



Harvard Law Record

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25 CENTS

Democrats Urge 'HLS To The Hill'

By Richard Genow

The HLS Democrats began their Spring agenda last Monday by sponsoring a symposium on careers in politics. Over 225 people converged on the Ames Moot Court Room to hear four HLS alumni discuss their personal experiences and advise law students with public service ambitions. The symposium, moderated by Professor Abe Chayes, consisted of the Democratic National Committee Chairman, Paul Kirk, HLS 1964, Sen. Paul Sarbanes (D-MD), HLS 1960, Rep. Anthony Beilenson (D-CA), '57, and Rep. Sander Levin (D-MI), '57.

Professor Chayes, known for his accomplishments in the public sector, kicked off the symposium by saying that "the purpose of the program is to show that there is somewhere you can go besides Wall Street or Hell." Each of the speakers then described their respective political histories, influences, and motivations.

Paul Kirk, whose leadership has helped the Democratic Party revitalize and retake a majority in the Senate, expressed optimism in light of current political events, with respect to the Democrats and the 1988 elections. When asked who he would most and least like to see nominated as the Republican candidate, Kirk responded with Vice-President Bush and Sen. Robert Dole (Kan.), respectively.

Sen. Sarbanes used the opportunity to stress participation in de-



Hillary Richard

Luke Cole, 1L, CHF member and participant in the rally, lights his grade burning kit.

Grades A Burning Issue At HLS

By Greg Herbert

Approximately 200 students gathered around the steps of Langdell North last Wednesday to participate in a grade burning rally/protest staged by HLS' radical student group, the Counter-Hegemonic Front. The event culminated a two-week long barrage of anti-grade hype, consisting of posters, T-shirts and cartoons, that appeared around HLS with increasing frequency. The Front staged the event to protest the school's "random" grading system and to demand a pass/fail first year program similar to that of Yale Law School.

Many students joined in chants of "Pass/fail, works at Yale" and "Hey hey, ho ho, those random grades have got to go," while 150 signed a petition endorsing the proposed pass/fail system.

"It's an incredibly reasonable proposal," said CHF member Wilson McLeod, 2L. "There's absolutely no reason to maintain the current system other than institutional inertia."

A group of about twenty second and third year students actually burned their grades. 1Ls, who had not yet received any grades, were supplied with "grade burning kits." The kits consisted of matches and official-looking transcripts with every first year course listed as receiving a B. "Just like you're going to get in a few days anyway," co-organizer Peter Levine, 2L, shouted, in support of the contention that grades at HLS have no correlation to performance or understanding.

One of the major allegations made by the CHF was that professors

(Continued on Page 6)

(Continued on Page 3)

Visitors Find HLS Exciting, Enjoyable

By Michael Reilly

A sampling of the fourteen visiting professors on campus this year produced enthusiastic responses about their HLS experiences. Each year HLS invites distinguished individuals from other law faculties and practice to teach here. Visits serve to attract faculty who later win permanent lateral appointments. Other reasons behind an invitation may be to fill a curricular gap, or simply to invigorate intellectual and scholarly discourse in the school with outside viewpoints.

Despite the varying reasons behind the individual visits of professors Renier Kraakman, Cass Sunstein, Steven Shffrin, and Zygmunt Plater, all were uniform in expressing their enjoyment at HLS.

The reason for Professor Steven Shffrin's presence this academic year is "to have fun in seeing a different city, a different faculty and students." Shffrin, who taught Constitutional Law last semester and is currently teaching Torts, is a tenured member of the UCLA Law faculty, and will begin a permanent position at Cornell Law School next fall.

Having visited at Boston University in '82-'83 and the University of Michigan in '84-'85, Shffrin is a veteran visitor who finds the "geographic diversity of the [HLS] student body produces a greater range of political views" than he has experienced elsewhere. He has enjoyed his stays at each school and regrets leaving the "wonderful law school at UCLA," but is obliged to leave Los Angeles for personal reasons.

Shffrin said that the enormous diversity of faculty at HLS is a great advantage, creating "a stimulating environment for both the faculty and students similar to that at UCLA. The sheer quantity of cultural and ethnic diversity in the Boston area as well as the "rich array of speakers" at Harvard makes HLS an exciting place at which to study law. Shffrin said that he has experienced "quite a bit of interaction with students" at HLS

and has not discovered much difference in student-faculty rapport, adding that the same proportion of students have spoken with him (both in and out of class) as at smaller law schools.

Another visitor from a smaller law school is Professor Renier Kraakman of Yale. Last semester Kraakman taught Corporations and he is now teaching Corporate Finance and a seminar, "Theories of Firms and Markets." He said that the change in class size (from 60 at Yale to over 150 in his Corporations class) required some adjustment, but that the quality of students and student-faculty interaction is comparable.

Despite the larger enrollment in his Corporations class, Kraakman came to know quite a few of the students personally — going out to lunch with groups of four or five students on a regular basis.

Besides interaction with new students, Kraakman praised personal faculty interaction as one of the main attractions of visiting. Both Kraakman and Shffrin, however, cited as one the luxuries of visiting is that visitors need not attend faculty meetings. Without this obligation, visitors can more fully enjoy expanding their scholarship.

Kraakman said that "a lot is getting off the ground here," and through the faculty workshops, both visitors and permanent faculty can participate in meaningful discussions. Kraakman stated that he has greatly profited from his visit through his work with the law and economics workshop, while Shffrin has used his time in Cambridge to finish his upcoming book: *The First Amendment: Democracy and Romance*.

Neither visitor has found the faculty to be as splintered because of Critical Legal Studies as reported. Kraakman stated that there is "a whole lot less divisiveness than was rumored," and that much of the faculty's embattled reputation stems from HLS' high visibility and the ensuing likelihood of exaggeration. Shffrin, who comes from a faculty that has substantial CLS represen-

tation, has not changed his general views as a result of his time here. For Kraakman, coming from a CLS-free faculty at Yale, his visit to HLS has given him new insight into the controversial school of thought.

Another visitor from a law school with no critical legal scholars is Professor Cass Sunstein, '78, who is currently teaching Administrative Law and a seminar on constitutional theory. Sunstein, a tenured member of the faculty at the University of Chicago, recently finished a visit at Columbia Law School last fall. "Chicago students," Sunstein said, "are well known for being well prepared," and so he was worried that he would have to change his teaching style and lecture more than usual. However, Sunstein has found his fears ungrounded, stating that everyone "here [at HLS] has been terrific."

The size difference in the two schools has advantages and disadvantages, Sunstein said; he said he believes that more faculty-student contact occurs at Chicago, while at HLS there is a greater ideological diversity and more resources upon which to draw. Of the three law schools he has seen in the last year, Sunstein said that "Chicago is the most intellectually intense overall, but [HLS] is the most diverse" and heterogeneous with different currents of thought.

The ideological difference is what most distinguishes HLS students from Chicago students. There is no active left at his home school while there is a very active far right. Sunstein additionally noted that there are no CLS faculty members at Chicago. Like Kraakman, Sunstein said that his sojourn in Griswold Hall has given him a greater understanding of critical legal studies. The movement has been good for legal education and scholarship, in Sunstein's view; it has been responsible for introducing Marxist interpretive techniques into the law.

Sunstein's overall evaluation of his HLS experience as being "ab-

(Continued on Page 7)

Estrich In Calif., Plans Return To Academics

By Eric Stockel

HLS labor law and criminal law professor Susan Estrich has been working in an appellate practice in Los Angeles this year. She began working at Tuttle & Taylor last July, a move designed to keep her closer to her husband, Marty Kaplan, a vice-president of Walt Dis-

ney Company. The two had been dating since they met on the Mondale Campaign in 1984 and were married last fall. The fact that Mr. Kaplan's job fixes him fairly permanently in Los Angeles has led to rumors around campus that the newly tenured Estrich would not be coming back.

