YEAR I THOUGHT BEIN' A RATIONAL AUTONOMOUS UTILITY MAXIMIZER WUZ THE CAT'S PAJAMAS? WELL, THAT'S OLD HAT!!

PLEASE DON'T INTERRUPT ME WHILE I'M COUNTING MY PILES OF JEWELS AND MONEY...

GOLLY, THIS YEAR I WANNA BE ONE O' THE "ELITE CADRE OF MADISONIAN NOTABLES AND LEGAL ANALYSTS?"

JUST HAVE 'EM PUT IT ON YOUR TERM BILL AND SEND IT TO ME...

AN' I WANNA GET WITH IT, AN' JOIN UP WITH THE PROGRAM OF PESSIMISTIC REFORMISM...

HMMMM... NOTHING LIKE RESIGNED BENEVOLENCE.

YUP, DADDY! THERE AIN'T NOTHING LIKE THE BONAPARTIST HANDING DOWN OF BENEFITS FROM ON HIGH (TO REMEDY SITUATIONS OF ENTRENCHED SOCIAL DISADVANTAGE) TO SATISFY MY DUALIST SOUL! RIGHT, SANDY?

AH YES, ANNIE, I'M GLAD TO SEE YOU'RE GETTING SOMETHING USEFUL OUT OF LAW SCHOOL...

AN' Y'KNOW WHAT? EVEN THOUGH OUR POLICY AND PRINCIPLE-ORIENTED STYLE OF LEGAL ANALYSIS MAY LOOK LIKE A RAMSHACKLE, PARTICULARISTIC HISTORY OF ADHOC FACTIONAL COMPROMISES OUT OF SYNCH WITH THE PROFFESSED IDEALS OF SOCIETY, WE KNOW BETTER! AT LEAST WE'RE NOT UNARMED, DISORIENTED, AND AT LAST CORRUPTED AND SEDUCED BY OUR OWN POWERLESSNESS LIKE YOU-KNOW-WHO!!

YES INDEED! (HA! HA!) NOTHING LIKE AN AURA OF IRRONIC DETACHMENT TO DISABLE THOSE DAMN CRITICS!!

ARF!

Selbin Surprised And Astounded By Ironic Uproar

The following is an open letter submitted by Jeffrey Selbin to the law school community.

There's nothing more frustrating than being thrust into the center of a debate in which, behind all the absurd charges and accusations, the true aggrieved parties are once again silenced. It is a shame, to put it mildly, that the Federalist Society's irresponsible affront to women, people of color and other minorities is being obfuscated by the attention focused, at least in part, on a piece of my personal correspondence. It is sad, but clearly illuminating, that the

told by the RECORD's reporter that the newspaper was going to run my letter in a story alongside an article about the threatening, misogynist letter a 1L woman received. After a series of conversations with the editor of the RECORD, I did offer a comment: the letter was a personal communication and not the public editorial I would have written regarding the Federalist Society amendment.

If I was surprised at the RECORD of Nov. 25, I didn't have to wait long to be astounded by the RECORD of Dec. 2. Concerned, thoughtful students had

"fairness" amendment and the letters to the RECORD could use a lesson in history.

People like Sam Levy, who feel no hesitation in denying others the group-based harm they claim to suffer themselves, are anathema to me precisely because I am Jewish — that's why I wrote an intrafaith, personal letter in the first place. My letter did not attack Sam Levy as a Jew. It denounced his views as being aligned with the sort of hatred and insensitivity which is commonly directed towards Jews. A sentence of that letter conspicuously, but not surprisingly, absent in the RECORD's account, read: Your attack, in the name of "fairness" of all things, on women, Blacks, gays and lesbians, and other minorities is despicable.

It was, and it still is.

I find it astonishing (and as a Jew, painful) that Sam Levy, who clearly understands that anti-Semitism in any form diminishes all Jews, can't understand the analogous harm to other communities with similar immutable characteristics. Even if the amendment was initiated with the noblest of intentions (doubtful) and a complete lack of awareness of the hurt it would cause (also dubious), a chorus of voices quickly cleared up any misunderstanding — every minority organization on campus (and many non-political groups as well) repeatedly and in various forums expressed to Mr. Levy and the Federalists the harm their amendment was causing. Yet they forged ahead, unconcerned about the incredibly destructive impact of their so-called "fairness" amendment. Where were the cries for apology then?

The irony of the response to the letters Mr. Levy received is that he is being defended (and rightfully so in my opinion) not as an individual, but as a member of an historically oppressed minority whose welfare requires stri-

dent vigilance. Yet, the thrust of the Federalist Society amendment, in spite of all their rhetoric about "fairness," was curiously ahistorical as to other historically oppressed minorities.

The Federalist amendment was premised on the grounds that at Harvard Law School white, conservative males are being oppressed (and apparently have been historically) in terms similar to, and as a result of the presence of, status minorities. Although this flies in the face of reality, past and present, it is in keeping with the tone of the rhetoric from the Right all semester long — for example, suggestions that courses about poor people and Asians deny us the opportunity to take real courses like mergers and acquisitions; arguments that we need an affirmative action program which focuses on the real minorities at HLS, the (apparently) nearly-extinct, Euro-male, Bork-backer; and on and on, ad infinitum reactionarium. When minorities and women at the school express outrage at these affronts to their dignity, they are told, simply and patronizingly, to "Trust the Text."

