



Harvard Law Record

Volume 88, No. 7

America's Oldest Law School Newspaper

April 21, 1989

Melendez Reelected

By Troy Morgan
Staff Writer

Brian Melendez, 2L, was reelected president of the Law School Council by a margin of more than two to one and said he sees the vote as a mandate for him to continue to implement plans and policies begun in his first term.



Brian Melendez,
LSC President

Melendez defeated Todd Berman, 1L, by a vote of 302 to 146 in balloting last week.

Among the issues Melendez pledged to address were encouraging cross-registration with other schools within the university, examining the procedure for response to incidents of sexual harassment, advo-

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Faculty Sets Capital Fund Drive Priorities

By Chris Crain
Editor-in-Chief

The faculty approved last week a major report on law school planning that calls for a more than 15 percent increase in the size of the faculty, significant construction in connection with the library and student dormitories, and the largest capital campaign in the law school's history.

Other major suggestions included in the report and approved by the faculty were that money from a fund drive be used to endow both the Low Income Protection Plan and a number of research and clinical programs.

The positive faculty vote was the last major step before the report of the law school Steering Committee goes before the governing board of the university, the Harvard Corporation.

Outgoing Dean James Vorenberg '51 said the law school development office will begin discussions over the next six months with a number of

"potential major donors" about the "feasibility of raising major funds at this time."

Early indications from alumni, including the Dean's Advisory Council, a "small cross-section of possible major supporters," are that a fund drive could raise as much as \$150 million, Vorenberg said.

Although any such figure

would be reduced by as much as \$35 million to cover annual giving from alumni, any money in excess of \$100 million would dwarf past law school campaigns. If approved, the drive would take place sometime in the next two years, according to Professor Andrew Kaufman '54, chair of the Steering Committee.

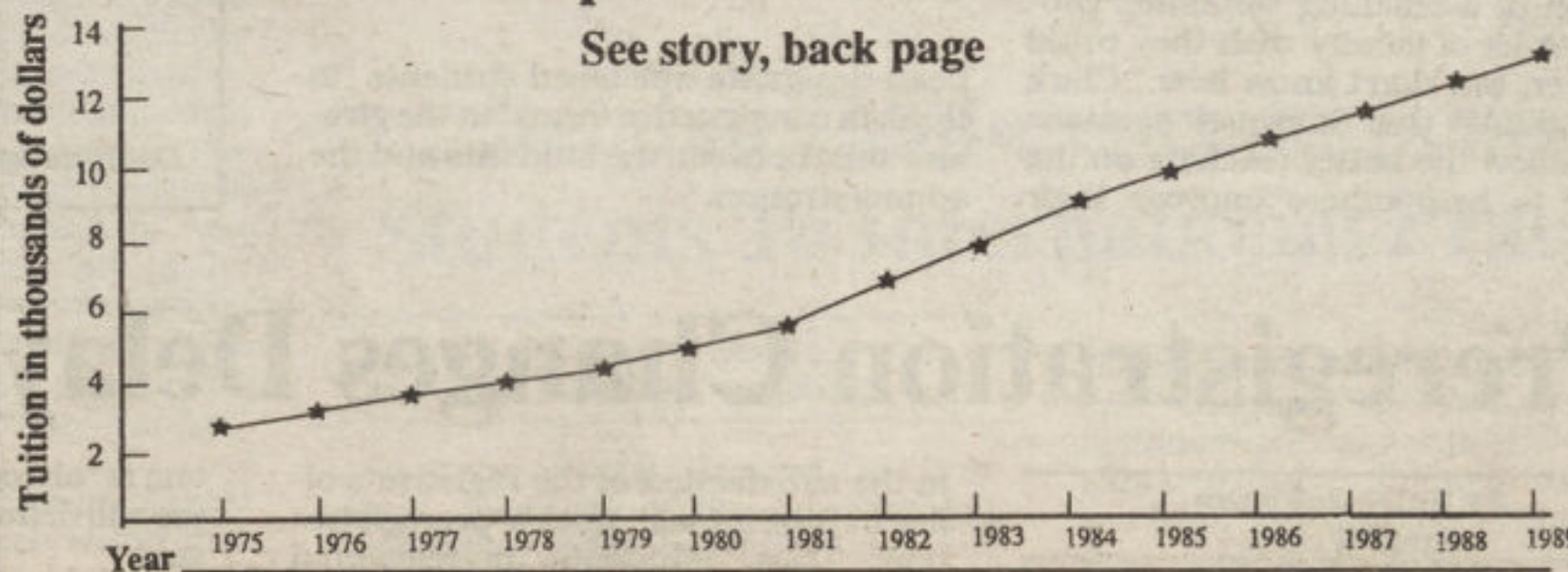
The most recent major capital campaign, conducted during the law school's sesquicentennial celebration in 1967, raised just \$15 million, Kaufman said.

In addition to supporting the call for a major fund drive, the faculty voted to support the priorities set by the Steering Committee.

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Tuition Jumps 8.9 Percent For '89 - '90

See story, back page



If a capital fund drive is successful, it could reduce pressure on tuition as an income source. The law school budget for 1989-90 includes the largest dollar increase in tuition in the law school's history. (See story, back page)

La Alianza Challenges Hispanic's Appointment Denial

By Liz Askey
News Editor

The decision by Dean James Vorenberg '51 to fill the teaching vacancy left by Bancroft (Nick) Littlefield in the Government Lawyer course with Gary Katzmman has sparked concern among members of La Alianza over the denial of the position to Deborah Ramirez '81, a Hispanic.

The denial of the position to Ramirez comes in the wake of recent efforts by La Alianza to encourage the appointment of Hispanics to the faculty. Although at press time La Alianza had had no formal communication with the administration and had not yet met to discuss the issue, Co-chair Ana

Maria Salazar, 3L, stated that "with the information we have, it does not seem that the Administration is dealing with us in good faith. We are frustrated and angry with these developments."

Ramirez, Assistant U.S. Attorney for the district of Massachusetts, Criminal Division, taught the clinical component of Government Lawyer in the spring and fall of 1988. She also taught Trial Advocacy Workshop (TAW) with Professor Charles Ogletree '78 in the fall of 1988 and the winter of 1989. She has accepted a part-time position as a Federal Litigation - Criminal instructor in the spring of 1990.

Katzmann is also an Assistant U.S. Attorney for the district of Massachusetts, where

he is currently Deputy Chief of the Criminal Division and has served as Chief Appellate Attorney.

According to Salazar, there were "high expectations" that Ramirez would teach the course because she had taught the clinical component in the past. Furthermore, Salazar stated, the course had been "very practical." Ramirez has been involved in twenty trials while Katzmman has tried only four at the appellate level, according to Salazar.

The April 13 Adviser announced, however, that "Government Lawyer I" and "Government Lawyer II" had been "deleted from the course schedule for 1989-90." The new course to be taught by Katzmman is entitled "Govern-

ment Lawyer: Issues in Criminal Enforcement."

Salazar said there is some concern that the focus of the course may have shifted from a more practical to a more theoretical orientation.

"How are we ever going to get more Latinos on the faculty if they change the rules of the game when a good prospect comes along?" queried Salazar. Ramirez stated she did not know if the content of the course had changed.

Littlefield, who taught the course for 8 years, stated that he would be "astonished" if the course were changed significantly. He emphasized that the course was "never entirely a practical course" and that he had always combined theory and practice.

Ramirez said she "gives credit to the school" for giving her the part-time Federal Litigation lectureship. "It's a step in the right direction," she said, but added "they just have to do more [to hire Hispanics]."

Both Ramirez and Salazar emphasized that they did not want to attack the selection of Katzmman, but rather were concerned with the process of the selection. "The process sends a message," Ramirez said, noting that Vorenberg never talked to Richard Stearns '78, who supervised both Ramirez and Katzmman at the U.S. Attorney's office.

Salazar added, "We are extremely angered and upset because it shows a lack of

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Fried To Argue Abortion Case

HLS Prof. Charles Fried, former U.S. solicitor general, is being called back into service by the Department of Justice, but his return is drawing mixed reviews.

In mid-March, Professor Fried told *The National Law Journal* that some career lawyers in his old office probably would not want to argue the upcoming abortion case before the Supreme Court and others would. "I would be delighted to argue the case," he added.

Attorney General Dick Thornburgh must have heard that delight bouncing across Harvard Yard to the D.C. Beltway because he recently asked

Professor Fried to represent the government's position during 10 minutes of argument time as an amicus curiae in *Webster v. Reproductive Health Services*.

Going outside of the Justice Department for an advocate is considered unusual, especially on an issue singled out as a priority of the Bush administration. Although it was suggested the attorney general might argue the case, he recently said he was not the best lawyer to handle the job. Judge Kenneth Starr of the U.S. Court of Appeals here - President Bush's choice to replace Professor Fried as solicitor general

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Former Solicitor General and
HLS Prof. Charles Fried.

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Clark Discusses HLS Future With Students

By Soo K. Yi
Staff Writer

Dean-designate Robert Clark '72 shared his goals about the future of HLS with approximately 25 students in attendance at an open meeting in Austin East on April 12. Discussing what he sees as the "principal mission of HLS," Clark repeated his view that the focus of HLS will be "on learning, knowledge, and understanding," rather than on "promoting the personal welfare of any particular constituency."

Addressing faculty divisiveness, Clark emphasized that his job was not to bring harmony to the faculty, but "to manage the faculty in a constructive way," and "to make the faculty more productive in both teaching and scholarship."

Clark also spoke of his goal of increasing the size of the faculty. The quality of education, he suggested, can be improved "by having more small classes taught by main-line, tenure-track professors who are really interested in the subjects they're teaching and who can make students more active in class."

Clark envisioned further improvements in teaching through the implementation of a teaching workshop program. "A lot of faculty wish they could be better, but don't know how," Clark said, adding that informal sessions would allow the better teachers on the faculty to help others improve their

teaching.

While noting that there are some fields of law, such as international, comparative and health care law in which HLS could hire more faculty, Clark reaffirmed his statements that such hiring should not come at the expense of "quality."

Regarding clinical programs, Clark said he is interested "not [in] maximizing production, but [in] maximizing educational value." He agreed that clinical programs represent "a non-traditional format of instruction that offered great promise," but added that he "wouldn't hire on the standard of diverse excellences."

When asked about student input, Clark said that he would actively seek student opinion, especially on such topics as the first-year elective program and the political and ideological balance in first year courses. Finally, the

"A lot of faculty wish they could be better, but don't know how."

dean-designate welcomed students "to think in constructive terms" in the give-and-take between the students and the administration.



Dean-designate Robert Clark attends a reception with students earlier this year.

Preregistration Changes Delayed Until Next Spring

By Sally Johnson
Staff Writer

Although a new preregistration system proposed by students was approved by Dean Vorenberg '51, it was not tested

to the satisfaction of the registrar's office in time for last week's preregistration. Thus, students preregistered under the old system on April 13 & 14.

Mark Slawson, assistant registrar, stated that the testing of the new sys-

tem is "almost complete. The new process will definitely be used next year," he said.

The new process will allow students to sign up for multiple sections of courses as well as for courses with time con-

licts. The system will prioritize students' subsequent choices when their higher choices are denied. Students will be able to list as many as 23 different courses on their pre-registration forms.



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Texas Democrat Urges Populist Move For Party

By Patrick Miles
Staff Writer

Jim Hightower, the spitfire Texas Agriculture Commissioner, addressed a Pound Hall crowd on April 2, and encouraged Democrats to appeal to those who were left behind during the Reagan era. "The Democrats should not fear appealing to that majority," Hightower said in a speech co-sponsored by the HLS Forum and HLS Democrats.

"It is not fashionable these days to be considered a liberal, populist, or any other tinge of progressive thought. But the truth is that those of a progressive stripe in this country are actually a majority ... they [Republicans] try to keep us apart," Hightower said, adding that he felt labor unions, small businesses, environmentalists, and minorities are not enemies, but are "natural allies locked in the same central struggle."

"The issues are diverse, but the struggle comes down to one central theme: too few people in our society control too much of the money and the power, and they use that control to take from the rest of us."

Hightower suggested that the same power is breaking labor unions, bankrupting farmers, stifling small business and minority enterprise, shutting off escape hatches for the poor, and hurting the middle class. He added that this power is "taking from the productive majority in this country and concentrating greater and greater wealth to themselves."

Hightower characterized these powerful as "modern day robber-barons," charging that "the idle rich are stealing from the productive majority." Hightower continued, describing their use of government "as a socialistic force,

to take from the many and gather unto the few. They have redistributed the wealth."

