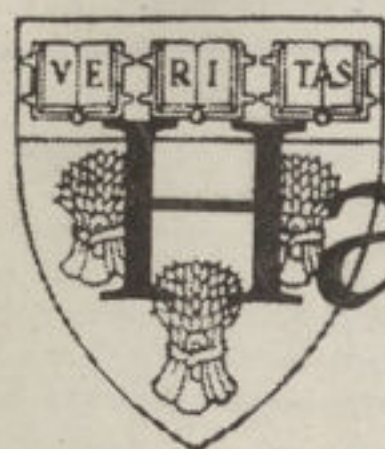




Harvard Law Record

Volume 91, No. 5

America's Oldest Law School Newspaper

October 26, 1990

CCR Invites Clark To Mock Trial On Faculty Diversity

By Pat Gulbis
Special To The RECORD

Dean Robert C. Clark, '72 declined an invitation from the Coalition for Civil Rights (CCR) to defend the law school's hiring record on diversity during a mock trial scheduled for Nov. 19 in Ames courtroom. Clark described the trial format as "too adversarial" to be productive.

The organization scheduled the trial which could open the school's hiring criteria to public scrutiny after concluding Clark has not made enough progress on the diversity issue since two student sit-ins last year and the indefinite leave-of-absence taken by Prof. Derrick Bell.

Students say the trial will as much as possible duplicate courtroom procedure, with advocates playing the role of lawyers on both sides and a presiding judge who will command the respect of the law school community.

The proposed trial will be along the lines of a real trial, according to Laura Hankins, 2L. "There will be witnesses, cross-examination, openings, closings, and an impartial arbiter," she said.

The legal question, CCR organizers say, is whether the law school "has met its stated goal of providing a broad-based, diverse education environment for its students." The claim of the plaintiffs will be based on two civil rights statutes: Title VII of the 1964 Civil Rights Act and Chapter 151B of the Massachusetts Civil Rights Act.

Clark explained his decision not to participate in the forum commenting "mock trials by their nature are backward looking, and I'm more interested in the future. People tend to dig themselves in. The incentive in a mock trial format is to minimize the other side's points and to exaggerate your own. We don't need that at this time."

Clark said that he was working an alternative to discussing the school's hiring record. "One possibility is a faculty-student working group preparing a paper on the hiring goals and our aspirations for diversity" said Clark.

If held, the trial even without Clark's participation will allow the two sides to present views of hiring that are very much in opposition. Clark has

(see CLARK on page 8)

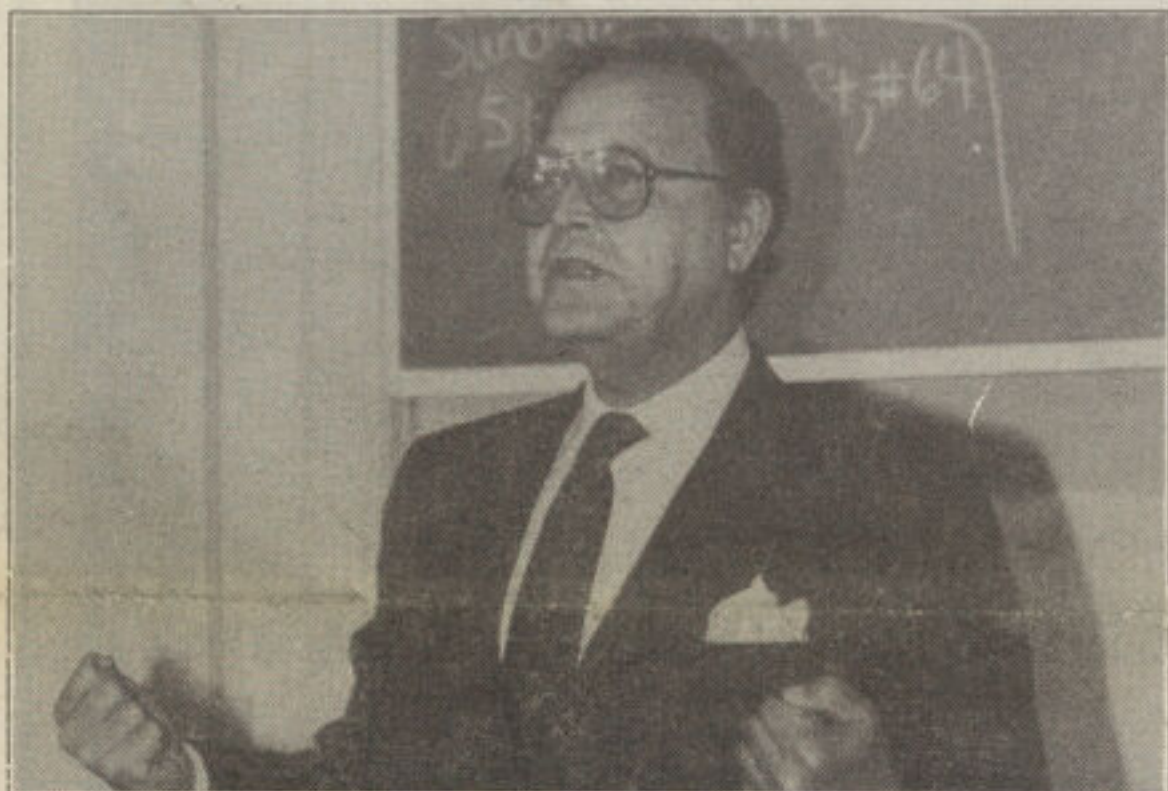


photo by The Harvard Crimson

Iraqi Ambassador to the United States, Mohamed Sadiq-al Mashat.

Campaign For Pro Bono Requirement Spreads To Over 100 Law Schools

By RECORD Staff

WASHINGTON, D.C. - Backed by the prestigious student division of the American Bar Association, law students from Harvard and more than 100 other law schools launched a national campaign this week to implement a pro bono requirement in every law school in the nation by the year 2000.

Students from HLS and several law schools--including the University of Hawaii, Georgetown, Michigan, American, and Whittier--held a press conference Monday in the nation's capital to announce the formation of a new group called "Law Students For Pro Bono." The students said they were motivated by a desire to get practical training so they can fulfill their pro bono obligation when they graduate, and by concern over a recent ABA study that indicated nine out of 10 legal needs of the poor go unmet.

"This is curricula reform at its best," said Matt Nicely, a delegate to the Law Student Division of the ABA and Student Bar Association president from American University in Washington, D.C.

"This is a great way to get training so we can fulfill our pro bono obligation when we graduate," said Sandra Hauser,

a third-year student from Harvard.

The campaign comes two months after the student division of the American Bar Association passed a resolution in favor of a pro bono requirement in law schools, a move that was mentioned prominently by the students. The ABA student division is made up of student government leaders from each law school in the nation.

The goal of the law student campaign is to incorporate a pro bono requirement into the traditional curriculum at each of the nation's 175 accredited law schools. Last year at HLS, a referendum on a pro bono requirement for academic credit passed with 54 percent of the vote.

