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Clark Offers Cool Response To Bell's Protest

By Linda Popejoy

Dean Robert C. Clark '72 this week characterized Prof. Derrick Bell's decision to take an unpaid leave as "power politics" and indicated he had no plans to speed up the hiring process for a woman of color in order to prevent Bell's exit.

Clark, in an interview with the RECORD, gave no indication he would change his position on the issue, which is expected to be discussed at length at the final faculty meeting of the year on May 9.

"Appointments decisions should be made on the basis of relevant factors," said Clark. "These include excellent scholarship while giving some weight to diversity."

Clark added that "symbolic gestures and other forms of raw pressure are not relevant factors" in the appointments decision making process and that he felt that he had a "moral obligation" not to base decisions on such factors.

Clark said "[Bell] underestimates the power and importance of rational discussion and analysis among colleagues."

Bell could not be reached to respond to Clark's comments, which came as the RECORD was on deadline.

"If the good faith was real, a person like [Visiting Professor Regina] Austin would now be weighing a tenure offer," Bell

added.

Julie Ferguson, 2L, president of the Black Law Students Association and a leader of the Coalition for Civil Rights, strongly criticized the law school administration for not doing more to reach out to Bell.

"Harvard has it within its power to do something to prevent this from happening," she said. "Thus far there has been no good faith effort by the administration. All we have heard so far is lip service."

Bell's announcement — precipitated by a wave of student protests by the Coalition for Civil Rights (CCR) that have swept the law school since early April — has continued to receive national press attention. This week, Bell and his student supporters appeared on the Cable News Network and in *Time* magazine.

Other developments in the wake of the announcement, made April 24 in front of hundreds of students outside Harkness Commons, include:

- a speech by Clark to alumni last weekend that infuriated student leaders of the CCR, who claim Clark mischaracterized the position of the organization;

- a move by a group of professors to take final decisionmaking power over minority appointments from the faculty appointments committee and place it in the entire faculty;

- the creation by students of an "Endowment for Diversity" for alumni contributions, to be

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Prof. Derrick Bell announces protest.

photo by Felicia Ravago

As Debate Continues, Austin Asks Students To Not Focus Protests On Her Appointment

By George Paul

Regina Austin, in her first public statement since the protests for faculty diversity, has stated that she feels the cause for diverse hiring goes beyond her personal appointment.

Prof. Austin distanced herself for the diversity issue in a statement submitted to the RECORD stating that she would rather not "be identified with" the campaign to procure an appointment for her. "Any emphasis on my appointment trivializes the genuine concerns of the students and diverts attention from the real source of those concerns," she elaborated in her statement, "the people who for all of their suffering cannot get the sort of attention Harvard Law students rather easily can."

Students agreed it was unfortunate that the diversity issue escalated into a battle over Regina Austin. One student in-

volved in an argument reported in *New York Times*, Marcia Narine, 1L, said that the press had "skewed the issue."

Adam Weiss, 1L, another student involved in the argument, said Prof. Austin was not the issue and that he liked Austin "very much personally" and that she had dealt with the issue wonderfully by speaking to the section and issuing the statement. Weiss further stated he was misquoted by a *New York Times* article that quoted him as saying Prof. Austin showed favoritism. The *Times* printed a retraction on Saturday.

On one side, some students

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Watkins On Trial In Middlesex Courthouse

By John Thornton

While all the facts in the bizarre sex scandal involving former HLS student Kevin T. Watkins may never be uncovered, the trial to determine if he is criminally responsible for two counts of rape of a Harvard undergraduate woman is underway this week at the Middlesex County Superior Court. One count of assault has been dropped.

The case against Watkins hinges on the testimony of the woman, whose story to report-

ers has ranged from allegations of rape throughout their relationship to claims that she doesn't really remember what happened on December 11, 1988, the day the alleged rapes took place.

Watkins, however, is prone to rash statements and spinning conspiracy theories, and may not be a good witness either. If facts substantiating the many rumors about his sexual history and strange security procedures in the Society of Black Professional Entrepreneurs come to light during the trial, convincing jurors that the admitted

sexual acts were not consensual may be made easier.

A piece of evidence which may strongly effect the jury is a videotape made in April or May of 1988 in which the alleged victim

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HLS Admissions: The Criteria Explained

By Kristen Swartz

For the 745 students admitted this year, it wasn't always an excellent Law School Admissions Test (LSAT) score or perfect Grade Point Average (GPA) that the HLS Admissions

Committee found crucial when choosing from a pool of 8,483 applications. Prof. Richard Fallon, chairman of the Admissions Committee, said that while numbers were used as a "sorting device," committee members ultimately critiqued applicants on more subjective

qualities which he referred to as the "richness and diversity of [an applicant's] experience."

While refusing to supply the mean or median LSAT or GPA of the admits this year, Joyce Curll, Assistant Dean for Admissions and Financial Aid, said that even an applicant with terrific scores and grades had to pass muster with herself and at least one faculty member to be accepted. Some of the applications, she said, were read five or six times before the committee made their decision.

As soon as applications arrived at HLS, they were sorted into one of three groups based on a calculated "admissions index." The admissions index is a combination of the LSAT score and GPA which is discounted according to an applicant's undergraduate college. Those with the highest admis-

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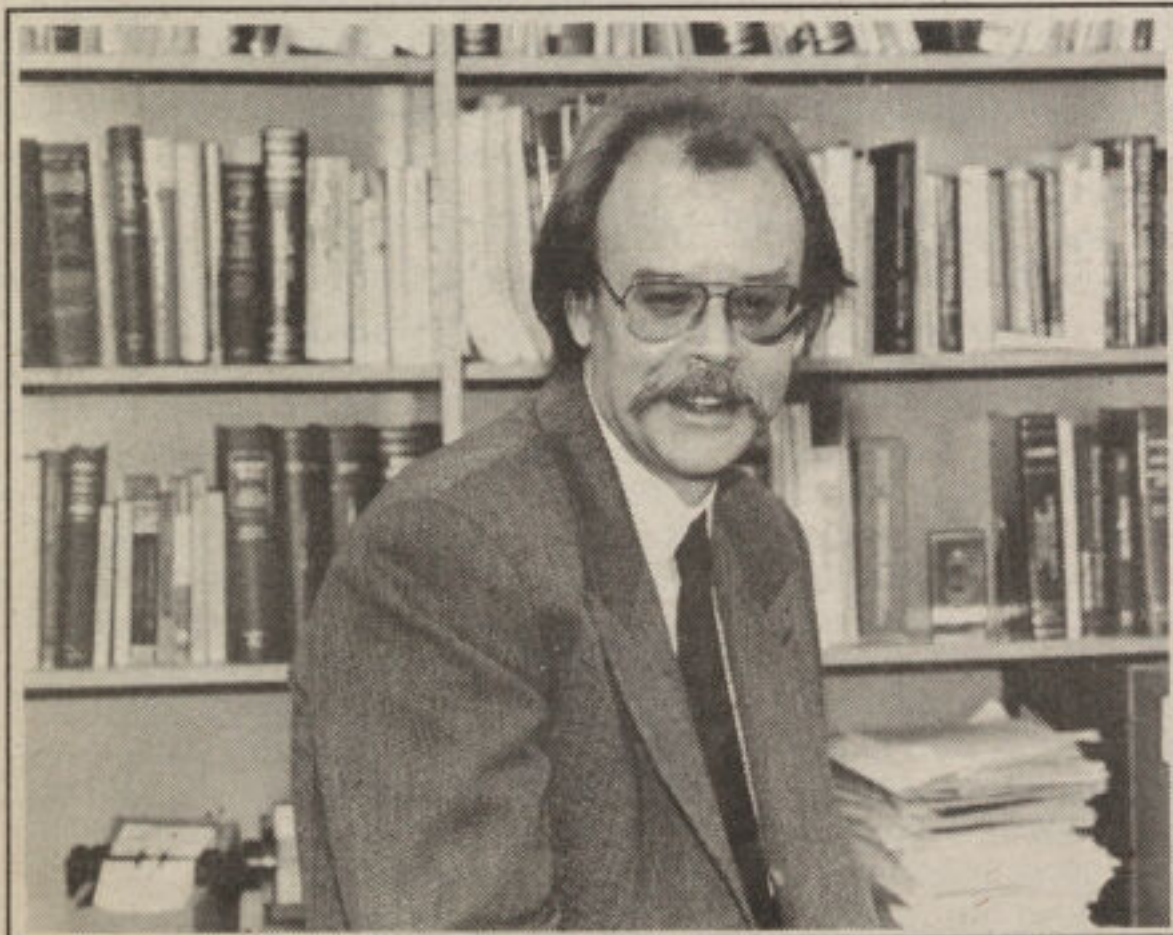
Former Dean Snyder Dies Suddenly