Those rumors were no doubt started by someone who knows very little about Professor Estrich's history at HLS. After graduating as the first woman president of the Law Review, Estrich worked as general counsel for the judiciary committee. Following the 1980 defeat of the Democrats, she returned to HLS. She remained at Harvard for about 2½ years, before politics called again, and she became first the executive director of the Democratic National Platform Committee, and later a senior policy adviser to Walter Mondale.

Estrich returned to Harvard after Mondale's 1984 defeat and was granted tenure last spring. Last summer, however, due to her impending marriage, Estrich was indeed considering never returning to Harvard. She was nearly certain about spending two years in Los Angeles before making a final decision. All this changed last month, when she decided that she missed academic life. And so, with an irony Estrich herself appreciates, just as rumors swirled about the HLS campus, she was writing her course descriptions for next year's catalogue.

Estrich will be teaching courses on sex discrimination, election law, and advanced criminal law, and will probably stay at Harvard at least through the elections in 1988.

Students Burn Grades On Langdell Steps

(Continued from Page 1)

spend very little time grading exams, contributing to the grades' inaccuracy and randomness. Luke Cole, 1L, recited a list of anecdotes to support this claim, including one professor who said she awards herself with a Twinkie for every exam she finishes in less than seven minutes. "She admitted she had a lot of Twinkies that grading season," Cole said. Another professor was said to have admitted spending only eight minutes per exam.

The CHF also criticized HLS' traditional grading system as encouraging "obscene" over-competitiveness and anxiety among 1Ls, "and in extreme cases, even suicide," Levine added.

More reflective of the Front's style, however, was Levine's claim that "grades smooth students into a process where they're going to end up working for the corporate culture, taking on the values of corporate firms without thinking about it, and repudiating the very reasons they came to law school."

Stuart Kliman, 1L, challenged this as a rationalization. "They're just making excuses early because they're going to end up in a corporate firm," he said. Although he disagreed with their ideology, Kliman supports a pass/fail system for all three years and agreed for the most part with the CHF credo, "Grades are random." "It's reasonable that grades are random here,"

(Continued on Page 11)

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Williston Negotiations Focus On "Paper Hunt II"

By Vince Chang

While most first-year students greeted the new semester and braced themselves for Ames, 120 first year students entered the annual week-long Williston Negotiations Competition from February 2 to February 6.

Williston, run by the Board of Student Advisors, pitted two-person teams against each other in an attempt to negotiate a contract between a famous movie actress and a motion picture production company, which wanted the actress to star in its newest film "Paper Hunt II: The Final Conflict." The students had to draft contracts after negotiating the following issues: the actress' salary and her share of the film's profits, a penalty to the production company in the event the film was not distributed, the number of days the actress would be on the set, the perquisites the actress would receive, and whether the actress would submit to drug testing.

The opening meeting of the competition on February 2 featured presentations by Professor Roger Fisher, who spoke about negotiating techniques, and by Elliot Surkin, a real estate partner in the Boston law firm of Hill and Barlow. Surkin, who is teaching a course in Real Estate Planning this spring, made a presentation on drafting techniques. After this brief instruction session, the teams were given the competition materials and told to return in five days with completed contracts.

In fact, at the end of the protracted bargaining session only two teams had failed to complete contracts. Nine members of the BSA

then proceeded to evaluate the contract, selecting three categories of awards: best contract overall, best contract for the actress, and best contract for the company. The best contract overall award was based, according to John M. Gray, Chairman of the Williston Committee and a co-drafter of this year's competition, on the "clarity, simplicity, and workability, and the creativity of the contract terms." The best contracts for the actress and for the company, by contrast, were based largely on how favorable those contracts were for the parties the teams represented.

Winners of the Best Contract Overall were Joseph A. Anderson, Section 1, Mir Saied Kashani, Section 1, Thomas K. Higley, Section 4, and Jon F. Vein, Section 4. The runners-up for that award were Harry A. Olivar, Jr., Section 1, Douglas E. Ulene, Section 1, Myles J. Slosberg, Section 4, and Jesse D. Droddy, Section 4.

The winners of the Best Contract for the Actress were Michael S. Hoirn, Section 3, and Alexander A. Chacon, Section 3.

The winners of the Best Contract for the Company were Robert M. Ultan, Section 2, and Paul Richard Dubinsky, Section 2.

Most of the winners apparently worked long and hard for these awards. Kashani, for example, said that he spent roughly 20 hours negotiating with the other team and another five hours discussing strategy with his partner, Anderson.

However both Kashani and Ulene said that they thought that the program was well worth the work. Ulene, who graduated from college two years ago, stated that he was initially "intimidated" to find himself across the bargaining table from

Slosberg, who had been a president of Stride-Rite Shoes for roughly 20 years. These initial misgivings, however, subsided as Ulene, like Kashani, found his opposition reasonable. Both Kashani and Ulene said they learned a great deal in the negotiating process. Ulene, moreover, praised the speed with which the BSA evaluated the contracts. "We got the contracts back only four days later. It's not like first year grades. Instead we get immediate feedback," Ulene commented.

Both of the teams winning the awards in the "best contract" category placed creative provisions in their documents. Kashani's team included a provision that "if the actress got temperamental and stormed off the set, she would forfeit \$500,000." As a quid pro quo, however, the movie company, in order to allay the actress' fears that "the company wouldn't fork over the cash when needed" advanced the actress a full \$2.2 million "up front, in cash, no credit cards," Kashani noted. By contrast, Ulene's team used a more flexible sliding compensation scale that would enable the actress to receive her choice of various packages such as \$2.5 million and 5% of revenues or 1.5 million and 10%. Despite these figures, apparently teams representing the company were instructed to give no more than \$1.5 million with no share of gross revenues.

Williston is over, but some of the winners are aiming at even higher goals. Ulene noted that as a runner-up in the best contract award, his name would not go on the plaque in Langdell devoted to the first place contract drafters. But Ulene noted, "now we'll just have to win third year Ames."

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Alumni Democrats Urge Public Service

(Continued from Page 1)

mocracy in order to preserve the system. He emphasized that "all of you should carry a strong notion of public service," and that a career in politics is a way of being part of the "action and passion" of our time.

It was Rep. Beilenson who added the most insight to his personal experience by admitting that "while at HLS [he] didn't go to class all that often" and that law school was the worst three years of his life. He went on to say that in the public sector "most people won't hold it against you that you're from HLS, especially if you don't tell them."

Addressing himself to the role of a legal education in a political career, Rep. Sander Levin warned that it's not true that a law degree is a passport anywhere in public service; expertise is required. Moreover, while "law school may help you think and express yourself, it does not teach you how to care."

The entire panel agreed that political careers are highly rewarding, but require substantial financial sacrifice. They also added the grim reality that winning an elected office requires luck, timing and considerable financial resources, in addition to the right qualifications. Thus, they urged students not to limit their interests in the public sector solely to elected positions, stressing that there is a world of opportunity in local and national politics that is distinct from elected office. Rep. Beilenson summed it up best: "If you're interested in doing something that is very rewarding, then I encourage you to get involved in politics, but don't count on being elected to Congress."

The speakers agreed that while financial hardship is definitely a consideration for indebted law students embarking on a political career, there are opportunities for reasonable earnings. Moreover, recent changes in HLS's financial aid program are easing this burden. Ultimately, however, the answer must come from within. As Professor Chayes aptly pointed out, the speakers "were not afraid to take



Hillary Richard

Rep. Sander Levin and DNC Chairman Paul Kirk discuss from "HLS to the Hill."

a risk and stray from the mainstream path that leads—from the third floor of Pound Hall."