Students already have signed up students at 101 different law schools to begin their own pro bono campaigns.

"We are ecstatic so many students have come together around this issue," said Georgetown student Juliette Williams, the national president of the Black Law Students Association. "It is definitely high on the agenda of our organization."

"It is a fact that 33 percent of African-Americans in the United States live in poverty," said Williams. "I am taking part in this organizing campaign because it is imperative that

Iraqi Ambassador Calls Kuwait Invasion: 'Self Defense'

By Dan Greaney

Iraq's invasion of Kuwait was an act of self-defense against a conspiracy to destroy Iraq's economy, Mohamed Sadiq-al Mashat, the Iraqi ambassador to the United States, told an overflow crowd gathered in Austin Hall, Wed. Oct. 10.

Kuwait's refusal to abide by OPEC oil quotas, said Mashat, reflected an intent to cripple Iraq's struggling economy, already heavily burdened by eight years of warfare with Iraq. Mashat also accused Kuwait of extracting oil from underneath Iraqi territory with angled oil wells.

Israel, too, conspired to destroy Iraq, said Mashat, warning Americans not to die for the sake of "Israeli imperialism."

"Why does Israel want to destroy Iraq?" Mashat asked rhetorically. "Because we have been concerned about the Palestinians since 1948. Israel does not want peace, Israel wants a greater Israel."

Mashat also declared that Iraq has no intention to attack Saudi Arabia and that Iraq has never planned such a move. "We know that you have a treaty with Saudi Arabia. We know that Saudi Arabia is strategic for you," he said. "Kuwait is not a strategic area for the U.S. You have no treaty with Kuwait."

Iraq's goal now is peace, said Mashat. "It's in our interest, and in the American interest to arrive at a peaceful solution."

he said.

Mashat appeared at HLS in response to an invitation from the Middle Eastern Law Students Association (MELSA) to participate in a forum entitled "Iraq, International Law and the Modern Middle East."

Originally, MELSA planned to have both the Iraqi and Kuwaiti ambassadors at the forum.

"Ideally, we would have liked to have had the Kuwaitis and the Iraqis together," MELSA member Sima Sarrafan, 3L, noted. "Both state departments agreed. But, the Iraqis changed their minds."

Participating in the forum with Mashat were Zachary Lockman, associate professor of Middle Eastern history and Alfred Rubin, professor of international law at the Fletcher School of Law and Diplomacy. HLS Prof. Detlev Vagts '51 served as moderator of the forum.

Rubin began the discussion with a critique of recent American actions in the Middle East based upon a close reading of the U.N. charter and the resolutions passed by the U.N. Security Council in response to Iraq's invasion of Kuwait. None of the provisions cited by American policy-makers in defense of the U.S. enforcement of U.N. sanctions actually authorized the U.S. to take such steps, said Rubin, quoting article 51 of the U.N. charter and Security Council resolutions 660, 667, and 668.

Rubin also criticized continuing recognition of the ousted

Emir as the legitimate government of Kuwait by the U.S. "The law speaks from the facts," he said. "Attaching legal labels in disregard of the facts is bad policy."

Rubin warned that American disregard for international law will damage both the nation's credibility and the institutions of international law which are essential to the "new international order" sought by President George Bush.

Lockman also criticized Iraq's claim that Kuwait was an artificial creation of the British as accurate but irrelevant. "Kuwait is an artificial creation of British imperialism," said Lockman, "or at least it was. The problem is: so was Iraq. All states have previously been something else. So what?"

Lockman said that the solution to the crisis lay in recognizing the right of the people of Kuwait to self-determination, but not identifying that right with the Saba family, the hereditary rulers of Kuwait expelled by the Iraqi invasion, whom Lockman called "a corrupt, oil-wealth-bloated oligarchy." "To many people in the Arab world, the reaction to the invasion was that the Kuwaitis had it coming to them," said Lockman.

"The double standard of U.S. support for Israel and U.S. opposition to the people of Iraq is not lost on the people of the Arab world," Lockman added.

The law school crowd, boisterous (see IRAQ on page 8)

more programs be created to increase the amount of legal services available to the underrepresented."

A pro bono requirement already has been adopted by Tulane, University of Pennsylvania, Valparaiso, and Florida State. Several other law schools are currently considering such a program, including Hawaii, Harvard, UCLA and Stetson in St. Petersburg, Florida.

"It is outrageous that in this day and age students can go through three years of law school and never be exposed

to the legal needs of one of the tens of millions of Americans who cannot afford a lawyer," said Scott Saika, a student at the University of Hawaii School of Law.

Organizers say that if each of the nation's 129,000 law students performed the ABA-recommended amount of 50 hours of pro bono work per year, they could provide six million hours of legal services. Given that pro bono cases take an estimated ten hours, it is possible that upwards of 600,000 Americans can have some of their legal

needs met if the requirement is adopted by the nation's law schools and adequate placements are found for law students.

Also speaking at the press conference was Ralph Nader '58.

"Today marks the end of the '80s, or the decade of greed myopia that has been reflected in the legal profession," said Nader, who came to speak at the request of the students.

"The legal profession is grossly failing to deliver," said Nader. (see PRO BONO on page 8)

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International Law Fellowship Program Announces First Awards

By Evette Harrison

The Ford Foundation has announced the first ten fellowships for the Ford Fellowship Program in Public International Law. The fellows include two recent HLS graduates and seven second and third years.

The Ford Fellowship Program, sponsored at Harvard and other law schools, was established to train people interested in public international law and to provide funds to study for both the J.D. program and post graduate work. It is designed to fill a void in the ranks of international law teachers. "[The Ford Foundation] recognizes quality when they see it," said HLS Dean Robert Clark '72.

Clark had high praise for the recipients. "The initial group is outstanding. I'm very optimistic that they all have the potential to be major scholars in the field of public international law," stated

The First Ten Recipients Of Ford Fellowships:

Karen Lee Engle '89.
Catherine Ann O'Neill '90.
Michael B. Froman, 3L.
Jean E. Manas, 3L.
Alissa J. Stern, 3L.

Anna Gelpert, 2L.
Jonathan Hay, 2L.
Jeffrey Hoberman, 2L.
Soo Jung Im, 2L.
David Westbrook, 2L.

Clark. Michael Molitor, the Program's director, agreed saying, "The first group of ten fellows represents an outstanding range of interests in public international legal questions, from international development issues in Southeast Asia to political and economic reforms in Eastern Europe."

Abe Chayes '49 chairman of the program's supervisory committee said that the Fellowship signifies a "vote of confidence in the future of international law at HLS. These programs will iden-

tify top law school students with strong international backgrounds, early in their academic careers, and give them the necessary encouragement and financial support to prepare them for teaching and scholarship in public international law."

But Martin Elling, 2L, president of the International Law Society complained the program was not broad enough. "To fully realize its goals, the Ford Foundation should not only fund up and coming scholars in international law

but should make funds available to the law school to internationalize the whole legal program," said Elling.

