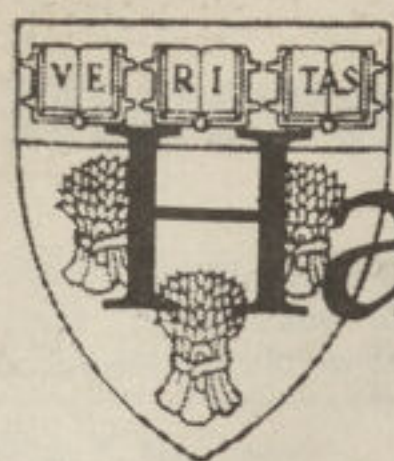




Harvard Law Record

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America's Oldest Law School Newspaper

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March 1, 1991

Discrimination Suit Dismissed

CCR Says It Will Appeal



Dean Robert Clark welcomed the dismissal saying, "discussion of these issues is most likely to be productive when conducted outside the setting of a lawsuit."

In what members of the law school's Coalition for Civil Rights (CCR) are calling a major disappointment, Middlesex Superior Court Judge Patrick

By Robert Arnold

F. Brady dismissed the controversial student lawsuit charging the law school with discriminatory hiring practices. The suit was dismissed Monday, February 25.

Members of the CCR said they will appeal the decision and expressed optimism about the prospect of overturning the dismissal.

The suit, which was filed in November, 1990, argued that Harvard Law School employs a set of unofficial criteria which illegally work to the detriment of women and minorities in the hiring process.

Just ten days after the preliminary hearing, Judge Brady wrote that he dismissed the case because the student plaintiffs did not have proper legal standing to file a suit.

"Under state law, only employees, rejected employees, or would be employees who were deterred could sue for employment," said Brady.

The students have maintained that they have proper legal standing under the Massachusetts Equal Rights Act, which they say allows those indirectly affected by discrimination to file as plaintiffs.

In response to the student contention that their group is analogous to a union, Brady claimed that "the nature of an unincorporated student organization is quite different from a labor union. Membership, of course, is brief and transient."

Pat Gulbis, 2L, a CCR member who argued the motion before the judge said, "We are very disappointed that the judge dismissed the suit on a technicality, allowing the university to avoid discussing the case on the merits . . . Harvard Law

School has violated civil rights and the proper forum for a violation of civil rights law is in the courts," he said.

Harvard attorneys had contended from the beginning that the CCR lacked standing to bring suit, and it filed a motion to dismiss the case on those grounds two weeks ago.

Allan R. Ryan, who argued in defense of the law school in court at the case's preliminary hearing, said in an interview yesterday that he was not surprised by the decision.

"We were never sure we were going to win, but the judge's reasoning was impeccable," Ryan said.

In her argument, Gulbis asserted that Harvard was using "subjective" criteria to hire professors and that students deserved to know what those criteria were.

CCR member Linda Singer, 3L, argued to the court that the law school's hiring record hindered discussion of non-traditional legal issues and deprived students of role models. She said that the absence of non-

CCR page 8

Faculty Expands Public Interest Curriculum

On Friday, February 22, the faculty easily approved three Public Interest Advisory Committee (PIAC) resolutions calling for the Law School to

by George Paul

expand its public interest curriculum but stopped short of recommending a mandatory public service.

The resolutions call for the introduction of several new courses and expansion of existing ones, including poverty law, environmental law, and criminal defense.

Harvard lecturer and PIAC member Gary Singen said participation would be voluntary for both faculty and students. First year students will be allowed to enroll in public interest courses for the first time. In the spring of their first year, students will study substantive law and fulfill clinical requirements in the fall of the second year.

Committee chair Christopher Edley '78 was pleased about the vote. He said, "It is a truly remarkable development in that the consensus on the faculty is overwhelmingly supportive of an invigorated public interest mission for the law school. I can't imagine this kind of success five years ago."

The resolutions, which add public interest to the first year curriculum, were greeted with mixed emotions by EPIC members who have spent the past one and a half years pushing for a public service requirement.

EPIC member Steve Donziger, 3L, stated, "It is a tremendous

victory for student organizers despite the fact that the faculty did not go as far as we would have liked.

PIAC committee member Sandy Hauser, 3L, said, "I think students will be pleased with the PIAC proposal. It adds new opportunities [for students] to explore public interest options. The recommendations are an important step in moving to a curriculum in which public interest options are available to everyone."

During the meeting, a number of faculty expressed concerns about the curriculum change implying a preference for clinical type training over more traditional academic training. Others countered that law students' greatest complaint is that they are unprepared for legal careers after graduation from law school.

Nationally, student movements for public service requirements have spread to over 100 of 175 law school campuses. Last week, Fordham Law School dean John Ferrick announced a pro bone requirement bringing the number of law school's having such a program to eight. At Columbia, where students have gathered 250 signatures supporting mandatory pro bono, the student senate endorsed a public service requirement with only one dissenting vote and students met with incoming dean Lance Liebman '67 to discuss the issue.

The national pro bono requirement movement prompted Donziger to charge that the faculty did not go far enough. "Harvard, as a national leader

in legal education, owes more to the legal profession and citizens of this country than this proposal." Donziger commented, "Nine out of ten of the legal needs of low income persons in the United States are not being met, yet this faculty still could not muster the courage to implement a program that would guarantee that all graduates had training to fulfill their pro bono obligation."

Donziger noted that the pro bono issue should be of special concern at Harvard. He said, "While the Harvard proposal is a step in the right direction, it still means Harvard is falling behind the national trend and it means the faculty is content to give up—at least for now—its position as the recognized national leader in legal education."

The key resolution passed by the faculty reads:

"It is the sense of the faculty that, with respect to the recommendations of the Dean's Public Interest Advisory Committee Report of November, 1990:

"(a) the Dean should endeavor to implement the principle, recommended by the Committee, that there be sufficient clinical fieldwork placements to make it reasonably possible for every student to take at least one such course from among a range of subject matters;

"(b) more specifically, the Dean and faculty should endeavor to implement the Committee's recommendation that some expansion of clinical opportunities be in the form of a classroom-then-fieldwork

"Woeful Ignorance"

Palestinian 1L Assesses Attitudes Toward Middle East

In order to gain a different perspective on the events in the Middle East, and benefit from

by Robert Arnold

the immensely diverse group of students that is collected here at HLS, the RECORD interviewed a student who has first-hand experience of the Gulf Region. His name is Ala (Trig) Tarazi. He is a Palestinian, and a first-year student in section two.