For those who do find success in a political career, the panel urged that they conduct themselves according to their moral beliefs from

the very beginning, because once one begins cutting corners it is difficult to stop. "Do what you believe is right," advised Rep. Beilenson, "because that's what people respect and though they may not admit it, that is what they really want." ❧

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Visiting Profs Compare HLS To Home Schools

(Continued from Page 2)

solutely great," is echoed by Professor Zygmunt Plater, a visitor from Boston College Law School. Plater is teaching a heavily-subscribed Environmental Law course this semester.

Plater attributes the large enrollment (despite the requirements of both a paper and a final exam, and scheduling of class meetings at 8:15 a.m.) to a recognition that "our resources are part of our legacy, and if we lose them, the cost to society will be cataclysmic."

Students know, according to Plater, that environmental law is no longer a luxury — it is creeping into the experience "of the most urban clients." Also, environmental law serves as the vehicle of the most cutting issues in the law: procedure, criminal law, sovereign immunity, constitutional law, and administrative law. In light of growth in this area, Plater feels that the material should be treated in several courses. To condense the body of

material into one course is nearly impossible.

Despite the challenging bulk of environmental law, Plater has

found his experience to be "thoroughly delightful." In each class there is an "active investigation" of the topic by both Plater and the class. Due to the large class size, there is an "incredibly broad range of backgrounds . . . someone will always have an insight into a particular situation, no matter how idiosyncratic."

Similarly, Plater has enjoyed his contacts with the HLS faculty. They, like the immense library and administrative support, serve as an "extraordinary resource." As with the other visitors interviewed, Plater has not noticed the hostile tensions and passions reported in the press. He had been "saddened" by the rumored divisiveness and was pleased to note a "growing sense of community and mutual respect" in the faculty.

Plater continues to maintain close ties with the *Environmental Law Review* and the Environmental Law Society, and will supervise third year papers after his return to Boston College next fall.

Sunstein Gets Award

Visiting Professor Cass R. Sunstein has received the first award for administrative law scholarship awarded by the Section of Administrative Law of the American Bar Association (ABA). Sunstein was honored for his article, "Interest Groups in American Public Law," published in 1985 in the *Stanford Law Journal*.

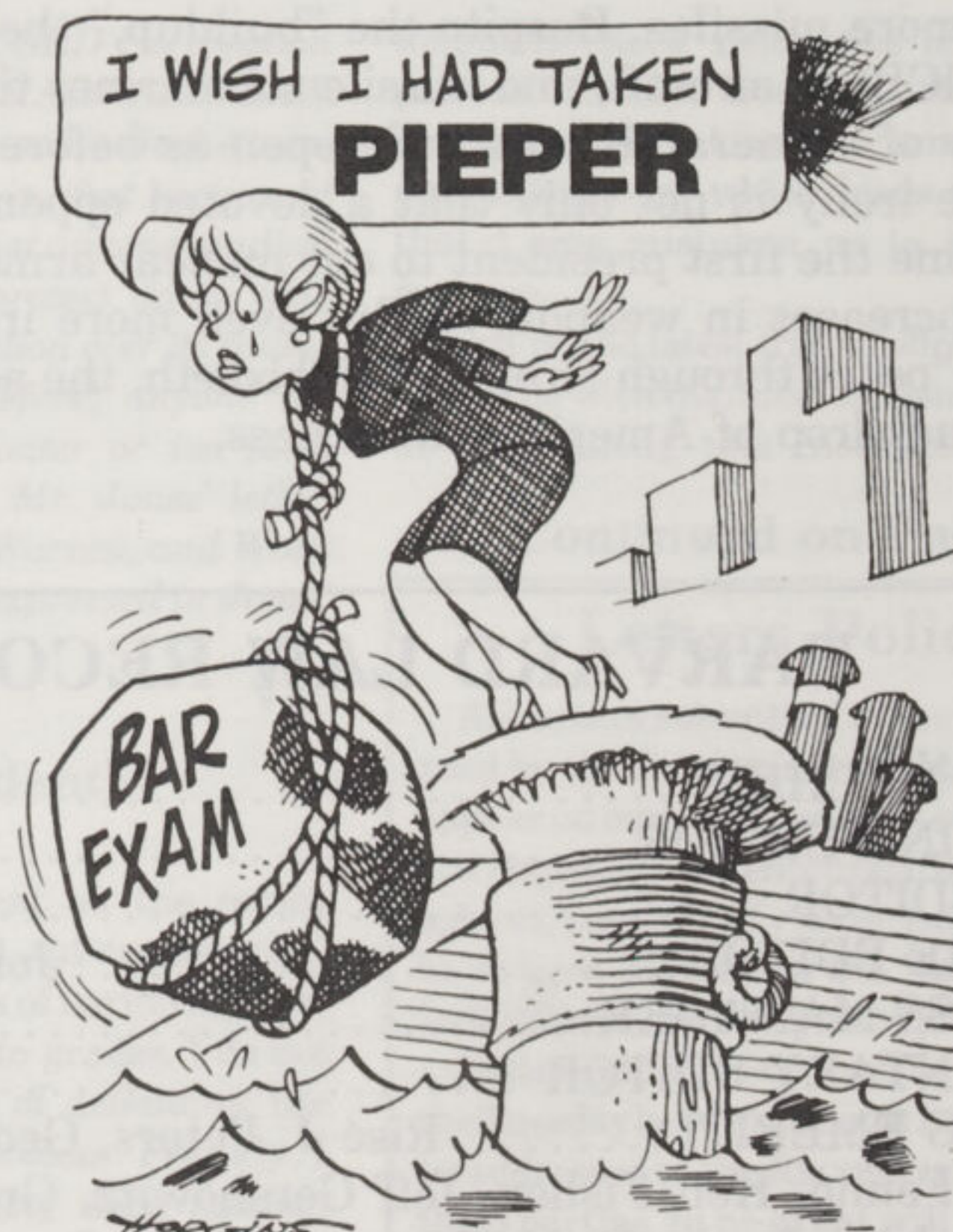
Sunstein is visiting HLS from the University of Chicago Law School. The *Administrative Law News*, a publication of the ABA Administrative Law Section, described the article as "a creative and thoughtful attempt to help revive-borrowing Professor Sunstein's terms-aspects of what he refers to as a republican conception of governance."

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DAUNA WILLIAMS

Peace Through Weakness?

The Soviet proposal to limit Europe-based medium range missiles must seem like a godsend to the president. Supporters of the administration will no doubt trumpet the virtues of "peace through strength," claiming that the Reagan arms buildup forced the Soviets to the bargaining table. The reality, however, is that an agreement on medium range missiles would be the product of American weakness, not strength.

Current negotiations follow up on those which foundered in October when the Soviets insisted that the U.S. place limits on Reagan's Strategic Defense Initiative (SDI) shield against ballistic missiles. The Soviets vowed to eschew talks on other arms control issues until such limits were imposed. Since October, the U.S. has placed no further treaty limits on SDI; why, then have the Soviets decided to seek an accord?

American vulnerabilities are probably the driving force. The Soviets correctly perceive that Reagan, beleaguered by charges of illegality and incompetence, needs the kind of public relations breakthrough that only a dramatic arms agreement can provide. Now, the Soviets must feel, is the time to exploit Reagan's weakness and to cut the best "deal."

Moreover, the Soviets may recognize that SDI is also politically troubled. Congress has slashed the President's SDI funding request 40%, forcing the program to emphasize ground-based technologies, while shelving the glamorous space-based systems popularly associated with SDI.

With SDI a paper tiger, the Soviets' previously desperate insistence on SDI limits may be softening. Instead, by portraying themselves as reasonable, the Soviets may hope to deal a knockout blow to SDI. If SDI's supporters can no longer label the Soviets as bellicose, political backing for the project might be fatally undermined.