The Ford Fellowship program was initiated by the Ford Foundation after recognizing the lack of students in public international law. The Foundation extended HLS a planning grant to examine the problem. HLS's solution was the fellowship program. Similar efforts are being made by the Ford Foundation at other law schools, including Columbia, Michigan, New York University and Yale.

"International law can no longer remain at the margins of the law school curriculum," said Chayes. "The conditions of contemporary law practice are generating an increasing demand for lawyers with strong grounding in international law and foreign legal systems. And the headlines in our daily newspapers testify to the renewed significance of international law in our public life."



photo by Amy Kessler

C. Boyden Gray, above, addressing the HLS Forum on Tuesday, October 23 in the Ames Courtroom. Gray spoke on the "Bush Administration's Environmental and Energy Policy." Gray refused to comment, during the question and answer session following his speech, on advice he gave to President Bush on the recent veto of the Civil Rights Act of 1990. Gray, however, did acknowledge to the audience that he personally opposed the legislation.

One Live Crew: HLS Team Sets Record In Head Of The Charles

By Sean Thomas Brady
 Special to the Record

The Harvard Law School men's crew team battled back from a late start in Sunday's Head of the Charles Regatta to set an all time record for a law school team. The crew's time of 17:59 now stands as the best performance ever by a law school crew in the Head, cutting 17 seconds off the previous record set in 1973.

Their time is also nearly a minute faster than the law school's 1989 finish, an improvement termed "extremely impressive" by race officials.

The HLS team may have beaten the clock, but the competition proved to be strong competition. The team finished 40th out of 48 boats in their division.

"Just to be invited to compete in the Head is an honor for any crew," explained team Co-Captain Greg Shapiro, 2L.

The Head of the Charles Regatta,

which celebrated its 25th anniversary this year, is the largest rowing event in the world. Its prestige is second only to that of the annual Henley Regatta rowed on the Thames in England. This year's Head featured nearly 1000 boats from universities and rowing associations throughout the U.S., in addition to entries from countries as far afield as Lithuania and Australia. The race attracted some 200,000 spectators, including thousands of students and alumni of various New England colleges.

This year's Head almost became a disaster for the law school team. Just before the start, their boat got caught in traffic in the Charles River basin and they failed to enter the race in their designated place. They had to wait for over a dozen boats to pass before even crossing the starting line.

"We were worried at the start" admitted coxswain Theo Cheng, a senior at Harvard College. "We lost time and the crew was tense. But a few seconds after crossing the starting line the crew settled down and we really started moving. From there it was smooth sailing."

"Everything came together right after the start," agreed Co-Captain Phil Berg, 3L. "Right then I knew we'd break the record."

Apparently, not all rowers were quite so optimistic. "I had heard that they'd opened the locks on the Charles to let out the excess rainwater from the day before," noted bow seat rower Dave Shaman, 3L. "That always causes a strong downstream current, and so I figured our time would actually be worse than last year. I never dreamed we'd break eighteen [minutes]."

"The current and a minor equipment failure were two strong negatives," added Dov Seidman, 2L. "Combined with the late start they make our time even more than merely 'impressive.' It was phenomenal."

Despite the success, Harvard Law School Crew does not plan to rest on its laurels. "There's always the spring to start training for and this year there's the possibility of going to Henley," explained John Henning, 3L, referring to the crew's hopes to compete in the English regatta next June. According to members of the team, the crew is currently seeking law firms and alumni who would be interested in sponsoring all or part of the trip. "It would be a tremendous opportunity for us and there are undoubtedly a few international firms that would like to be involved in our successful season," explained Matt Sloan, 2L.

"Henley is the premier rowing event," added six-seat rower Sig Berven. "It would be tough, but with the current law school crew, we would have no problems qualifying, and I'm confident we'd do well. Maybe we could set a new law school record at Henley."

Hal Scott Named To Chair Funded By Japanese Securities Corporation

By Sharon Stone

Dean Robert Clark '72 announced the appointment of Prof. Hal Stewart Scott to the recently funded Nomura Chair on Oct. 11. Donated by the Nomura Securities Company, the \$3 million fund was created for a professorship in international financial systems.

The professorship is intended for the advancement of the study of banking regulations and the development of

securities markets and new international financial products.

Yoshihisa Tabuchi, Nomura's president said, "We are making this contribution because we have the highest respect for the educational programs offered by Harvard Law School. The Nomura Professorship will support the finest scholarship and teaching, and will symbolize our commitment to excellence."

Scott said that the impact of the Nomura endowment will go far beyond

financial benefits. "Recognition of the work of the Harvard Law School by a prominent firm gives our work credibility, it will open doors to do research and enhance co-operation. This symbolizes a co-operative effort between the top security firm in Japan and the premier legal institution in the world."

Scott is an expert in international payment systems and commercial law and is a former president of the International Academy of Commercial and Consumer Law. He teaches banking law and international banking law.

Three years ago, Scott began a program in international financial systems which looked at the operation of money markets in Hong Kong, South Korea, Indonesia, Malaysia, the Philippines, Singapore and Japan.

The study focuses on how government policies affected the performance of these markets. His next study will involve an examination of the financing of capital market operations in these same countries as well as Thailand and Taiwan.

According to Vice Dean David Smith the Nomura chair furthers the goal of internationalizing the school. "Support of our international financial systems program will guarantee the HLS's preeminence in teaching and research of regulation, operation, and interconnection of international financial markets," said Clark.



Prof. Hal Scott (left), Hideo Sakamahi (middle), Dean Clark '72 (right).

Harvard Law Record

Volume 91, No. 5

Patrick Miles, Jr.
Editor-In-Chief

Bush's Last Refuge

President Bush may have found another "Willie Horton-type" issue to regain support from the Right that he lost by backing down on his empty "no new taxes" pledge. The United States Senate and House of Representatives passed civil rights legislation which received a prompt veto from the president. Bush, whom many appraised to be a moderate Republican -- some even speculated that he was a closet New England liberal -- has now clearly defined the first half of his presidency as a continuation of the conservative politics of his predecessor.

The Civil Rights Act of 1990 was passed by Congress to reverse the trend set by six recent Supreme Court decisions which made it difficult for plaintiffs to winning discrimination lawsuits. Bush, however, felt that the bill's "new and very technical rules of litigation" would prevent employers from adequately defending themselves against discrimination laws. In particular, Bush would like to return job discrimination claims to where they stood before the *Griggs v. Duke Power Co.*, decision. The *Griggs* decision propounded the "disparate impact" theory which read Title VII of the Civil Rights Act of 1964 to prohibit "not only overt discrimination but also practices that are fair in form but discriminatory in practice." In an opinion written by Chief Justice Burger, the Court in *Griggs* placed the burden on employers to prove that their practices were not discriminatory. The Court noted that in job discrimination cases, the employer is in a better position to prove that the challenged practices are "a business necessity," while it is difficult -- if not impossible -- for the plaintiff can prove that they are not vital.