NOTE: The positions expressed in the following interview do not necessarily reflect those of the RECORD.

Ala Tarazi was born a Palestinian Christian in Kuwait City, Kuwait, exactly one month after the end of the "Six-Day War" between Israel and an Egyptian-led Arab coalition in 1967. His mother was eight months pregnant when she was forced to leave the occupied West Bank and become one of the many Palestinian refugees. She joined his father, a Palestinian employed with Kuwaiti Health Ministry. Exiled from their homeland, in a rather gloomy and exiled reunion, they welcomed the birth of their child.

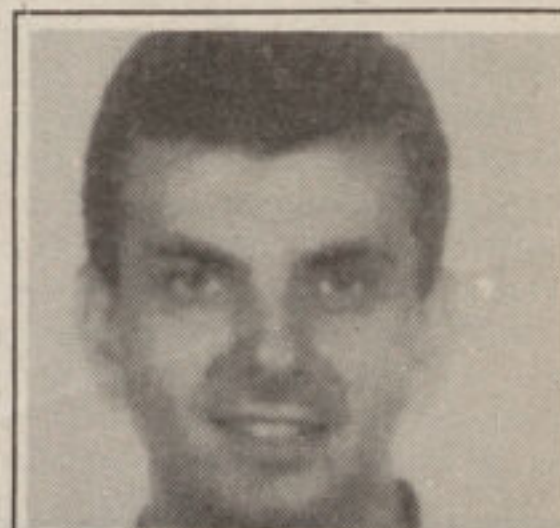
Shortly after Ala was born, his family decided to leave everything behind and move to

America. His father saw America "as one of the few places in the world where a Palestinian could make a decent living." Ala's family left behind relatives in Kuwait, Jordan, and the West Bank, who are very much a part of this war. The RECORD interviewed him to get his sentiments on the Gulf, the war, the impending end of hostilities, and the aftermath of the war.

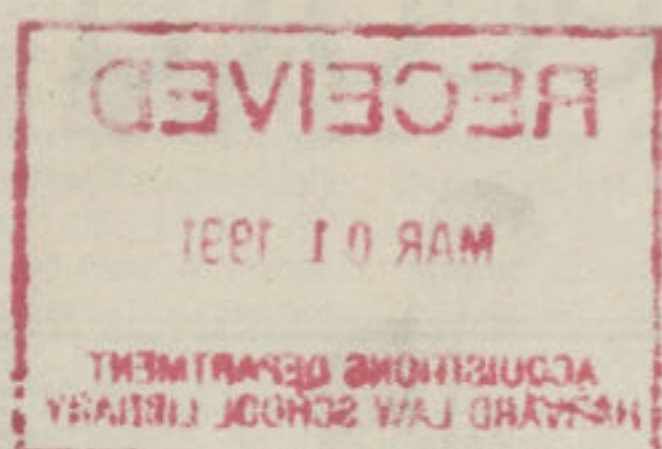
RECORD: What do you think of student reaction here at HLS towards the war?

TARAZI: Woefully ignorant. People are not asking the right questions. People who are opposing the war are opposing it for pacifistic reasons, or they are opposing it for reasons that have nothing to do with the

Ignorance page 8



Ala Michael Tarazi, 1L shares his views on the Middle East.



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"Democracy Wall" Asks: Are You PC?

The comments on the Harvard Civil Liberties Union's "Democracy Wall" show that most HLS students know that

Malcolm E. Harrison

"P.C." does not mean "personal computer." Beyond that, however, students seem very divided about what "politically correct" really means.

For some, P.C. is "mom and apple pie (cooked by dad)" and for others it's "growing up in Greenwich, Connecticut and thinking you're from Kingston, Jamaica." For few, though, is there a clear and consistent definition.

And there wasn't meant to be, organizer's said.

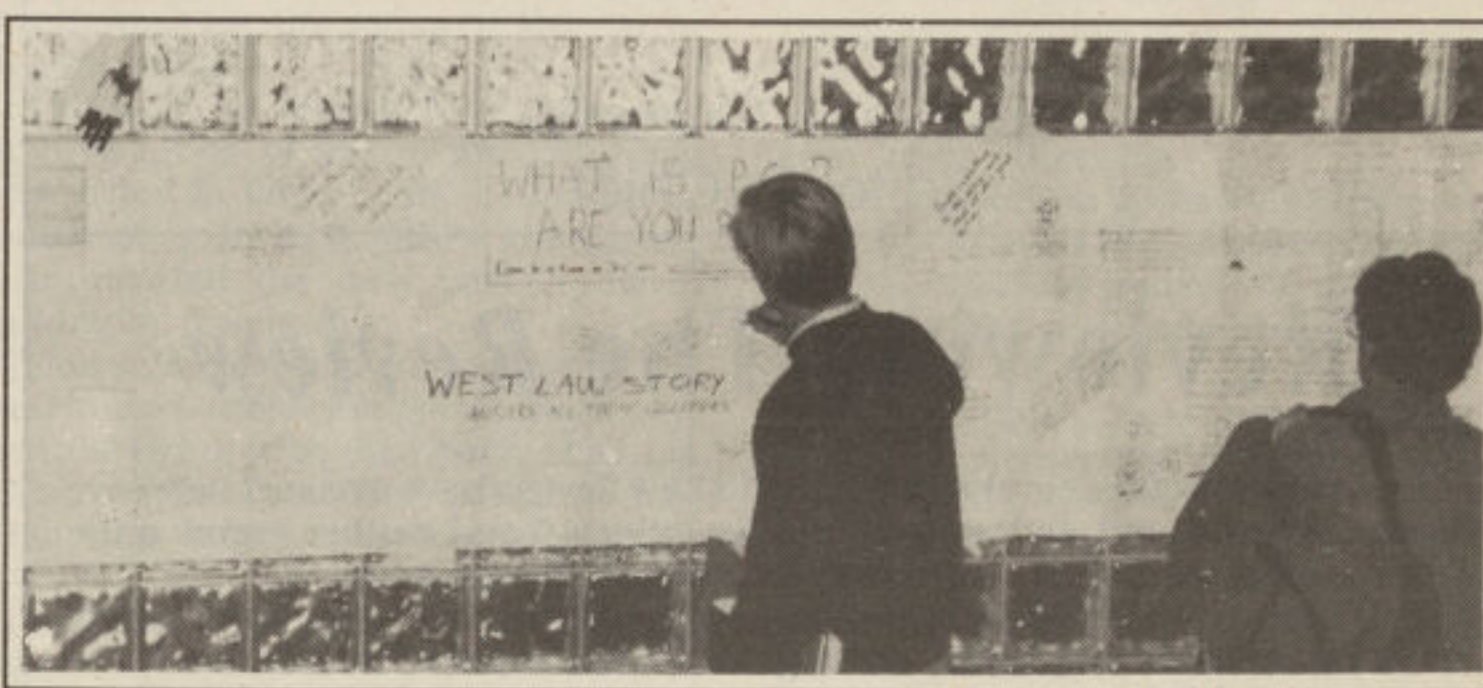
"People at HLS don't yell at each other - they yell about each other," said Adam Weiss, a vice-president of the HCLU and one of the key organizers of the Democracy Wall. "The idea is to provoke a dialogue about what political correctness means."