Reagan's supporters would quickly argue that, even if SDI is lagging, non-SDI programs in Reagan's buildup may have pushed the Soviets to the table. The short answer is that the rest of Reagan's effort has been no more successful than SDI. According to a 1986 study, in Reagan's first term, he spent 91% more than Carter on nuclear missiles, but funded only 6.4% more missiles. Despite the "buildup," the Soviets continue to have more ICBMs, aircraft, and missile submarines than the U.S., leaving the window of vulnerability as wide open as before.

Thus, the irony is not only that a devoted opponent of arms control might become the first president to cut nuclear arms (SALT placed only limits on increases in weaponry). But even more ironic is the fact that despite the "peace through strength" shibboleth, the accord will be reached amidst a backdrop of American weakness.

—V.C.

Fenno

Dead broke and out of Schlitz, Fenno rolled around desperately on the dirt brown carpet of his unfurnished Somerville efficiency. "What did I do with that six-pack," he racked his brain. As he writhed and contorted, he overheard a static-filled mumble emanate from the twelve inch black and white screen with the foil sticking obscenely out of it.

"Well you know, Pat," the voice said, "life around old Harvard Law School has been kinda like a Wheel of Fortune II lately. And one could argue that while not all the women on the East Coast look like Vanna, at least they've got the brains to do more than most traffic lights. . ."

The reference to school made what was left of Fenno's mind stew. He strained to remember a big, gray place he used to frequent once a month or so. "My locker," he ejaculated, "that's where I left it." It seems both members of the *Journal of Law and Public Policy* had offered him some brews one night in a seedy bar if he would attend one of their meetings. After he snored through a lecture on "The Free Market and Child Labor Laws: The Compromise for Eight-Year-Olds," he told one of the members to leave the beer in his locker, since they couldn't find any Coors nearby. When he entered the tunnels, his ears were assaulted by the noise of screaming circular saws and Marlboro-smoking burly men. He wandered through the tunnels pretending he was a hamster in a habitrail. He thought his imagination was working too well when he saw the water dripping from the roof and the wood shavings on the floor everywhere. Where's the exercise wheel, he wondered.

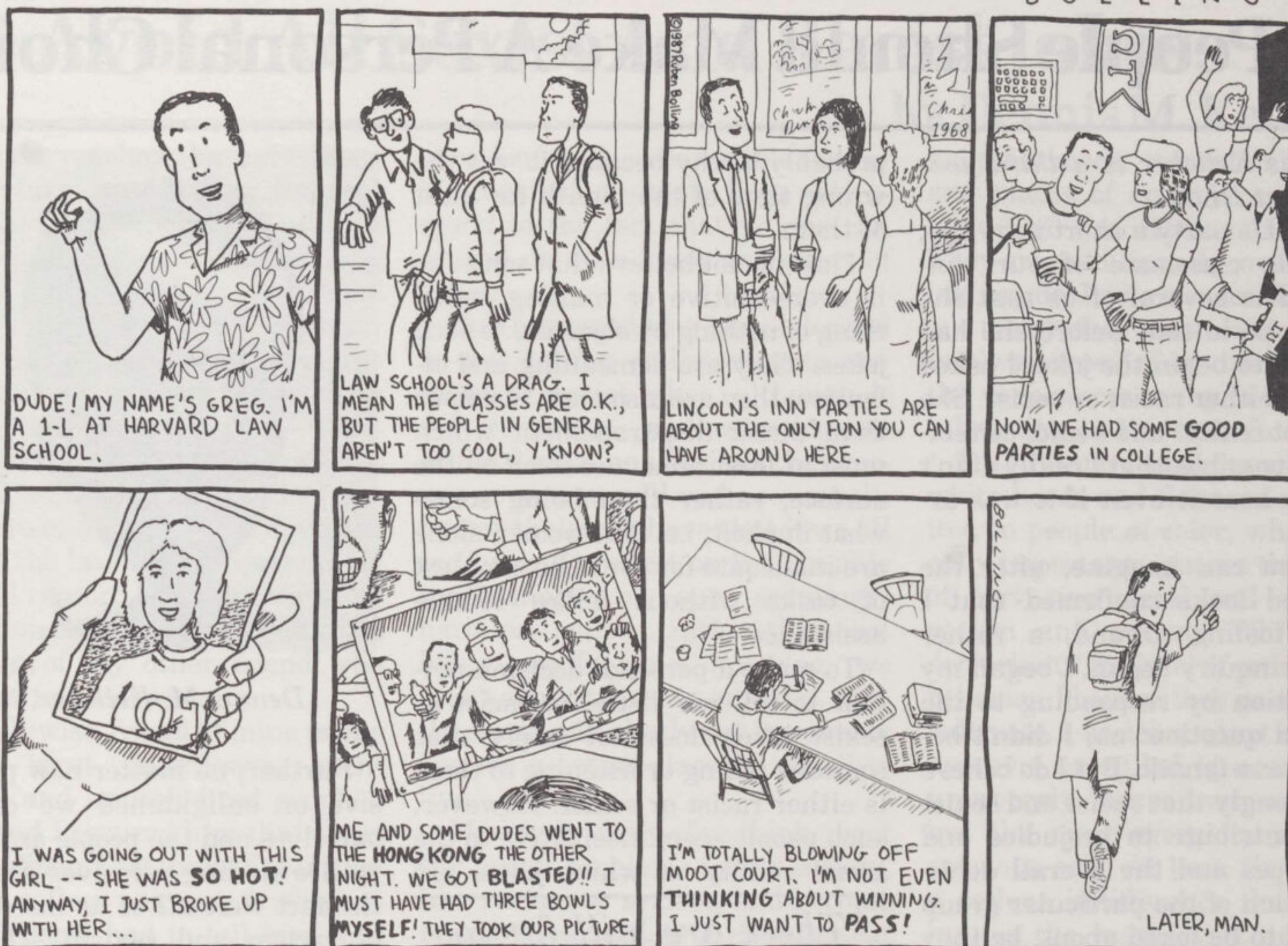
As he approached the general area where his locker used to be he read a sign: "Since our policy of randomly shifting the mailboxes proved so effective at maintaining that mystical, existential angst we strive for, we have decided to apply this policy to student lockers and administrators as well. If this fails to pulverize any vestigial feelings of self-worth or security you may have subversively built up, we may soon apply it to cars in the student garage. NOTE-This may be a fake sign, although the chf signature at the bottom is definitely unauthentic."

Disgusted, he emerged from the rodent-like system and noticed a group of students chanting "Deans are Random. Administrator burning at 3:00." Fenno noticed someone they were calling Sleepy Jim answering an angry question. "Well, I don't know about this issue. I'll have to sleep on it," Sleepy said. "In fact, I think I'll go throw myself into that job right now."

Well, Fenno thought, what can you expect for \$20,000 a year?

HARVARD LAW RECORD

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Letters to the Editor of the Record

Tax Protest Illegal

To the Editors:

I hold no brief for the policy and activities of the present administration in Nicaragua, but I am appalled that the RECORD would suggest in the January 15 issue, which just arrived at my office, that law students and others should make a protest on a Form 1040.

Since 1982, Section 6702 of the Internal Revenue Code has imposed a \$500 penalty for filing a frivolous income tax return. The penalty applies when an individual files what purports to be a return that does not contain information on which the substantial correctness of the self-assessment may be judged and this is due either to a frivolous position or to a desire, which appears on the return, to delay or impede the administration of the Federal income tax laws. This seems to describe the form suggested.

You owe your readers a belated warning and a duty to exercise more critical editorial judgment in the future. That would seem to be a reasonable minimum to expect from those planning to enter the legal profession.

John B. Jones, Jr.
Washington, D.C.