In the 1989 case, *Wards Cove Packing Co. v. Frank Antonio*, the Supreme Court rejected the *Griggs* standard, and put the burden back on the plaintiff to prove that the hiring and employment practices of the defendant were intentionally discriminatory.

Bush not only prefers the *Wards Cove* decision, he also supports legislation (as an alternative to the current civil rights bill) which some have interpreted to outlaw affirmative action programs -- including those with the approval of Federal courts. Bush, like Reagan, would like to move the country back to a different era, back to a time before the civil rights advances of the 1960s.

Bush's attempts to label the Civil Rights Act of 1990 a "quota bill" have proven fruitless as traditional opponents of quota programs, such as leaders of the Anti-Defamation League of B'nai B'rith, have clearly stated that this is not such a bill. The president's claims of the bill containing a quota requirement to prevent potential litigation, are hauntingly familiar to his 1988 presidential campaign issue regarding Willie Horton, and are a not-so-subtle attempt to rally support from the right wing of his party, which he desperately needs as he loses moderates and those on the Left whom he has alienated by his failure to deliver on his promises of being the "Environmental President" and the "Education President."

--P.M.

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Clinical Program Promotes 'Politically Correct' Ideology

To the Editor:

I would like to address the persistent call for a mandatory pro-bono requirement at Harvard Law School. As an opponent of the student referendum last spring, one of my major objections to a pro-bono requirement was its inevitable ideological content. In response, those favoring a requirement plastered

free aid from Students for Public Interest Law (SPIL).

Rather than being encouraged by the clinical directors at Harvard, these students were thwarted at every turn. Dan Greenburg reportedly stated that he could not accept such a program as being a legitimate, worthwhile cause. He further argued that representing landlords might be a conflict of interest. When that argument failed, he argued that the program did not have enough interested students. Finally, he simply said that the clinical program does not have enough money to support the students (I am unsure exactly how much money is required to direct a small group of student volunteers in a noncriminal setting.)

This attitude (i.e., that pro-bono should be encouraged, but only politically correct pro-bono) is consistent with the actions last winter of the WLA which sent a letter to each student notifying them that a local law firm had done pro-bono work for Operation Rescue.

Those still advocating a mandatory pro-bono requirement have been less (see COOK on page 7)

Letters To The Editor

the walls with posters declaring that pro-bono was non-ideological.

Unfortunately, in practice, these pledges have been forgotten. Perhaps the best example of these attitudes happened recently when a number of Harvard students attempted to organize a new student group--The Harvard Small Property Owners Coalition. This group initially sought recognition as a clinical program, to represent small property owners in hearings before the Cambridge rent control board. Small property owners are often unable to afford counsel for rent control hearings, as opposed to tenants, who may seek

WLA's Misguided Call For Affirmative Action

To the Editor:

Until Oct. 12 I had never considered matters of *Harvard Law Review* policy fit for discussion in the RECORD, much less any other publication intended for family consumption. But the WLA's call for affirmative action for women at the *Review* merits a response. As always, facts are the best disinfectant, and the demands of WLA chairs Patty Arzuaga, 2L, and Michelle Benecke, 2L, deserve a thorough flushing.

Statistical analysis on my Zenith TurboSport 386 confirmed that this year's class of nine women out of 36 editors is indeed a blip. If one assumes that 179 men and 107 women apply for 36 positions every year, each *Review* class should yield an average of 13.47 women. One thousand random editor selections on the Zenith yielded 41 classes of nine women and 27 men. Classes of 14 women occurred 127 times, as in 1989. The Zenith also delivered 42 classes of 18 women.

The bottom line? A class of nine women reflects neither discrimination nor bad

female performance. Once every 25 years the *Review* will have a class that is 25 percent female. Once every 25 years the *Review* will have a class of 18 women, half the 2L membership. Though statistically equivalent to a class of nine women, the presence of 18 women in the *Review's* 2L class would have sounded not only hosannas at the annual WLA banquet but also the death knell of gender-based preferences at the *Review*.

Anyone who dislikes these numbers may call me at 495-7889 for a copy of the program. I assure the WLA that its politically correct computer will generate statistically identical results.

To their credit, the current and past *Review* leaders interviewed in the RECORD urged greater sobriety. I respect their institutional wisdom and speak here only as an interested individual. Nevertheless, the article exposed the shaky basis of affirmative action. In itself the suggestion that the *Review* extend its program of group-based (see CHEN on page 7)

Sound In Body While Also Sound In Mind

To the Editor:

I read with concern Robert Arnold's Oct. 12 column about the inadequacy of Hemenway Gym. Regrettably, it seems that life within the venerable walls of Ivy is not so different from life outside. While some pockets of wealth and privilege persist, most of us exercise in athletic facilities without croissant counters and saunas.

It's at just such times we should be wary of demagogues like Arnold who preach quick-fixes to long-term systemic problems. Not to mention the humorous tactical and strategic problems with Arnold's militaristic solution, his plan also creates serious legal and moral difficulties. Like Sadaam Hussein and

the Democratic Party, Arnold glibly says, "sock it to the rich."

Let Arnold take his self-important, ranting drive someplace else. If the law school wants to regain its leadership within the Harvard community it will have to learn to compete. (And I don't mean by raising even more money than the B-School for an ethics program and spending it to refurbish our gym.) We need to be thinking about changing the paradigm (kind of like what Einstein and Newton did for physics).

How about bringing exercise to the classroom? Here are just a couple of suggestions: 1. Group calisthenics to start each class (it works in Japan, why (see SALTZMAN on page 7)

**Next RECORD:
Friday, November 2**

Disabled Law Students Face Rampant Discrimination

Maybe you've noticed on the chalkboards, or when leafing through the Employee Directory: Zeros, lots of zeros. Now and again a one; rarely, I stress rarely, a two. Let's jump in with both feet: if you have a disability, the firms don't want to touch you. A quick sam-

By Mark T. McGoldrick, 2L
Guest Columnist

pling of ten large firms will give us a reference point:

Pillsbury, Madison & Sutro: 453-0
Shearman & Sterling: 1557-0
Jones, Day, Reavis & Pogue: 1,130-1

Gibson, Dunn & Crutcher: 875-0
O'Melveny & Meyers: 517-0
Cravath, Swaine & Moore: 313-0
Baker & McKenzie: 494-1
Skadden, Arps, Slate, Meagher & Flom: 1,035-2
Kaye, Sholer, Fierman, Hays & Handler: 337-0
Baker & Hostetler: 498-0

(Source: HLS Employee Directory 1990)

These firms, at least their branches that were interviewing here, have at my count some 7,209 lawyers, only four of whom have a disability. Their numbers

are not anomalies, they are representative of other large firms who interview here.

Those are the numbers -- now, for the stories. This summer *The Village Voice* followed the story of Joe Gibney, a 1989 Columbia Law graduate who uses a wheelchair. Gibney finished a five year joint degree in finance and physics in four years from the Wharton School of Business, graduating with honors and second in his physics class. None of the investment banking firms would hire him, so he went to law school. As of the August 7 issue of *The Village Voice*, Joe's sent out over 400 resumes and has

gone on over 70 interviews, and no one will give him a job.