The display is part of a program that

the HCLU is sponsoring on the topic of political correctness. The "wall" which is actually a large sheet of paper that organizers place near the entrance of Harkness Commons from 12 - 2 p.m., is the prelude to a discussion on the topic of political awareness which will be moderated by visiting Professor Gerald Torres on Wednesday, March 6 in Langdell North Middle at 7:30 p.m. HCLU organizers are taking a novel approach to the discussion. There will not be a panel or a central speaker. Weiss envisions it to be more like a running dialogue between everyone who is in attendance.

Organizers feel that the Democracy Wall is important because it opens what they hope will be an ongoing dialogue about this concept. Any student can put something on the wall, which thus far features anecdotes, jokes, longer philosophical statements, cartoons, and even an offer to help move a futon.

The commentators range from people



Students are to "write something!" (It's not PC to walk away.)

who believe that they understand and like political correctness to those who feel uncomfortable with the whole idea. This written debate, while thought provoking, sometimes takes a turn for the bazaar, such as a drawing of Jesus Christ with the phrase "Just another white male," written beneath it.

"No one ever said that free speech feels good. That's why it took so long to develop a polity where you can have it," Weiss said. "We'll consider this whole project to be a success if it gets people to talk to each other about their different ideas."

Dershowitz Saves Jim Bakker

Tammy Faye Says "He's Our Kind Of Guy"

Televangelist Jim Bakker may soon be a free man, thanks to Professor Alan Dershowitz successfully arguing to

By Henry Kerner

the 4th Circuit Court of Appeals that Jim Bakker's sentence was excessive and a direct result of the trial judge's religious bias. "45 years is an outrageous sentence," Dershowitz said, "so we wanted to give the court justification to throw out the sentence." The court did.

The court focused on comments made by Judge Potter during sentencing. "Bakker had no thought whatever about his victims and those of us who do have a religion are ridiculed as being saps [for] money-grubbing preachers and priests," Potter said.

"He certainly is worthy of every penny he makes."

—Tammy Faye Bakker

While upholding the conviction, the 4th Circuit Court of Appeals vacated the sentence and remanded it back to the district court for a renewed sentencing hearing. "The imposition of a lengthy prison term here may have reflected the fact that the court's own sense of religious propriety had somehow been betrayed," the ruling stated. The new sentencing hearing will take place in front of a different judge.

Although the court reversed the sentence, the new judge could possibly sentence Bakker to the same term. Dershowitz considers that unlikely. He said, "We hope we will get a fair judge this time. We're hoping for a sentence consistent with other sentences in comparable cases," which he said should be in single digits.

Dershowitz, who has tangled with Judge Potter before, clearly enjoyed the victory over a man he claims "sentences in decades instead of years."

Dershowitz is currently advising Bakker on another issue, the question of prejudice by the judge during the trial. Dershowitz said that since the judge was obviously biased against Jim Bakker, there may be evidence that he was biased during the trial as well.

Dershowitz, who is not Bakker's general counsel, joined the defendant's legal team only 10 days before the due date for filing the brief, and only on the sentencing issue. The latter is the only issue that prevailed on appeal. The 4th Circuit upheld Bakker's conviction for

defrauding followers who brought partnerships in PIL's Heritage USA vacation park.

The Federal Sentencing Guidelines did not apply to Bakker's case, because all but one act of the conspiracy occurred prior to the enactment of the Guidelines in 1987.

A recent New York Times column by David Margolick stated that Dershowitz's performance earned respect from both his employers and co-counsel. Tammy Faye Bakker said Dershowitz singlehandedly restored her faith in lawyers. "Jim and I are really sold on him and think he's the greatest," she said. "He certainly is worthy of every penny he makes."

"One of the biggest desires now is to meet him," she added. "He's our kind of

people, a real down-to-earth, nice man."

Even his co-counsel, two noted orators, were dazzled by Dershowitz. "It was kind of like watching a terrific maestro in front of an orchestra," Don Ervin said. Brian Wice called the performance "mesmerizing"; "He looks like a schlep, wearing suits he could have bought in Filene's Basement, woolen socks, and shoes—I don't know if they still call them Earth shoes. But the judges hung on every word he had to say and bought what he was selling."

Races Affects AIDS Care

Study Indicates That Doctors Withhold AZT From Women And Non-whites

A study conducted by researchers at Rhode Island Hospital and Brown University demonstrates disparate access to the drug AZT, the only drug

By Evette Harrison

approved by the U.S. Food and Drug Administration to combat AIDS. The findings suggest that doctors are unconsciously withholding AZT from many women, non-whites, drug users and uninsured sufferers, for a variety of non-medical reasons.

The study, which focused on 880 AIDS patients in nine cities, concludes that about 73 per cent more whites were offered AZT than non-whites; men were three times more likely than women to be offered AZT; insured patients were twice as likely to be offered the treatment as uninsured patients, even when the cost of the drug was covered by the state; and the number of intravenous drug abusers offered AZT was less than half the number of homosexuals offered the treatment.