Hightower then assessed the damage he felt the Reagan administration did: "Progressive tax policies [have been] turned over during the past decade. They have made a mockery of our government's regulatory protections, they have squeezed the life out of our nation's monetary programs. They have perverted the nation's spending policy away from one based on need, to one that is consumed by greed."

"[They have been] engaged in a total retreat in the last decade from the fundamental, cherished democratic values of our society: economic fairness, social justice, equal opportunity for all people and full participation by all Americans, and [they have] replaced it with a pernicious philosophy of greed," Hightower continued.

Hightower said that people are angry that their full potential and aspirations are not being achieved. "It is up to the Democrats to sense the anger that is out there among the American people, and rouse them around the central issue of too few controlling the wealth."

"The true majority in society is not ideologically liberal or ideologically conservative. The true majority in society is not ideological at all. Often [people are] both liberal and conservative. The real political spectrum in our society is not left to right, it is top to bottom. And the vast majority of people are in the bottom looking up and wondering who is going to help them make a stride upward within our society. Democrats have to appeal to those people," Hightower argued.

Hightower cited a Congressional Budget Office study which found that

"eighty percent of American families lost income under Reaganomics, 10% of the wealthiest families gained 16% in income, and the wealthiest 5% had a 24% increase in income, while the top 1% of the richest families had a 50% increase in income."

"We lost 20% of our family farms in eight years. 650,000 people lost their farms. This was not because of bad management, bad weather, or bad luck, but because the government busted the price of their commodity. Wheat went from \$4.85 a bushel in 1981 to \$2.40 a bushel, corn fell from \$3.50 a bushel to less than \$1 a bushel, Hightower asserted. "It does not matter how good a farmer you are, how efficient or how productive, if you can't get a price to break even, you have to go bankrupt."

"One million people have been added to the poverty rolls from 1981 to 1988. Twelve million people were laid-off. They only had a 62% chance of finding a new job, that at best paid two-thirds of their previous wage. That is not prosperity," Hightower said.

Hightower noted that Reagan was the beneficiary of a grassroots effort en-

"Reagan is not the harbinger of the conservative revolution in our society. He is the culmination."

gineered by Ray Bliss after Barry Goldwater's 1964 defeat. Bliss got people elected mayors and county commissioners, and those people later became legislators, governors, and U.S. senators.

According to Hightower, this movement elected Reagan in 1980. "Reagan is not the harbinger of the conservative revolution in our society. He is the culmination."

Hightower concluded that the Democrats have not been at the grassroots, but that "they have the values, the program, and the message that people are willing to hear."

Belgian Conference Exposes Students To International Practice

By Alfredo Vitolo
Special to the RECORD

A group of seven Harvard Law Students, members of the International Law Society (ILS), visited the European

Community (EC) Headquarters in Brussels, Belgium. The visit, which also included meetings with the U.S. Delegation to the EC, American and Belgian law firms and an American consulting firm, took place during the week of March 27 - 31. The focus of the student group's meetings was the implications of European integration (otherwise known as the "1992 integration") on U.S.-EC relations.

The activity spanned four days and began at the European commission on March 28. At the Commission, students attended lectures and question-and-answer sessions on various topics including the 1992 integration, EC external relations with the U.S., the European Monetary System, the EC decision-making process, and the Commission's Legal Service Department.

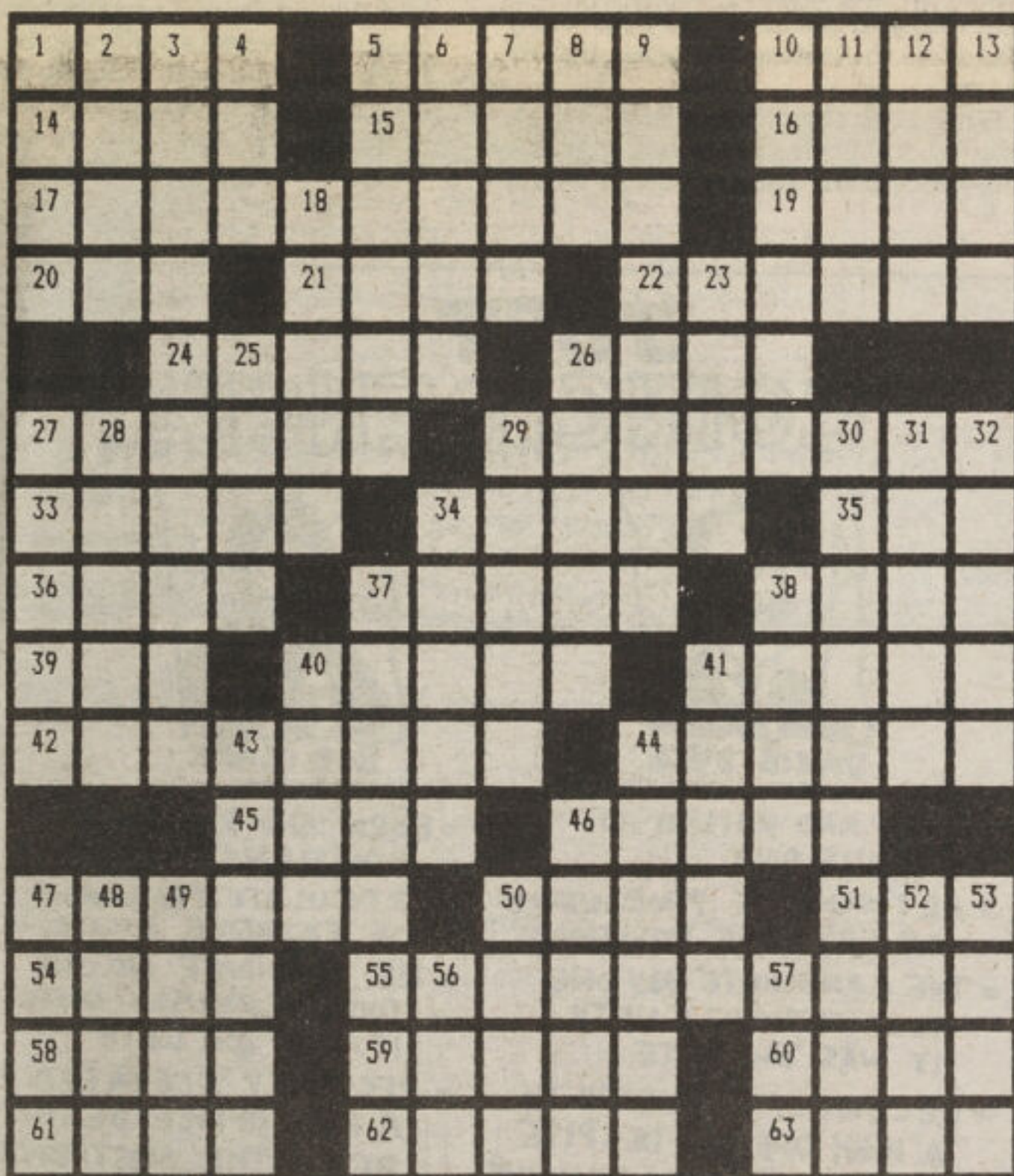
Later that day, the students attended a reception with EC Commission student interns. The next day the ILS students met with the American-based law firm of Cleary, Gottlieb, Steen & Hamilton and discussed legal practice perspectives of American lawyers working in Brussels and transacting business within the European Community.

On March 30, the students met with the U.S. Delegation based in Brussels for an American diplomatic perspective and later with McKinsey & Company, Inc., a consulting firm in Brussels, for a briefing regarding concerns of business enterprises in their preparation for the Common Market integration.

On March 31, the students met with the Belgian law firm of De Bandt, van Hecke & Lagae to discuss EC legal practice from the vantage point of European lawyers.

The International Law Society is an organization of Harvard Law students interested in the practice of international law. ILS sponsors a variety of events on and off campus geared toward improving students' awareness and understanding of international law. The trip was made possible through the support of several sponsors. Sabena Belgian World Airlines provided transportation and the Hilton International Brussels provided accommodations. The Commission of the European Community itself and the law firms of Cleary, Gottlieb, Steen & Hamilton; and Wilmer, Cutler & Pickering provided financial support.

The seven Brussels trip participants were chosen from a lottery of members and included Scott Blank, 2L, Everett S. Carbajal, 2L, Barbara Eyman, 2L, Greta Husemoller, 2L, Calo Kostka, 2L, Paul Tarr, 1L, and Alfredo Vitolo (LL.M. from Argentina).



Cross Examination

(solution, page 14)

ACROSS

1. Torts prof, to his friends?
5. Zones
10. Craig __, 2L
14. Aware of
15. __prosequi (will prosecute no further)
16. Church part
17. Type of presumption
19. Semiprecious stone
20. Ram's girlfriend?
21. Capital of Italia

DOWN

22. Sup. Ct. justice
24. They say it pours when it does this
26. 1960's rock and roll TV show
27. Don't be led here
29. Receivers of legacies
33. Having ear part
34. One who adores, if foolishly
35. __Magnon
36. Yoko and namesakes
37. Rids of moisture
38. Quote middle (see 10D)
39. Evergreen
40. Inheritors of property
41. Late singer/songwriter Jim
42. Can be captured
44. Some set-aside beneficiaries
45. Diagnostic photo
46. Silly
47. End of quote (see 10D)
50. Picnic invaders
51. Degree from "B" School
54. __moss
55. Disclaims property interest
58. Store up
59. Neckwear of the condemned?
60. __Karenina
61. Singular event
62. Surrounds
63. "One small __..."

Created by Sally Johnson



Harvard Law Record

Volume 88, No. 7

Chris Crain
Editor-in-Chief

Alain Kodsi
Business Manager

Fairness Amendment Passes

It's amazing the power an idea can possess, if it is only given a chance.

After soundly rebuking by more than two-to-one a proposal made by the conservative Federalist Society to establish a nondiscrimination policy for the law school's student government, the noble and tolerant HLS student body last week supported by the same margin a proposal with the same basic language sans the baggage of being sponsored by conservatives.

The so-called "Fairness Amendment" that went down in defeat last semester suggested that, in appointing its subcommittees, the Law School Council should not discriminate on the basis of race, gender, religion, and, among other things, political affiliation.

Accompanied by a first-of-its-kind groundswell of conservative indignation at being treated by classmates and professors as second-class students, the "Fairness Amendment" was rejected by the liberal majority of the student body. Contributing to that result was a flood of leaflets and pronouncements deriding the proposal as racist, sexist, and insensitive for suggesting that the experience of political minorities was akin to that of immutable minorities.

This time around, the LSC itself suggested a proposal with virtually the same language, listing political affiliation along with immutable characteristics as categories of nondiscrimination. Neither the Federalist Society last semester nor the LSC today has suggested that the experiences of political and racial minorities are similar, but only that political minorities deserve protection, along with racial and ethnic minorities.

It is true that the LSC proposal contained none of the complicated "super-majority" requirements of the earlier proposal regarding special exceptions to nondiscrimination, but that obscurity was never the true focus of the "Fairness Amendment" debate.

The overwhelming passage of the LSC's "Nondiscrimination Policy" may reaffirm for some the basic "fairness" of HLS students when confronted with a rational proposal designed to protect vulnerable groups, however dissimilar they may be.

The flip-flop, however, may reaffirm for many a gut-level suspicion that a large number of those same students are far too susceptible to rejecting out of hand any message delivered by a politically unpopular messenger. C.A.C.

Macneil Reveals Hypocrisy

The issues central to the disputes between Visiting Prof. Ian Macneil and his section 3 students remain clouded, but one consequence emerges clearly: Macneil's reaction is questionable.

Even if he felt the students were wrong, he had a responsibility to respond in a sensitive and exemplary fashion. He utterly disregarded this responsibility.

Hypocrisy exacerbated the insensitivity of Macneil's response: it precisely contradicted the doctrinal message he has tried to convey in his class all year. The message he woefully ignored in this instance is this: in human relational exchange, avoid polarization of power and escalation of conflict, particularly when future relations are important.

Prof. Macneil knew resentment toward the attendance policy had been brewing all year, and he chose to ignore that resentment. Instead, he treated the eruptive incident as an isolated occurrence, which could be handled without any reference to earlier bad feeling.

Emphatic reaffirmation of a long-dormant attendance policy whose sanctions were not communicated until they had been abruptly implemented, had no place in a law school classroom. Laundering-device apologies to those whom it sanctioned without notice only served to add insult to injury.

Predictably, strict enforcement of rules and persistent display of power brought interchange between the two groups to a grinding halt. Explaining his paternalism does not make it appropriate, nor palatable. The unfortunate and recurrent message to students is clear: in this power game, they'll play by his rules, no matter the cost, and they needn't waste their words in protest.