Paul Miller, a recent Harvard Law graduate who is a dwarf, also had to make hundreds of job inquiries, despite "pulling B's" with the rest of his HLS peers. He said a Philadelphia firm told him they didn't want their clients to think they were running a "sideshow freak act." Paul's now found a home doing disability rights work in Los Angeles.

Laura Cooper, a wheelchair user, graduated near the top of her class at University of Washington Law School (See MCGOLDRICK on page 6)

A Stereotype By Any Other Name Still Stinks

Columns are almost always reactions to particular events or statements that have caught the attention of the columnist. This week I walk with open eyes into a potential minefield by reacting to a statement made by Patty Arzuaga,

Robert K. Niewyk
RECORD Columnist

2L, and Michelle Benecke, 2L, the co-chairs of the Women's Law Association (WLA). In an article about the number of second-year women who are on this year's *Law Review*, the RECORD reported that Arzuaga and Benecke "found the corporate law topic [of the *Law Review* writing competition] cumbersome last spring and they know other women were turned off by it as well."

Well, I am fairly certain that, had I been the one to give voice to the assumptions displayed by Arzuaga and Benecke in their statement, I would have been immediately attacked as a sexist pig. Because if I read their comments correctly, Arzuaga and Benecke are saying two things: First, in the context of a discussion about equal representation on the *Law Review*, an assertion that women were "turned off" by the writing competition topic suggests that women as a group are inherently less interested in certain topics or types of work. The second assumption is more troubling: I can't think of what Arzuaga and Benecke could have been implying when they said they found the topic "cumbersome" other than that women as a group find some topics to be more difficult than do men.

Very few people would disagree with the idea that there are real differences, mental as well as physical, between

women and men. Years of testing by psychologists have produced widely accepted gender-based distinctions such as linear thinking versus holistic thinking or verbal skills versus spatial skills. The debate focuses more on to what degree, if any, the differences reflect innate tendencies rather than socialization.

It is very dangerous, however, to move from an abstract generalization that "there are differences" between men and women to specific actions or policies that attempt to account for those differences. To begin with, it will always be difficult to know whether a specific gender-based difference does in fact exist. The *Law Review* situation is a perfect example: Was the writing competition topic less suited to one gender than the other, or wasn't it? One could argue (persuasively, I think) that it was not. For starters, the case comment was not a corporate law topic; it was primarily concerned with the First Amendment, equal protection, and campaign spending restrictions. But beyond that, are there any legal topics that have an inherent gender bias? I have female friends who answer that question with an emphatic "No."

Next, when actions or words suggest an assumption of gender-based differences, it may be unclear just what the differences are supposed to be. One set of assumptions may be correct and justified; the other may be deadly. I discovered this only a few weeks ago when I was furiously attacked by two of my friends for commenting, after hearing that a research project at the law school had attracted five men and no women, that I was "not surprised given the topic." There were still some hard feelings after we talked our positions

out, and it took us several weeks to realize that we had crossed wires; I had been implying that women were less interested in the topic, while my friends had inferred that I thought women were less capable of handling the topic. These two ideas are, not coincidentally, the same two that were displayed by Arzuaga and Benecke in their statement. The first is at least debatable, but the second is untenable.

More troubling than a mere misreading of assumptions is that even an empirically correct gender-based distinction may end up harming the group it is trying to help; it may either cause people to make the wrong distinctions as well as the right ones, or it may simply have the same consequences as the wrong distinctions. To continue with the interest/capability distinction, I think Arzuaga and Benecke have a valid point about the writing competition: If a subject is empirically more interesting to one group than to another, then it is unfair to base a test of general abilities on that subject, because those who find it more interesting will naturally do better on the test. One should strive to test with neutral subjects--ones that either excite everyone or bore everyone.

An acceptance that women are less interested in a subject, however, might be no less harmful than an assumption that they aren't as good at it. If law firms transmute an assumption about interests into an assumption about capabilities, or even if they simply get the idea that certain practice areas "aren't for women," they might discourage their female associates from taking on assignments in those practice areas and push them towards assignments in other areas. Worse yet, firms might

have a preference for men when hiring for practice groups dealing with the "male" topics.

I'm sure everyone would agree that such actions by a law firm would be abhorrent. Even if women as a group are less interested in a subject, those women who are interested should be just as capable as the interested men, and they should have the same opportunities to practice in that area. This seems obvious once it is said; the problem is that making the correct distinctions requires a care and clarity in thinking that no one can display all the time.

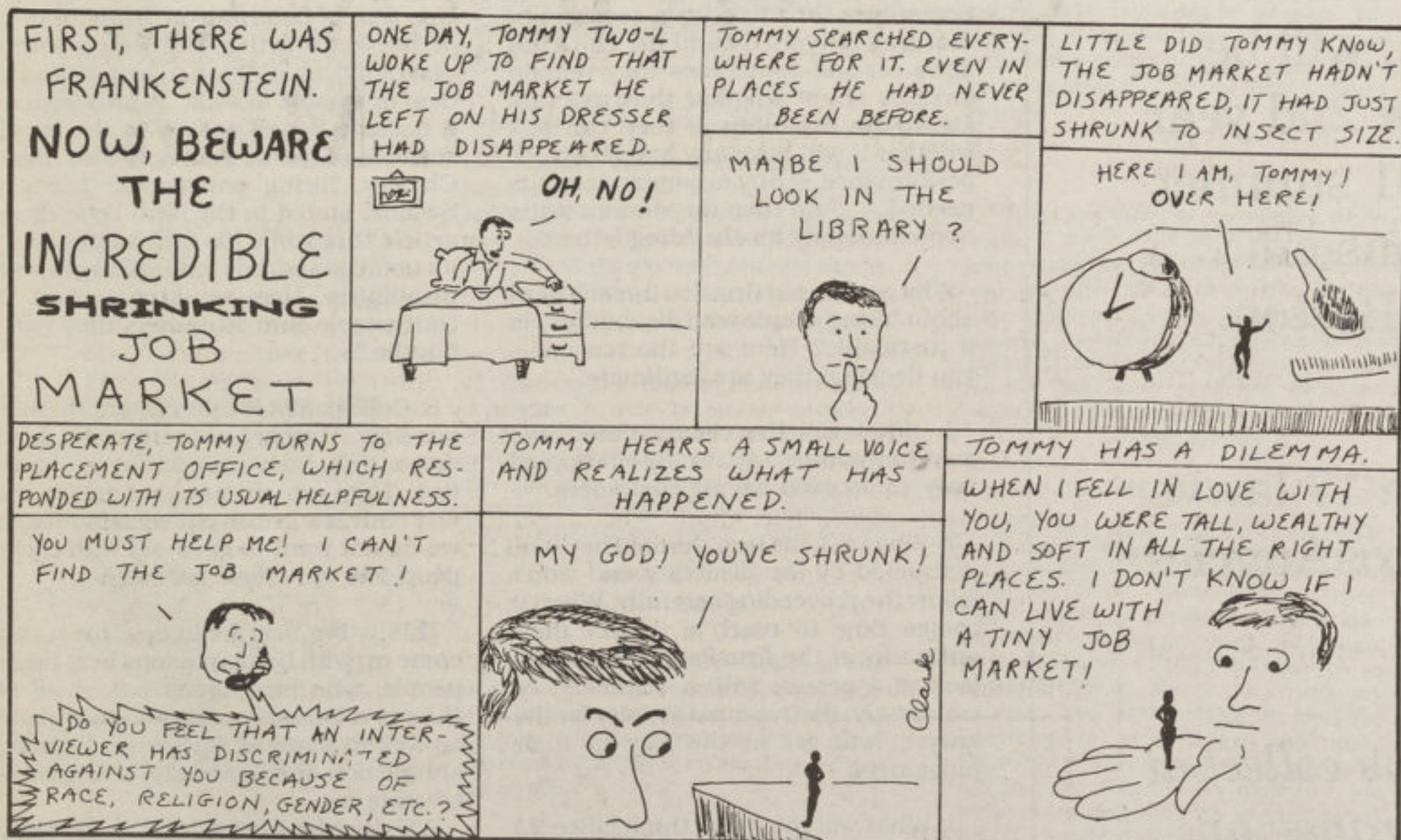
The final danger is perhaps the most insidious and the most common: People and institutions may discriminate in ways that directly harm women even though they think that it will help them. This point was made frighteningly clear to me when I was interviewing with a woman who is the only female partner in her law firm. She had this to say: "I think there are still subtle forms of sexism in law firms that affect the female attorneys. No one--not even the older partners--thinks they are at all sexist. But they make adjustments for the women that they don't make for men; they think they are just being sensitive, but in fact they are hurting the women just as effectively as if they had meant to."