There are a lot of things I have apologized for in my life, but I would never apologize for condemning, in the strongest terms possible, someone like Sam Levy. That the RECORD and its friends have used my letter to obscure this debate (and completely overshadow the real harm of the "fairness" amendment) is lamentable. If anything, my gut reaction is to apologize not to Sam Levy, but rather for Sam Levy, on behalf of those Jewish people — the vast majority, I believe — who, based on our common history of oppression alongside people of color, women, and gays and lesbians, still identify with and support the struggle for a more democratic and just society.

Jeffrey Selbin, 3L

Footnotes omitted.

"The letter was a personal communication and not the public editorial I would have written."

Right didn't address or take into consideration the multitude of responses from concerned people from both within and without the Diversity Coalition nearly as seriously as they have an angrily-written letter from one of their own kind. The barrage of misleading and decontextualized attacks by a handful of students who like to see their names in print has unfortunately resulted in an intolerable atmosphere which demands some explanation.

I must admit to having been surprised when the RECORD called me on Nov. 22 at 9:15 in the evening, just before their copy was going to press, to ask me if I had any comments about a personal, signed, hand-delivered letter that I had written to Sam Levy several weeks before. Apparently Mr. Levy had "made it available" to the newspaper (sic) along with another letter he had received, and the two were to be published in the upcoming edition. I was

taken time out of their busy schedules to reveal and denounce my "anti-Semitic" remarks. My initial reaction to the charge of anti-Semitism was: but, some of my best friends are Jewish ... like my two brothers and my twin sister and my parents. I learned everything I need to know about anti-Semitism from the experience of my grandmother who fled Nazi Germany with her child (my mother) after Ernst Rohm's Brown Shirts (the SA) seized my grandfather and handed him over to Heinrich Himmler's Gestapo. I didn't tell the RECORD reporter (who had the chutzpah to ask me about my faith when he called for "comments") that I was Jewish. It was none of his business — the letter wasn't written to him. On the other hand, I just don't need lessons on anti-Semitism from the RECORD-Federalist-JLPP crowd. If anything, my sense is that the deliberative, sensitive, principled people responsible for the

Cole Apologizes And Clarifies Federalist Destructiveness

The following is a letter submitted by Luke Cole to Federalist Society President Sam Levy and interested members of the law school community.

Dear Sam:

First, I would like to take the opportunity to apologize for any hurt or offense I may have caused you or any member of the Harvard community in my use of the word "untermenschen" in the note I left you some weeks ago (as I am sending

away. I am recalling this only because the ensuing reports of my "letter" — rather, a hastily scrawled note — have made it sound somehow underhanded, when in fact, I saw it as a very open gesture. It was not an anonymous note, but clearly signed (with "Love, Luke" or "XO, Luke," I believe). And while it was flippant, and in one place unintentionally offensive, it was part of the public give-and-take surrounding your amendment. It was an

"It was an expression of frustration with what I perceive to be destructive and divisive tactics."

expression of frustration with what I perceive to be destructive and divisive tactics by the Federalists. I find your actions destructive for a number of reasons, but I would like to focus on two of them: first, your exploitation of the media to continually put forward ideas which you knew or should have known were untrue, and second, your appropriation and misuse of the language of the civil rights struggles of women and people of color.

For many weeks this fall, the Federalists ran a campaign, largely through the pages of the sympathetic RECORD, to remove the two members of the Coalition for Diversity in Faculty Hiring from the Student Dean Search Committee because of your belief that their presence represented preferential treatment of minorities. This was a wilful misrepresentation of the facts behind the creation of the Dean Search Committee. You and I both know how the Student Dean Search Committee was set up — we have been at the same public forums where the creators of the Committee described its genesis, and had the same opportunity to read the RECORD, in which the history of the committee has been laid out. You and I both know that the committee was not solely created by the Law School Council, but was in fact a collaborative effort of the Coalition for

Diversity and the LSC, initiated in large part by Coalition members who sought student input into the Dean Search.

Despite your knowledge of this history, you and the Federalists repeatedly described the committee as a creation of the LSC in your attempt to call into question the presence of two Coalition representatives on the Dean Search Committee. When the Federalists' proposals to exclude Coalition members from the committee were voted down by the Law School Council on October 11, one member of the Federalists threatened to "ruin" the Dean Search Committee. Just days later, the Federalist-sponsored amendment to the Law School Council Constitution appeared.

You have characterized the Federalists' plight — that they were not offered the same "preferential treatment" as Coalition members — as exclusion, and called for Federalist representatives on the committee. I can only conclude that your protests that you were "excluded" were not in good faith, because you and the Federalists passed up the opportunity to serve on the Committee when three spots were offered to the law school student body at large — three spots for which there were only five applicants.

Your use of the vocabulary of "exclusion" brings up the second reason I find your efforts destructive. I — and many others, judging from the community's response — find offensive your usurpation and consequent distortion of language used in the struggle for civil rights for women, people of color and gays and lesbians. You have consistently used the term "minority" to describe yourself, and the Federalists have tried to equate their status with that of historically oppressed groups.

I am sure you realized that your amendment and line of reasoning was offensive to many people, especially after the open forum called by the Law School Council, where you and the three other members of the Federalist Society presented heard from the 60+ members of the Black Law Students Association and the Harvard community who had gath-

ered to express their hurt and anger at the terms you had used. If that experience did not give you pause, you could have had no doubt after the open letter to the student body from the presidents of the organizations representing Asian-American, American Indian, Black, Hispanic and women law students stated that they were "appalled" that you had equated "the experiences of a political or ideological group with that of women, racial minorities, and gay men and lesbians."