According to Dr. Michael Stein, director of the AIDS clinic at Rhode Island Hospital, "the study may be demonstrating doctor bias," and "might help explain why people in different social and economic groups succumb to AIDS more rapidly."

Professor Martha Field, who teaches a course entitled "AIDS and the Law," was not terribly surprised by the findings. "It's another example of the discrimination which is seen in our society and in other areas of the medical field," she said.

Michelle Benecke, 2L, Co-chair of the Womens Law Association, expressed similar sentiments. "What has started to be reported recently is that women and men exhibit different symptoms of AIDS and there is a non-recognition of symptoms particular to women, for example, various forms of uterine and vaginal cancer. This non recognition of their AIDS symptoms creates a problem of access to drugs."

Julie Ferguson, 3L, president of the Black Law Students Association, noted that, "when this country thinks about health care they think about treatment for the white society and are concerned about the people of color only as a secondary issue."

According to Morris Ratner, 3L, a Committee on Gay and Lesbian Issues member, "AIDS is seen as a gay, white, male disease, even among doctors." This perception is said to account for the AZT disparities.

Field believes that it would be difficult to bring a lawsuit on the basis of this study. "Instead of a lawsuit, a remedy which more readily suggests itself is there ought to be some regulatory body controlling who gets AZT to ensure that access to the drug is fairly administered. What these people need is treatment," commented Field, "not lawsuits."

Ratner claimed that while lawsuits have their place, "white, gay activists have demonstrated that direct, grass roots, militant pressure on the government and organization of community responses are the keys to getting a response from the government and hospitals."

BLSA Forum Calls For Cultural Understanding

As part of the celebration of Black History Month, the Black Law Students' Association hosted a forum entitled,

**Karla Byrd and Earl Phalen
Special to the RECORD**

"Creating An Agenda: The State of Black America, 1991."

The four-person panel, which met last Wednesday, included: Dr. Joan Wallace-Benjamin; Professor Randall Kennedy; Ken Reeves, Vice-Mayor of Cambridge; and Bruce Bolling, a member of the Boston City Council. Although the panelists' views varied

widely, one over-arching theme emerged: the powerbase of the African-American community.

Kennedy sparked the debate by arguing that African-American advancement required an understanding of the importance of class in American society. In doing so, he challenged W.E.B. DuBois' belief in the centrality of the color line. In contrast, Bolling proclaimed the significance of race, citing persistent discriminatory attitudes and practices that hinder African-American achievement. He warned students not to be misled and beguiled by the achievements of a select few African-Americans.

Reeves urged the audience to re-evaluate the concept of "minority." African-Americans, he said, need to understand the changing racial dynamics of the nation to assert power locally and nationally. The panelists feared that the school system is failing to impart crucial cultural understanding in African-American children. There was a general agreement that Eurocentric values and perspectives are important, but not so important that Afro-centric perspectives should be ignored or excluded.

Harvard Law Record

Volume 92, No. 3

Daniel J. Greaney
Editor-In-Chief

Reviewing The Review

Does the color of the cover of the Harvard Law Review have a name? Pale olive drab comes to mind, but so does "tawny mildew," and neither seems quite right. Is it possible that the Review actually employs a color too dull to have a name? If so, it is an extraordinary achievement, and a fitting touch for a profoundly bland, unimaginative, and conformist magazine.

So staid, so hidebound is the Review that it is almost endearing. The italicized invitation to advertisers printed at the top of the casebook directory calls to mind the slightly superior understatement of a fictional butler. No illustrations, nor any real design distract the reader from page after serious page of black type. Magazine design may have been revolutionized a dozen times since its founding, but the Review plods onward, faithful to its frumpiness.

But what of the contents of the magazine? Are they cut from the same musty cloth?

A glance though the Review —by the way, one of the least stimulating experiences available to the contemporary magazine browser— suggests that the substantive content of the articles repudiates the magazine's stuffy form. Instead of preserving a clubby world of tweeds and worsteds, the Review seems to be dedicated to remaking society in accordance with what I suppose could be called liberal ideals.

The decision to dedicate the first section of the Review's prominent "leading cases" issue to a celebration of Justice Brennan gives an indication of the Review's predilections. Justice Marshall's description of Brennan's legal philosophy would appear to describe that of the Review as well. "To my mind, what so distinguished Justice Brennan was his faithfulness to a consistent legal vision of how the constitution should be interpreted. That vision was based upon certain core principals, especially first amendment freedoms and basic principles of civil right and civil liberties..."

Faithfulness to a consistent legal vision. Faithfulness. With Justice Marshall's help we can make the connection between the Review's stodgy style and its crusading content: Faithfulness. The faithfulness to persevere in its dedication to an absolutist preference for individual rights despite the negative societal effects of such a faith. The faithfulness to fight racism everywhere —and find racism everywhere— when others might have questioned the usefulness of such an obsession. The Review is keeping the faith with its received idea of liberalism. It is as loyal to what it understands to be the intellectual legacy of its predecessors as it is to their typography, their layout, their design.

Hence Professor Robin West's astonishing equation of the current Supreme Court with Stalinism in her forward to the leading cases section of that same November issue: "During the past year, while the ideals and institutions of liberal individualism gained ascendancy in Eastern and Central Europe, those same ideals and institutions came under attack by the United States Supreme Court."

Hence the leading article in the most recent issue, "Fair Driving: Gender and Race Discrimination in Retail Car Negotiations," which grabbed national headlines for its finding that prices offered to car purchasers varied according to race. Allegations of racism always evokes warm memories of the sacred sixties. Never mind that the article omits to mention that any solution to the problem is likely to have a racially disparate impact —since black salespeople make a disproportionate amount of the high-mark-up sales to black buyers. That matter, I suppose, will be the basis for some future assistant professor's Law Review article.

Hence, too, the argument for a constitutional right to beg in the February issue. A faint flavor of civil liberties accompanied by a strong desire to irritate and disenfranchise the majority seem to be the hallmarks of the Review's liberalism. Such preciousness seems to me a far cry from the truly liberating, actually courageous acts of those —like the members of the original civil rights movement—whose legacy the Review apparently believes itself to be perpetuating.