Ed. note: The Readers' Forum section of the paper in no way represents the views of
MARCH 6, 1987

the HARVARD LAW RECORD Corporation or of the masthead of the HARVARD LAW RECORD. The Committee on Central America form letter reprinted in that section of the RECORD suggested that anyone sending the letter and tax form protest do so only after "considerable deliberation over its causes and consequences." Therefore, anyone intending to send such a letter or tax form should carefully consider Mr. Jones' letter. Tax professors Andrews, Warren, and Wolfman agree with the views expressed in Jones' letter.

V.C.

CHF "Strident"

To the Editor:

I would like to comment on the recent activities of the so-called chf (counter-hegemonic front? — collection of harmless fools? — it's a secret) in regard to grades. I do not write with the intention of defending the integrity of the grading process. Frankly, I think the things are pretty darn random too. Rather, I wish to express my puzzlement with the group's tactics and objectives.

When the anti-grade campaign first began, I interpreted it as a healthy attempt to get people to lighten up and stop taking themselves and this institution so seriously. Accordingly, the first posters which appeared around campus were genuinely funny

tongue-in-cheek mockeries of the grading process. Lately, however, the anti-grade campaign has taken on a tone of stridency and seriousness which leads me to believe that I was mistaken as to their original purpose.

That is, the latest frantic efforts to saturate the walls with manifestos seem less directed at humanizing this institution and more

(Continued on Page 16)

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which have been covered in the RECORD. Short letters are more likely to be printed.

Letters must be received by 2:00 P.M. on the Tuesday before the issue. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD. Organizations should identify the specific individual(s) responsible for approving the letter. All letters submitted become the property of the HARVARD LAW RECORD Corporation.

People Should Make A Personal Choice

Dennis Kelleher is a third year student at HLS.

At a 3L's party a short time ago, a female classmate of ours announced to several of us that she had a joke to tell. Before she had a chance to begin the joke, I asked if it was either racist or sexist. She said "not really" and I said, as tactfully as possible, that I really didn't want to hear it even if it was arguable.

As you can imagine, after the contorted looks confirmed that I wasn't fooling around, a rather spirited inquiry began. I began my explanation by responding to the unstated question: no, I didn't believe I was a fanatic. But I do believe very strongly that racist and sexist jokes contribute to prejudice and stereotypes and the overall dehumanization of the particular group selected to be joked about, be they Black, Hispanic, female, Asian, Irish, Italian or whatever. Moreover, a miasma of hostility and intolerance necessarily accompanies the cavalier attitude of one who tells racist or sexist jokes.

The woman who had attempted to tell the joke and who I know to be quite progressive, said she "was not racist or sexist and telling a joke in fun to friends doesn't make (her) one either." And from another, "no one here (almost all HLS students) is racist or sexist and they all understand that it is just a joke." "It's totally harmless" seemed to be the consensus. Silent incredulity and bewilderment were the loudest responses, however.

It strikes me as undeniable that these types of jokes are simply different from other truly harmless jokes. And, I'm not just referring to jokes expressly aimed at "niggers" or "wops" or "wetbacks" or "micks" or "kikes" or "PMS girls," etc. But also jokes like the one our classmate wanted to tell: "How many women does it take to screw in a lightbulb? Fourteen, one to turn the bulb and thirteen for a support group." No kidding, and the support group was

probably bitchy because it was the wrong time of the month for most of them.

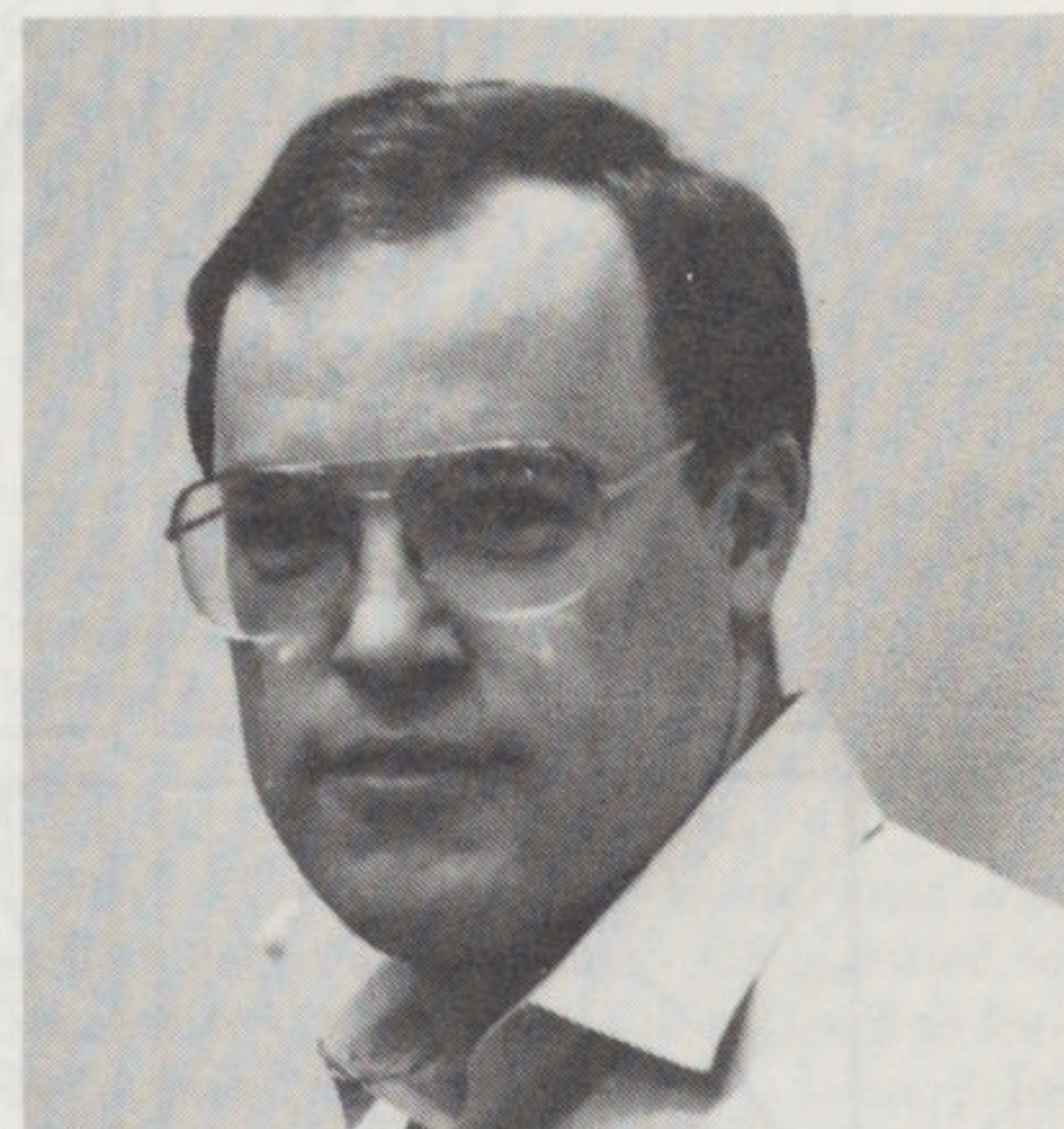
I just do not believe that someone is oversensitive or making something of nothing by objecting to such jokes. They are demeaning and offensive; they are also more insidious than direct disparagement which must at least announce itself on the surface, rather than being somewhat implicit, i.e. that women alone are inadequate for even the simplest of tasks without fellow female assistance.

To make a personal decision neither to tell nor listen to racist or sexist jokes does not imply that someone telling or listening to them is either racist or sexist. However, such people seem insensitive to the social reality in which jokes are

"There are still far too many people who do believe the point of most [racist and sexist] jokes."

heard and understood. There are still far too many people who *do* believe the point of most jokes: that the subjects are freeloaders or greedy or stupid or indolent or drink or are criminals, etc.