"For example, it took me a few years to notice that when female associates are given performance reviews, they do not receive the same kind of honest criticism that the men do. The reviewers often soften up their reviews of women in order to 'boost their confidence.' The problem is that without accurate feedback, the women do not know how and where to improve--at least not to the same degree that the men do. As a result, a woman's career can be seriously hurt by an attitude on her reviewers' part that basically boils down to 'Don't make her cry.'"

What should one conclude from these warnings? Simply this: Let's be careful out there. Let's be careful not to make group distinctions too quickly, incorrectly, or for the wrong reasons, even while we recognize that such distinctions may sometimes be correct and beneficial. A group distinction, whether made by the WLA or the KKK, has another name: stereotype. That stereotype may be right, but it may be wrong, and it may cause more problems than it solves. Disadvantaged groups have always been the losers where stereotypes are concerned, and they may be the losers even when the stereotypes are thought to be benevolent. The founders of this country were absolutely right when they ensured that we based our society and bestowed our rights not on groups, but on the individual.

Agenda Neutral

By Eli Clark



Fenno

Fenno took an early leave for a fly-out. Fenno will be back with a full report.

A.I. Letter Writing Helps Americans Get Freedom

By Tom Samuelian

Last spring, I spent a morning at the Amnesty International (AI) Weekly Writer Table asking students to "write a letter and save a life."

A year and a half later the students who signed the petition can know that their efforts have been rewarded.

The petition was for the release of the Karabagh Committee and the Activists of the National Democratic Movement of Armenia being held in a Moscow prison. It called for the release of the first democratic leadership in the land since the Armenian Genocide of 1915-

1921. The Armenians of Karabagh have sought to be reunited with Armenia ever since.

In 1987, 100,000 Karabagh Armenians signed a petition to Mikhail Gorbachev. Citing cultural oppression, anti-Armenian discrimination, equal protection violations, and purposeful economic underdevelopment, they sought reunification with their relatives and compatriots in Armenia. Their request was summarily rejected in February 1988. By then the movement had gained momentum.

In a "cultural ecology" agenda adopted a platform of human rights, cultural survival, democratic leadership, and environmental clean-up. To show their solidarity with the Armenians of Karabagh, over a million people flooded the streets of Armenia's capital.

Several hundred miles away, Azerbaijani mobs responded to the Armenian demonstrations with pogroms against their Armenian neighbors. Fearing for their lives, tens of thousands of Armenian Azerbaijan fled to Armenia. There were isolated incidents of violence on the border. Gorbachev declared a state of emergency and dispatched Soviet troops not to Azerbaijan where the pogroms had taken place, but to Yerevan, the Armenian capital, to put an end to the demonstrations.

Throughout 1988, the people engaged in non-violent protests, ordinary people once again spoke freely about how their country should be run. As the voice of this new democratic spirit, the Karabagh Committee became the de facto leadership of Armenia.

This spirit of democracy was all but extinguished by the earthquake in December, 1988. The earthquake, which measured 6.9 on the Richter scale,

destroyed the northern third of the country. It left more than 25,000 dead and 500,000 homeless.

In this time of crisis, the people were shocked by the devastation and frustrated by the ineffective Soviet relief effort. Gorbachev curtailed his trip to the United States to inspect the earthquake zone, but casualties were already mounting because of delays caused by the Azerbaijani rail blockade of food, fuel, and medical supplies. When the people rallied around the Karabagh Committee by protesting the rail blockade and pointing out that the casualties had been exacerbated by the poorly housed refugees from Azerbaijan, Gorbachev ordered the Karabagh Committee imprisoned. That's when AI became involved.

As the AI urgent action letter read, "the Soviet government imprisoned the members of the Karabagh without legal basis for the arrests and . . . it appears they will be tried as common criminals for 'inciting public disorder,' 'conducting illegal meetings,' and 'fueling ethnic tensions.'"

The letter continued, "the members of the Karabagh Committee are well-known and respected academicians, writers, scholars, and teachers who have maintained leadership of a non-violent and peaceful movement for the democratization of Armenia and its institutions."

AI pressure contributed to the release of their prisoners.

Karabagh Committee members proved to be a remarkable and resilient group indeed. Two were already duly elected members of the Armenian parliament. That fall several more were elected, and the physicist Rafael Kazarian, was elected Vice President. When Vice-President Kazarian visited the United States last spring, I had the opportu-

nity to serve as an adviser and translator. Mr. Kazarian is a soft spoken, scholarly man, acutely aware of his historic responsibility for leading the Armenian people to a more free and democratic way of life.

The most moving meetings, however, were when he visited Human Rights Watch in Washington, and Helsinki Watch and AI in New York and thanked them for their help in gaining the release of himself and other members of the Karabagh Committee. Kazarian pledged to continue the struggle for greater democracy in Armenia. "Though my country is temporarily devastated and there are over 500,000 earthquake homeless and 250,000 refugees from Azerbaijan, I hope one day that we will be a thriving democracy . . . We seek no more than that the aspirations expressed in your Constitution, in our Constitution, and in the Universal Declaration of Human Rights be enjoyed by all peoples who seek freedom and democracy. And like you, we will settle for no less."