Frederick E. Snyder '77, former Assistant Dean for International and Comparative Legal Studies, died unexpectedly on Fri., April 20 in Seoul, Korea. Snyder was 46 years old.

Snyder was associated with HLS for more than a decade before resigning in Jan. 1990 to begin a career in international trade, investment, and transaction management as founder and president of Cambridge Transnational Associates of Boston.

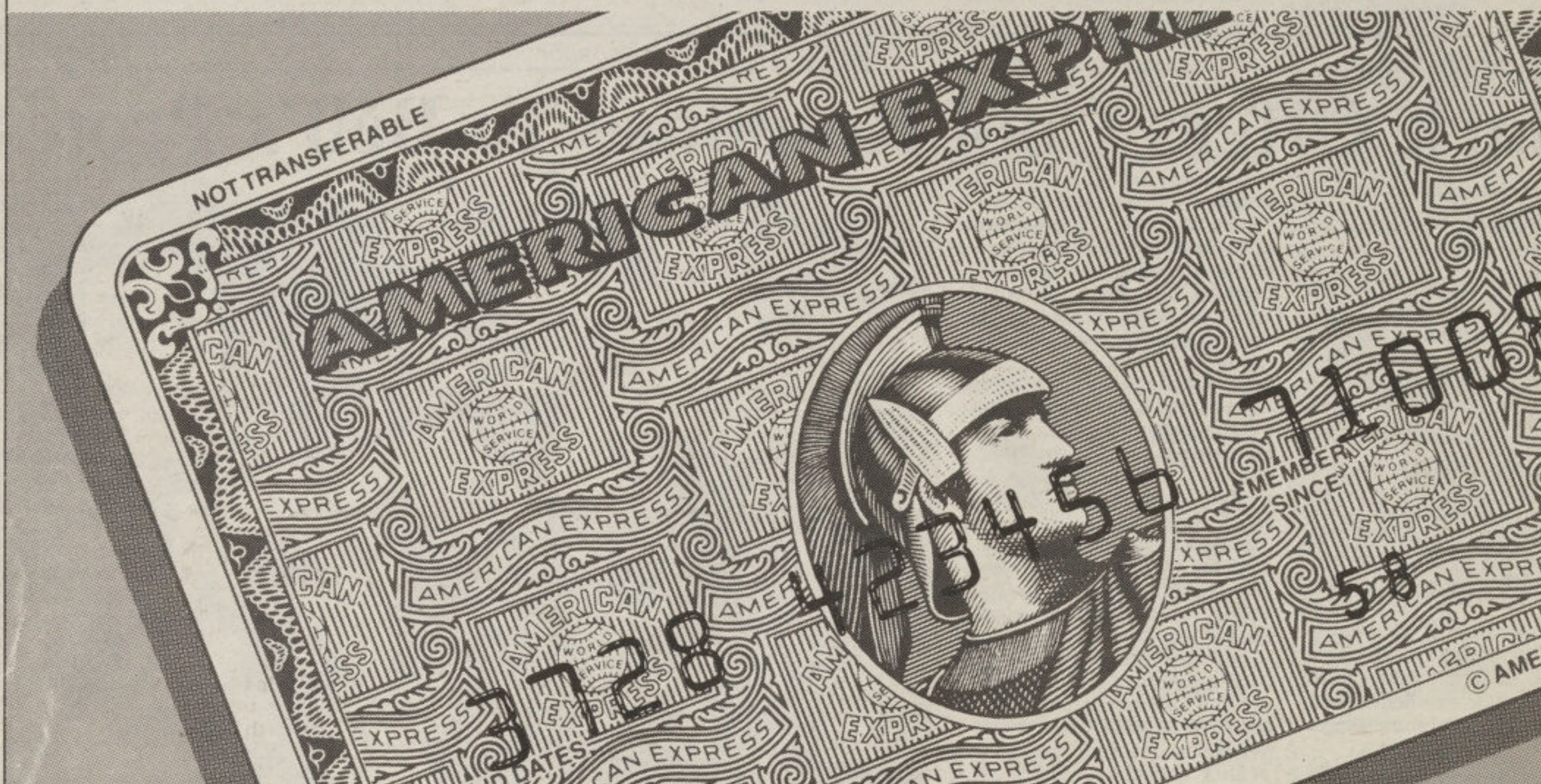
Snyder came to HLS in 1977 as a Fellow in Law and Humanities, before becoming Assistant Dean in 1978 and Lecturer on Law in 1980. Since 1983 he had been Assistant Dean for International and Comparative Legal Studies, Administrator of the Graduate Program, Associate Director of East Asian Legal Studies, and Lecturer on International Law. Other administrative positions held include Director of the

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Former Dean Frederick E. Snyder '77

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Third-Year Student To Teach At Texas Tech

By Dawn Ross

Harvard Law School Class of 1990 already has one member heading off to scholarly pursuits. Reynaldo Valencia, 3L, has been named Adjunct Professor of Law at Texas Tech University School of Law in Lubbock, Texas, where he will be one of two Hispanic faculty members. Valencia admits to being excited about the opportunity to teach in his hometown and also to being somewhat incredulous about his selection. As he noted, "I haven't even finished my third-year paper yet!"

Valencia will be responsible for originating, developing and teaching courses in race-racism, and gender discrimination. His part-time duties will begin in January of 1991, when he will teach the race-racism course on Mondays, then fly to Dallas where he will be practicing at the firm of Jones, Day, Reavis & Pogue. While not looking forward to the weekly commute, Valencia is pleased at the opportunity to visit his family in Lubbock on a regular basis. In the following semester, Valencia will teach gender discrimination, and will alternate the two courses on a

semester-by-semester basis thereafter.

The chain of events that led to his selection began when Valencia asked Prof. Laurence Tribe to supervise an independent field study project for the Winter '89 term. Valencia had learned of a pending lawsuit filed against the Lubbock school board by an Hispanic board member. The lawsuit involved aspects of Lubbock's court-ordered school desegregation. Valencia's work as part of the trial team included his being primarily responsible for the brief that was filed in conjunction with the litigation. The trial team members, including Prof. Dan Benson of Texas Tech's law school, were very impressed with Valencia's work. Benson suggested that Valencia consider teaching, and encouraged him to meet with the dean of the law school. The rest, as they say, is history.