What separates us, Sam, is that while we have both used language offensive to people, my use was inadvertent, and I have apologized for it. Your use of language in a way offensive to many people was not only intentional, but a well-thought-out strategy by the Federalists to try to delegitimize the work of the Coalition for Diversity. You have made no move to apologize — in fact, you have not only repeatedly used the language after being told it was offensive, but based your entire amendment campaign on it.

I find your action divisive, as well: not only have you distorted facts and used inappropriate language, but you have shown little regard for the history of real exclusion experienced by women and people of color here at Harvard Law School. While I disagree with you that "affirmative action" means "preferential treatment," Harvard has operated what you would call an affirmative action plan for most members of the Federalists — white, upper-middle class males — for the last 150 years. Harvard ran a preferential admissions program, admitting only white males, until the late 1940s, when one or two blacks were allowed per class of 500. Small numbers of women were let in in the 1950s, but the preferential admissions plan for white men continued unabated until the late 1960s, when for the first time, women and people of color were admitted in less than token numbers. The first Hispanic student was admitted to this law school in the 1960s; the first Native American, in the 1970s.

(continued on page 7)

Blast From The Past — 1980

Students Try To Interview Potential Dean Candidates

This article appeared in the Nov. 26, 1980 RECORD as HLS was in the midst of its most recent dean selection.

The Coalition of Responsible Dean Selection (CORDS) will interview several HLS faculty members it considers to be candidates for Dean. According to Fritz Byers, 3L, CORDS spokesman, Profs. Derrick Bell, Gary Bellow, Abram Chayes, and Morton Horowitz have agreed to be interviewed by CORDS.

CORDS, admitted Byers, are not rumored to be leading candidates for the position of Dean. "Rather than just interview people acknowledged as candidates, we decided to interview people the Coalition felt were good candidates," he explained. Byers said the interviews would help students become aware of the views of these faculty members.

CORDS members plan to conduct the candidate interviews this week. Summaries of those interviews will be

the HLS appointment process. In a recent meeting with Dean Sacks, students expressed their concerns on this issue and agreed to hold some kind of open meeting with Sacks on affirmative action and the appointments process. Several CORDS suggestions and requests, however, such as that of direct student involvement in the appointments process, were rejected by Sacks.

The suggestion to hold an open meeting was Dean Sacks' idea, Byers said. "He thinks (the issue) should be a matter of public discussion," Byers explained. While originally CORDS planned to sponsor one meeting with Dean Sacks and Prof. Stewart, chairman of the Appointments Committee, the Coalition is now considering a series of meetings with various faculty members and administrators. For example, Byers said, one idea is to have an open discussion with Profs. Michelman, Nesson, and Vorenberg on affirmative action and the appointments process, since all three professors are members of the Michelman Committee.

According to Byers, Sacks was "quite strongly" against the suggestion that student representatives sit on the Appointments Committee. He explained that Sacks feels the appointments procedure is adequate, and that there is a significant risk in allowing students to participate in the process.

Stephanie Phillips, 3L, feels that the Dean was somewhat contradictory on the question of student participation in the appointment procedure. On one hand, she explained, Sacks said students can come talk to him and that there are avenues for students to contribute to the appointments process. "But he is overlooking the important thing: there is a big difference between one way input and the group deliberation and discussion that goes into changing 'the nebulous concepts of qualifications and hiring standards,'" she said.

Sacks was reluctant to give CORDS exact numbers of Third World and women faculty candidates currently

being considered by the Appointments Committee. Byers said that Sacks would only say that "the number of women is closer to 10 than it is to one and is closer to 10 than it is to 50" and the number of Third World candidates is closer to five than it is to 10. Sacks likewise refused to comment on exact figures to the RECORD; however, he left open the possibility that offers are currently being made to women and minorities to join the HLS faculty.

Sacks, said Byers, pointed out that in the 10 years he has been Dean, three minority members have been offered tenured positions while overall 20 to 22 people have received tenure. Sacks then stated, said Byers, that if HLS had three minority members on the faculty and more being considered in the appointments process, he would be happy. CORDS members, however, felt that the success of the appointments process in achieving affirmative action had to be measured in terms of the number of minority faculty members currently in the faculty as a whole, Byers explained.

Sacks and students also disagreed on the ability of the current appointments process to achieve affirmative action. Sacks commented to the RECORD that "the process is a good process . . . In my view there is good reason to hope it will produce women and minorities." On the other hand, Byers stated that the hiring procedure is faulty since the Appointments Committee is all white male and it invokes hiring standards having racial biases built into them. Phillips shared Byers's frustration, stating that faculty members and administrators "seem to be satisfied that the same old process is now generating a few minorities and women they feel to be qualified, without looking at the impact on the Law School of not broadening" the concept of "qualified."

"If the University expects us to take seriously their purported commitment to affirmative action, they're going to have to change, since it's clear that the procedures aren't doing the job," Byers commented.

Dean Sacks was quite strongly against the suggestion that student representatives sit on the Appointments Committee.

Profs. Frank Michelman, Charles Nesson, Richard Stewart and James Vorenberg, however, have refused to speak to the Coalition as Dean candidates.

Many of the candidates speaking to

available for student review at the Langdell receptionist's desk after Thanksgiving.