In the spring and summer of 1990, free elections were held. The former political prisoners were elected as president and prime ministers.

That morning in the Hark, I could not have imagined the role these political prisoners would play in the re-establishment of democracy in Armenia. Regardless of their station, anyone imprisoned for peacefully advocating human rights, freedom and democracy deserves our assistance and support. We are grateful. They were released unharmed. AI's goal has been achieved. The fact that this group of prisoners went on to guarantee a democratic state in which their country's citizens need not fear imprisonment for their political beliefs is yet one more reason to "write a letter, and save a life."



AMNESTY
INTERNATIONAL
VOICES

1922, during which 60 percent of the population perished at the hands of the Ottoman Turkish government.

Throughout 1987 and 1988, the Karabagh Committee, began drawing attention to the plight of the 200,000 Armenians living in Karabagh, an autonomous region just across the border from Soviet Armenia, Azerbaijan. They advocated reunification with Armenia to protect the lives and culture of Armenians in the region. Despite the fact that 80 percent of the population is Armenian, Karabagh had been arbitrarily separated from Armenia by Stalin in

Howarth & Smith

Los Angeles

1991 Summer

Associate Positions

Don Howarth and Suzelle Smith, senior partners of Howarth & Smith, will be available to interview 2nd year law students for 1991 summer associate positions on November 5th in Boston.

Howarth & Smith is a 17 lawyer civil litigation firm in Los Angeles.

Please call Cary Stevens collect at (213) 955-9400 to arrange an interview or for more information.

McGoldrick

(continued from page 5)

and won a judicial clerkship. She too had to send out over four hundred resumes before getting an offer from Pettit & Martin.

Evan Kemp, now the national chair for the Equal Employment Opportunity Commission, was rejected by 39 of the 39 law firms he interviewed with, despite graduating in the top of his class from the University of Virginia Law School.

Closer to home, I hear similar stories from current HLS students, classmates of yours and mine, people doing as well in their course work as the next. They, however, go through interviews with partners uncomfortable with the idea of hiring a student with a disability. Sometimes the interviewer recovers in that way lawyers do and the chit-chat flows on and sometimes they remain anxious about whether they can talk about the disability, if they can ask whether it will have any impact on job performance, if any accommodation is needed . . . And then the student waits apprehensively for the "ding letters".

Why are the big firms so intransigent about hiring people with disabilities? Is it justifiable? Here are the reasons--you decide if they are legitimate:

1. What will the clients think? We can't just go around pawing off crippled lawyers on good paying customers.

2. What will the jury think? They'll be distracted by the disability and won't follow the proceeding carefully. When it comes time to reach a verdict their antipathy at the firm for making them look at a person with a disability, or conversely, their sympathy/pity for the lawyer, will get in the way of their judgement.

3. What will the judge think? (See 2.)

4. Insurance. Our insurance costs will go through the roof. AIDS and stuff.

5. The accommodations required are too burdensome. The firm simply cannot absorb the cost of making bigger stalls in the bathroom, or giving an associate a big enough office for her to maneuver around in, or buying amplified telephones, or adaptive computer programs.

6. People with disabilities aren't good enough, can't pull the hours, won't have reliable transportation. As Kenneth Anderson, hiring partner for Gibson, Dunn was quoted in *The New York Times* on Dec. 30, 1988 as saying, "I'm not sure what the response of our firm would be to hiring a blind lawyer, but we'd certainly have to look at the costs." On the long-hours thing: "To compensate for lost efficiency we would probably adjust compensation."

7. Lawyering is demanding work; it would be better for these people not to subject themselves to such rigor. Of this type of paternalism, Amy Virshup of *The Voice* writes, "A [person with a disability], in addition to being blind or deaf or unable to walk, is also seen as a delicate flower not up to the harsh realities of the workaday world." Evan Chesler, hiring partner at Cravath, Swaine, stated in the *New York Times* article that while his firm would apply its usual standards for applicants with disabilities, they would not want to "put people into situations they can't handle."

8. Collegiality: We don't want them in our firm. They are not attractive, don't dance well, aren't any fun at pool parties. They are clumsy and get in the way. Our law firm is our social unit and we do not want to grow old with these people as our fellow partners.

This is the best I can do. If you can come up with better reasons why these people, who have stood out in all of their previous schooling and have done so well in many of life's other arenas, should now be so unemployable, please educate me.

P.S. Just for fun pretend we're thirty years back and reread the article. See how many places you can replace "person with a disability" with "woman" or "African-American."

Cook

(continued from page 4)

strident in arguing for "politically correct" pro-bono, but the attitude is still discernable. For instance, according to the RECORD, Emergency Public Interest Committee (EPIC) member Steve Donziger, 3L, seems to believe that a pro-bono requirement should be patterned after programs "oriented toward poverty law."

How can the faculty accept that a mandatory pro-bono program will be run in a non-ideological fashion when the current program is not? How is an ideologically-based pro-bono requirement any different than forcing someone to speak against their will and for causes they oppose? It is lamentable enough when different voices are silenced in campus debate, but it is doubly evil when students are forced to advocate viewpoints with which they disagree.

Greg Cook, 3L

Saltzman

(continued from page 5)

why not here?). 2. Exercycles in the back row of every classroom. 3. A recasting of the student-teacher relationship. Why not call our professors "coach"?

We should be cognizant that our actions might easily create new problems. For example, back-benching could easily evolve into back-pedaling where persons uninterested in fitness selfishly occupy the exercycles to avoid being

called on (or perhaps just for the cushioned seats).

But if we're really interested in making change, we should be willing to take a risk or two. All in all, this will be an excellent way for the law school to promote both fitness and class attendance. After all, most of us aren't just interested in competing with the B-School—we want to take on the world. If we want to win, we'll need to be smarter as well as leaner and stronger. Most importantly, we'll need to be more efficient.

David H. Saltzman, 1L

Chen

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preferences in editor selection heralds the eventual triumph of bigotry and sexism.

Arzuaga and Benecke thought that a "corporate law topic" hindered women's success on the competition. Such unmitigated stupidity scarcely merits a dignified response. The topic the WLA chairs decried was the constitutionality of state-law limits on corporate campaign contributions. The *Review* can do without editors who don't realize that they will read *Austin v. Michigan Chamber of Commerce* in Tribe's constitutional law class rather than Kraakman's corporations.

More fundamentally, in presuming that women have little interest or aptitude in certain legal topics, Arzuaga and Benecke repeat an old sexist lie. Unfortunately, they are by no means alone. At Harvard, a foolish "diversity" has become the hobgoblin of little minds. The increasingly fashionable belief that particular groups monolithically share political and intellectual interests threatens true racial and gender equality at least as much as does residual discrimination. Perhaps more: white male bigots discredit

themselves, but the spectacle of women and people "of color" clamoring for group-based preferences assuages white male guilt even as it affirms the invidious belief that women and other "beneficiaries" of affirmative action can't compete on a level field. A growing group of minority scholars (not to be confused with the "critical race" theorists who have anointed themselves the sole legitimate voices for nonwhites) has begun to articulate why all Americans, whatever their color, should eliminate affirmative action root and branch. See, e.g., T. Sowell, *Preferential Policies: An International Perspective* (1990); S. Steele, *The Content of Our Character: A New Vision of Race in America* (1990); Steele, *White Guilt*, 59 Am. Scholar 497 (1990); cf. Kennedy, *Racial Critiques of Legal Academia*, 102 Harv. L. Rev. 1745 (1989) (disputing the intellectual foundations of critical race theory).