Valencia notes that it is "really ironic to be a professor in my own hometown." Neither his father Sabino, nor his mother Lupe, finished high school, yet "they always showed me by example that hard work pays off," said Valencia. Although Valencia had some early doubts about whether he will be experienced enough right out of law school



photo by Felicia Ravago

Rey Valencia, 3L

to teach, he cited the need for more Hispanic teachers nationwide as one of the deciding factors for him, along with the opportunity to teach at a law school that has been traditionally plagued by racial and minority discrimination problems. According to Valencia, there are very few Hispanics teaching at the law school level. "There's a voice there that needs to be addressed," he stated. In addition to his desire to raise His-

panic consciousness at Texas Tech, Valencia has vowed to commit his teaching salary, less his commuting expenses, to establishing a scholarship fund for Hispanics. He sees the teaching opportunity as a chance to open the door for other Hispanics in education. "After all, he noted, 'If I hadn't gone there [to Lubbock for independent field study], they [Texas Tech] wouldn't have come looking for me.'"

Republican Candidate For Governor Lambasts Dukakis

By Andy P. Thomas
Special to the RECORD

Saying his "prosecutorial mentality" would be attractive to angry Massachusetts voters in November, former U.S. Attorney William Weld '70 told students at HLS that he was the Republican candidate with the best chance of winning the governorship in this year's election.

Speaking at an event sponsored by HLS Republicans on April 18, Weld promised to eliminate excessive layers of bureaucracy and cut wasteful state spending, serving as the sort of "slash-and-burn guy" whom the people of Massachusetts want as the next governor. Massachusetts voters, he argued, are willing to reward a Republican gubernatorial candidate who is prepared to enter office "kicking ass and taking names."

Weld lambasted Governor Michael Dukakis '60 and Democrats in the State House for "staggering" amounts of waste and "breath-taking arrogance" in their handling of the state budget. He asserted that \$3 or \$4 billion could easily be cut from the state budget, noting that the present proposed budget of \$12.6 billion, what Governor Dukakis has called a "starvation budget," is \$3.5 billion more than the budgetary outlays pro-

jected for fiscal year 1991 by the previous governor, Edward King.

The 1970 *cum laude* graduate of HLS predicted that George Keverian, Speaker of the Massachusetts House of Representatives and fellow Beacon Hill Democrat will propose \$1 billion in increased taxes, but will wait until after the May filing deadline for state legislative races. The Democratic leadership would find support, he stated, from the *Boston Globe*, which he accused of being "morally convinced" that the state government requires an additional \$1 billion in increased taxes.

Observing that a Republican was formerly a "pariah" in Massachusetts, Weld argued that Republicans now "get credit" for not being responsible for the state's current fiscal and economic woes. He believes that to get elected in November, a Republican gubernatorial candidate need only say, "I'm a Republican; I wasn't here; I'm not part of the problem."

Weld stated that both he and State Representative Steven Peirce, the Republican House Minority Leader and the other Republican candidate for governor, are close to tying in the polls Francis Belotti, the Democratic gubernatorial front-runner, even though they have only about one-half of Belotti's name recognition.

The two dominant issues in this year's campaign, as he sees it, are the state economy and crime. Governor Dukakis' high unpopularity is due to his mishandling of these two issues, particularly his unfavorable "Sixties" view of business and his disdain for criminal punishment.

Governor Dukakis "doesn't believe in punishment," Weld maintained, stating that Dukakis feels that incarceration of criminals is morally justifiable only if done for purpose of rehabilitation. He also argued that the citizens of Massachusetts still blame Dukakis for last year's increase in the state income tax, which he termed the "presidential election campaign tax of 1989."

Weld defended his campaign against charges of commingling of funds leveled by his opponent, Rep. Pierce. He and his running mate in the primary, State Senator Paul Cellucci, have been accused of unlawfully sharing campaign funds through their campaign's practice of advertising both names on billboards and bumperstickers. The Weld campaign has filed a motion for declaratory judgment on the matter in the Massachusetts Supreme Court, which is set for hearing on May 10.

He sharply criticized Pierce for challenging the Weld-Cellucci campaign

practices, saying that Pierce's own admission that, over the past several years, he has been late in filing federal income taxes was the sort of federal offense that he had prosecuted when he was U.S. Attorney.

Weld also contrasted his environmental record with Pierce's, stating that the National Audubon Society had ranked Pierce in last place in its ratings of state representatives' positions on environmental issues.

Admitting that to some Republicans he may look like a "hopeless liberal," Weld argued that he was a fiscal conservative who would prove to be the more marketable candidate in the general election, especially due to his stance on abortion. Weld is pro-choice, while Pierce is pro-life.

In response to a question about the Weld campaign's intended strategy, he said that he did not foresee prolonged conflict with the Pierce camp before the Republican primary. He sees both campaigns as campaigns as concentration more on promoting a positive image of their candidate among the electorate than on attacking the opposing candidacy.

His theme in the remaining months before the September primary will be "tough on taxes, tough on crime."

Timmons Attracts National Attention For CLS-Bashing

By Jim Houpt

An HLS student is considering several book and article offers he received since a controversial article of his appeared in last month's *Wall Street Journal* criticizing "left-wing intellectuals," particularly HLS Prof. Duncan Kennedy. Brian Timmons, 2L, originally penned the article for *The New Republican*, the newsletter of the HLS Republicans.

Timmons confirmed persistent rumors around the law school that one offer is from *Reader's Digest* but refused to confirm rumors that the magazine offered him \$15,000. "I've just put everybody on hold until after the exams," Timmons told the RECORD.

Under the headline, "That's No Okie, That's My Torts Professor," the piece targeted a proposal linked to Kennedy, a founder of the Critical Legal Studies movement, that Harvard law professors should regularly change places with the school's janitors. "The edited version was a little different from the original one that I wrote," said Timmons. "The [WSJ] article focused more on Duncan Kennedy. The original focused more on the radical, left-wing professors to be found at many universities."

The article said Timmons interviewed

twenty of the custodial staff to get their replies — "something Mr. Kennedy had evidently never bothered to do," the story added.

"Tell this professor of yours to mind his own damn business!" one unnamed janitor is quoted to say. "The world would be a lot better off without some screwed up, overeducated college brat telling the rest of us how to live our lives."

As another quote put it, "If he were really that concerned about the work we do, he'd offer to come help us once in a while, rather than just talking it up to the world. We can't even get them to empty their own trash!"

Not everyone is convinced the interviews are authentic. "I've gotten a lot of response from faculty members — mostly anonymous," reported Timmons. "Many of the professors wanted me to reveal the names of the janitors to verify my story."

Timmons said he has received letters from law professors all over the country, much of it critical of his article, though some were favorable. "I was amazed, frankly, that faculty members would even read it. I thought most of them would probably laugh it off."

Kennedy's secretary reported that Kennedy did not have time this week to

respond to Timmons' article. But Kennedy provided a copy of *Legal Education and the Reproduction of Hierarchy — A Polemic Against the System*, the source of his well-known proposal. The 1983 booklet came to be known popularly as Kennedy's "little red book," a reference to Chairman Mao's book of quotations.

The booklet did not specifically recommend that law professors and janitors switch jobs. But it did suggest that all salaries should be equalized, "including secretaries and janitors." And it did advocate that "every person should spend one month per year performing a job in a different part of the hierarchy from his or her normal job."