CORDS is also continuing its activities on the issue of affirmative action in

Would those of you who feel powerless no longer express that by your silence?*

WRITE THE RECORD!

* Adapted from quotation by Prof. Martha Minow.

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Language Chosen Was Inadvertent, Not Offensive

(continued from page 6)

Harvard used preferential treatment to hire only white men in a similar fashion; even today, as you call for increased numbers of "traditional legal scholars" — historically, white men — preferential treatment of white men continues. Last year, of the seven tenure appointments to the HLS faculty, six were white men, one a Black man. None were women. After 150 years of preferential treatment for white men, the law school's tenured faculty is, unsurprisingly, 90 percent white male. Thus, to characterize reserving places on a student committee as "unfair" because two of the positions were not guaranteed for white men, shows amazingly little understanding of the history of and the present situation at Harvard Law School.

For my part, I have done my homework on the unfortunate word I used. "Untermenschen" was originated not by the Nazis but by the philosopher Friedrich Nietzsche. The Nazis did use the word to refer to people not of Aryan descent, and I realize now that the word was inappropriate and hurtful. I am deeply sorry for this.

In conclusion, however, I stand by what I meant my original note to say. Your tactics are such that even the strongest of language is not inappropriate; in fact, harsh words barely express the distaste I have for your political program and activities at the law school.

Luke Cole, 3L

Footnotes omitted.

NEXT RECORD:
February

AROUND THE LAW SCHOOLS

Jackson Poster Burned

From The Commentator, New York University School of Law, Dec. 1

Another incident of vandalism with racial overtones has occurred at NYU Law School. On Nov. 27, a Jesse Jackson poster was burned while it was on a resident's apartment door. This same apartment was the one where a Jackson poster had been torn up and left in pieces in front of the door. The poster had a statement at the top of it saying, "Keep hope alive."

This brings to six the number of incidents in the recent past: first the defacement of the Women of Color brochure, then the laundry ticket on the APALSA board, followed by the first incident with the Jackson poster, harassing phone calls made to women, a swastika in a D'Ag elevator, and now the burning of a Jackson poster.

Dean John Sexton met with members of the Black American Law Students Association (BALSA) and APALSA after the incident related to their members. After his meeting with BALSA the dean issued a letter to the law school community condemning the defacement of the brochure.

In response to this most recent incident, Dean Sexton met with a group of concerned students. The dean is requesting a full investigation of this incident to be carried out by NYU Protection.

Blackmun Hints Court Departure

From the Hastings Law News, Nov. 17

Speaking Nov. 16 for the sixth annual O. Tobriner Memorial Lecture, United States Supreme Court Justice Harry A. Blackmun delivered a speech short on substance but long on melancholy reflection.

The 45-minute address, entitled "Trends and Countertrends," left many observers wondering whether the liberal justice intends to step aside in favor of the more conservative forces gathering strength in this nation's highest court.

Appearing aged but not frail, the 80-year-old spoke in a firm and resonant bass voice. He told the capacity crowd of approximately 400 about Justice Joseph Story, who mourned by-gone days nearly 150 years ago after realizing he had become one of the lone dissenters in a Court that had taken a radically different view of the Constitution.

"I am persuaded that by remaining on the bench I could accomplish no good, either for myself or for my country," Blackmun quoted Story as saying. "I am the last of the old race of judges."

However, Blackmun struck a positive note, observing that, in spite of the recent election results, "the Republic will survive — it always has and it always will."

Asked to comment on the prospective fate of *Roe v. Wade*, his controversial 1973 decision guaranteeing women a constitutional right to abortion, Blackmun declined to predict the outcome of future reconsiderations.

Nonetheless, he did say that "the votes are there if they wish to change it." Blackmun counted Justices O'Connor, Scalia, Stevens, White and Rehnquist as sure votes for overturning *Roe*, and plainly labeled recent appointee Justice Kennedy as the deciding vote.

Professors Grade Attendance

From Georgetown Law Weekly, Oct. 31

Professors should remain free to sanction students for absence from class, but students should have notice of strict attendance requirements when they make their selections, the faculty-student committee on academic standards has agreed.

The committee declined to endorse additional student-proposed guidelines for class attendance policies. The unendorsed proposals would have required professors (1) to give class participation positive weight as well as negative weight in determining grades, (2) to minimize participation requirements in large lecture courses, and (3) to recognize certain causes for excusable absence.

The faculty noted the existing Georgetown requirement of regular class attendance is imposed by the ABA on all law schools it accredits. Several professors expressed their view that any limitations on professorial discretion in implementing attendance policies would intrude on the principle of academic freedom.

Call To Diversify UC-Davis

From The Advocate, Martin Luther King, Jr. Hall, School of Law, University of California, Davis, Nov. 28

As we approach the Dec. 9 faculty meeting where they vote on whether to extend offers to any of the minority applicants that will have visited King Hall, one senses an almost nervous tension on the issue similar to when a silence abruptly presides over a room full of otherwise interactive people.

The pre-vote headcounting has begun, as the swing votes are identified and hopefully persuaded. So it suddenly becomes imperative that the students not engage in "unnecessary" activities (i.e., a public discussion in certain media) that might alienate these crucial votes and forestall the mutual goal of faculty diversification.

If this proposition were a drink, one might find that she had already finished it before the disconcerting taste set in. Since the recommendation (coming from certain members of the students, faculty and administration) does not disapprove of all activity (private one-on-one discussion), merely the ones inviting public scrutiny, its acceptance initially palliates — only to fade, a precursor to a lingering sense of unfulfillment.