In the final analysis, it must also be pointed out that, if Macneil was insensitive, the involved students were naïve. The collective "smiley-face defense" of refusing to sign his attendance sheets was a half-hearted effort partially motivated by anger, but also obviously motivated by a desire for anonymity spurred by the fear of retaliation.

In some sense, the students intuitively affirmed what Macneil has been advocating, though not practicing, all year: leave breast-beating and power displays at home. Mature dialogue scorns such tactics. E.E.

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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.

Tuition Jump Unjustified

To the Editor:

Congratulations to Dean Vorenberg for another 10.6 percent increase in the law school budget for 1989-1990. As a result of this whopping growth, students will pay 8.9 percent more for tuition next year.

Unfortunately, the increase in Dean Vorenberg's budget is not unusual. Despite the fact that the U.S. Consumer Price Index has only risen at an average rate of 4.2 percent for the period 1980-1989, Dean Vorenberg has managed to increase law school budgets at a 10.6 percent annual clip during the same period.

Admittedly, tuition at Harvard Law School is still slightly less than the cost at comparable law schools. Dean Vorenberg cites this fact as support for the size of his budget.

However, the number of students at HLS is roughly three times the size of the student body at each comparable school (Yale, for example).

Since many law school expenses are scale driven, one would expect to see lower costs per student at Harvard. For example, Harvard has a much higher student/faculty ratio than Yale. Faculty costs per student should therefore

be much lower at Harvard.

Second, the registrar's computer grading and scheduling system is scale-driven. Registrar costs per student should be much lower at Harvard also. Even library costs per student should decline as the size of the student body increases.

One would therefore expect the cost per student to be lower at Harvard than at comparable schools, such as Yale. On page five of his March 20 memorandum to the law school community, Dean Vorenberg admits that the tuition gap between Harvard and other schools is rapidly closing.

Sadly, there does not appear to be much student concern over the Vorenberg budgets. In fact, the Law School Council contributed to the budget inflation by requesting a 25 percent increase for the Student Funding Board.

The Law School Council seems more interested in the amount of its budget and the politics of tenure appointments than with the size of students' tuition bills.

I only hope that once in office, Dean Robert Clark can bring some measure of fiscal responsibility to this law school.

Michael Anderson, 3L

Macneil Article Misleads

To the Editor:

When I was contacted by Mr. Tom Bilello, RECORD News Editor, concerning last week's article, "Macneil Threatens Disciplinary Action for Absenteeism," he told me he was just calling for background information to see if there was any issue worth writing about.

I agreed to give him some background information "off the record." Since I was the most quoted-by-name source for the article, I feel it is only right that you give me this opportunity to address the issues discussed and my quotes.

While I can't argue that the words attributed to me in last week's article were inaccurate, the context in which

they were spoken and the general tone of my half-hour conversation with Mr. Bilello were greatly distorted.

I was very clear to Mr. Bilello that, after almost three-fourths of the year had passed, one of the students in my contracts class was going to be thrown out for violating a normally unenforced HLS policy regarding excessive absences.

I was equally clear in informing him that this no longer seems to be the case and that as far as I was concerned any past controversy appears to be over.

From what was said at the class meeting and in your article, it appears Prof. Macneil and I are in agreement (continued on page 7)

JUST COINCIDENCE...



DAVID DUKE
LOUISIANA LEGISLATURE

- BORN AND RAISED IN LOUISIANA
- ARTICULATE PROPONENT OF EXTREME POSITIONS
- THE CANDIDATE NO ONE TOOK SERIOUSLY UNTIL IT WAS TOO LATE
- RECENTLY ELEVATED TO A HIGH OFFICE DESPITE BEING THE MOST DIVISIVE CANDIDATE
- HAS PROMISED HIS ENEMIES THEY HAVE NOTHING TO FEAR



BOB CLARK
HLS, INC.

- BORN AND RAISED IN LOUISIANA
- ARTICULATE PROPONENT OF EXTREME POSITIONS
- THE CANDIDATE NO ONE TOOK SERIOUSLY UNTIL IT WAS TOO LATE
- RECENTLY ELEVATED TO A HIGH OFFICE DESPITE BEING THE MOST DIVISIVE CANDIDATE
- HAS PROMISED HIS ENEMIES THEY HAVE NOTHING TO FEAR

Cartoon Crosses Line

To the Editor:

I enjoy the outspoken style the RECORD has adopted. I chuckle at the cartoons and take pleasure that the Law School student body includes people with a talent and penchant for more than legal work.

And I recognize that the cartoon genre has a long and proud tradition of using hyperbole to make its points.

But Luke Cole goes beyond any ac-

ceptable bound of propriety in juxtaposing Bob Clark and David Duke ("HLS, Inc.," March 10 RECORD).

The reasons are so obvious that they need not be repeated. But just in case anyone fails to appreciate them, consider the likely reaction to a cartoon in which the words "the South" were substituted for "Louisiana" and "Jesse Jackson" for "Bob Clark."

Robert I. Kantowitz '79

Preregistration Teaches Art of Second-Guessing

OK, column topic time. What ridiculously insane thing happened to me this week? What exciting trauma did I undergo? In a word, preregistration.

A lot of experiences are overrated, their horrors and trials built upon one another in such detail that reality fades into legend. But preregistration was everything it's cracked up to be.



Robin Juni
Columnist

For two weeks, half my section paid attention in class while the other half flipped through course registration books and mumbled credits to themselves. The best part of the whole thing, though, was the calculated advice flying back and forth.

In a typical encounter, Joe Student

sits down for a gala meal in the tastefully decorated Hark, having figured out the all-time, super-duper, best-ever schedule. Joe's classes do not conflict with each other, are strategically ranked, and are even subjects which he has a mild interest in taking. Joe proudly displays to his friends the penciled-in, if slightly grubby, registration sheet.

Then the demolition begins.

"You can't get Warren if you put him second."

"Everybody in my section is putting Evidence first."

"There are only 30 people in that seminar, you know."

"Don't forget, Herwitz is on the over-subscribed list."

"Do you really want to take all your classes on Mondays?"

Eraser in hand, Joe Student thanks his friends and slinks back for another 12-hour round of tactical planning.

After revisions, Joe seeks out one friend for advice, having decided the committee approach is counterproductive. As he soon learns, however, that idea also has its drawbacks. "No way, you'll never get a Tribe-Charny combo, but you might get Charny-Wolfman,

unless, of course, everybody else thinks the same thing. In which case you could get Tribe-Charny because they'll all put down something else. But then everybody else might think the same as that and put down Tribe and Charny anyway, so maybe you should put something else. Did that help?"

The whole preregistration experience is probably the best example of reverse (and double and triple reverse) psychology on the planet. Maybe we could get a grant.

The timing of information is a key to full enjoyment of the preregistration process. After everybody has second, third and fourth-guessed everybody else on what pros to try for and worked out a schedule of classes which sort of fits together, the final exam schedule gets posted.

My perfect schedule, which I'd revised to avoid taking all my classes on Mondays and Tuesdays got shot down by that little piece of information. I discovered I was taking back-to-back finals (9 a.m. and 2 p.m.) in Evidence and Tax. No way. I'd rather become insane slowly, through the course of the semester, than snap in the middle of a Tax

exam. Fewer people would notice.

I finally came up with a serviceable schedule (Perfect Schedule VI), which I think will allow me to retain what sanity I now possess. I handed PS VI in to the Registrar, along with the perfect schedules of everyone else, but the spirit of preregistration has not yet died. More wisdom has sprouted, this time over how likely one is to get the classes he or she put on the schedule.

A sample: "I heard 200 people put Tribe first, so about 50 of those are going to be cut. If you put Charny second, you've got a shot, because only about 100 put him first, but you might get cut there, too." More permutations and combinations arise when including the 2L versus 3L variable, but only math majors (and I'm not) can follow most of that discussion.

As a result of all this analysis, at least half the students are convinced they'll have absolutely no classes for next year; the other half signed up for clinicals and already know their fates.

I know changes in the preregistration system are in the works for next year, but I'm against it. I might be fresh out of column topics.

HLS, Inc.

By Luke Cole

Fenno

"You know I don't like it here," the dark, bearded figure said as he peered at Fenno through his sunglasses. At least, Fenno thought he was peering at him. He might be looking at my nose, thought Fenno. I hope he's not looking at my nose.

"Please pay attention. I really need your help," growled the grisly guest. "It's quite a sacrifice, my coming here to the pub to speak to you, you know. By the way, you've got something right here," said the shadow, pointing to his nose.

I knew it, thought Fenno. He was looking at my nose the whole time.

"Fenno! Listen to me. I need a slogan, something catchy."

"What's wrong with that one I gave you last time?" Fenno asked. As he looked into his guest's sunglasses, Fenno moved the napkin up to his nose. Slowly, discreetly.

"I thought 'HLS is the best law school on the face of the earth' was good enough, but now I need more."

"How about 'H.L.S. - Homogeneity's Last Stand'?" Fenno blurted out. Fenno was, at that moment, quite proud of his Burst Of Acronym Sensing Talents (B.O.A.S.T.).

"Not bad, not bad," the visitor said, shifting slightly in his seat. But can't we get 'traditional excellence' in there? Or anything with 'excellence' in it? Or 'tradition.' Excellence or tradition. Or excellent tradition. How about this: 'HLS - it's an excellent adventure.'"

"It's been used," Fenno said, dryly. It was time for another pitcher of M.B.

"Or how about 'quality'?" the scruffy scholar sputtered. "I don't think I've used that one in a while."

"The meeting the other day," Fenno said, warily.

"Oh, you're right. Come on, help me," the poor pedant pleaded. "You're so good at it."

"Okay. How about 'Harvard Law: The mostest bestest law school in the solar system'?"

"Great!" shouted the visitor, leaping from his seat. "That's just what I'm looking for. Let me write that one down."

Seized with inspiration, Fenno flushed out the following: "Yale sucks. We're better."

"Hal!" the visitor cackled in delight as he transcribed the tumult of terse tidbits.

As he sipped the last few suds of his supper, Fenno tossed off the one he had been building up to all night. "HLS - Tastes great, less filling."

"Ain't it the truth," the enigmatic entity emitted.

Dead Lines

By KA

Harvard Becoming Best Liberal Law School

"If you wanted a conservative law school, why didn't you go to Chicago?"

This question, regularly thrown at anyone who dares to question the liberal orthodoxy that prevails at this august institution, is one of the dumbest and most frustrating a conservative student can hear.

In my two years here, I have yet to meet a conservative who wanted to



Brad Smith
Columnist

attend a "conservative" law school. I mean, c'mon, we're not stupid — it's not like we all sit down at application time and go, "Wow, Scalia went to Harvard! It must be a pretty right-wing place!"

Most conservatives I know chose not to attend Chicago precisely because they did not want to attend a "conservative" law school. They wanted more variety than that, more openness, more diversity. They wanted to attend the "best" law school they could find.

They thought, perhaps mistakenly, that Harvard was it.

I say "mistakenly" because we're not getting the education here that we should. Part of the problem is the lack of minority and women professors on the faculty. But other reasons are the ideological staleness of both the faculty and the student body.

Brad Smith, 2L, serves as a senior policy analyst for the Mackinac Center, a conservative libertarian, Michigan think-tank.

Contrary to what some of the goofier members of the Coalition for a Diverse Faculty might think, conservatives do not want a faculty of white men. And contrary to Crit paranoia, we do not want to remove Crits from the faculty. Most conservatives enjoy the exposure to Crit ideas and the challenge of a good Crit professor.

The need for racial/gender diversification of the faculty is well-travelled territory, generally endorsed by campus conservatives. Yet the campus Left seems unwilling to concede that conservatives can have any other legitimate complaints about faculty make-up.

Thus a year ago, when the Federalist Society responded to an invitation to all campus groups to work with the Coalition for Diversity to create a more diverse faculty, the Coalition quickly withdrew the offer. They were not interested in organized conservative support for racial/gender diversity if it meant recognizing that this campus' faculty is as ideologically homogenous as it is racially homogenous.

Despite Crit hysteria, this faculty is all but void of conservatives. One begins with Charles Fried, and ... who? Dean Clark '72 seems to be a moderately conservative guy, but the Crit caricature of him as some kind of Reaganite is laughable. Anyway, it looks as though Clark won't be teaching for a while. Dick Stewart '66 is another such moderate conservative, the kind who favors the status quo but doesn't seem to even dream about fostering conservative change. He, too, won't be teaching for some time.