Furthermore, all such jokes necessarily declare that these particular people are appropriate objects of ridicule. The joke is a truncated form for withholding or questioning the value and dignity of others — such dividing and compartmentalizing of people into quickly identifiable groups as fit subjects for attack is the first step in denying them their humanity. These messages accompany every racist or sexist joke, maybe subliminally, but no less biting. Think about the explosion of anti-Jewish arbitrageur jokes spreading throughout Wall Street spawned by the recent insider trading scandal which netted many criminals who happened to be Jewish. Harmless?



Hillary Richard

Dennis M. Kelleher, 3L

Further, no matter how progressive or enlightened we consider ourselves and the people around us, we are kidding ourselves if we deny the fact that *all* of us have traces of racism and sexism. This just means we have to be vigilant for those times when the dormant traces become reality. It seems to me that at least one such time when this occurs is when we tell racist or sexist jokes.

A joke's effect upon the people who hear it is also fundamentally unknowable. Something that happened to me recently illustrated this as well as the truly pernicious nature of even apparently innocuous jokes. While I now refuse to tell or listen to any and all racist or sexist jokes, I used to decide on an individual basis and if a joke didn't seem too bad, then what the hell, it was worth a laugh. One such joke just came back to haunt me.

I recently had lunch with a friend who is, in name and features, obviously Irish. He told me he was clerking for a year and then would be looking for a public service job. I told him a good friend of mine, and a classmate of ours, had just got this great public service job similar to what he would be looking for and how I was sure when he was looking for a job that this guy would probably be receptive to his job inquiry.

To Avoid All Sexist And Racist Jokes

by Dennis M. Kelleher

He told me how he only knew this friend of mine a little, but that he didn't think this guy would be open to his job search. When I asked why he told me a joke this friend of mine told him in one of their infrequent encounters over the years here: "Do you know what a Jewish student at HLS is? A majority. Do you know what an Irish student at HLS is? A visitor," i.e. there are many Jews and few Irish here at the law school, presumably for good reason. He took this as an indication of anti-Irish prejudice on the part of my other friend who happens to be Jewish.

This Jewish friend of mine is one of the most progressive, open-minded and unprejudiced people I know and I assured him that I was fully confident that the joke decidedly did not reflect any anti-Irish prejudice. Then I had to tell him that I had told that joke to my Jewish friend the year before, although it isn't clear to me now why I thought it was funny. I remember this because I used to tell so few such jokes and because I thought seriously before I told him this one, from an Irishman to a Jew — just a harmless joke between friends. Indeed, a different Jewish friend had told it to me.

We can all argue that it was unreasonable for my Irish friend to suspect prejudice from such a seemingly slight suggestion, but

questioning the reasonableness of his conclusion simply does not respond to the fact that no one can control or even know the effect of a joke.

This happened long after I decided to stop telling or listening to any racist or sexist jokes, although it did reconfirm my commitment. While I have no illusions that racism or sexism will end as a result, I nevertheless believe that if we all *individually* reflect on the possible implications of our seemingly harmless actions, rather than just being comfortable knowing we aren't explicitly racist or sexist, then the world will slowly yet inexorably become a better place for us all to live.

Moreover, many of us think about the larger problems facing society, like racism or sexism, and become immobilized because it appears that we as individuals can do so little; yet each one of us can *personally* act, even if in small ways, to affect the larger issues without having to drop what we are doing and run to the ramparts full time.

We must all be mindful that the highly visible and unambiguous racism of the Klan's white hoods and confederate flags defiantly displayed recently in Forsyth County, Georgia, and less visibly but no less powerfully in Howard Beach, are not the only types of racism we must fight. Indeed, all too often our

neighborhoods, recreational areas, and places of employment are as white as the Klansmans' robes. They are, additionally, overwhelmingly male. Its no wonder that racist and sexist jokes are socially accepted in these types of environments — the very places many of us will be inhabiting in the near future.

To only guard against racism with white hoods and flags, or only limited to people of color, while critically important, ignores the reality of pervasive social and economic racism and sexism. While jokes don't rise to the level of overt vicious behavior, I believe they nevertheless cultivate a social context of either approval or willed ignorance that improperly inures everyone to all but the most egregious and conspicuous acts. At best, they reflect a callous indifference that tacitly invites the more overt actions of others.

Equally important, while the value and dignity of all people, as groups and individuals, should be of paramount concern to everyone, it *must* be to those of us who will be participating in a legal system that purports to make these concerns central. We have to be ever mindful that the value and dignity of people are thoughtlessly yet significantly chipped away when we unreflectingly tell or listen to racist or sexist jokes, however harmless they may appear to be.

Students at Rally Demand Pass-Fail Grades for 1Ls

(Continued from Page 3)

he said. "We're all about the same academically and it's too hard to differentiate between us."

The CHF denied responsibility for the phony grade announcements posted around HLS last week. "That was done by someone trying to sabotage our purposes," McLeod said. "We don't want to contribute to grade anxiety in any way."

HLS offered a pass/fail option to

students one year in the 1960s, but only 17 percent of students chose the option, according to Dean of Students Mary Upton. The option was rescinded the next year, alleged Levine, "because there was so much pressure from corporate firms to change it."

"The student body has historically supported pass/fail grading," said Cole, citing a 1984 student survey in which 63 percent of students favored pass/fail. "The Michelman

Committee of the early 1980s also studied the issue and recommended pass/fail grading, but the faculty voted it down," he added.

When asked about the CHF's coming agenda, McLeod responded, "We're working on a counter-hegemony, and the next issue of the *Reptile*," the group's newspaper, will focus on "alienation and repression."

Readers' Forum

Random Grades Produce HLS Apathy

By Susan Brune

The Counterhegemonic Front and their grade-burning allies call attention to a fact that HLS students have known for a long time: there is something wrong with the grading system at HLS.

From their first days at HLS, 1Ls are bombarded with cynical cues from their disenchanted predecessors. "Grades really are random," a 3L confides to a 1L acquaintance over beers at the Pub. "I know a woman who never read a case or went to class first year. She even spent the week before first semester exams on the beach in Venezuela. And she got an 'A' in contracts," remarks an envious 2L as she blots her Three Aces pizza with a stack of napkins. "I didn't even bother with Gilbert's and I still managed to ace Crimlaw," hisses another 2L as he passes a 1L hunched over his casebook in Langdell Reading Room.

The typical 1L doesn't believe any of this. After all, even if she won't admit it in polite company, she didn't get all those 'A's' in college merely by sleeping with her books under her pillow at night. She read a significant proportion of her assigned reading. She attended classes with secular — if not religious — regularity. She wrote long term papers. She even scribbled somewhat coherent essay exam answers. True, the exams usually rewarded regurgitation of facts and arguments, but at least the professors turned them back with comments suggesting that they had read them. Why should things at law school be any different?

Things at law school are different, she discovers when she is handed her first semester grades. "What? An 'A' in civil procedure?" she gasps, remembering how the exam had focused on a chapter that she hadn't had a chance to read. But what's this? "A 'B' in torts?" Ever since the exam she had reminisced about her essays on that exam with fondness. They were so organized, so original, and they even showed that she had pored over every case. "And how about that 'B' in property?" She certainly knew more about property than she did about civil procedure.

Doubts begin to creep in. Maybe the CHF was on to something after all. She visits her professors, asking for copies of her exams, hoping for written comments or a discussion of how she could have improved her essays. "I really don't remember your exam," replies one vaguely, hinting that even asking shows an unseemly tendency toward grade-grubbing. "Do you know how long it would take us to write comments on each exam we have to grade?" asks another. "Do you know how long I studied for that exam?" she thinks. "Or how many weeks it took you to turn the grades back in? Or how many hard-borrowed dollars my classmates and I are paying you to be our professor?" Another professor

puts an announcement in the Advisor: "Sample 'answers' to the recent exam are available in my office." "Why doesn't my transcript have quote marks like that around the grade I got on that exam?" she wonders.