Free Speech Canadian Style

From The Opinion, State University of New York at Buffalo School of Law, Nov. 9

Should people who make hateful and racist public statements be subject to punishment for group defamation? In Canada, unlike the United States, they are. That was the topic of the 1988 Annual Mitchell Lecture which occurred Nov. 4.

Calling the day's events a lecture is actually a misnomer since there were in fact six separate people speaking at the colloquium entitled "Language as Violence vs. Freedom of Speech: Canadian and American Perspectives on Group Defamation."

Regardless of where the speakers were from, they presented varied and occasionally complex positions in what was an important and stimulating public discussion.

Prof. Kathleen Mahoney, of the University of Calgary in Alberta, in referring to the United States and Canada, said that "her task is to explain differences between two systems."

"Because freedom of speech defined by women and [people of color] looks different" than "free speech" by "the dominant elite," Prof. Mahoney said, Canada's anti-hate laws are necessary. For instance, Hitler's hate propaganda drove reasonable discussion from the marketplace of ideas and helped lead, she implied, to the gas chambers.

Ghosts Of Hahvahd's Past Visit Prof.

Anonymous column from Lex Brevis, Western New England College School of Law, Dec. 9

Something peculiar is going on here. As you know I AM the consummate serious journalist, so I broke out my Geraldo investigative reporter handbook and got some answers.

First was the earthquake Nov. 25. MIT seismologists confirm its epicenter was somewhere in Springfield. At that instant, unknown forces pulled Langdell case-books from the stacks in the library, rending them in two.

The next peculiar report comes from my anonymous source planted deep in Section One. On the 28th, one of Hahvahd's finest is rumored to have erased the board in complete disgust, screaming, "I don't know what the hell I'm saying!" She then went on to explain the UCC in completely humanistic, rational terms.

The final incident involves late-night skulduggery. Someone crept into Room A on Friday and put up a Christmas tree, lights and all. This rash behavior contradicts the first canon of the Final Exams Code of Ethics: "Thou shalt have no fun as sleigh bells ring and children sing."

It all began years ago, when an obscure practitioner of law became dean of a trade school just a little east of WNEC. This Langdell fellow's legacy has left generations of graduates scarred for life: believing they must know everything and that law is far too serious to ever be fun.

Finally, one of Langdell's disciples rejected this conditioning. She tried to get back into the Ivy fold for years: underpaying law clerks and working through weekends. Never at peace, she returned to academia to reconcile her humanist tendencies with her Ivy league instincts.

The holidays approached. Her legal upbringing haunted her. "Closed book finals!" chortled her Ivy-clad fellows, their chains clinking in glee. "I don't know, it just doesn't seem FAIR!" Her despair deepened.

This reporter has facts inquiring minds want to know. Just before the shock waves, my source heard a bloodcurdling scream: "Nooooooo, Ghost of Ivy Past, I CANNOT do it!! Let their books BE OPEN!!" The quake was felt as far east as Harvard square, where Christopher Columbus Langdell's marble base was split cleanly in two (leaving the old man in a very embarrassing, and drafty position).

Hastings Challenges Impeachment

From The Gavel, Cleveland-Marshall College of Law, Dec. 1988

Impeached District Court Judge Alcee Hastings told students and faculty at Cleveland-Marshall he feels like a constitutional guinea pig.

"They did not care whether I had a son. They did not care whether I had a mother. I was found not guilty by a jury," Hastings said.

Hastings was indicted for bribery in 1981, but was acquitted in 1983. He was impeached by the House of Representatives on Aug. 8, 1988, and will face trial in the Senate on March 1, 1989. He is charged with fabricating a false defense in his trial.

One of the issues coming into play in the case is the constitutionality of the Judicial Council's Reform and Judicial Conduct and Disability Act of 1980. The act empowers councils of each circuit to investigate and sanction the conduct of federal judges.

"What you have is a judicial council saying that a judge had done an impeachable offense, they in turn sent a letter to the U.S. Congress, who by United States Constitution Article I have the sole power to impeach," Hastings said.

"You are looking at the first person in the history of the United States, that has the judicial branch, the legislative branch and the executive branch addressing that person in an impeachment proceeding."

According to Hastings, 37 of the 42 judges involved in the complaint did not read or even see the file.

"They signed off on my life, but life will go on even if I'm removed," he said. "The troubling thing about it is they didn't read shit."

The executive branch was also criticized by Hastings. He said he felt justified in saying the Reagan administration is a racist administration.

"Law is not some vague disembodied spirit," he said. "It is a manifestation of the will of the dominant culture." This allows many persons to be abused in the process of seeking justice, he added.

Still, Hastings says he will fight to the end.

"The ultimate measure of a man, in the words of Martin Luther King, is not where he or she stands at moments of comfort, but where he or she stands at times of challenge and controversy. When Martin said that, little did I know it would have a ring for me of immense consequences," Hastings said.

"This is not just about my life or judicial independence. I'm not in this mess about principles. I'm legally correct. I'm morally correct, and I'm physically correct, and that's exactly why I'm in this."

"A little chicken shit \$89,000-a-year job is not what I'm about. I was not born a judge, and I do not have to die one; but I was born a man, and not one of those people will cause me to quit."