Loyalty is usually considered a virtue, but when the consequence of loyalty is adherence to discredited ideas, perhaps the time has come for the editors of the Review to reinterpret the lesson of their heritage. They should have no problem finding a new model to imitate with their characteristic slavishness. After all, it was a former Law Review editor, Oliver Wendell Holmes who said that the constitution is not a suicide pact.

D.G.

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RECORD Columnist Biased Against Israel

To the editor:

I have a copy of your issue of February 8, 1991, in which you entitle yourself "America's Oldest Law School Newspaper", and should frankly be discontinued and become the last of its kind.

I have been getting it for some time as

Letters To The Editor

an alumnus of the class of 1926, and the article by Mr. Steve Donziger, "Record Columnist", at page 5 of that issue, is one of the worst anti-semitic attacks I have seen in a long time, and conscience in its statements concerning Israel and my people in effect.

This is a man who should be put in the army and do his fighting for his country, instead of fighting his country in this sheet of yours, which I detest.

I have given so far, to a large pledge, \$250,000 since a year ago October, for scholarships, and I can tell you not one penny of that will go, if I have anything to say about it or my estate does, as I am going to be 87 on my next birthday in May and am still working at the law in my offices at the above address, to people such as Mr. Donziger.

Mr. Donziger writes about Israel invading Lebanon and killing 20,000 Lebanese; where he gets these figures from, I do not know, but of what they should have done, justifiably because Israel was being attacked constantly by the PLO from that haven, many Israelis

being killed with attacks like the "intifada." These incidents are constantly being provoked, and Israel will remain intact, I can assure you, as they have been defending themselves for 43 years, since 1948, from the Arabs, who number in the neighborhood of 125,000,000 or more, while the Israelis number in the 3 1/2 to 4 million Jews, and some 1 1/2 million Arabs in the Gaza and the West Bank.

I am highly offended by the attitudes taken by Professor Roger Fisher and some students from Harvard Law School, talking about linkage, and then no linkage, which is utter nonsense. I have read his articles in the Harvard Law Review from time to time and I find them worthless and useless in this day and age, just as I find your Harvard Law Record a disgrace for its lack of consideration of the feelings of the Jews, who have lost 30% of their population in the massacres by the Nazis, Russians and Poles in the Holocaust, of our people.

You students should stop trying to run the Law School and destroy its administrative procedures.

I went to the Law School in 1923-1926, and had the greatest teachers in its history—Dean Roscoe Pound, Prof. Williston, the greatest authority in Contracts and Sales, Prof. Thomas Reed Powell in Taxation, Prof. Chafee in Equity, and others of almost similar great qualities.

The Law School ain't what it should be under these circumstances, and it was not that way in my time.

David Berg.

Legal Aid Bureau Already Represents Vets

To the Editor:

In the Record's coverage of the February 1, "Open Forum on the Gulf War" I noted Anthony Brown's suggestion that one way "protestors" could support soldiers while criticizing policy makers would be by "expanding the clientele in the Legal Aid Bureau to include veterans' benefits."

The Harvard Legal Aid Bureau does represent veterans in public benefits proceedings, and always has.

The Legal Aid Bureau is a non-partisan, wholly student-run legal services office which represents low-income people in the Greater Boston and Cambridge communities. We have fifty-three 2L and 3L members who practice under the supervision of six supervising attorneys. Our practice is concentrated in housing, family and public benefits law; with the approval of the Supreme Judicial Court, we represent clients in Massachusetts' trial and appellate courts, as well as in front of administrative agencies.

The Legal Aid Bureau serves people who have been denied public assistance, or whose benefits have been terminated or reduced. Bureau clients participate in Aid to Families with Dependent Children (AFDC), Social Security, food stamps, general relief, unemployment compensation and disability insurance; veterans may be eligible for a wide range of these federal and state benefits. Over the years, the Bureau has represented numerous veterans; currently we are working with local Veterans Administrations to establish a more efficient referral system through which veterans can retain free legal representation in their benefits disputes.

If you have any questions about the Legal Aid Bureau in general, or more specifically, the types of cases or clients with whom we deal, please feel free to contact me or Michelle Anglade at 495-4408.

Brian L. Schwalb, 2L
President, Harvard Legal Aid Bureau

To Our Readers:

The RECORD welcomes your letters and columns, however, if possible, please submit on IBM WordPerfect Disk. This facilitates the editing process.

Thank you for your support.

**Next RECORD
March 8th**

Mandatory Pro Bono: The Clash Of Absolutes

The mandatory pro bono issue is a clash of absolutes: a clash between virtue and liberty. Harvard Law's faculty

By Max Torres
Record Columnist

will undoubtedly be called upon to decide whether its students will, in the future, be required to perform free legal services in order to graduate. I am writing to air my distaste with "mandatory pro-bono" proposals in spite of ethical predilections to the contrary.

In the February 15th issue of the RECORD, we are informed that in Boston, eighty to ninety percent of "poor" people's legal needs go unmet and that only twenty percent of lawyers lift a finger to help them. Granting the statistics' credibility, arguendo, that the state of affairs they depict mandates immediate redress is presumably self-evident. Because there is suffering, we *must* alleviate it.

Happily, the Emergency Public Interest Coalition (EPIC) and the Public Interest Advisory Committee (PIAC) have a plan: make serving those needs a requirement of graduation. Not only will Harvard be preparing its Law graduates to "ameliorate this outrageous situation," but it will be furthering "the good of our own education, and [the] good [of] society" as well. The

"public service" argument reduces to the proposition that since most people do not voluntarily do what decency requires of them, they must be required by regulation to do it. This is an ancient and venerable idea expressed most forcefully in Aristotle's *Nicomachean Ethics*:

"To live temperately and hardily is not pleasant to most people, especially when they are young. For this reason their nurture and occupations should be fixed by law; for they will not be painful when they have become customary. . . for most people obey necessity rather than argument, and punishments rather than the sense of what is noble. This is why some think that legislators ought to stimulate men to virtue and urge them forward by the motive of the noble, on the assumption that those who have been well advanced by the formation of habits will attend to such influences; and that punishments and penalties should be imposed on those who disobey ..."