The professor's secretary also disputed a claim in Timmons' article that Kennedy drives a Jaguar to work. Timmons admitted he was not sure of that when he included it in the original commentary.

Timmons will not say if he has received any response from Prof. Kennedy. And there has been no official response from the law school, though faculty members received a copy of the article with an unsigned memo saying, "The article has generated some controversy on this campus and in the broader legal community."

"I think it's ironic that yesterday's iconoclast deconstructionists like Duncan Kennedy would be so literal-minded when placed on the defensive," Timmons responded. "And I think it's fair to say, to paraphrase a Duncan Kennedy expression, a problem of emphasizing form over substance."

Timmons is tight-lipped about any other offers he has received beyond the *Reader's Digest* proposal and a request for a second piece from the *Wall Street Journal*. Timmons said they want him to elaborate on "the populist critique of the article."

In one example of that "populist critique" from last month's article, Timmons wrote: "Turgid left-wing theories propounded from ivory towers are rarely heard in the factories and in the fields, and when they are heard, they are never understood. These theories are not published for the common man to read, but to win notoriety, tenure and chaired professorships from other academics."

Timmons is a graduate of Duke University and is working on his dissertation for a D.Phil. from the London School of Economics. He is considering a career in academia which, he added, "would be ironic after criticizing the left-wing academics."

Randall Kennedy, along with many of
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Diversity Movement Will And Must Not Cease

Ticking inside the minds of too many Harvard law students is an H-bomb ready to go off, waiting to go out into a world of lesser human beings and exalt arrogance, flaunt singular prestige, and proclaim ignorance. More addictive than crack, the Harvard name promises to

David Troutt
Columnist

keep you loaded for life. Diversity might defuse all that.

So might maturity and experience. Each year we learn that the average H-bomb is 24 years old. For all their lickity-split logic and in-your-face appeal, most of these folks have never signed a lease, brought home a black classmate, eulogized a friend, bathed an infant, lost a job, or gone hungry. And yet you can still hear them ticking, talking all that classroom bravado, averting their eyes in the corridors, withholding support from needy peers, counting money they haven't made yet, dreaming of a job with Him, Him and Him.

Learning to think like a (Harvard)

lawyer entails the purchase of the lawyer/person distinction; most faculty will sell it for credit. It starts with the objectification of real people's lives and ends at the height of abstraction. Witness the almighty "squib," the notorious "flip," and the indomitable "tension." The names, classes, faces and races of the lives behind the cases lose their ring and their flesh. Even the faculty lose their pasts and their points of view, like they traded in all their "I feel" for "it is."

But we feel. Slap me if I'm wrong, but one day these irreducible principles will reduce to people and their lives—in spite of our ability to criticize them. The lawyer/person distinction will have a neutron effect on our private hours once we are forced to reckon with their difficulty. Everyone must struggle, death will take our loved ones, our children will require compassion. And we must understand.

Diversity is such a simple word for the complex realities of our time. The big "legal" cities are full of Latino day-laborers, lesbian architects, homeless families, Black school boards, Asian

orderlies, and kids on crack. They will defy your abstractions and explode your ignorance. Their needs, desires, and rights are no less great just because Wall Street has come to overbid your services; or, to re-try an old question, what has Cravath got to do with the price of infant formula in Harlem? (A lot).

Diversity is also the elixir for the incendiary burning the intestines inside so many of us mild-mannered missionaries of difference, as we sit awaiting "race week," "women's day," "Indian moment," "gay flash" for our invitation to offer some forgettable word from the "Other" to some prof who's heard it all before. We pray for the Uncomfortable Moment when our experience is paraphrased for a predetermined diagram. You would think sometimes that this was just the education of white students at stake, and the fortunate few of us are here on borrowed time. Well, it isn't—not at 25C's a pop. Our issues matter. We should burn no more.

The call for Latino, Asian, Native American, disabled, openly homosex-

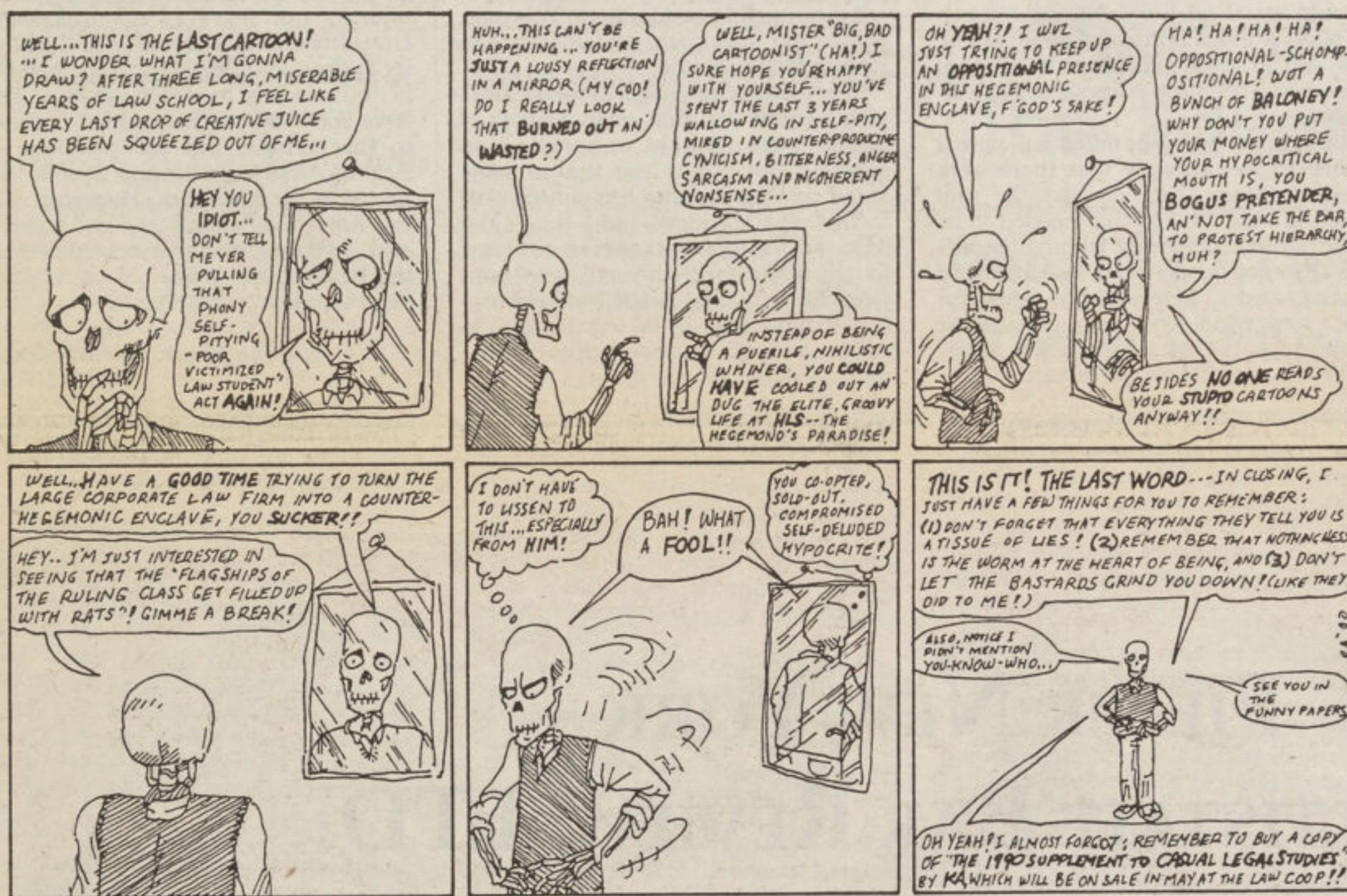
ual, and women of color on the faculty here is implicitly a call for people with the courage and credibility to disclose experience, to connect law to life, to bring context to the classroom, to demand relevance from your Ted Koppel-esque speeches, to open their doors when you must let down your hair, to return that H-bomb to a living blood-pumping organ so that you may be as good a human being as you are a lawyer.