After that, who? Hal Scott, maybe, and the passionless Steven Shavell, and that's it. The Crits like to tell us David Rosenberg and Lance Liebman

'67 are conservative, which they are compared to Crits but not to anyone else.

Yet even including them leaves a tenured faculty of 60 with at most five teaching members who can even remotely be considered right of center.

There are roughly twice that many identifiable Crits, more if you include people like Frank Michelman '60 in

"I have never heard the terms 'racist' and 'sexist' thrown around so indiscriminately and irresponsibly as here at HLS."

their ranks. The rest of the faculty ranges from moderately liberal to very liberal. There is no "right-wing" equivalent of the Crits at Harvard, though such professors do exist nationally.

For conservative students, this means there are few opportunities to explore and develop ideas with close faculty guidance or to work on interesting research for faculty. For most students, it simply means not being exposed to a vibrant line of jurisprudential inquiry and not receiving a balanced, complete legal education.

The second conservative complaint is the lack of civil discourse on this campus. I have never heard the terms "racist" and "sexist" thrown around so indiscriminately and irresponsibly as here at HLS. There are certain people on this campus who seem unable to believe that not everyone who disagrees with them on an issue is racist or sexist.

When such basic name calling won't do, there are people on the left who take further steps to try to silence conserva-

tive ideas. There was, for instance, the well-reported anti-Semitic and general hate mail received by Federalist President Sam Levy last autumn.

Still other left-wing students are willing to use physical force to silence the right. The leaders of last year's student protest that forcibly silenced Adolfo Calero have never apologized for the incident or renounced such tactics

in the future — indeed they have publicly reserved the "right" to forcibly silence future speakers if "necessary." Hissing and hooting down of conservative voices in class remains common.

Is it asking too much for students here to show a little more tolerance and open-mindedness towards opposing ideas?

Am I asking too much when I urge our leftist leaders to be a little more circumspect before they question the motives of all those with whom they don't see eye to eye, and a little more discriminating in their use of the "racist" and "sexist" labels?

Or is it the problem that they don't want HLS to be what I want it to be? I want it to be the nation's best law school. They seem to think it should be the best "liberal" law school.

It would make sense, I suggest, if a few of this school's leftists were asked the question, "If you wanted a liberal law school, why didn't you go to Berkeley?"

HLS Misses Chance to Appoint Hispanic Woman Prof

Take a look at last week's *Adviser*. Turn to page 4 and read the fifth entry: "GOVERNMENT LAWYER I AND GOVERNMENT LAWYER II: These courses have been deleted from the course schedule for 1989-90."

If you keep reading, you'll see that the very next entry introduces a new Government Lawyer class, subtitled "Issues in Criminal Enforcement." The *Adviser's* description of the "new" course describes some of the questions which will be addressed, including "What is

has prosecuted twenty cases, the most recent being a conspiracy conviction she secured this month against several Lawrence police officers.

Ramirez also has teaching experience at HLS. In the spring and fall semesters of 1988, she supervised the clinical component of the Government Lawyer class at the U.S. Attorney's office, along with Rick Stearns, her supervisor at the office. Ramirez and Stearns would meet every other week with the students to discuss the substantive legal issues they were encountering.

In the fall and winter semesters of this school year, Ramirez was invited by Charles Ogletree '78 to assist him with his Trial Advocacy Workshop. Like many other practicing attorneys from Boston and around the country, Ramirez sat in on the workshop's afternoon sessions for one week, during which she critiqued student performances on the varying aspects of the trial: opening and closing statements, direct and cross-examination, etc. She also delivered the opening statement for the prosecution in one of the evening demonstration sessions of the workshop.

Finally, Ramirez is currently assisting John Markham in teaching a Federal Litigation section for first year students. Her work in this and the other courses has been recognized by the administration, and she will be coming to HLS part-time in the spring semester of 1990 to teach a Federal Litigation section of her own. But Ramirez would like to teach full-time.

She was the perfect replacement for Littlefield's Government Lawyer, right? Someone with extensive trial experience, significant teaching experience, and the desire to do the job probably should get it, right? Wrong.

Ramirez approached Dean Vorenberg about the possibility of teaching The Government Lawyer next fall. Vorenberg hemmed and hawed and finally said no, that the instructor would have to be someone with more teaching experience. Satisfied for the moment with what appeared to be a plausible explanation, Ramirez told her friend Charles Ogletree the situation.

Ogletree called Vorenberg to suggest that Ramirez was right for the job, not-

withstanding her shortage of teaching time. Ogletree asked who was being considered for the job, and was told that Gary Katzmann, Ramirez' co-worker at the U.S. Attorney's Office, was on the top of the list.

Who was this Katzmann guy? Ogletree wanted to know. Reading the last paragraph of the *Adviser's* description reveals that Katzmann is a Yale Law School graduate with impressive credentials: clerkships for two federal judges, Research Associate at the HLS

ence, and he would present her case.

Then came the recommendations. When the decision makers asked Ogletree who should teach The Government Lawyer, he said Ramirez. When they asked Nick Littlefield, the former instructor said Ramirez. When they asked Rick Stearns, supervisor to both Ramirez and Katzmann at the U.S. Attorney's Office, he said Ramirez.

But when the decision was made, Katzmann was the new instructor of The Government Lawyer.

"By this monumental act of deception, the powers that be at Harvard Law School have once again refused to place a Hispanic on the faculty."

Center for Criminal Justice, Chief Appellate Attorney in the United States Attorney's Office for the District of Massachusetts, and most recently, Deputy Chief of the Criminal Division in that office. And oh, yeah, he's written a book.

Impressive, but qualified? Not for the Government Lawyer class as it was formulated by Nick Littlefield. That class was meant to be taught by an active trial attorney, not an academic. Katzmann has tried four cases in his career, compared to Ramirez' twenty; his job at the U.S. Attorney's Office is basically reviewing the briefs written by his co-workers. He does not deal with clients, with investigations, or with the situations facing a prosecutor on a day-to-day basis.

Nor is Katzmann qualified by the standard Vorenberg set in his explanation to Deborah Ramirez: teaching experience. Katzmann has not taught a single class, or even supervised HLS students doing a clinical.

Ogletree thought the standard was to be "eminently qualified." The decision should have been simple. Ogletree advised Ramirez to go home and compile a list of all the cases she has tried and outlining all of her teaching experi-

Why? Didn't Ramirez' credentials scream for selection when placed next to Katzmann's? What was going on here?

Simply put, they changed the class. Or at least that's what they said. The class was going to have a more theoretical focus, a more scholarly approach, and as a result, the logical choice was Gary Katzmann. But they didn't tell anyone this until after the decision was made. Ramirez never had a chance.

By this monumental act of deception, the powers that be at Harvard Law School have once again refused to place a Hispanic on the faculty. Although Ramirez will teach Federal Litigation next spring, she will keep her job at the U.S. Attorney's Office, and lecture here only part-time.

How could they be so blind? Now, when the members of La Alianza, the HLS organization representing the interests of Hispanic students, have been more vocal in the last month than they have been in the past five years, the decision makers thought they could get away with another shirk of their responsibility. In that month, La Alianza staged a silent protest outside the March 22 faculty meeting, took part in the

(continued on page 7)

Rudy Rodriguez Features Editor

prosecutorial discretion? Who are the major actors in the investigative and prosecutorial process? What lawyering skills and strategic calculations are used in case preparation, jury selection, trial litigation and appellate advocacy?"

Comparing the description in the *Adviser* with that given for the prior Government Lawyer I class in this year's *Preliminary Registration Bulletin* reveals very little difference between the two courses. Judging by the questions listed in the *Adviser* and the traditional focus of the class — from the point of view of the practitioner — one would guess that the instructor should be someone with extensive trial experience who has dealt with a wide range of situations faced by a prosecutor. One would not conclude that the instructor would need the academic credentials touted as requisite for HLS professors.

When Nick Littlefield, the former instructor of The Government Lawyer, left HLS, a search began for someone to replace him. Enter Deborah Ramirez. A 1981 graduate of HLS, Ramirez stayed close to Cambridge after graduation, as an associate at Hale & Dorr in Boston, and then later as Assistant United States Attorney for the District of Massachusetts, in the Criminal Division. Ramirez

Rudy Rodriguez, 2L, is Features Editor of the Harvard Law Record and is a member of La Alianza.

Developers Must Compromise in Future Wetlands Battles

Wetlands protection is here to stay. Regulatory programs show no signs of weakening. To the contrary, the newest regulations are more exacting and less compromising to development and agricultural interests. The courts are becoming less sympathetic to the argument that the filling of wetlands is a constitutionally-protected right. More and stronger wetland protection plans are being advanced in local, state and

swamps meant for filling and development. Today, scientists, engineers, watermen, hunters and even the general public are discovering the irreplaceable functions wetlands serve. Both presidential candidates emphasized the need to protect this resource — an indication of how far our awareness has come. In fact, the public demand for wetlands protection is now nearly as vociferous as it is for the clean-up of hazardous waste sites.

Some say we need new laws and policies to protect wetlands. This is not the case; there are already adequate tools in place — if they are used properly. At both state and federal levels, existing programs are being geared up for the task. Yet, given this new public awareness and sufficient regulatory tools, why the demand for a dramatic policy change?

The fact is that wetlands still too often lose to development pressures, politics and government discretion. Developers continue to battle in the courts, administrative agencies, and legislative arenas to loosen or escape from existing standards. Although environmental interests may continue to lose some skirmishes, the tide has permanently shifted from the development of wetlands to their conservation.

At this point, development stands to lose by winning. The more wetlands are filled to build shopping centers, warehouses, residential and vacation homes, and to develop more farmland, the more public outrage will fuel a desire to lock up all remaining wetlands with new and unbending regulations. The climate for radical change will continue to heat up unless the development community leaders relax their combative stance and support tough, but evenhanded, regulation. By taking this initiative now, developers can demonstrate that the present framework can achieve both conservation and development goals.

Developers can demonstrate a willingness to compromise by buffering wetlands near development sites. They could voluntarily limit project proposals to those requiring a waterfront or wetland site; work with state and federal agencies, and conservationists to minimize adverse impacts; and propose restoration efforts that would simultaneously enhance the value of their project while securing environmental benefits for the public. For example, a Long Island developer recently added 5 acres of man-made tidal marsh to complement an existing 25 natural acres; 36 residential units were

"The fact is that wetlands still too often lose to development pressures, politics and government discretion."

constructed near — but not in — the wetland, offering them scenic views and waterfront access. Strict requirements for buffering wetlands in Maryland's "Chesapeake Critical Area" have in some cases provided financial savings to builders by encouraging both residential clustering or lower densities in non-urban areas.

To continue to thrive, developers need to be innovators and leaders; they need to demonstrate that development can occur without great environmental loss. To continue their vehement fight against all wetland restrictions — or even to merely adhere to the minimum that the law requires — will certainly leave developers high and dry.

Erik J. Meyers
Off The Record

national forums around the country, and even internationally.

Every additional acre of wetlands that is lost to the plow or bulldozer increases the American public's resolve to protect remaining resources. When wetlands were plentiful and their value largely unknown, there was little appreciation. They were perceived only as

Erik J. Meyers is general counsel for the Environmental Law Institute in Washington, D.C.