Aristotle has penetrated the essence of EPIC-PIAC's "solution." EPIC-PIAC sees clearly that one is not prepared for virtue unless one is habituated to it by "right laws," and that "doing the right thing" will not be painful when it has become customary. If a sense of duty is to be manifest in lawyers, it must first be habituated in law students. And

since most people obey necessity rather than argument, legislators—faculty in this case—ought to stimulate law students to virtue and urge them forward by the motive of the noble, eschewing for the moment the carrot for the stick.

The snag, of course, is that the formative ethos of virtue was long ago discarded in favor of the self-defining ethos of liberalism. Mill's *On Liberty* announced the new creed's "harm principle" timelessly:

"[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

By this principle, the possibility that a faculty council's enactment—such as mandatory pro bono—would benefit society is irrelevant. According to Mill, the operative consideration in the immediate case is whether or not a law student's decision to withhold his pro bono services "harms" society in a way that demands its "self-protection." Does Harvard Law School need to mandate pro bono for the self-protection of its alter ego, society? If not, the authorities are not warranted in mandating it, and their power cannot be "rightfully exercised."

It is argued alternatively, that MPB is also for "the good of our own education." To this argument, Mill countered: "His own good . . . is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be

better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise."

To the assertion that a 54-46 majority of last year's students favored mandatory pro bono—a contestable assertion which I grant arguendo—Mill had this to say:

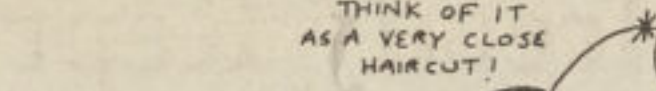
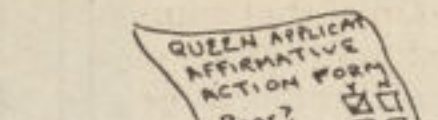
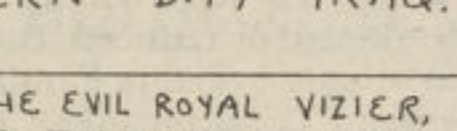
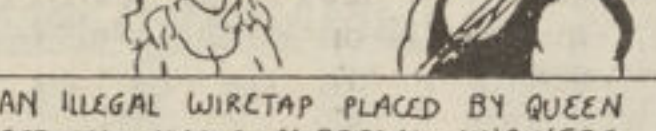
"Let us suppose . . . that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it."

Thus, by Mill's creed, neither the greater good of society, the greater good of the individual, nor the will of the majority justifies an imposition on an individual's liberty, save in the case of harm to others. Were it simply Mill's creed, his contribution to my understanding of the mandatory pro bono issue would be merely comparative. His principle, however, constitutionally enshrined via Justice Brandeis's formulation of a "right to be let alone—the most comprehensive of rights and the right most valued by

Pro Bono page 8

Agenda Neutral

By Eli Clark

THIS WEEK, JEWS ALL OVER THE WORLD CELEBRATE PURIM. THE STORY OF PURIM TAKES PLACE IN PERSIA, WHICH IS MODERN-DAY IRAQ.	AHASUERUS, KING OF PERSIA, SEPARATES FROM HIS WIFE, QUEEN VASHTI. IN A MESSY PROPERTY SETTLEMENT, HE INSISTS ON KEEPING HER HEAD. 	ESTHER, A YOUNG JEWISH BEAUTY, APPLIES TO FILL THE VACANCY. ESTHER DOES NOT ADMIT THAT SHE IS JEWISH, BUT CLAIMS TO BELONG TO A DISADVANTAGED MINORITY. 
HAMAN, THE EVIL ROYAL VIZIER, REPORTS TO THE KING THAT THE JEWS ARE CHEATING ON THEIR TAXES AND OUGHT TO BE WIPED OUT. THE KING, FACING A BUDGET DEFICIT, AGREES. 	AN ILLEGAL WIRETAP PLACED BY QUEEN ESTHER'S UNCLE MORDECAI UNCOVERS HAMAN'S PLOT. IN A DRAMATIC COURTROOM CONFESSION, ESTHER ADMITS SHE IS JEWISH AND ACCUSES HAMAN OF CONSPIRING TO KILL HER. 	THE KING AUTH- ORIZES A PLEA OF SELF-DEFENSE FOR THE JEWISH PEOPLE, WHO TAKE ARMS AGAINST THEIR ATTACKERS AND DEFEAT THEM. HAMAN IS CRUELY, BUT NOT UNUSUALLY NEROTICISM IN VIOLATION OF FEDERAL NEGOTISM LAWS, QUEEN ESTHER'S UNCLE MORDECAI BECOMES THE NEW ROYAL VIZIER. ESTHER AND AHASUERUS LIVE HAPPILY EVER AFTER. HAPPY PURIM TO ALL!

Law of the Jungle

By The Idle Rich

[illegible]

Fenno

"Dear HLS cronies,

I'm still here in Saudi Arabia and of course if I'm writing this letter I'm still alive. That's my main objective, a very good one too...I still laugh when I think about the old days at the Inn. Boy, we sure were a bunch of wild young sex-seeking students then, huh? The only thing different is...we're older.

Right now we've got a real *bad* sand storm blowing around outside. Sh...it's all getting on my nerves. Can't even find a sleazy chick out here...gonna go looking for a camel soon. (Add another hump! HA!)

Well that's all I've got for now!
Send polaroids.

Love ya, FENNO™

Instantly alerted to Fenno's altered frame of mind, his concerned comrades hurried with the letter to Health Services, where the resident Gypsy (i.e. Acid) Queen did a reading with the aid of her omniscient Glass Globe.

"Do ya think he's sad, Gypsy? Do ya think he's lonely, Gypsy? Do ya think he's frustrated and scared and confused? Do ya think I'm sexy?"

"I think he is all of those things. As for his so-called friends, I think you possess the perspicacity of an addled mole. If you permitted yourself one small minute to reflect upon the realities of his life at this moment, you would not have found it necessary to consult my *Globe*. Additionally, unaided you could have found ample evidence to support my conclusions. Look at the envelope. What does it say?"

Fenno's friends fired in unison, "GREETINGS FROM THE GIANT CAT LITTER BOX!"

SHOULD THERE BE A PRO BONO REQUIREMENT?