I am a 26 year-old black man, raised in Harlem, indebted to my mother's wisdom. The role models demanded by my sisters are mine, too. H-bombs are unhealthy things that must be overcome by a more lasting power, and we don't tire easily nor apologize. Like Bell, the world will sicken of our bomb threats and dispose of them. The failures of Clarks, Boks, and anonymous faculty to engender community will one day backfire in their "liberal" faces. It is no personal concession to demand validation, nurturance, honesty, perspective. It is preparation. We are all owed it.

And so this movement will not cease.

Break Downs

By KA



Fenno

His ventral fin hooked to the doorframe of the Wily Angler's Seafood Parlour, Fenno peers inside. Da Big Coho approaches and gives the once over. "So," he mutters, eyes flashing right-left-right-right-and-further-yet-to-the-right. "Why ya standin' there? Ya wanna come in or not?"

Fenno grabs this line into the inside, follows Da Big Coho to a freshly napped table and perches on a chair. "Da menu" is cast onto Fenno's face.

The Wily Angler's Seafood Parlour has the biggest, the bestest, the finest, the freshest aqua blue bred delicacies a man can buy.

"Da Specialty O' Day is Carp Lo, a diluted stew that pales under bright lights," Da Big Coho announces.

Fenno is impressed. "Cheaper than a can of worms! And quite a selection." There's North Sea Plastered Haddock, Maine Coast Pasty Cod, Lake Superior Bleached Bass, and Blanched Trout from the St. Lawrence River.

"We don't got everything," Coho sputtered, eyes darting faster than a fly. "We don't got no warm water fish. We try to keep 'em fresh but they just breed maggots on the trip up. We keep 'em a couple days then we gotta throw 'em out. Don't got no meaty fish, either. Ain't got no Yellowfin Tuna, no Red Snapper. Da paying customers won't have 'em. Dey're not real fish, ya know? If it don't reek, it's not fish." Then Coho grins. "Usually we got the Blackened Mahi Mahi... but subject to availability, and ya know, we only serves the biggest the bestest the finest the freshest... If it ain't all those, we ain't got it."

Fenno muses over the menu. "Then what do you recommend?"

"Ya got your nice light fleshed haddock here, or your tender cod, or your boneless bass, your flaky trout. Da only real difference is how dry dey are. Dere's dry, and then there's desert parched. So dry it'll make your mouth pucker, and da eyes water, like ya gots a fish scale caught in your windpipe, and ya grab your throat and you GAG!"

Fenno shudders. I don't think that I want to be gagged. I think I want to ignore these fancified feather lures. I think I want to breathe free. "I WANT TO BREATHE!"

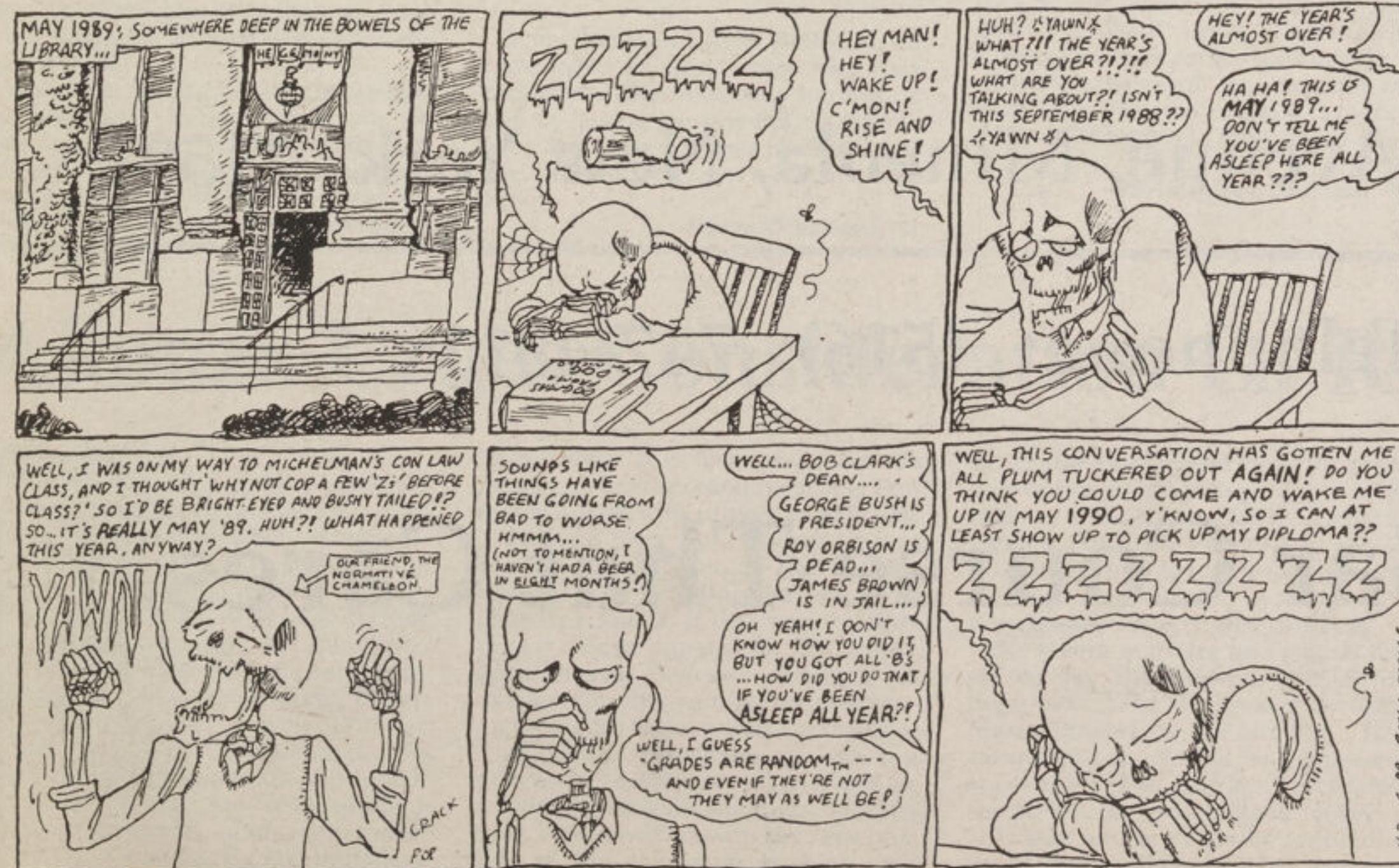
"Ya wanna breathe? Ya thinks the fish breathe? Then why do ya think the fish are here at Wily Angler's Seafood Parlour? Ya gotta EAT! Ya gotta CHOW DOWN! Throw up! Shove it in, push it out! In, out, in, out! Dat's what we're all about!"