Patty Arzuaga asserts "it would be hard for anyone to stigmatize or degrade a Harvard Law student on *Law Review*." Wrong. The mere presence of affirmative action cheapens membership for every editor who falls within the existing groups. Even if individual applicants decline to check off the box designating their nonwhite ethnicity and even if the *Review* does not con-

sider racial information for one particular year, the possibility of racially based selection taints the records of those thought to gain from the affirmative action program. Were there no stigma, the *Review* would happily emblazon "Racially Selected Editor" upon the foreheads of all editors who but for the program would not have qualified by grades and writing competition scores.

I happen to know. When one interviewer asked me last year whether the *Review* included Asians in its affirmative action program, I felt the stigma. Personal knowledge that rigorous academic efforts rather than the melanin/carotene content of my epidermis secured my position on the *Review* failed to salve the wound entirely. That interviewer was racist. But so were the misguided *Law Review* editors who voted in the affirmative action plan.

I shall waste no more of the RECORD's commercially valuable space by detailing all my objections to affirmative action. I will ask of the WLA two favors. First, if Arzuaga and Benecke can assail my statistical analysis, I ask that they publish the response in the RECORD so that any unintended numerical deception on my part may be expunged. Second, I would like WLA members to take the following poll to

test whether women are indeed less interested in such topics as "corporate law." Last June's *Review* included six student notes. Of these, which three were written by women?

- Clarifying Comity: State Court Jurisdiction and Section 1983
- State Tax Challenges
- Military Justice and Article III
- The Legal and Regulatory Implications of Airline Computer Reservation Systems
- Tax Treatment of National Principal Contracts
- Standards for Federal Funding of the Arts: Free Expression and Political Control
- Claim Preclusion in Modern Latent Disease Cases: A Proposal for Allowing Second Suits

No matter what the result, the WLA should submit results of the poll for publication in the RECORD. It can't lose. On one hand, the WLA may so authoritatively identify three of these subjects as inherently attractive to women that it alone can dictate what women want to study and learn. Otherwise, random results will prove that women have an equal claim to topics as diverse as these—and to an opportunity to excel on the *Review*'s writing competition without a chromosome test.

Jim Chen, 3L

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RR 1990

Iraq

(continued from page 1)

terous and disruptive on past occasions when representatives of oppressive governments and regimes have spoken here, remained passive and polite throughout the discussion. The audience remained courteous yet skeptical when Mashat blamed Iraq's invasion of Kuwait upon Israel and equating America's support for the democratically elected president of Panama with Iraq's invasion and annexation of its smaller neighbor.

Mashat, perhaps buoyed by the lack of negative responses from the audience and in a humorous mood, remarked, "You call it annexation, we call it merger."

According to Sarrafan, "MELSA only wanted to bring in a side [of the Gulf crisis] that

most people have not heard. We wanted to make people as informed as possible. We wanted to present the perspectives of both the Kuwaitis and the Iraqis." Sarrafan added that she found Mashat's constant Israeli-bashing "disturbing."

MELSA President Syed Reza, 3L, said the forum was intended to call attention to aspects of the crisis with which many Americans are unfamiliar.

Reza's opening remarks at the forum, however, seemed to contradict his claims of neutrality. In a somewhat oblique reference to the U.S. invasion of Panama, Reza described Iraq's attack on Kuwait as "a military action which, in the eyes of many, bore a strong resemblance to the military action by the United States nine months ago."

MELSA is planning to have the Kuwaiti ambassador to the U.S., Sheikh Saud Nassir Al Sabah, participate in a forum at HLS on Tuesday, Oct. 30.

Clark

(continued from page 1)

framed the debate in terms of academic standards versus diversity, whereas CCR has maintained that increasing faculty diversity would significantly improve the law school education.

"Our position reflects the concerns of students who want to make their education more responsive to the needs of society," said Chris Arnold, a first-year who is also planning

the trial."

Of the 66 faculty members at the law school, five are black men and five are white women. There are no tenured Latinos, Asian-Americans, Native Americans, openly gay or lesbian professors, and no professors with physical disabilities.

In its invitation to Clark, the group said the trial "will provide an opportunity for the administration, as well as the CCR, to present its case to the law school community in a fair and equitable forum."

"Each side will have an uninterrupted period of time to present its case before the law

Pro Bono

(continued from page 1)

"Most lawyers are working for polluters and not the environment, for landlords and not tenants, for management and not workers, for the wealthy and not the poor. Under the campaign announced today, law students around the country are working to change that."

"Under pro bono programs established at their schools, students will working on the critical issues of the day and learning how to meet their professional obligations in advancing justice in their society," Nader said.

The students said the burden of solving the legal services crisis should not fall on law schools or the legal profession, but that law schools could set an example by getting involved in the solution.

"There is still a critical need for the legal profession as a whole and the government through such programs as the Legal Services Corporation, which has been seriously underfunded by the Reagan and Bush Administrations, to

school community in the presence of an impartial third party who will act as a procedural moderator."

The letter also said that for the last twenty years the debate over the faculty diversity issue "has been passionate and varied, ranging from closed-door meetings with student groups to campus-wide protest...Throughout its history, the debate has lacked a

meet their obligation to delivering access to justice to the poor," said Nicely, student body president at American University Law School.

"In the classroom we learn that the United States more than any other country in the world promises every person a fair shot in court," said Saiki, the Hawaii student. "On the streets outside we find a tragically different story."

"We find people evicted because they cannot afford to go to housing court, we find battered women who do not have the money to hire a lawyer, and we find elderly people who cannot enforce their rights under the law because of lack of money," added Saiki. "These problems must be incorporated into our education so we can start doing something about them now, and so that we will be better equipped to deal with them when we graduate."

Announcement of the campaign comes on the heels of a weekend conference by the National Association for Public Interest Law, which brought together students from over 90 law schools around the country. NAPIL staff have been enlisted by students to help coordinate the pro bono effort.

forum where both sides could clearly articulate their positions and respond to opposing viewpoints. The mock trial is an opportunity to fill this gap."

"At previous CCR events the Dean has felt uncomfortable talking to us because he said the forum was unacceptable," said Laura Hankins, 2L. "Now we have provided him with the kind of dignified forum in which he would feel comfortable presenting his arguments."

Harvard Law Record (ISSN 0017-8101) is published bi-weekly during the school year. Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138-9984. Telephone (617) 495-4418. Subscription price: \$20.00 year mailed; \$30.00 year mailed outside U.S. Individual copies: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, Mass. and additional mailing offices.

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POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

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