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Legal Copy Gets New Owners

By Dan Kroll
Features Editor

The Legal Copy center is in new hands, as the former owner, Copyquik, went out of business last month. While students were faced with a very minor inconvenience when the center was closed for one working day last month to allow for the transition, no further closures or delays are expected. The center, under its new owner Central Copy, will continue to provide copying service to HLS at similar, if not lower, rates.

According to Paul Upson, assistant manager for finance and operations at HLS, the change of ownership followed a series of financial difficulties at Copyquik, a private business which owned a number of copy outlets in addition to the Legal Copy branch at HLS.

Although he was uncertain of the exact cause of the company's difficulties, Upson said he thinks the Legal Copy operation was profitable but that other aspects of the company's operations dragged it down. "I guess it was somewhat of a management nightmare," Upson said, adding that Copyquik had recently entered a number of new ventures which turned out to be unwise.

Considering the abruptness of Copyquik's announcement that it would no longer be able to operate the copy center, the change of ownership was remarkably smooth. Upson said that the school had previously spoken with Central Copy, a business owned and operated by Harvard University, about the possibility of taking over the operation next school year, beginning in the summer of 1989. With Copyquik's announcement, he said, "we had to have them come in next week. Copyquik closed on a Friday, and Central was in on Monday."

In spite of the fact that Copyquik took its machinery with it when it left, Central Copy was able to begin immediately, Upson said, due to some "excess capacity" in its operations as well as its ability to borrow some additional machines. Because the change of ownership occurred just before exam period in December, Upson said everyone was afraid of delays and that some materials, particularly course outlines, would be unavailable. "But nothing like that happened," said Upson.

Dan Fitzgerald, manager of Central Copy, said that although the transition

occurred at "the worst possible time [just before exams], I think it went smoothly anyway." Fitzgerald said that most of the workers at Legal Copy were able to keep their jobs, and that the previous manager under Copyquik, Anders Erekson, would remain as manager under Central Copy.

Fitzgerald said he does not expect many changes to the operation of Legal Copy except that "service will actually be better." He said that the prices will be very similar to those offered before, and that because its prices are standardized with its other branches, "the prices will be a little bit lower now."

Upson said it would be difficult to measure the overall savings to users of the service, because Central Copy uses a different price scale. He mentioned, however, that the new prices will be more time sensitive; while last-minute work may be a bit more expensive than it used to be, jobs that are less time-pressured will be cheaper.

Central Copy, which is a part of the Office of Information Technology (OIT) of Harvard University, also operates copy centers at Harvard College, the Kennedy School and the Harvard Medical School.

The RECORD Congratulates The First Year Class On The Completion Of Their Fall Exams, And Wishes Them Continued Success (And Survival)

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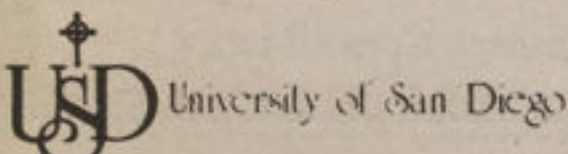
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Faculty Panel Debates Federal Sentencing Guidelines

Jurists Applaud The New System

By Troy A. Morgan
Staff Writer

Three federal court judges and attorney Alan Morrison '66 met in the Root Room of Langdell Law Library on Jan. 12 to debate the new Federal Sentencing Guidelines which have met with recent constitutional challenges in the courts.

Morrison, the attorney who argued against the constitutionality of the guidelines before the Supreme Court, defended his position that the guidelines violate separation of powers principles. Judges Douglas H. Ginsburg of the D.C. Circuit Court of Appeals, Stephen G. Breyer '64 of the First Circuit Court of Appeals and Robert E. Keeton, S.J.D.'56, of the Federal District Court for the District of Massachusetts responded that the new guidelines are a step in the right direction, despite the problems they may raise.

The discussion among the four panelists, all currently teaching at HLS, was sponsored by the Federalist Society. The guidelines' constitutionality was also the topic of this year's Ames Moot Court Finals, the problem for which was written by Morrison himself.

The Supreme Court announced Jan. 18, by a 8-1 vote, that it would uphold the constitutionality of the sentencing guidelines.

Morrison, the director of the Public Citizen Litigation Group in Washington, D.C., maintained that Congress' delegation of policy-making authority to the Sentencing Commission in 1984 was irreconcilable with the separation of powers doctrine. He argued that it unconstitutionally delegated Congress' law-making powers to the judicial branch of government. Three federal judges, Morrison explained, sit on the commission along with an economist, a sociologist, a law professor and a prison warden. Morrison contended that the Constitution guarantees rule by the people by reserving law-making power to their elected representatives.

Breyer, who is a member of the Commission, asserted that the judges' life tenures shield them from much of the pressure of public opinion that infects decisions of elected officials in Congress, who vote openly on the severity of punishments for various crimes. He suggested that a congressman might be more likely to punish some crimes more or less severely than they deserve in order to please a voting audience ill-informed about the precise nature of the offenses.

Breyer deflected the argument that judges would be performing a legislative task, asserting that sentencing is "historically a judicial function." Breyer added that, because the Commission chose the mean sentence for each crime based on past practice, the Commission's results usually conform with sentence ranges set by Congress.

The only criminal sentences not based on past practice were for white collar crimes, because, Ginsburg explained, past practice in this area resulted both in "huge disparities in punishments for similar offenses" and in "trivial sentences." In one case which Ginsburg found to be particularly outrageous, a judge sentenced a man to host a charity golf tournament for the United Way. The offender, Ginsburg said, volunteered to host the tournament again the following year, explaining that it raised his standing in the community.