In the interest of bringing readers a range of opinions on the issue of mandatory pro bono, the Record presents interviews from a random selection of students. Here are the responses:



Tony Fama, 2L

I think the pro bono idea has some merit, but I don't think it makes any sense in the long run. I think that people who want to contribute to the community will do that on their own initiative, and I think those people will make a better effort out of it. I don't see any reason to force people to do something they might not want to do.



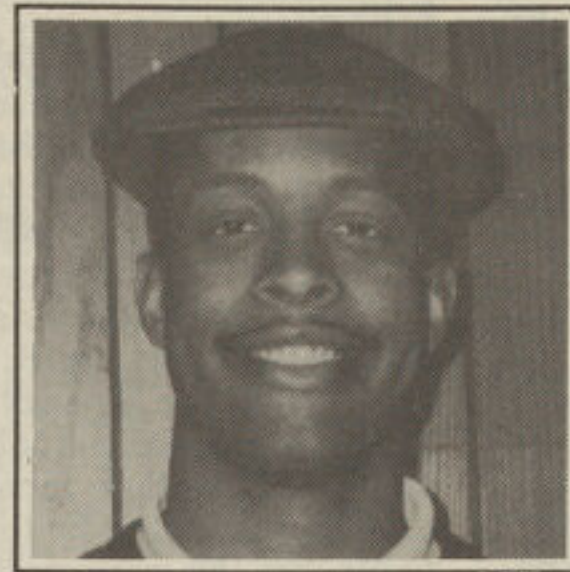
Judy Gliniecki, 3L

I personally feel that there shouldn't be a pro bono requirement. I think that there should be lots of opportunities for people who want to do it, and I think people should be encouraged to do it, but I don't think they should be forced to do it.



Meg Becker, 2L

Yes, I think so because I think it's important and I believe in the idea that...public service ought to be a part of getting an education. I can think of other countries that have systems where if you have professional training then you give something back. I think its good exposure for people.



Sean Carter, 2L

I am utterly opposed to it. The problem I see with it is that...because the Law School students have achieved something so wonderful such as a Harvard Law School degree, that other people are entitled to use that degree free of charge. That seems to be both illogical, setting up a terrible hierarchy, and it is something I could not support.



Juan Zuniga, 2L

Yeah, I think it should be a requirement just as moot court is a requirement. The opportunity to work with clients and to effect people in a real life situation gives the classroom experience much more meaning and depth.

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SUNDAY, MARCH 3, 1991
11AM - 3PM

Pro Bono

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civilized men," underlies the hallowed right of "privacy." So revered is Mill's spirit that a professor on this faculty recently concluded that when the absolutes of life and liberty clash, liberty trumps life: even another's life. While a further distance than Mill would have ventured, this step from a liberty-without-harm to a liberty that countenances direct harm, owes much to Mill's dismissal of Aristotelian ethics. "To impose virtue on any person demeans that person's individual worth," our professor concludes.

Exalted liberty does not accommodate the habituation of virtue, regardless of the cause's nobility. Not surprisingly, many MPB advocates deny that they are compelling virtue. Rather, they claim to be advocating a just quid pro quo: mandatory pro bono as the price for monopolizing the legal profession. In the alternative they plead that MPB is merely a just substitute for the jury duty foregone as a consequence of our profession; or that MPB is simply another justifiable prerequisite for the profession of lawyering, rather like taking the BAR exam. But these are not reasons for mandatory pro bono. They are rationalizations for those who would compel it on others, rationalizations

which, incidentally, gut MPB of the noble sentiment it requires to justify its imposition: that it is better for the world and for man to form him to help others who cannot afford his help than it is to let him degenerate into selfishness.

This retreat from a bold ethical principle—people must be habituated to good action by right laws—to fuzzy metaphysics—by being a law student you monopolize the profession and your omission to ameliorate the suffering you cause via your monopolistic control obligates you to help—is a decisive step backwards from the crux of the issue.

"Liberty consciousness" is so deeply embedded within Harvard Law's collective psyche that one expects any demand for the imposition of virtue to be accompanied by at least mild remonstrations from the cult of "rights." Paradoxically, however, mandatory pro bono is a "civil libertarian's" issue at Harvard Law. Thus, when I read that EPIC urges mandatory pro bono as a "de minimis" step towards helping us satisfy our "pro bono obligation as practitioners,"—an obligation mandated by conscience—and that other champions of MPB have determined that societal and individual goods "outweigh the slight liberty interest involved," both unsubstantiated by any discussion of the issues just presented, I wonder from what bottomless pit of hubris their certitude derives.

Ignorance

continued from page 1

Middle East. People who are supporting it, are supporting it for reasons that have nothing to do with understanding the Middle East. Everyone seems to be concerned with their own issues. It's not the concerns of the people in the Middle East which are the focus of the war demonstrations. It's domestic politics, Republicans, Democrats, and the economy. No one asks, "How can this situation be handled without a war? What's the region going to be like after the war?" Nobody asks those questions when they are talking about Kuwait. They just say, "Well, is war good or is war bad?", as if this scenario could happen anywhere in the world. I was talking to one guy who said he has two uncles in the war, and that he had to explain to his grandmother why her sons are over there. He said that he told her, "Well, there's this evil guy, who gassed his own people, and he's a total tyrant, and now he invaded Kuwait, and we have to stop him before he invades some other place." I think he did his grandmother a disservice. Maybe he should've told her that Hussein also has one of the highest literacy rates among the Arab world and has a very secular, non-fundamentalist government. Many of the people in his government are non-Muslims.

RECORD: Have you personally experienced any backlash against Arab Americans?

TARAZI: No, nothing serious, but I know it is much more of a trend in places where people are not as well educated as they are here. I haven't had anything like a physical threat made against me or anything to that effect. I guess, for me, I have suffered, more than anything else, from the frustration of people being ignorant about the situation. I remember one person I was dating said to me,

"Is it okay if I call you Arab, or is that a derogatory term?" As if the word "Arab" was derogatory. I am shocked by how little people know about Arabs and that part of the world in general. What frustrates me so much about the war is that people don't know a damn thing about Iraq, or Kuwait, or how Saddam Hussein got into power, or that his political party's goal is a secular, Pan-Arab state. People don't know anything about the Royal family in Kuwait, or why the Palestinians support Saddam, or what he means when he calls for a jihad [holy war]. No one can answer any of those basic questions about the Middle East and yet everyone has an opinion about the war. I just question how people can have an opinion about the war without being educated about the Middle East. My point is, simply, that you should try to understand the legitimate needs of the people, and why one country would invade another country in that region, because, unless you understand the underlying motivations, you are never going to have a peaceful, stable area.