If our hypothetical 1L is like most HLS students, she will cope with all of this in a number of ways. First, she will wrestle with doubts about whether those "B's" really were random. Maybe she just isn't as smart as she has been led to believe she is. After all, none of the 2Ls and 3Ls she heard bragging about how little work they did for their "A's" mentioned working hard and getting "B's". She will decide to keep quiet about the two "B's", but maybe let it slip that she got that "A" in Civil Procedure, by writing about the cases she never read. Second, she will stop preparing for class as carefully as in the past, because there doesn't seem to be any point. Maybe it's not that grades are random at all, but rather that the less work you do, the better your grade, she postulates. Or maybe, her subconscious will suggest, it is better to do less work, because then her ego will be better able to withstand the blow of future "B's", by rationalizing that she did not even try. Third, she will stop participating as much in class. It is hard — although by no means impossible — to say anything intelligent about a case she hasn't read. Besides, she doubts her professors take her ideas very seriously, when they won't even deign to comment on them when she writes them on her exams.

At this point, she joins the ranks of the apathetic 2Ls and 3Ls she has been trying to disbelieve all along. As her other classmates join her in apathy, 1L section discussions begin to fall flat. Even enthusiastic professors' lectures are met with blank stares. By second year, few of her classmates will have done the reading for class and the professor will be forced to lecture the entire class period. If the professor expects any kind of response from students, he has to first summarize the case he wants to discuss. Class discussions become more and more dispirited, reinforcing the cycle of apathy. And when our hypothetical friend is talking with the new crop of 1Ls, she will hear herself telling them what she heard her first year, that grades are random.

Is she behaving childishly, here? After all, "B's" are not bad and she did get quite a few "A's" over the course of the year. And besides, shouldn't she appreciate learning for its own sake, not just because she gets a little reward in the form of a letter grade at the end? But that ignores the obvious. Grades do matter. They matter because, like it or not, they are the one way we get any feedback around here. And they matter to us because they matter to the outside world. If we want to clerk for a particular judge or work at a

particular job, good grades will help us.

Some have suggested that the solution to the problem presented by apparently random grades is to abolish them altogether. While this is one approach, it does not address the twin problems of professorial unresponsiveness and student apathy that underlie the complaints about random grades. The problem of random grades presents a clear choice: make grades meaningful or abolish them.

If this law school is ever to live up to its pretensions of being a graduate school, instead of a fancy trade school where students spend three years of their lives and tens of thousands of dollars getting the equivalent of legal union card, then students' work is going to have to be taken seriously. Three hour exams covering four hours worth of tricky issue spotters featuring characters with amusing names (Ha! Ha! This exam is a huge joke!) will have to be deemphasized. Where traditional exams are retained, professors should be expected to turn them back to the students with extensive comments. Professors should announce their willingness to discuss exams with all comers or perhaps give a special class to go over the exams in a group. This way students could learn from their mistakes and might even conclude that that "B" was not assigned randomly after all.

As in graduate school, students should be expected to turn in research papers regularly. Serious work, rather than the facility for spinning out a counterargument for every argument or scribbling all the right buzz words, should be rewarded with high grades.

(Continued on Page 14)

About The Readers' Forum

The RECORD welcomes views from all perspectives. In addition to Letters to the Editor and more elaborate Off-the-Record ruminations, the RECORD features another avenue for reader contributions: The Readers' Forum. The purpose of the Readers' Forum is to allow students, alumni/ae, and faculty to express their thoughts on various areas of the law, the profession, and life at HLS; we would like to stress that we welcome all viewpoints on subjects outside the scope of Harvard Law School as well. Please limit Forum pieces to a length of 500 words or less. The Editors reserve the right to edit Forum submissions for length or objectionable language.

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Readers' Forum Continued

(Continued from Page 12)

All work should receive comments, and students should be given a chance to rewrite work that missed the mark the first time so that they can learn from their mistakes. After all, many of us will be expected to research and write for a living when we graduate. It is inexcusable that most first year students leave for their summer jobs without having their written legal work (other than possibly a moot court brief) evaluated by a professor. Student moot court advisers and legal methods teaching fellows, no matter how well-intentioned and hard-working, cannot replace professors who have broad research and practice experience.

Finally, as in graduate school, professors should give as many "A"s and "A-"s as the quality of their students' work warrants. Until the apathy brought on by an apparently random grading system sets in, most students take their studies seriously. We are all reasonably hardworking, competent students or we wouldn't be here. There is no need to set up a false hierarchy or to further encourage competition among us by holding to a curve fixing the percentage of "A"s, "B"s, and "C"s. If most of us produce work above a certain level, most of us should get "A"s. Such a policy would have the effect of deemphasizing grades and emphasizing professors' comments. In contrast to a regime under which grades were abolished, grades would counteract the natural human tendency toward laziness by retaining some power to sanction for haphazard work.

For this plan to work, professors' efforts to teach their students must be given as much, or even more, weight than their research work in tenure decisions and in the professional hierarchy. It is understandable that many professors shrink from giving time to their students, when they are under a great deal of pressure to produce articles and books, while their work with students goes unnoticed. In addition, it may be necessary to hire more professors to be responsible for grading written work and discussing their comments with students. Like most things, this would cost money, but it would be money well spent.

A combination of professorial accountability and higher expectations for student work would go a long way toward combating the well-documented morale problems that plague HLS. Exams could be an occasion for learning, rather than frustration and cynicism.

Family Poverty

By Eric Stockel

One of the great tragedies of our time has been and continues to be the steady sinking into poverty of divorced women and their

children. As various and sundry negotiations, affairs and crises have gripped our attention over the past few years, little notice has been given to the fact that women and children now make up two-thirds of those living below the poverty line.

While the currently crumbling Reagan Administration deserves much of the credit, the legal system has also done its bit to advance the feminization of poverty. As of 1981, only 59 percent of children in single parent families had child support orders, and of those, fewer than half received their full payment and 28 percent received nothing at all. (And since nine out of ten children live primarily with their mothers after a divorce, I will assume that the custodial parent is the mother for the purposes of this article.)

In response to these appalling figures, Congress in 1984 ordered the states to come up with child support guidelines, in the apparent hope that this would induce judges to grant more child support orders. The Massachusetts judicial commission set up to fulfill this Congressional mandate has recently promulgated its draft guidelines and is currently receiving comment on them.

On their face, the guidelines are patently inadequate and will be of only modest help to those heading single parent households. As a result, naturally enough, the organized bar in Massachusetts wants the proposed support levels reduced, arguing that they will impoverish divorced fathers faced with the prospect of having to spend up to 33 percent of their incomes to support their own children. To fend off the influence of lawyers dependent on divorced fathers for their livelihoods, more enlightened members of the legal community should now voice their support of at least the draft guidelines, and even of needed improvements.

One of the more striking results of divorce in this country is its effect on the relative standards of living of the two new households as compared to that enjoyed by the original one. A recent California study revealed that one year after divorce the standard of living of the custodial parent had declined an average of 73 percent, while that of the non-custodial parent had increased by 42 percent. This result should be relatively unsurprising, given that courts rarely if ever order a father to pay even half of his income to his former wife. Since the father is usually the primary breadwinner, this means that he finds himself supporting a single person household with at least half the income formerly used to support three or more people.

Percentage of Income Inadequate

The draft guidelines make a half-hearted attempt to deal with this by using a percentage-of-income approach to child support. The commission, headed by Chief Administrative Judge Mason, looked at the average amount of income spent by intact families

on their children, and used these figures to set the percentage of income a judge should order as support.