FINDING AN APARTMENT IN MANHATTAN TAKES THE RIGHT EDUCATION

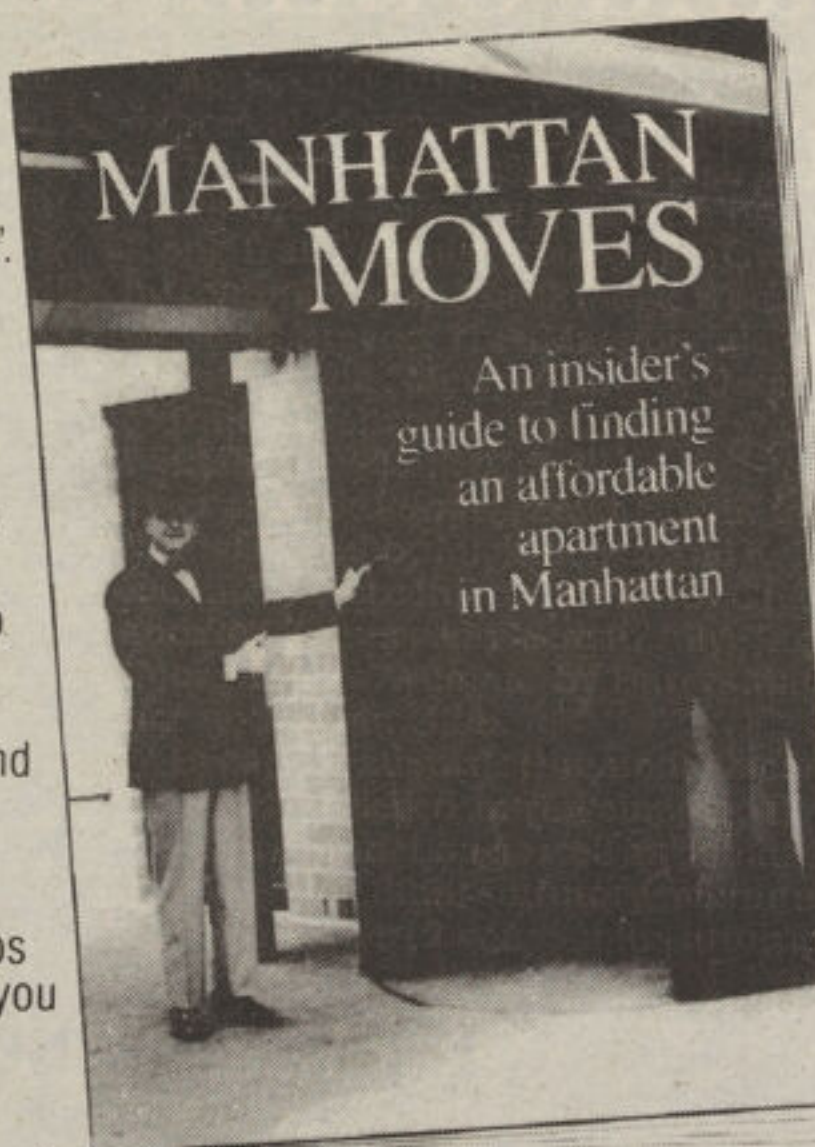
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Macneil Story Too Negative

(continued from page 4)

that if any disciplinary action is taken against the students involved, the issue would become one of notice and should be directed at the law school.

While I didn't mean to raise a reliance issue (as the article suggested I did), I think the fact that I was told by an HLS administrator that attendance and participation would not be reflected in my grades is relevant to the notice issue.

Although I personally think that it would be better for visiting professors to honor the procedural "traditions" of HLS, I made a point of telling Mr. Bilello that I felt it was still the teacher's right to pursue disciplinary action if he or she felt it would be appropriate. Prof. Macneil followed the ABA and HLS rules and written procedures regarding absence to the letter and should not be faulted for exercising his options.

It is clearly the administration that must make sure students are not penalized because of procedural disparities among the four sections taking the mandatory 1L curriculum. It seems silly and pointless for the school to withdraw a student from a class one year because of excessive absences, only to insist he retake the same course the following year without any fear of penalty for absences.

Criticisms of Prof. Macneil make popular rumors and good news, but they do not seem to make such good reporting.

Many people at the much-publicized class meeting praised his teaching

method and several other aspects of the class. One "victim" of his attendance policy even defended him on that issue and spoke of its benefit to her personally. At the end of the meeting, many were glad the meeting had taken place (a fact Mr. Bilello confirmed to me when we spoke).

Why wasn't any of that included in the article?

Prof. Macneil initiated this after-class discussion (how many other teachers would have voluntarily exposed themselves to such criticism from the class?) in order to promote a greater understanding of his motivations and to iron out any other issues the class cared to bring up.

Isn't this something we should encourage?

If teachers are willing to take time out after class to try and sort through problems, the least we can do is report the positive opinions expressed along with the negative.

The views I have expressed in this letter are not news to Mr. Bilello. Had he done his job properly, they wouldn't be news to your readers, either.

If Prof. Macneil still "draws fire" from students in my class, I would appreciate it if, in the future, you would quote them and not me.

Raymond D. Jasen, 1L

Editor's Note: The RECORD maintains that all statements included in the article, "Macneil Threatens Disciplinary Action For Absenteeism," were made on the record. The RECORD stands by the story.

Hispanic Passed Over For Post

(continued from page 6)

April 6 Langdell study-in, and sent a speaker to the April 7 rally at University Hall commemorating the Harvard Strike of 1969.

One simple decision, and the activities at La Alianza might have been quiet. Instead, Vorenberg and his cronies blatantly ignored the rising voices of everyone on this campus who has awakened to the disgusting fact that 9% of the students on this campus are unrepresented by anyone on the faculty. Once again, the protests have been met with excuses.

The excuses are old and tired, repeated so often that they might as well be spoken by robots incapable of reason. For years, La Alianza has sent a contingent on a yearly pilgrimage to the Dean's office, which has been turned

away with assurances of good faith efforts to come. But this latest incident belies any attempt by the administration to assert good faith. In fact, the purported change in the course description, made only so that Ramirez could be denied a position on the faculty, reeks of bad faith.

About a dozen Hispanic alumni/ae visited HLS last weekend to plan an upcoming Alianza alumni conference. They told tales of frustration at the lethargy of the HLS administration from as far back as 1973. They were outraged by the affront to Deborah Ramirez, and they kept asking one question, the same question that should now be running through the minds of everyone concerned about this crisis: What do we have to do?

More than we've been doing, that's for sure.

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FIRST YEAR REVIEW

Legal Education Lacks Sensitivity To Gay And Lesbian Issues

By Christopher V. Bacon
Special to the RECORD

Ten years ago I was teaching mathematics on an emergency certificate in a small town in Texas. I received a letter from the Texas Educational Agency informing me that I would have to complete a course in "Acculturation Through Education" if I wanted to continue teaching the following year.

The course had been designed to familiarize Texas teachers primarily with black, Hispanic, and Vietnamese cultures, because all of these groups were heavily represented in Texas schools.

I was indignant that the state would require me to take such an irrelevant course. After all, I had a masters degree in mathematics. What more did a mathematics teacher need?

There was not a black approach to factoring polynomials. Mexican-American culture was irrelevant in a trigonometry class.

I had no need for a "touchy-feely" sensitivity developing course. And so I cursed the Texas Educational Agency as I made the two-hour drive that summer to the University of Houston.

"Law professors start students all over again as if they were children and as if law professors didn't like children."

Last week, I overheard two students laughing at the Hark Boxes. In their hands were the flyers announcing the conference on "Sexual Orientation and the Law: Implications for Legal Education."

They seemed particularly amused by a session on integrating sexual orientation issues into tax courses. One of them gleefully remarked that a session on "Homosexuals and Secured Transactions" was lacking.

The second student chimed in that "Gay Torts" might have been an appropriate offering.

Remembering my adverse reactions to "Acculturation Through Education" 10 years ago, I tried not to be too critical of the two gentlemen. However, their attitudes certainly underscored the need for the April 8-9 conference.

Conferences on gay and lesbian legal issues have been held with increasing frequency in recent years. The April 8-9 conference was unique in that it focused on the law school classroom, which Mary Joe Frug compared to a "three-ring circus."

The participants in the first panel were all law professors, and all agreed with the statement by Asst. Prof. Charles Ogletree '78 that the law classroom is an arena of power and authority.

However, Ogletree suggested that some teachers can be too sensitive and as a result exclude important issues from discussion. Worse yet, some professors are gratuitous to the point of being damaging. Ogletree used the example of the professor who painstakingly uses hypotheticals with "black partners" or "female judges."

Prof. David Kennedy said he believed that there may not be clear answers to the questions of what lan-

guage is appropriate and which issues should be raised.

Several of the panelists struggled with the question of what a professor should do with his own views, or, in the case of gay teachers, whether they should feel comfortable about "coming out of the closet."

Prof. Frank Michelman '60 warned that one ought not to profess neutrality at one level and have some program, political or otherwise, at another.

In a later session, Stanford Law Prof. Mary Dunlap said the classroom should be made "safe for people to make mistakes in." Dunlap mourned the fact that many times law school defies every principle of adult education, in that law professors "start students all over again as if they were children and as if law professors didn't like children."

Congressman Barney Frank (D-Mass.) '77 delivered the keynote address and highlighted some of the legal issues that are of concern to gays and lesbians.

Frank displayed considerable optimism about the future of legislation concerning AIDS discrimination, the removal of immigration prohibitions for gays, and the barring of gays from government jobs.

Frank was less optimistic about a general sexual orientation discrimination statute. Nevertheless, he felt prejudice is slowly eroding, although the political world sometimes suffers from "cultural lag."

Frank made no effort to conceal his opinions of the current administration: "James Baker is the most ethically overrated person in the United States today."

Nor were the members of the Supreme Court immune from Frank's attack: "The longer Byron White lives, the clearer it becomes that JFK's second biggest mistake was the Bay of Pigs."

At the same time, Frank praised people like Admiral Watkins, who headed former-President Reagan's commission on AIDS, for his integrity and intellectual honesty in preparing the commission's report.

The conference also addressed the issue of how specific curricula can deal with sexual orientation issues. In smaller sessions, law professors from around the country showed how sexual orientation issues can be integrated into constitutional law, employment law, family law, tax and estate planning classes.

The merits of teaching courses on sexuality and the law were also discussed. New York School of Law Prof. Arthur Leonard '77 expressed concern that courses on sexuality and the law (as well as similar courses focusing on other minorities) could lead to a form of "ghetto-izing" of such courses and would cause the professors of mainstream courses not to make any effort to integrate these issues into the traditional fare.

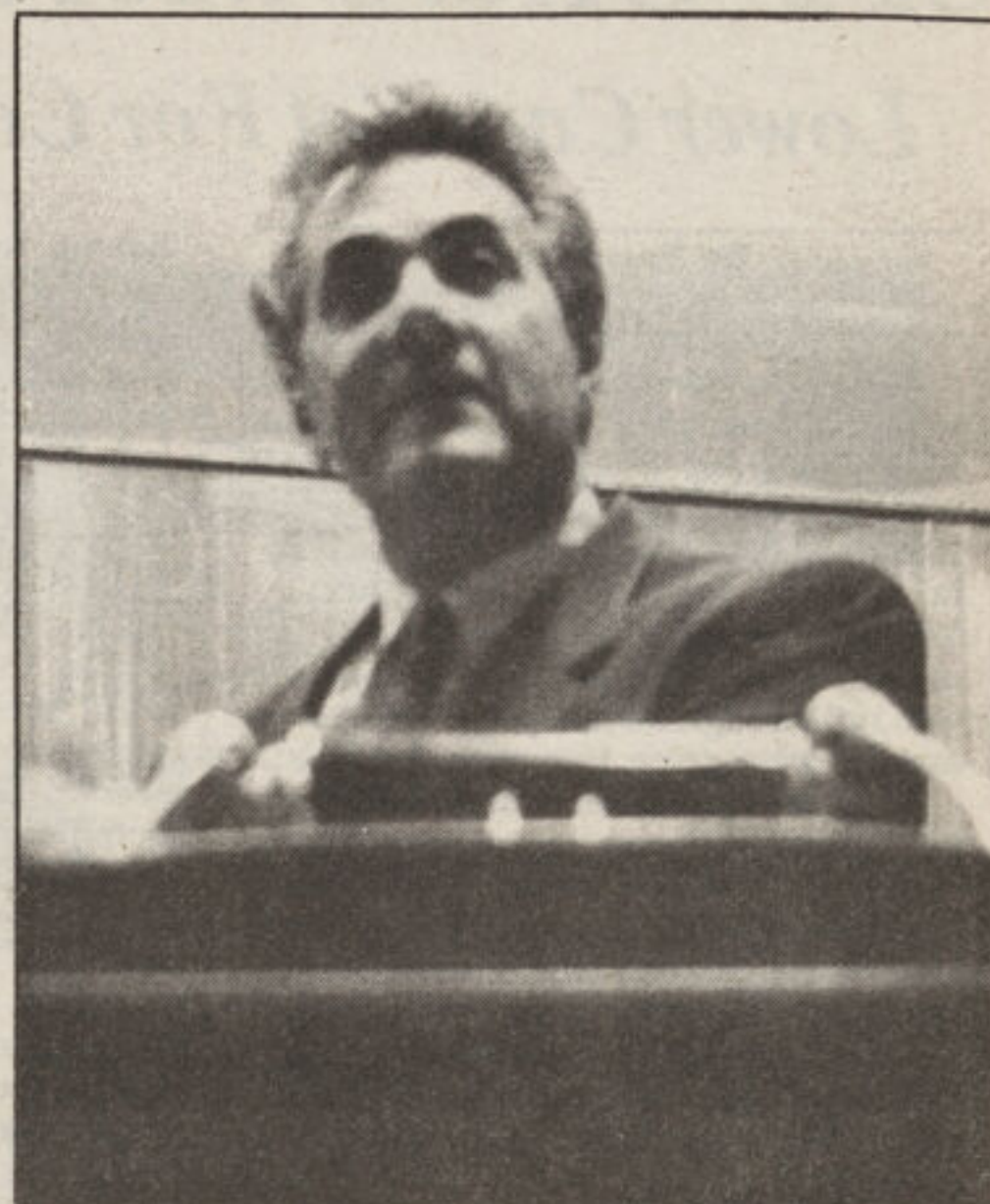
The general consensus, however, was that these courses serve an important function in the law school curriculum.