RECORD: Does the West really want a peaceful, stable area in the Middle East?

TARAZI: I don't think so. I think it is a very simple strategy of divide and conquer. You've got boundaries drawn according to the colonialists without any recognition of tribal or cultural recognitions. The natives were never asked, "Is this where you want to draw the line for your new country?" I think America would rather have a bunch of weak, easily manipulated states instead of one strong Arab state controlling all the oil, which is what I think most Arabs want. That's why when China invades Tibet, America doesn't say anything. When Syria invades Lebanon, America doesn't say anything. But the minute that Iraq invades Kuwait, America

Wake Up: HLS Diversity Works

The truth is, the word "diversity" is a misnomer. It is a catchy, all-encompassing buzzword to appeal to

by Robert Arnold

our sense of pluralistic idealism. It is a more palatable description of other ideas espousing the same viewpoint. But, so what!

By whatever name one chooses to better represent his particular point of view and/or side of the argument, whether it be distributive fairness, proportional representation, or reflective inclusion, diversity is a fashionable word used to inject much-needed life and energy into the currently out-of-fashion, and almost dead-in-the-water, civil rights struggle in this country.

Our forefathers didn't intend a society in which people feel compelled to change their names and ideologies, get cosmetic surgery, and otherwise

"pass" in order to be accepted. They intended a society which recognizes and celebrates "that all are created equal" and endowed with "inalienable rights" as Thomas Jefferson alluded to in our Declaration of Independence. (Call me helplessly and hopelessly naive, and I'll plead guilty.)

Sure, diversity causes problems of its own; however, its inherent benefits far exceed its costs.

The regular readers of this column might mistakenly get the impression that I don't have one good thing to say about HLS. That's not true. I do have one good thing to say about HLS: The student body here is the most diverse gathering of people I have ever encountered in my life. And, even though, at times, I have had some minor problems of adjustment, and, even though I have been here for only a limited time, I really believe that I have grown and become a better, more under-

standing, compassionate, and intelligent person because of my exposure to the backgrounds and experience of this diverse group of people. (There, one good thing has been said, and I'm glad I got it out of my system.)

But then, of course, there is the issue of the faculty.

I recently had lunch with a very diversity-and-civil-rights minded fellow student. During the lunch, she expressed the belief that it will be the students who ultimately effect at HLS.

Though I admire her resolve, the distressing truth is, as indicated by the recent dismissal of the case filed by CCR against the faculty, it will be the monopolistic corporation called HLS that has the final word as to what changes come about in this place.

You can bludgeon them profusely and repeatedly about the head with a cold, wet noodle, and some people still just don't get it: DIVERSITY WORKS!

CCR

continued from page 1

white, female, and other types of faculty members "stigmatized" students who share these backgrounds.

The suit asserted that instructors draw from personal experiences when they teach. The law school's hiring policies were said to result in students not gaining exposure to the viewpoints of various minority groups.

In a statement released on Monday, Dean Robert C. Clark said, "I am gratified that the judge has dismissed the lawsuit filed by a group of Harvard Law School students. Although I continue to believe that there is no foundation to these students' allegations that the law school discriminates in faculty hiring, I also believe that broader issues relating to the composition of the law school's faculty are

important ones to the entire law school community. Discussion of these issues is most likely to be productive when conducted outside the setting of a lawsuit."

Gulbis, however, asserts that the discussion of the hiring issue will continue to take place in the court room for at least another round. "We will be appealing in a week or two," she said. "The Massachusetts higher courts have a history of being sensitive to civil rights matters. We hope that that is still the case."

Dean Clark expressed admiration for his courtroom adversaries. "I am also gratified that the judge took special note to commend these students for the quality of their advocacy."

In his eight page decision, Brady said that he was "impressed with the students' apparently sincere concern over the impact upon them of the alleged lack of diversity."

responds because she doesn't want all of that oil coming under the control of one person.

RECORD: If there were a conference tomorrow on "the Palestinian issue," who would represent Palestine, or more accurately, who do the Palestinians recognize as their leadership?

TARAZI: It's clearly the PLO. Everyone in America has this picture of the PLO as a primitive, barbaric group of people located on the evolution chart between man and monkey. That is not true at all. They have much more support among Palestinians, percentage wise, than George Bush does here, or the Israeli government in Israel. But, what should be emphasized isn't that we support them because we agree with everything they do or say, we recognize them the way any American recognizes the American government. One can recognize Bush as president without agreeing with all of Bush's policies. Our support for the PLO comes from being told by the Israelis and by the Western countries, especially America, that the PLO is not our legitimate government. Every time they [the West] say, "no, they are not your government," we are going to say, "yes, they are our government," because we are the ones who are going to determine who our government is and not anyone

else. It just strengthens our resolve. It's not because we think Yasser Arafat is the greatest guy in the world, in fact, I think many Palestinians are disillusioned and frustrated with him. He's actually quite a poor leader, especially since the Iraqi invasion. He was doing very well in the last few years, but since the Iraqi invasion, he seems to have thrown out everything he worked for by supporting Iraq. How can you talk about freedom for your people from occupation, while at the same time supporting the occupation of another country?

RECORD: Can you personally, and Palestinians in general, ever truly recognize Israel's right to exist?

TARAZI: There should probably be a distinction made between recognizing Israel's right to exist and recognizing Israel's existence. Because when you say, "Israel's right to exist," you imply to a Palestinian, "Did they have a right to kick me out of my home? Did they have a right to occupy my house? Did they have a right to annex everything that I ever owned?" Of course, the Palestinian would say, "No, they didn't have a right to do that." However, if you ask them, "Do you accept Israel's existence now, and are you willing to deal with it?" most Palestinians will say, "Yes, we understand what happened can't be reversed, and we

shouldn't invest time trying to reverse it. It's happened, it's a fait accompli. It wasn't right, but we must accept it for the sake of the future, and for the sake of our children."

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