Fenno is drowning, gasping for life giving oxygen, slipping from his stool and staggering towards the door he screeches, "HEEEELP! HEELP!"

"Humph," snickers Da Big Coho. "He'll be back, belly up, dat's for sure. Ya don't live on air. Sooner or later ya gets HUNGRY."

Dead Lines

By KA



Smith Bids Farewell And Offers Last Words

As I sit to write this column one final time, it amazes me that I have so often been short of ideas. Think of all the juicy targets out there waiting to be scorned. Consider:

How would removing the pictures of

By Brad Smith
Columnist

dead judges from classroom walls encourage more students to take "public interest" jobs, as was once seriously suggested at a student forum?

When you register a car in Cambridge, do they give you all those bumper stickers, or do people actually buy them? (How does that one go? "Think Globally, Act Foolishly"? "Think Locally, Hug Whales"? Whatever.)

Why can't the various victim groups on campus — the Women Liberals' Association, the Black Liberal Students Association, La Alianza Izquierda, etc. — pick a name and stick with it? I mean, first they got together as the Coalition to Tenure Claire Dalton, then as the Coalition for Diversity, then the Emergency Coalition for Public Interest Placement, now the Coalition for Civil Rights. C'mon guys, pick a name already! We dimwit white males can't figure out who to oppress.

Why is there a mail slot in the door of the Langdell North Men's bathroom?

Does Derrick Bell really believe, as he said at this farewell demonstration, that there is a proper "white" way to think and a proper "black" way to think? And if so, is it just coincidence, or thanks to hard work, that the proper "black" way to think is seemingly identical to the way Prof. Bell thinks?

Is anybody angry yet? Offended?

When I came to Harvard Law, I certainly had no intention of making my name one of the more controversial on campus. When I leave HLS, I expect to settle into a boring life in a boring part of America's most boring large city, Columbus, Ohio. So how, and why, did I get

into this mess?

A number of people, many of whom agree with me on most issues, have commented that my column is too abrasive, not sensitive enough. It offends, rather than convinces. It turns people off, not on, to my ideas.

One response to this charge is emotional — when has the campus left — my usual target — shown any sensitivity to anybody? Was it when an HLS Republican-sponsored speaker was physically attacked? Is it the anonymous mailbox stuffers, such as those who placed threats in the box of a student who was quoted in the New York Times saying unflattering things about Regina Austin? Or the ones who resorted to anti-Semitic box stuffing last year? Perhaps indiscriminately lumping all heterosexual "white males" together as evil oppressors is leftist sensitivity? Or maybe it's hissing at conservative class comments in class? I don't believe I have seen in one place such a large group of people who are insensitive and intolerant to the views, life choices, and integrity of others as the activist left here at HLS.

But that is the visceral, spleen-venting response, and, believe it or not, not how I usually feel. In fact there is a more calculated reason behind the madness. Several years ago, when I wrote a regular column for a newspaper in Michigan, I vowed that I would always be positive. I would avoid ad hominem arguments, stress solutions rather than complaints. I would, in short, make friends. But that has never been the purpose of this column.

During my first year and a half here, I came to feel strongly that there were certain things that needed to be said around here. Things that needed to be said bluntly and openly. I thought people had listened in silence for too long to the racist, sexist, heterophobic nonsense that lumped all white men together as ruthless oppressors. I thought it rather silly for any student at Harvard Law —

the nation's elite — to spend so much time bemoaning his or her past and future. I thought grants for the Harvard Law elite (to which I happily concede membership, having spent my first life's savings for it) to engage in low-paying summer jobs amounted to welfare for the rich. I thought the campus might benefit from an occasional good word about free markets, personal responsibility, liberty, and the rule of law. And I thought the level of student debate here might actually rise a notch if someone thought to examine the record of the Public Interest Placement Office before protesting its elimination, or actually read the damning student evaluations of Claire Dalton before protesting her tenure denial. By voicing opinions in strong, uncompromising language, I hoped I might stir others to speak up as well.

Given the tremendous positive response to my columns, many students apparently agree. Students I would never have thought of as conservative regularly side up to praise the contents of this or that column. And I think that there is a much fuller and, believe it or not, more civil debate on campus now than there was when I began writing this column. For example, I doubt if anyone would have spoken up in opposition to mandatory pro-bono two years ago, and the proposal would have swept through without meaningful consideration. This year, people did speak up, and many were persuaded to vote no.

Even my enormous ego, however, can't claim credit for this revitalization of conservative thought and action on campus. But I do believe that in some small way this column has contributed to that revitalization, and I thank the editors of the RECORD who are to blame for giving me that chance — Chris Crain, Greg Herbert, and Erick Hachenburg. And I thank you for taking the time to read — and to criticize as well as compliment — these efforts.

Times Off The Mark

Continued from page 4

equivocally false.

A legitimate debate about diversity was turned into an ugly critique of a single professor's qualifications and we submit that the *New York Times* was an inappropriate forum in which to address the merits of a faculty appointment. Professor Austin was treated unfairly by the reporter, students, faculty and administrators that contributed to the piece. She is not a self-interested individual vying for Harvard's affection but an individual whose overriding concern is to empower her students to provide legal services to those who need them the most, and who Harvard serves the least. Her concerns go far beyond the narrow conception of the law and who should teach the law that pervades this institution.

The larger issue of diversity cannot be focused on the appointment of a single professor or the availability of a single minority slot on the HLS faculty. The greater goal is to create an environment at HLS where diverse views can be accepted as valuable and essential elements to a well-rounded legal education. Diversity is about debate, challenge, analysis, and conquering our fears of the unknown. Diversity equips lawyers with the ability to practice effectively in the heterogeneous society in which we live. The *New York Times* article added nothing to this debate, but the presence of Regina Austin and many others like her of Asian American, Hispanic, Native American, openly gay and lesbian and physically disable perspectives on the HLS faculty definitely would. We need them desperately.

—The Black Law Students Association

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Derrick Bell's Protest

Direct Action Only Response To Disrespect

To the Editor:

Last week, in response to several student sit-ins to call for faculty diversity, Dean Clark stated that the students' cause would be better served by the channeling of hard work within the normal processes. It is this accentuation of "the normal process" as a mode of change that forces me to write. Unfortunately, the experience of Harvard Law students with "the normal process" (as opposed to direct action) has been one of deceit, defeat, and utter disrespect toward the autonomy of the students as an institution.

The incident that weighs most heavily on my mind has to be the Baker & McKenzie scandal. In that incident,

*Yet while we are here
we are treated with no
more respect than the
camera-clicking tourists
that wile away but a
single afternoon walk-
ing the halls of
Langdell.*

that law firm was admittedly guilty of subjecting an interviewing law student to racist, sexist and anti-Semitic comments. In response to that incident, the students, through the Law School Council (the only student-approved voice of the students), overwhelmingly voted to deny themselves the benefit of having Baker & McKenzie use school facilities to interview on campus for one year.

The Administration considered our vote in mid-April of last year and came to a conclusion. They then sat on the decision until the second week in May, a day after the newspaper shut down and while exams had started. The Administration had rejected and denied the student vote. They did it knowing students would disapprove, and they did it in a manner that would minimize public scrutiny of their decision.

The most regrettable aspect is, however, not the trickery used in its dissemination; it is the decision itself. Every student is here for three years, and make no mistake, three years is a long time. Yet while we are here we are treated with no more respect than the camera-clicking tourists that wile away but a single afternoon walking the halls of Langdell.