Joel Paul '82, a professor at the Washington College of Law at American University, talked about his experience 10 years ago when he was an HLS student and the Committee on Gay and Lesbian Legal Issues (COGLLI) was a newly-formed organization.

Three COGLLI members, including Paul, invited the HLS faculty to meet with them. About a dozen faculty members attended, and the three students began to share with this group numerous incidents in which they had either felt silenced or believed they had been victims of some form of discrimination or harassment.

When they had finished their presentation, one professor said, "Well, Mr. Paul, I'm not so sure why it is you called us here today. What is your theory of sexuality here?"

Paul had not anticipated the question, and he said



U.S. Rep. Barney Frank (D. — Mass.).

"The longer Byron White lives, the clearer it becomes that JFK's second biggest mistake was the Bay of Pigs."

he remembered being somewhat aghast at the moment. At that point, Paul said Prof. Victor Brudney interrupted angrily, saying, "Theory! What do we need a theory for; we've got facts."

Paul said he remains grateful to Brudney to this very day. Nevertheless, Paul was pleased to point out that a theoretical foundation is developing in the areas of oppression in the law, homophobia, sexual privacy, feminism, racism, and sexual orientation.

At the conference's end, I found myself remembering the "Acculturation Through Education" course that I had been forced to take a decade earlier. That course, like this conference, had not provided clear-cut rules for dealing with its topic — dealing with children who belonged to groups different from my own.

Many times, the discussions 10 years ago had seemed directionless and ephemeral. And yet, for the first time in my life, I had been made aware and sensitized about my own preconceived notions and ignorance about other cultures.

At one point in the conference, Carrie Costello, 2L, pointed to the panel and professors and students in the audience, and suggested that those in attendance were "already converted."

How, she asked, is this message to be communicated to law faculties at-large?

I confess that I was optimistic as I remembered my own reactions of a decade ago. After all, I had never volunteered to learn about other groups, cultures, or lifestyles.

No, I am not optimistic at all. I hope I am wrong.

Christopher Bacon, 2L, taught at the secondary and college level for 10 years in Texas.

Got an interesting third-year paper topic? Or just an axe to grind? Professors, students, alumni - publish your perspective on any law-related issue in the RECORD's *Off The Record* section.

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SFF Offers More Grants Despite Decreased Giving

Lower Caps Set For Cost Of Living

By Dawn Ross
Features Editor

Despite a lower pledge total than last year, the Student Funded Fellowships (SFF) program was able to fund 48 awards for the upcoming summer to HLS students working in areas of public interest law. According to Amey Winterer, 3L, SFF Steering Committee member, even though the dollar amount was not as high as last year, four more awards were given this year than last.

This was possible, stated Winterer, by "lowering the caps per city so we could fund more people." Winterer explained that the amount of individual awards are geared to the cost of living in the particular city where the public service work is to be performed. By trimming each city's cap by \$30, funds were made available for additional awards.

An "increasing interest in government work, particularly prosecution," has led SFF to seek additional ways to raise funds for summers in public interest, according to Winterer. This year, telephone solicitors made most of their calls to students over weekends, and were able to reach many more, without

having to leave numerous messages with roommates or on answering machines. Winterer believes that reaching students with "less hassle" tends to make them more sincere in the pledging.

The phone-a-thon was conducted over two weekends, and SFF members followed up positive responses by stuffing the pledger's box with a thank-you within the next day or two. Jennifer Durringer, 3L, commented that "the bulk of the pledges comes from first- and second-year students," although she noted that many 1L pledges are contingent, because many had not accepted summer employment during the phone-a-thon.

While SFF accepts any pledge offered, students are encouraged to "spend one day working in the public interest" by pledging one day's salary from their summer employment. SFF has expanded this program by asking firms to participate by matching the donations of their summer associates. Winterer was quick to point out that pledging students are not identified to the firm until the firm has expressed its willingness to participate in the matching program.

The students who have been approved for SFF funding for the upcoming summer will work in a broad range of public service fields. Some of the placements are in the U.S. Attorney's Office, the Organized Crime Strike Force, the NAACP Legal Defense Fund, the Environmental Defense Fund, and for the first time, several human rights organizations, such as the Cambodia Documentation Center and the Indochina Resource Action Center. Other students will work in various legal services and impact litigation programs.

Interested students submit applications to SFF. Applicants are interviewed, and the Steering Committee makes its decisions based both upon the need of the organization, and the interest of the student.

In addition to fully funding some students, one of the goals of SFF is to try to bring up to a minimum level those students who are receiving some funding from other sources, such as work study or Andres grants. The Andres grants are a new program at HLS, brought about by Dean James Vorenberg's '51 efforts in securing a

\$300,000 donation for summer public interest funding from Kenneth Montgomery '28, in honor of F. William Andres '32.

Winterer noted that "the Andres fund has done its job and encouraged more people to do public interest work," creating a bigger need for SFF's efforts. In order to be able to make the most of available resources, SFF has joined a new non-profit organization, the National Association for Public Interest Law (NAPIL). NAPIL is designed to serve as a clearinghouse for information and fundraising strategies for groups like SFF at law schools throughout the country. Additionally, NAPIL raises funds on its own which it then spreads out to groups like SFF.

Durringer emphasized how important it is for students to honor their pledges to SFF. Students who have pledged will receive a letter in early June requesting that their checks be sent to SFF by early July. "We don't operate on a lag time," she stated. "We take out a loan from the school each spring that has to be paid back in October." By borrowing from HLS, students can leave for their summer jobs with funding in their pockets.

Blast From The Past: '79

Dorm Council Party Leads To BMI Copyright Suit

The following article was taken from the April 20, 1979 Harvard Law RECORD.

The sounds of silence will have to hover over Harvard's halls a bit longer while lawyers hammer out a settlement in what may be the first copyright controversy in the country over phonography music played at school dances.

Broadcast Music, Inc. (BMI), which owns the public performance rights to compositions by such stars as Mick Jagger and Leon Russell, filed suit against Harvard March 8 after the Law School Dorm Council played "Brown Sugar" and "The Masquerade" along with assorted disco hits at dances held during February.

The alleged infringements were "purely unintentional," says Dave Quinto, Dorm Council vice-president, adding, "It was no deliberate rip-off on our part."

Until 1978, schools and other non-profit institutions were permitted to play records in public without purchasing copyright performance licenses. But the new copyright statute has dropped the "non-profit" exception, thus opening official student organizations to the charge of appropriating musicians' artistic property by playing records at dances.

Under the old law, composers "were forced to give a gift to colleges," said BMI counsel Marvin Berenson Tuesday. "Musicians were paid, lighting crews were paid, security was paid, everyone except the writers of the music," he explained. BMI vice-president for licensing Alan Smith explained the rationale behind the new law: "When the University of Arizona brings Pablo Cruise for a concert and ticket prices are ten dollars, and tickets are for sale to everyone, it's hard to distinguish between academics and a commercial venture."

Harvard Law School is the focus of the first suit of its kind, to Berenson's knowledge, against an educational institution. "We have the feeling we're a test case," Quinto said.

All BMI wants from schools is an annual license fee similar to that it and other organizations, such as ASCAP, were able to exact from nightclubs and the like under the old copyright law. Smith said 1,800 to 2,000 campuses currently have the license that Harvard

has resisted.

Berenson said the BMI license fees for schools, a minimum of \$60, is set at 5-1/2 cents per year per full-time student. Additional fees are charged for student radio stations having more than \$10,000 annually in commercial advertising, such as Harvard WHRB, and for large concerts where the entertainment cost is over \$1,000. BMI does not exact fees from performers, it being easier to police the place of performance.

Apparently BMI agents attended dances at Harvard Feb. 9 and Feb. 23, and heard 12 songs for which BMI holds the public performance rights: "Long Train Runnin'" and "China Grove" by Tom Johnston; "Black Magic Woman" by Peter Green; "This Masquerade" by Leon Russell; "Macho Man" by Jacques Morali, Henri Belolo, and Peter Whitehead; "Walk This Way" by Steve Tyler and Joe Perry; "Brown Sugar" and "Satisfaction" by Mick Jagger and Keith Richards; "Disco Inferno" by Leroy Green and Ron Kersey; and "Stayin' Alive" and "More Than a Woman" by Barry, Maurice and Robin Gibb.

Because Harvard "threatens to continue" the alleged infringements, BMI seeks an injunction as well as damages of at least the \$250 statutory minimum for each of the 12 songs, plus attorney fees.

Harvard attorney Jim Sharaf would comment only that discussions between Harvard and BMI are presently underway. James Marcellino, the Boston attorney representing BMI in the action, said he's "hopeful we'll be able to settle." While he would not comment on the proposed terms of the settlement, he said, "The objective is to establish a licensing agreement."

In the meantime, Quinto said, no more Dorm Council parties are planned this school year. The Council has had one dance since the suit was filed, and on advice of counsel did not charge admission.

That fact might protect an organization from liability for infringement if there are no paid performers, under section 110 of the new statute. That section also exempts musical performances used in connection with teaching religious services, agricultural fairs, the blind, and retail record promotion.

As for BMI, Smith said, other suits against schools "are in the pipeline."

Fund Drive Will Help Library

(continued from front page)
Committee for how the money raised will be spent.

"We have over the course of two years of planning identified what we regard as major needs for the law school," Kaufman said, "needs that would require several hundred million dollars, and that is beyond what we think it is in our ability to raise."

Among those areas that would receive top priority for funding from a capital drive are major improvements and enlargements for the library, construction of student housing, additional faculty, increased financial aid, greater support for research and clinical programs, renovations of the Harkness Commons, and developing a common campus location for student organizations, Kaufman said.

Vorenberg and Kaufman both identified the library as the prime beneficiary of the fund drive, with money going

into preservation of collections, modernization, user needs, and additional space.

Another major change suggested by the report and approved by the faculty was an increase of ten tenured positions on the law school faculty, over the next five to ten years.

If the fund drive is approved and is successful, Vorenberg said "one strong possibility" would be that the money raised could be used to reduce the rate of student tuition increases.

He added, however, that such a result "depends on future management decisions" about what percentage of law school income should come from tuition.

Vorenberg also said that while he will help to plan the drive, Dean-Designate Robert Clark '72 "will be taking the major responsibility for planning it and carrying it out."

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Around the Law Schools

NYU Students Conduct Sit-In

From the March 30, 1989 issue of *The Commentator*, New York University School of Law.

"We have chosen the means we have chosen" because "we are proud of NYU ... and we realize that we are not where we can be," second-year student Londell McMillan told the faculty. McMillan was one of a group of students from the Student Coalition for Change (SCC) who addressed the faculty during its meeting of March 10, 1989. When McMillan and the other members of the SCC finished their 45-minute presentation they were greeted with widespread faculty applause.

Two weeks earlier, the SCC staged a sit-in on the spiral staircase in the lobby of Vanderbilt Hall to demand implementation of an 11-point plan designed to increase diversity and tolerance at the law school. As part of the negotiations that developed out of the sit-in, Dean Sexton agreed to work with the SCC in drafting proposals to the faculty committees that would implement the 11-point plan. Sexton said that while he did not specifically endorse any of the proposals he did "urge" the faculty to give them "serious attention." He said that the next few weeks could be a watershed for the NYU community.

McMillan, the first speaker, told the faculty of the impact of the bias incidents, such as the burning of the Jesse Jackson poster last fall, on students of color at the law school. The situation has reached a "state of emergency," McMillan said. These incidents, he said, generate "not only criminal ... but painful images to people of color." Students of color "are being squeezed ... we are reaching our resistance point," he said.

McMillan also said that he was "startled," that many students were not aware of the incidents. He said that in this regard he hoped that the sit-in was an "educational" process and had "absolute confidence in the student body" to build a more tolerant and diverse law school.

Another concern of the organizers was the apparent failure of the administration to move on the issue of recruiting more students of color at NYU. Carol Robles, a third year member of the SCC, told faculty that in her three years at NYU there had been "lots of meetings and few changes" in the number of students of color enrolled by NYU. She said that the problem was that students of color were doing the work that should be in the domain of the admissions office. Specifically, she cited the fact that no members of the admissions office were present during Law Day — an annual recruitment event for students of color held at NYU. In response, Dean Sexton volunteered to personally speak to any student of color who is accepted by NYU.