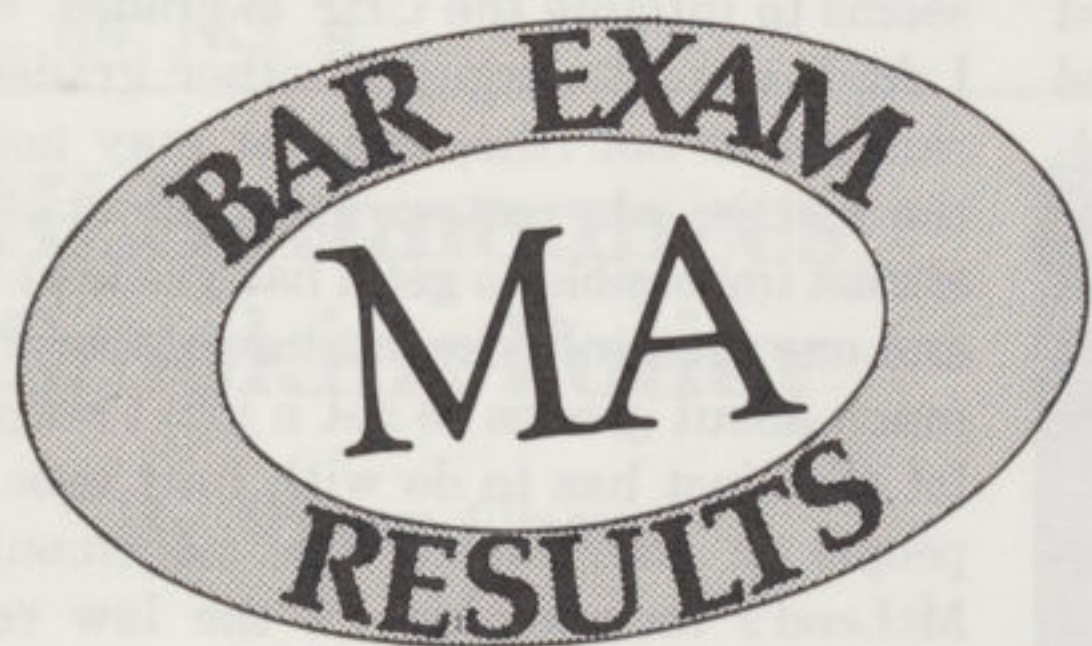
Setting aside the fact that Judge Mason chose to reduce the percentages below what the studies indicated was the actual level required, this approach contains obvious drawbacks. Quite simply, the amount of income an intact family spends on child support does not reflect the actual cost of raising children. For one thing, it does not take into account the value of child care services performed by mothers who choose to be housewives. For another, the guidelines make no provision for the fact that the custodial parent in a single parent family incurs a substantial opportunity cost, whether she chooses to stay home full time with her children, or is forced to take a job down by child care responsibilities.

The most equitable solution for the child support problem is a method called income equalization. Under such a system, a judge would total up all the income of the parties, and then try to ensure that any decline in living standards (and there will be such a decline, since it costs more to run two households than it does to run one) will be allocated equally between the two households. Judge Mason has misguidedly rejected such a system, and would be unlikely to resurrect it now. The best hope, then, for those who desire equitable guidelines is to flood Judge Mason with letters calling for tangible improvements in the draft guidelines. Two such improvements would be to make the guidelines presumptive, thus forcing judges to justify in writing any decision which ignores them, and to factor in a cost of living adjustment, so that an absolute level of support does not become wholly inadequate in only a few years time. Other ideas include a means of automatically taking account of career advancements by fathers (rather than forcing mothers to go into court for frequent modifications), and a clear statement in the guidelines that they are not meant to preclude the award of alimony in cases where it is appropriate. These ideas are by no means a comprehensive list, but were Judge Mason to enact them, they would ensure at least a modicum of fairness in the awarding of child support.

The Children's Rights Project, in conjunction with the Massachusetts Women's Bar Association, has begun a lobbying effort to make Judge Mason aware of the wide scope available for constructive change, an effort worthy of student support. The appalling reality of children living in grinding poverty, of having to change neighborhoods, schools, friends and lifestyles simply because ignorant courts are more protective of divorced fathers than their children, is what forced the creation of these guidelines. It would be sadly ironic if the worthy goals behind the guidelines led to the perpetuation, if not the institutionalization, of the very conditions they were meant to address.

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Letters to the Editor (Continued)

(Continued from Page 9)

concerned with demonstrating the glorious righteousness of this cause. Maybe the group members feel that they can magically convince the mindless hoop jumpers to stop jumping if they put up enough posters. Maybe they desperately want to convince us that they aren't preoccupied with such trivialities. They are likely to fail on both counts. Besides, the people who don't fall victim to defining their self-worth in terms of grades aren't printing up posters and t-shirts. Instead, they're probably reading a book, cooking dinner, or busy engaged in some simple human activity which produces happiness.

Despite this change in the tone of the campaign, I have not seen any indication that the members of this naughty group are serious in their opposition to the grading system. Serious opposition would entail rational discussion of alternatives to the present system and attempts to win support for these alternatives. What we have seen in the last few weeks, however, is a phenomenon best described by the "trivialization of protest." Although I was not present at the grade burning ceremony, it would not surprise me to learn that the participants joined hands and sang "We Shall Overcome" on the steps of North Langdell as their grades went up in smoke. By the way, how many peeked before they ignited their grade report?

What can we expect next from this bunch of daring commandos? Will they play "ring and run" at the homes of professors? Perhaps we will witness an attempt to toilet paper the shrubbery at Dean Vorenberg's house. I can hardly wait.

Christopher T. Shaheen

No Fan of CHF

To the Editor:

I am writing this letter to respond to Wilson McLeod's letter in the last issue of the RECORD about the vocal, trendy and really pompous Counter-Hegemonic Front (CHF).

McLeod is very upset that "hundreds of once public-spirited or at least disinterested students are annually recruited as foot-soldiers of the corporate empire." He believes that all of this is the fault of the HLS Administration which supposedly turns almost 540 very bright students a year into foaming right-wingers against their will.

Unfortunately, however fertile the imagination of the people in the CHF, this is not the case. I would guess that most people didn't come to HLS with the idea that they wanted to be revolutionaries. Many people came to HLS to get precisely those jobs at large law firms that McLeod hates so much. Still others came to HLS because they didn't have anything else to do, didn't see much of a future in their undergraduate majors, and thought that being a lawyer didn't sound so bad. This contrasts sharply with the sinister conspiracy notion the CHF would have us believe is behind HLS graduates not living their lives the way the CHF sees fit.

McLeod should realize that he, and other law students, are old enough to take responsibility for their own choices in life; he should quit blaming these choices on everyone's favorite scapegoat, the administration. Besides, who are McLeod and the CHF to so self-righteously condemn the decisions that many of their classmates are making?

As to the common complaint that many students have too many loans to do public interest law, the fact is that HLS now has

a program to forgive, or pay, the loans of graduates taking public interest jobs, and many Harvard students with huge loans manage to take public interest jobs every year.

On another note, one thing that really seems to inflame the CHF is grades. While I don't want to argue whether grades are random or not (they may or may not be), the fact is, why get so upset about it? It's almost impossible to get a bad grade at HLS, and one certainly doesn't have to worry too much about grades to get a job. I suspect a lot of it just has to do with hurt egos. The people at CHF don't hate hegemony, as McLeod's membership on the law review tends to show. Most of them are probably just upset they're not all at the top of their respective classes getting straight A's.

If grades upset the CHF so much, perhaps the administration could get extra proctors to hold their hands while they take the tests so they won't get so worried.

CHF members should take a course in psychology and learn a little bit about "projection." Life's got more to offer than being upset you weren't at the top of your class in law school. As for the ROSEBUD, I thought I heard the waitresses complaining about a group of arrogant, yuppie law-students who drank there.

James Hoffman, 3L
Cambridge, MA

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