When we, the students, proclaimed our outrage at Baker & McKenzie, we were saying that we found what they did morally offensive. To make our moral position known to the world, we chose to act. We did not choose some

punitive path that would cost HLS money; we chose the symbolic path of denying ourselves a benefit that would obviously be profitable to us. In vetoing our moral statement, the Administration denied us that minimum amount of self-determination that every person deserves. The Administration forced on us a benefit we found morally repugnant, and because our voice was robbed, to the outside world our silence undoubtedly stood as toleration for the acts of Baker & McKenzie.

The manner in which the Administration denied us the barest modicum of self-determination (and thus respect) in this incident is not a recent occurrence. It raises its ugly head in every current hot topic, from LIPP to the very recent need for faculty diversity. It is because I have seen students suffer deceit, indifference and disrespect for three years straight that I know that working within the confines of the process is no longer a viable option. The "process" should be equated with the Administration's choices, because if you use it, that is what you will get. From now on, or until students once again gain the respect they deserve, students should use only direct action.

I have seen how sit-ins got the attention of Dean Vorenberg, and I have seen how sit-ins brought Dean Clark to explain his arrogance. Neither result occurred when only "the process" was used. Accordingly, students should think logically and strategically to create new forms of protest to bring about change.

Dean Clark, in this respect, is not a difficult man to understand. He understands little but money for the law school, which said another way is "alumni." It is the alumni that need to be enlightened as to the deficiencies in our hallowed halls. Their alma mater is slipping behind other schools in prestige because other schools are keeping up with the times. So creative protest should be aimed at them. Some ideas to start with:

1) Direct targeting of the alumni by mail. If you can't get a mailing list, take out an ad in the RECORD. It goes to 10,000 of the most active alumni.

2) You know when they close the Root Room on Friday afternoons? That's so they can soak visiting alumni for cash. It wouldn't hurt to let them see peaceful protests everywhere they went. At least it would show them that things aren't as peaceful as the Administration wants them to believe.

3) Keep up the sit-ins. They are not directly aimed at the alumni, but they work.

In my three years here, HLS students have failed at every cause they have prompted. They did so by "hard work" and by "using the process." Don't let your three years reflect the same failure. Boycott the process; use direct action.

—Steve Crawford, 3L

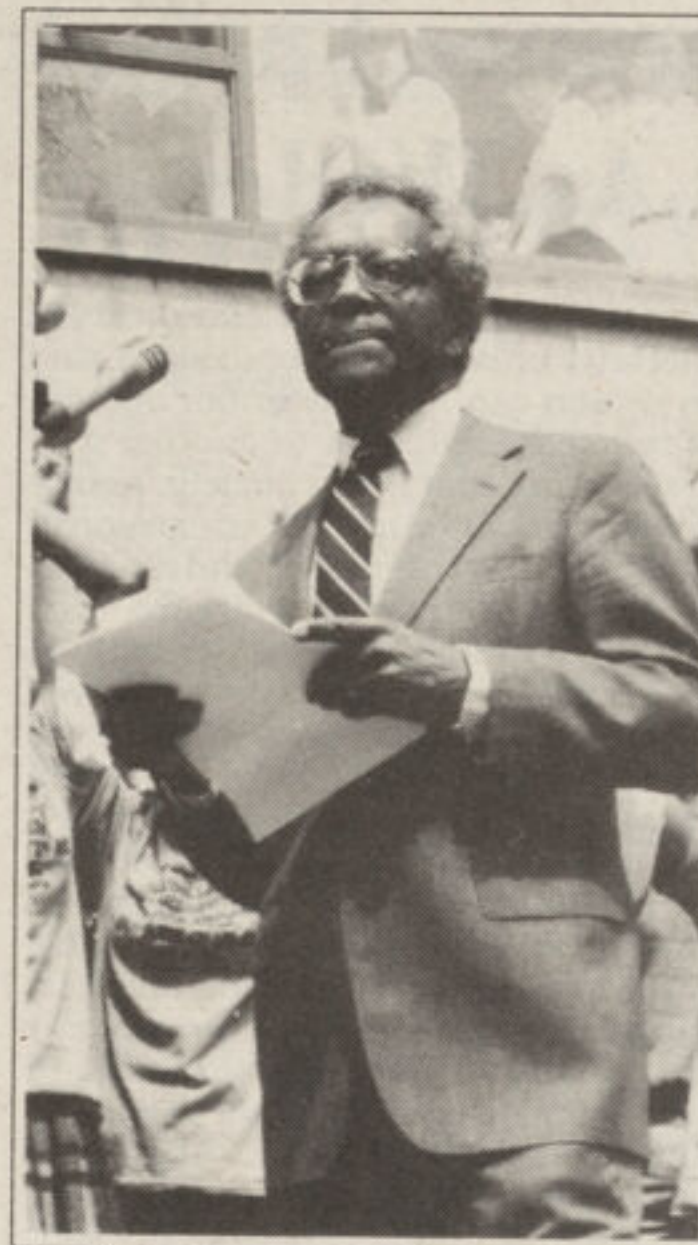


photo by Felicia Ravago

Letters To The Editor

Donate To The Diversity Fund

To the Editor:

I have a proposal for students and alumni who support Derrick Bell's decision to take a leave of absence until a black woman is offered a tenured faculty position. My proposal applies equally to those who simply support greater faculty diversity.

I recently sent a letter to Dean Clark informing him that I intend to make no donation to Harvard Law School until a black female is offered a tenured faculty position. Instead I will send my donations to Derrick Bell. Alternatively, I will make donations to a fund established exclusively to support minority faculty at Harvard Law School, if such a fund is established.

I encourage students and alumni to withhold their donations on the same condition. Such a stand is not anti-Harvard. It is pro-diversity. It will create a financial incentive for Harvard Law School and Dean Clark to seek greater faculty diversity — a goal Dean Clark already endorses in principle.

I hope others will join me and will write Dean Clark to inform him of their decision to withhold their donations.

—Christopher Branson, 3L

Students Should Practice What They Preach

To the Editor:

"Woe to you . . . hypocrites! For you are like whitewashed tombs which on the outside appear beautiful . . . but inwardly you are full of hypocrisy and lawlessness." (Matthew 23:27-28 NAS). These words, spoken by Jesus to the scribes and Pharisees of Jerusalem nearly 2000 years ago, condemned those who failed to practice what they preached. These words seem especially appropriate after last Tuesday's rally for "diversity."

While I realize that Jesus was preaching against spiritual decadence and not against "diversity" protests, I do think that many at the rally could learn from these ancient words of wisdom. The purpose of the rally was, theoretically, to demand greater diversity among the faculty at Harvard Law School. Faculty diversity is an important element of HLS, and more faculty diversity is needed. But many of the protesters do not seem to realize why diversity is desirable.

The way I see it, diversity is important for two reasons. First, a diverse faculty can provide "role models" for the students — people to whom students can relate because they have shared experiences. This is a good argument for hiring a qualified woman of color. However, an equally, if not more important reason for diversity is that a diverse faculty brings a wealth of opinion to the school. Law school should be a "marketplace of ideas" where everyone is free to state and defend his or her beliefs.

That's why I was outraged when Professor Bell stated at Tuesday's rally that HLS doesn't need instructors who "look like they are black, but think like they are white." (Does Professor Bell really believe he can draw a distinction between "black thought" and "white thought?") And I was driven to fury when many in the crowd clapped, cheered, and encouraged such nonsense. Professor Bell and company seem to be saying that they want racial diversity, but want that diversity limited to the ranks of those who share their beliefs. In other words, they only want "diversity" to the extent that it "fits" into their homogeneous ideological mold. Diversity at this level is superficial and relatively meaningless.