UC-Davis Students Boycott Classes

From the April 12, 1989 issue of *The Advocate*, School of Law, University of California, Davis.

On Thursday, April 6, over 150 law students boycotted classes and basked on the sunbathed grassy knolls outside of King Hall listening to various speakers and musicians at a rally and teach-in to protest various forms of discrimination.

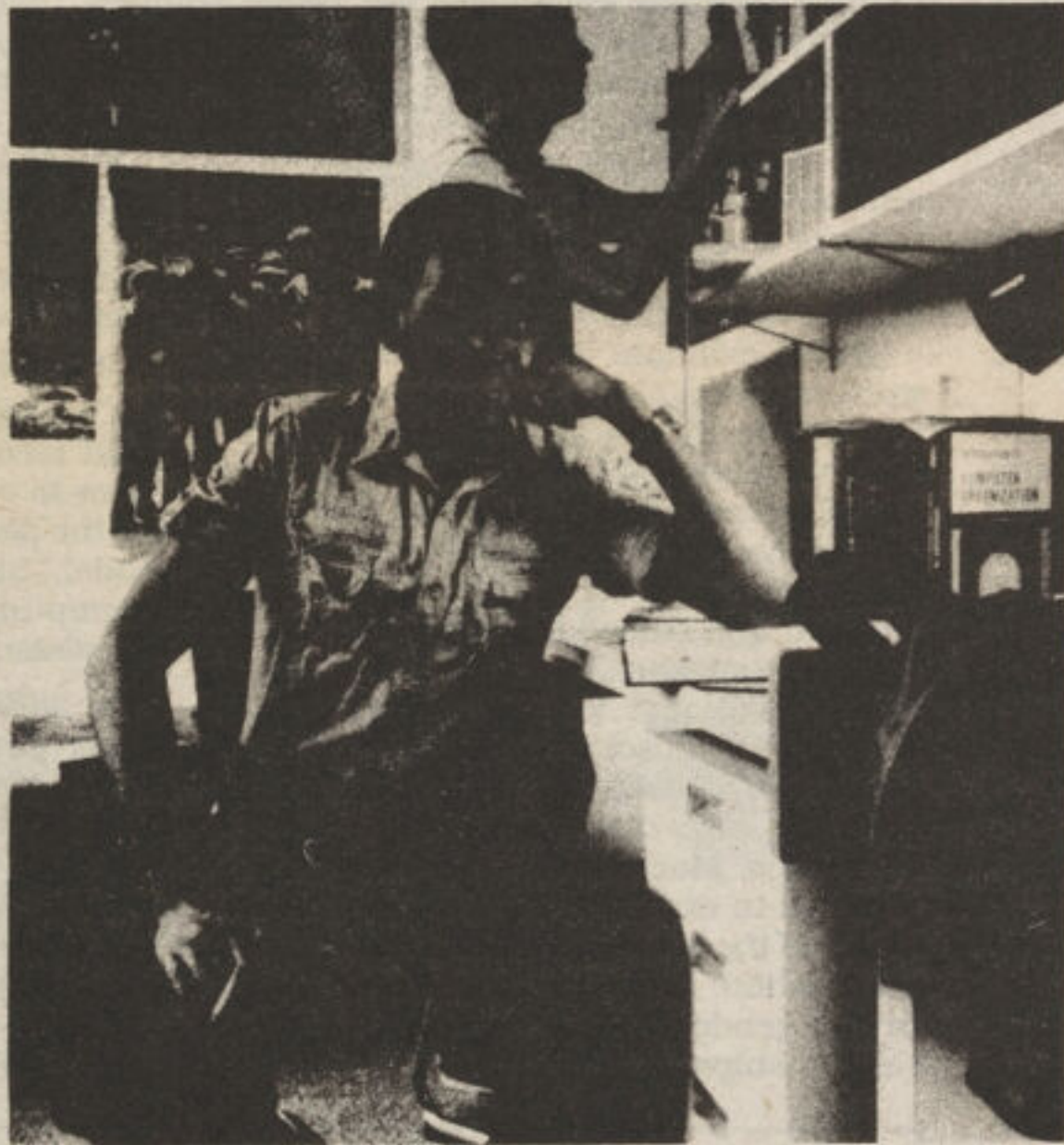
The day's activities actually began at 8:45 a.m. when members of The Coalition to Diversify King Hall set up informational pickets at all of King Hall's entrances encouraging students to boycott classes and attend the rally and teach-in.

The rally began at 11:00 a.m. with some introductory remarks by the Coalition's Nolan Del Campo, who acted as somewhat of the rally's conductor as he introduced the various speakers and efficiently kept the program in order, while still finding time for poignant comments.

Following a couple of political songs attacking those who pretend racism is no longer a problem, Vera Marcus addressed the crowd drawing upon her childhood experiences in Alabama. She expressed her lifelong conviction to confront the oppression particularly launched upon women of color, while appreciating that part of the

(continued on page 14)

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Feminist Legal Theory Pushes Basic Changes

By Teri Silvers
Staff Writer

Defending feminism as both "a philosophy and a practice that seeks to overcome the silencing of women's experiences," Buffalo Law Prof. Lucinda Finley said in a March 16 forum that feminist legal practice exists to eradicate gender bias in law, overcome social bias and recognize rights.

Finley, who was joined by Northeastern Law Prof. Denise Carty-Bennia, said that feminist legal theory has evolved from an assimilationist critique of the existing legal structure to a more active effort to eliminate gender bias in law and society, using gender "as a theoretical lens for analysis."

Carty-Bennia, a self-described "activist who happens to be a law professor," said she sees the experiences of women of color as "extraordinarily important as a model and as a historical trend that feminism has to look at," and criticized feminism's underemphasis of

racial and class-oriented differences.

She said she was concerned about the assimilationist tendencies of the movement.

"We are talking about 'reformation,' and that is dangerous at best," she said. "We ought not to be talking about assimilation, but [instead] institutional building on our terms," including the creation of "feminist law schools."

Citing figures that female representation in the legal profession is expected to rise from its current level of 18 percent to 50 percent by the year 2020, both women agreed that in terms of prestige, remuneration and power, women have been disproportionately positioned.

However, both professors agreed that changes in the legal profession must be made from within the existing system, requiring that many women be activists in their law firms, as Carty-Bennia was for two years.

For both, this commitment does not necessarily mean entering the legal

profession to do public interest work, thereby settling for low pay, long hours and understaffed offices, simply in order to feed an idealism that is not met in the firm atmosphere.

To them, the fact that women disproportionately enter the public interest field is further evidence of female marginalization and subordination in the legal world.

She cited as examples the First Amendment theory allowing speech of the powerful to crowd out the speech of the dominated, and the inability of the discrimination model adequately to handle sexual harassment, which perpetuates female subordination within power relationships.

Other theorists use a similar analysis to expose the tort doctrines of injury,

"Exclusion wasn't the problem. The problem was the male model itself."

Finley traced feminist legal theory to the mid-1970s, when sexual equality cases first appeared before the Supreme Court. At that time, the issues were defined as the exclusion of women from activities men could do, and, in custody cases, the reverse. The strategy then was for women to get into the existing male world; that is, to assimilate by having the "male rules" applied to women, Finley said.

This assimilationist approach was confronted with the realization that, according to Finley, "the real problem is not exclusion," but the inherent limitations of the male world.

Finley cited pregnancy in the workplace as an example of an area in which it was impossible to argue that women should be treated like men.

"Exclusion wasn't the problem. The problem was the male model itself," she said, adding that while the assimilationist assumes sameness is best, equality often means having differences recognized and respected.

The feminist legal theorist, Finley argued, explores the notion of rights, autonomy, and choice under the law in order to illustrate that the rules are not neutral but are shaped by the "white, middle class men" who made them.

As an example, she pointed to the work of Carol Gilligan, who suggests that the vision of autonomous individuals with hierarchical rights is a male model for resolving conflict, but that an alternative model is a care-based ethic embracing a view of people as interdependent and embedded in relations.

Such a critique, Finley said, exposes the individualist idea of "choice" as biased and illusory — useful only to those who already have power.

Finley also discussed the work of Catharine MacKinnon, who has attempted to expose the purported neutrality of the law as a mask of power and domination, and has suggested a theory of gender based on these power relationships.

harm and damages, which use the reasonable person model, as "gendered" doctrines, Finley said. The concept of injury is dependent upon income, but in the current tort system, the income lost when a woman has a baby is not worth compensating, she said.

Criminal law has responded to an awareness of the reasonable person standard as "gendered" by recognizing gender differences in relation to battered women cases.

Noting that in the past women were denied the opportunity to give evidence or testify, Finley asked if, "given the fact that law only listens if you use its language [and that] its language has been shaped by men, we [can] use it to change its role toward women when it doesn't include what women's experiences say are the problem."

Because Finley sees the nature of legal reasoning as gendered, she argued that the goal of feminist legal theory should be reconstructive: to make the legal system more useful and representative of the disempowered groups.

For example, arguing that pregnancy is a disability is not a way to reconstruct the legal system; arguing that the workplace involves an artificial split between work and family is reconstructive, Finley said.

Carty-Bennia claimed that feminism must recognize class and racial differences in order to avoid simply replicating the perceived mistakes of the "male model." She criticized the movement for attempting to "tell women's story" as if all women spoke the same language.

In addition, by talking about male power and domination, feminist legal theory cuts across men of color, when in fact minority men are equally disempowered, Carty-Bennia said.

"The process of being at law school and a lawyer is a homogenizing experience," she added. "We can't speak in the voices of all the people we purport to represent."

Around the Law Schools

(continued from page 13)

King Hall community that treated her as a person. After a few more songs, Fermin Calderon likewise spoke from his wealth of experiences and expressed the fact that we must not back away simply because a couple of minorities have been hired.

Millard Murphy from the Prison Law Office chronicled the need to view diversity as a movement that would eventually result in having half the faculty be women as well as people of color, gays and lesbians, persons with disabilities as well as other nonrepresented members of society.

Assemblymember Elihu Harris, a King Hall grad and former chair of the Judiciary Committee told the crowd of some of his experiences while at King Hall and how the more things change the more things stay the same. He thought attorneys could function as leaders on the critical issues facing society and he applauded our efforts to secure a diversified faculty and our demand to renounce all forms of racism, sexism, homophobia, and classism.

Cleveland-Marshall Honors Code Problems

From the March, 1989 issue of *The Gavel*, Cleveland-Marshall College of Law, Cleveland State University.

On March 1, 1989 the Honor Code Committee of Cleveland-Marshall distributed the proposed procedures to be followed when a violation of the proposed Honor Code Rules occurs. It was a noble gesture, but a futile effort. The procedures are simple enough. The rules are the difficulty.

The preface to the rules states, "the Honor Code establishes clear rules for any students who are unsure of what conduct is proper and what is outside the bounds of propriety for the law school community." This statement itself should be a violation of the rules.

The rules do not paint a clear picture for those in the community. In fact, the third sentence of the Rules contradicts the preface by stating, "the specific examples are not intended to be exhaustive statements of the limits of the rule; they are meant to be descriptive of the purpose and intent of the rule." The law student is left to determine the clear purpose and intent.

One of the simple examples given as a violation is: "Copying or retaining any examination questions except as expressly authorized by the instructor." Does this mean when an instructor allows students to keep an exam it must be put into a secret file and never shown to another student, or can it be assumed that the student is authorized by the professor to do with the exam as he wishes? This seems like a clear rule of the proper conduct for anyone who is still unsure.

Another of the rules states, "an authorization by an instructor for students to discuss an assignment with others, shall not be itself be deemed to be authorization to prepare the written work jointly." Does this mean students can talk but cannot remember any of the words they used? What a wonderful way to enhance the free flow of ideas.

SUNY Suspends Anti-Discrimination Policy

From the March 1, 1989 issue of *The Opinion*, State University of New York at Buffalo School of Law.

Last week, State University of New York at Buffalo Provost William Greiner announced that the University was suspending the Law School's recent prohibition of on-campus discrimination against homosexuals, the handicapped or people over 35 years of age. In a telephonic interview on Thursday, February 23rd, Provost Greiner said that the suspension of the Law School's policy was done so that the University could "do some clarification of the jurisdictional issue." Namely, whether the Law School or the University, if any body, has the authority to determine which organizations may recruit on campus and what school anti-discrimination policy ought to be.

Greiner emphasized that while "all of us (in the University Administration) are advisory to the President," Greiner himself would be announcing the University's position "within a week or ten days." The Provost also said that "I guarantee it (the jurisdictional issue dealing with Law School anti-discrimination policy) will be given very careful attention."