Another judge, Ginsburg continued, refused to punish a certain white collar defendant because "he was a pillar in the community." Even before passing the controversial guidelines, Ginsburg said, Congress had recognized the need to make punishments in the white collar crime area more certain, severe and uniform.

Breyer and Keeton praised the new guidelines for promoting honesty and candor in judges' sentencing decisions. Because the guidelines eliminate the possibility of parole, Breyer said, judges will no longer have to "second-guess the parole commission" when making their decisions. Breyer explained that a judge, for example, may impose a sentence of

twelve years, thinking the parole commission will reduce it to four. Although prisoners will still be allowed a 15 percent good-time exception, Breyer said that with the new guidelines "the sentence given will be the sentence served."

According to Breyer, the mechanical procedure under the guidelines "will lessen the widespread disparity in sentencing depending on who is the judge." Under the new system, the sentencing trial judge first looks up the crime at issue in an index. This reveals a "base offense level," a number from 1 to 43 whose magnitude represents the seriousness of the offense.

Next, the judge makes various adjustments in the offense level based on the presence of specific offense characteristics (a vulnerable victim, obstruction of justice, a police victim, etc.). Finally, the judge uses the defendant's resulting offense level and past record (age, prison escapes, etc.) to pinpoint the applicable sentence on a chart.

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Describing sentencing as "one of the most troubling of all the responsibilities of a trial judge," with the judge dependent upon advice from attorneys, probation officers and defendants, Keeton said that he "welcome[d] the help and guidance" of the guidelines, whose constitutionality he recently upheld in the 1988 case *United States v. Seluk*.

Ginsburg viewed the guidelines as a "great reform." He said that sentencing was a trial judge's "last repository of unreviewable discretion," with a wide range of possible statutory sentences and no obligation to provide a reason for his or her selection to an appellate

court. Now that a judge must give a written explanation for departures from a narrowly defined sentence range, appellate review will force him to pursue "a different kind of introspection and a different kind of reasoning process," said Ginsburg. This "salutary effect," according to Ginsburg, "is a crowning achievement, extending the rule of law

to a place that had been simply occupied by the discretion of the Chancellor's foot."

Alluding to the need for serious reform, such as more experiments with house arrests for working individuals, Ginsburg expected "real reform in the wake of this experience and in the documentation that will come out of it."



Photo by Patricia Lee

D.C. Circuit Judge Douglas Ginsburg, District Judge Robert Keeton S.J.D. '56, First Circuit Judge Stephen Breyer '64 and Alan Morrison '66, attorney for Public Citizen, participated in the panel.

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Student Search Committee Denied Interview Chance

(continued from page 1)

Liebman, while there appeared to be significant faculty support for both.

One faculty member close to the process suggested that student complaints about alleged insensitivity by Stewart toward women hurt both the professor's personal feelings and his chances to be chosen. The source added that he thought those comments were largely motivated by ideological differences with Stewart, a conservative.

The student committee had hoped to interview the outside candidates when they visited the law school, and according to SDSC Chairman Lisa Ferrell, 2L, both Bok and Tribe had approved its participation.

However, SDSC was not included in either of Prichard's visits to the campus last semester. Ferrell said that when Bok and Tribe were told of the committee's "extreme disappointment" at not having the opportunity to meet with Prichard, each responded that the other had refused to allow the SDSC to become involved.

Despite the rampant speculation about the "short list" of people currently being considered by Bok, there is a general consensus among those connected with the search that no one candidate has the apparent inside track. Several professors noted that Bok has done an especially good job of "holding

his cards close" and not revealing whom he favored.

At the same time, all of those contacted said they would be surprised if Bok's selection was someone not on the current list.

Higley said the SDSC members did not feel comfortable making recommendations of individual candidates for the position, because they did not feel it part of their "mandate" from the LSC.

Several professors familiar with the search added that, as a result of the controversy surrounding the appointment of the SDSC, its recommendations were not considered to be representative of the HLS student body. Instead the FDSC placed primary reliance on the student survey conducted by that committee.

Ferrell disputed that account, claiming "several members told [her] that our input was taken very seriously and had some impact."

Finally, one faculty source confirmed that no women or minority candidates made it past early consideration. Prominent females, including Profs. Mary Ann Glendon and Martha Minow, withdrew themselves from consideration, according to the source. Prof. Derrick Bell was apparently the only minority given active contemplation.

Ferrell said the committee made no active effort "to push the concept of minorities or women."

["Case lost again in the Royal Court (Appeals Court) . . . and he is as worried as if there wasn't still the Upper Appeal Court to go to . . ."]