Because the University is presently reviewing state statutes and relevant case law, Greiner was hopeful that the "SUNY Office of Legal Counsel" in Albany would not have to be consulted. "Our preference is to resolve it on campus," said Greiner.

However, on Tuesday, February 21st, in a meeting with about twenty law students, Dean Filvaroff said that a recent *New York Post* editorial, criticizing the School anti-discrimination policy on recruitment, caught the eyes of certain Albany authorities. Those authorities, according to Dean Filvaroff, contacted President Sample and Provost Greiner to express their consternation.

Despite the University's decision to view the Law School's policy, Provost Greiner said that "with respect to the behavior of the institution (the entire University) ... It is clear that our affirmative action standards include sexual orientation." So too, as regards all hiring and student admissions, "we're clear on not discriminating," said Greiner.

Solution (puzzle, page 3)

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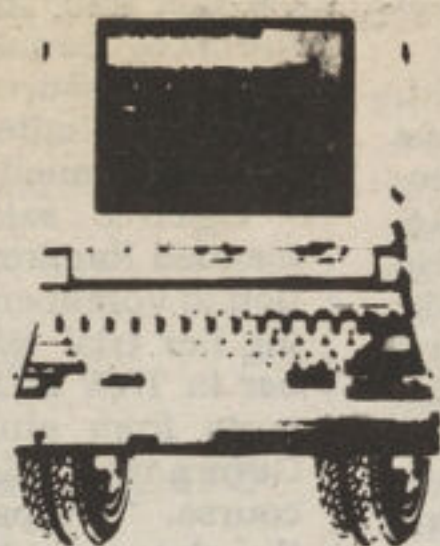
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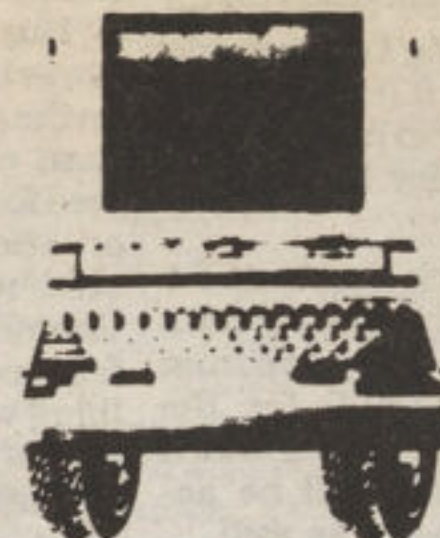
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Tribe Conference Downplays Croson Impact

By Sally Johnson
Staff Writer

Eighteen prominent law school deans and academicians met last month in Boston at the invitation of Prof. Laurence Tribe '66 to help stem a "panic" about the breadth of a recent Supreme Court decision striking down an affirmative action program in Richmond, Virginia.

Among those in attendance were Yale Kamisar of the University of Michigan Law School, Stanford Law School Dean and Prof. Paul Brest '65, and HLS Profs. Christopher F. Edley '78 and Frank Michelman '60.

In a March 30 meeting at Boston's historic African Meeting House, the group discussed the future of affirmative action programs in light of *City of Richmond v. Croson*, decided in January, in which the Court struck down a city ordinance setting aside 30 percent of public construction work for minority subcontractors.

Providing the real impetus for the impromptu conference was the "mistaken notion" held by some that *Croson* should be treated as a signal to dismantle all race-conscious remedies for minority exclusion, according

to Gene Sperling, a Yale Law School graduate who has engaged in affirmative action litigation. Sperling assisted Tribe in organizing the event, along with Rev. Charles Stith, head of the Organization for a New Equality, a non-profit organization advocating equal economic opportunity.

During the three months since the high court ruled, several set-aside programs have been challenged directly on the basis of the *Croson* opinion. Sperling also cited a "panic" expressed by many city officials over the constitutional status of their programs.

Tribe said he deliberately invited scholars and deans he knew supported the *Croson* decision to "avoid the same set of opinions" from being expressed.

Despite that fact, it was "not terribly difficult," Sperling said, for the group to reach a consensus on some general principles, a "reasonable interpretation" of the opinion, and guidelines for the development of future standards.

In a joint statement issued March 30, 28 scholars (participants and signatories not in attendance) agreed that *Croson*

did not amount to a blanket proscription of race-conscious remedies.

"A call for fairness and flexibility in affirmative action pro-

grams should never be equated with a call for retrenchment and retreat," according to the statement.

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The statement also indicated that while the group felt it would be "irresponsible" for cities to avoid fine-tuning their programs to fit the decision, "it would be equally irresponsible for others to claim that this opinion casts doubt on the overall constitutionality of properly constructed race-conscious remedies."

In addition, the group found nothing in *Croson* to alter the Court's prior recognition of the "permissibility of basing flexible race-conscious remedial goals upon relevant statistical comparisons."

Although the Supreme Court

has rejected societal discrimination by itself as an adequate justification for most race-conscious programs, it has never required local govern-

ments to assume the "tortuous and divisive burden of documenting specific incidents of purposeful past discrimination on identified occasions," the statement said.

The scholars pointed out that one serious consequence of pervasive discrimination is "to deter and discourage members of minority groups from even seeking to apply for, or enter the market for, occupations, business opportunities or homes in certain neighborhoods."

It is therefore "critical," according to the group, that courts consider this consequence as they try to determine the existence and extent of discrimination by making statistical comparisons to relevant labor

pools. Otherwise, "courts might well create a Catch 22 for cities seeking to implement sound affirmative action policies for sub-contracting," the state-

ment said.

The statement, which will be published in the *Yale Law Journal* in June, has important practical value, Tribe said.

The conference statement has "already served to stem the tide" of program dismantlement, Tribe said, adding that it is "likely to trigger more careful reassessment of programs and dialogue." He also said the statement can be used to defend claims of a lack of objective good faith on the part of city officials in lawsuits brought to challenge the constitutionality of remedial programs.

Tribe added that he was "very pleasantly surprised" by the strong interest in attending "what might be a politically controversial" meeting.

Tuition Raised To \$13,400

Dean James Vorenberg '51 has announced a 10.6 percent increase in the law school's budget and a corresponding \$1,100 increase in student tuition, the largest dollar increase in HLS history.

The dean cited faculty and staff salaries, the Low Income Protection Plan (LIPP), and expansion of clinical programs as major reasons for the budget increase.

Tuition, which accounts for 62 percent of the law school's annual income, will jump from \$12,300 to \$13,400 for the 1989-90 year. Vorenberg added that financial aid will be accordingly increased as well.

In addition to tuition, the administration plans to increase dormitory rental by 7.5 percent, as well as raise placement fees for on-campus law firm interviews, and charge \$50 admissions application fees.

According to Assoc. Dean Paul Upson, LIPP continues to

be the fastest growing item in the law school budget. The program, which provides financial support for students entering low-paying jobs after graduation, is largely responsible for the 17.7 percent increase in financial aid, Upson said.

During the current year, the law school will spend \$500,000 on the program, \$200,000 more than expected. LIPP is budgeted for \$625,000 next year. In an open letter to faculty and students about the budget, Vorenberg said the program's fast monetary growth "leaves [him] with the sense that [HLS is] putting the School's financial aid funds where they ought to be — with students who will not be getting high salaries in their early years as lawyers." Vorenberg said he receives student and faculty input on the budget early in the administrative process, and that student concerns this past year centered on rising tuition and the viability of LIPP.

Ramirez Pushes Hispanic Hiring

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commitment to hiring Hispanics."

Ramirez said, "I am a practitioner and not a scholar, but they told me they wanted someone with more teaching experience," she said. According to Salazar, Katzmann has no teaching experience.

According to Littlefield, however, Katzmann does have teaching experience in connection with his work at the HLS Center for Criminal Justice. He also said that Katzmann's forthcoming book, *Understanding the Criminal Process*, is "the only textbook of its kind on government lawyering."

Katzmann said he was unable to comment on the issue until he had more information.

Littlefield said that he recommended Ramirez for a position on the teaching faculty before he knew he was leaving, "but I would have recommended her and [Katzmann] for the Government Lawyer course. I think the school is

lucky to have them both," he added, noting that they both have "hands-on experience, teaching experience, and the highest standards."

Littlefield taught at HLS from 1976 through last fall when he accepted the position of Staff Director and Chief Counsel of the U.S. Senate Labor and Human Resources Committee, which is chaired by Senator Edward Kennedy (D-Mass.).

Ogletree said he recommended Ramirez for the position to Vorenberg after reviewing her trial work, observing her in TAW and receiving reports from students in her Government Lawyer clinical course. "Her participation in the classroom had been very effective," Ogletree noted.

"Students love her," Salazar added.

Ogletree said that Stearns had recommended Ramirez to him, noting her trial skills.

Ogletree added that Katzmann is "very highly regarded and a creative legal thinker." Littlefield echoed that Katzmann is "an outstanding trial lawyer and an expert on legal matters."

Vorenberg said that Ramirez's litigation experience

will be "enormously important" for her position as a Federal Litigation instructor, but refused to comment further on the issue.

Ramirez said that she feels it is critically important for HLS to hire Hispanics because "the school cannot effectively address Hispanic concerns without Hispanics on the faculty." Such issues include immigration, civil rights, housing law, AIDS, criminal law, and international law, she said.

Ramirez also pointed out that Mexico and the United States share a "porous border" and that "the destiny of Mexico is tied to the destiny of the United States."

"The school is neglecting to participate in an important debate," she added.

"We're not saying we're brown and we want a brown person on the faculty," Ramirez said, stating that the real issue is the "exclusion of issues by [an] educational institution which itself proclaims diversity."

"For the school to say there is no Hispanic qualified in the country to teach at Harvard Law School is insulting," Ramirez stated.

LSC Polls Student Opinion

(continued from front page)
cating a more open, less adversarial procedure regarding discipline and response to student grievances, and continuing practical objectives including safer dorms, a better-lit campus, an evening shuttle for off-campus students, and a new preregistration system.

Melendez defended the LSC election procedure from complaints in a RECORD editorial that it favored incumbents by not providing adequate notice to potential nominees.

"Notice was not the problem," Melendez said. "The request for nominees was in the Adviser since March. People didn't run because they didn't know about it."

"If I were not running, there were probably four or five students on the Council who would have run for president, but my incumbency scared them off. Todd Berman decided to buck that challenge," he said.

Berman declined to com-

ment on the RECORD editorial or the LSC election process except to say that "an election procedure that favors incumbents may discourage other prospective candidates from running."

Berman added that, "Brian had a strong base of support among the second-year students, apparently. I'm sure he will fulfill every obligation required of the president... There is no question that he really wanted to be president."

Melendez remarked that his style differed from his opponent's, which he described as "more social-oriented."

In addition to the presidential election, the LSC polled the student body on several other issues including a proposed "nondiscrimination policy" for the council.

The policy was supported by a vote of 207 to 131. The proposal would allow the LSC to affirmatively place members of interested student groups on

the boards of any departments established in the LSC.

A similar proposal, called the "Fairness Amendment" and sponsored by the conservative-libertarian Federalist Society, was defeated amidst controversy last semester.

Another poll found that 243 out of 365 students voting desired that the student body, directly or through elected representatives, set the level of funding to be shifted from tuition to student organizations.

The Student Funding Board met for the first time this year to advise the Dean of Students about allocating finances for student organizations, but the level of funding is currently set by the administration.

Other polling questions, concerning official scheduling of flyouts and new courses in environmental law and other fields, will not be tabulated for several weeks, according to Melendez.

Fried Choice Questioned

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— has not been formally nominated.

James McClellan, head of the Center for Judicial Studies, a conservative think tank, called the Fried decision "disappointing." He and others accused Professor Fried of "dragging his feet" on the abortion issue and he called the "Herculean task" of convincing the former solicitor general to file the amicus brief calling for reversal of *Roe v. Wade*.

"If this administration is really committed to reversal of *Roe*, it should have chosen someone who is committed to that objective and who doesn't just have problems with the ruling," said Mr. McClellan.

Patrick McGuigan of the con-

servative Free Congress Foundation, who once called for Professor Fried's resignation, said the former solicitor general is "one of the finest lawyers in the country." Although Professor Fried may not have initially been in the "right place" on the issue, he added, "Once the assignment goes out, I have no doubt he will be excellent."

Prof. Frank Michelman '60 has written one of the more significant amicus briefs on behalf of a group of law professors urging the court to affirm the *Roe* holdings.

Portions of this article were excerpted from The National Law Journal of April 17, 1989. Prof. Fried declined comment on the issue.