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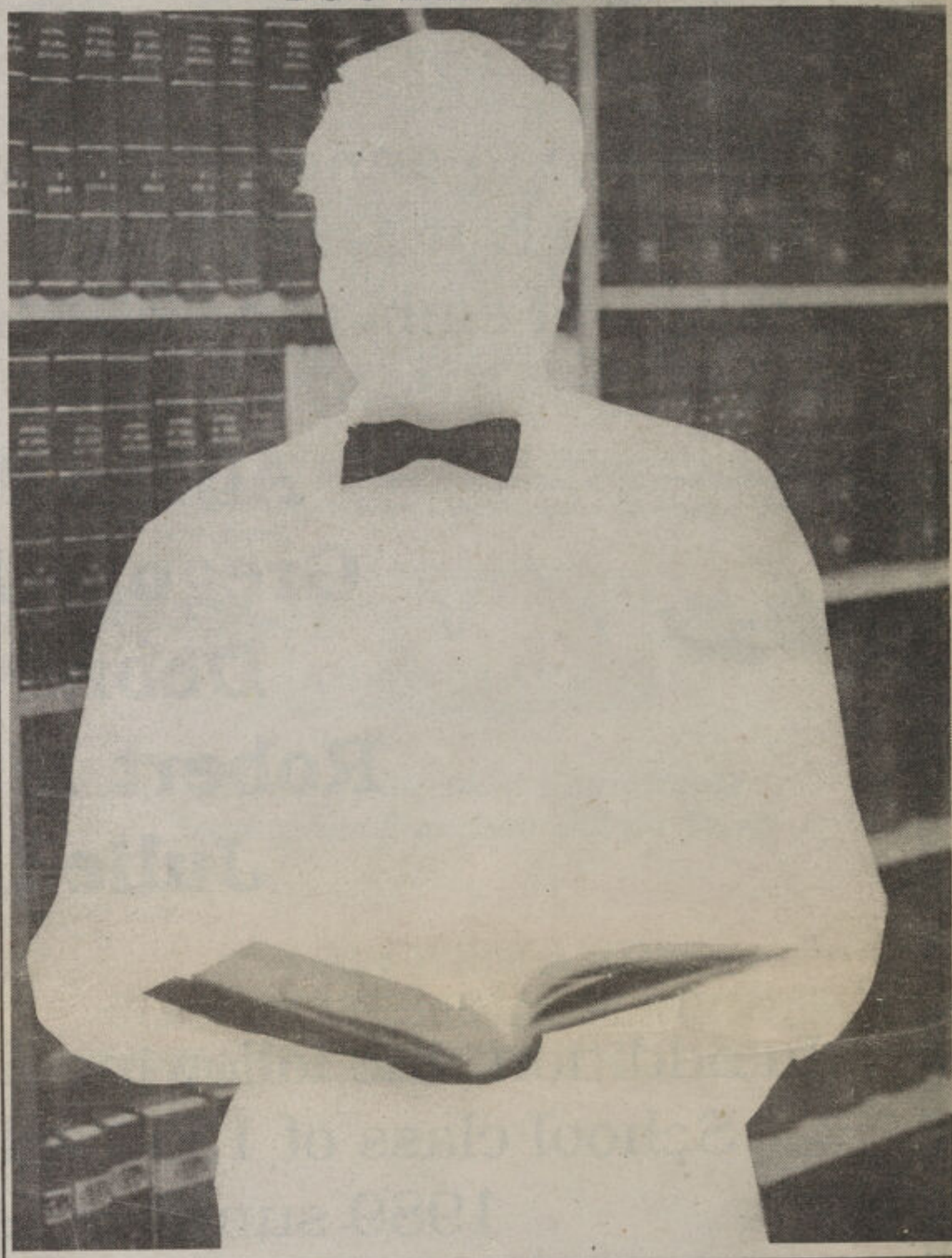
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Protection Plan Reassesses Parental Cash Contributions

(continued from page 1)

Magnuson described the calculation of parental contributions as a "very broad issue," to be dealt with separately from LIPP policy.

The committee's refusal to exempt from the recent LIPP modifications those students who enrolled at HLS under the previous version of LIPP has triggered some negative student reaction. Gordon Whitman, 2L, member of the Alliance for Public Interest Alternatives (APIA), stated that "people on APIA were disappointed that the financial aid committee didn't 'grandfather' existing students. Many of us came to HLS based on information we had received about the LIPP program. It worried a lot of students that LIPP can be changed out from under them while they are here."

The present lack of formal administrative commitment to the long-term financial stability of LIPP is another source of student uneasiness. "There is a real concern that LIPP should be something you can rely on, something that's solid, something that you can make career decisions based on," said Whitman.

Crawford commented that student perceptions of LIPP's status as shaky, together with the "enormous" debt burdens created by the new policy, may deter students otherwise interested in taking low-paying, public interest positions from participating in the program.

Magnuson, while assuring that LIPP is alive and well, discussed the possibility of endowing the plan, a move unanimously endorsed by the committee. An

endowment, she said, "would provide a stable income for the program for years to come." Magnuson added, however, that at present no decision to endow LIPP has been made.

Shortly after the LIPP changes were in place, Bolden stated that he and other students met with Dean James Vorenberg '51, Professor Louis Kaplow '81, committee member, and Joyce Curll, assistant dean for admissions and financial aid, to discuss student dissatisfaction with the committee's treatment of the issues bearing on the new policy. "Nothing was accomplished at the meeting, and I didn't expect anything to be accomplished," said Bolden. "What was important was to make the Dean aware of our views," he stated.

Crawford expressed hope that students and administrators will continue to talk about the problems presented by the committee's actions. Bolden called for identification of the "basic tenets or philosophy of LIPP and how these would relate to LIPP programmatically. We need to set priorities, something that has not been done yet."

Magnuson encouraged "panicked" students to "come in to see me or their financial aid officers so that they can see just how their own particular situations will play out as a result of this refinement of replacement borrowing." In her experience, she said, students who have done so "feel much better, and realize that they can in fact make the career decisions they want to make."