If Harvard Law School truly wants to reflect the makeup of this country, there is much work to be done. The HLS community lags 20 years behind the rest of the country in terms of intellectual and ideological development. Diversity based on race and gender is certainly desirable, but so is ideological diversity. Until Professor Bell and his supporters understand and support diversity at all levels, they cannot claim to be the "champions of diversity" they hold themselves up to be.

—Greg English, 1L

Alianza Urges Consideration Of Regina Austin

To the Editor:

We, the members of the Academic Affairs Committee of La Alianza, would like to express our desire that immediate action be taken in deciding the future of Visiting Professor Regina Austin at Harvard Law School. To that end we urge you and the faculty to waive the policy of waiting until a visiting professor has left campus before making a tenure decision on his or her behalf. We feel that it is imperative to waive this policy in situations where a significant constituency of the student body remains under- or un-represented on the faculty. Given the fact that there is no woman of color tenured on the

HLS faculty, it is imperative that the faculty make a decision regarding Professor Austin with utmost expediency.

Although there is no tenured woman of color currently on the HLS faculty, we would be belittling ourselves and Professor Austin if this was the only reason of our support for her tenure appointment. Professor Austin is an excellent teacher who brings a refreshing viewpoint to classroom discussions. Outside of the classroom, she acts as a role model and has served as a mentor to women of color on campus. She has been very generous with her time outside of the classroom working with students in all sections. She also is an

active voice for general minority issues on campus making her presence felt in various forums from the WLA Annual Dinner, Saturday School and the La Alianza sponsored exam-taking workshop. It is apparent to us that hers is a necessary voice on this campus.

The recent activism on campus has shown that the students at HLS feel there is a need for greater minority representation on the faculty. HLS cannot and should not let the present opportunity pass. The fact that Professor Austin has been offered tenure at Michigan and is currently tenured at Pennsylvania shows that her presence is coveted at prestigious law schools

around the country. It would be a shame if HLS wasted this opportunity to add a qualified and respected woman of color to its faculty. Furthermore, failure to act tells HLS students that their concerns are not heeded and that HLS is content with its record on diversity instead of seeking to promote itself as a leader in this area.

We urge you to act now.

—Juan E. Zuniga, 1L
—Ian Haney-Lopez, 2L
—Laura C. Gonzalez, 1L
—Edith Ramirez, 1L
—Gloria Y. Rivera, 2L
—Luis Aviles, 1L

Letters To The Editor

Standard Of Tolerance Applies To Homosexuals As Well

To the Editor:

I am writing in response to the two editorials in the April 20th *Harvard Law Record* concerning the tearing down of the COGLLI posters, yet lest I be immediately labeled a homophobic bigot, I'd like to make my personal feelings known.

I think that tearing down the COGLLI posters, and putting up retaliatory posters, is reprehensible and totally indefensible. I believe that every person should have the right to choose their sexual orientation, and that society has no right to impose its heterosexual preferences, or prejudices, on homosexual or bisexual individuals. I hope this qualifies me as a relatively tolerant person.

My tolerance also extends to those who are not willing to accept homosexuality as legitimate. There are people who believe, for moral, procreative or other reasons, that homosexuality is wrong. While I disagree with these people, no one can say, with absolute certainty, that their arguments are unjustified. As long as any doubt remains, I will defend their right to espouse their views (though not if their views arise from prejudice, or if they try to force others to conform to these views).

I have a feeling that some people disagree with me on this. Whether it be through taking down other people's posters to make room for the COGLLI posters, or labeling as homophobic all those who disagree with their opinions, some people feel that theirs are the only legitimate voices. If this law school is to be a forum for open debate, as Mr.

Ratner desires, then the standards of tolerance must apply to both sides, and no person can hold his or her opinion as inherently superior to another's.

I recognize that in our society, homosexuals are confronted by an extraordinary amount of prejudice, and that this prejudice extends to Harvard Law School. Though I prefer debate to confrontation, confrontation may well be inevitable and necessary. While the actions of people in putting up retaliatory posters were totally inappropriate, and they very well may be homophobic, this does not justify labeling all those who were made uncomfortable by the COGLLI posters as homophobic. Though Mr. Rater did not directly say this, it seems that homosexuals and their supporters are sometimes too quick to label anyone not aligned to their viewpoint as homophobic, and any manifestations of discomfort concerning homosexuals as homophobia. Homosexuals, of all people, should recognize the inherent dangers of labels.

It is human nature to be uncomfortable with anything that is new, such as public displays of homosexual intimacy. While intolerance and bigotry must be eliminated, and homosexuals accepted for who they are, this goal will not be achieved through the indiscriminate labeling of all those who are still uncomfortable with homosexuality, as homophobic bigots. Only through tolerance of their viewpoints, understanding of their positions, and consideration for their feelings, can these people be persuaded to accept homosexuals.

—Stephen Coco, 1L

Homosexual 'Conduct' Condemned

To the Editor:

I would like to address the recent controversy over COGLLI's posting of campus with pictures of naked men embracing. First, I want to emphasize that I am not one of the students that Morris Ratner's column criticized. I have not torn down any of these posters, nor have I put up the "Real Men Love Real Women" posters.

However, I am, as are many other students, offended by COGLLI's posters. As a Christian, I genuinely believe that homosexual **CONDUCT** is immoral. Such a belief is not that of a zealot. The Catholic Church continues to argue against such **CONDUCT**. Jewish law and Christian precepts have taught for thousands of years that homosexual **CONDUCT** is wrong. These instructions are stated in clear and unequivocal terms. See Leviticus 18:22 ("Do not lie with a man as one lies with a woman"); see also Romans 1:26-27; 1 Corinthians 6:9; Genesis 19; Jude 1:7; 1 Kings 15:11-12; see generally 1 Corinthians 6:18-20.

It should be emphasized, though, that Christians do not fear or hate homosexuals. Christ did not condemn those who disagreed with him, but condemned their conduct. He preached that we have all done wrong at some time and are, therefore, in no position to judge others. See, e.g., John 8:1-11 (Jesus rescues the adulteress threatened with being stoned to death. He argued that "[i]f any one of you is without sin, let him be the first to throw a stone at her . . . neither do I condemn you.").

COGLLI need not offend Christians by using graphic displays to make their point, just as recent gay newspaper articles need not expose suspected homosexuals to heighten debate over homosexuality. COGLLI need not have sparked this spiral of the debate to the lowest common denominator — sensationalism. I urge COGLLI to return this debate to the discussion of substantive issues as is suitable to an educated forum.

—Greg Cook, 2L

Kennedy Teaches Diversity

Continued from page 4

my fellow classmates, has made me more aware of racial concerns. I claimed I couldn't see racism, and Randall Kennedy showed me its face. He gave me personal accounts of his victimization by racial prejudice. I claimed I was unaffected by a racist society, and Randall Kennedy showed me where I was racist. He made me aware that neutral policies which bring about biased results (such as a welfare cut) exhibit a form of racism.

I have never felt alienated from someone because of race before I came here. Many students and professors labelled

me as a conservative, racist white male, and dismissed me. Randall Kennedy treated me as a colleague, not as an adversary, and enlightened me where I was ignorant. I don't know if ten years from now I will remember Arthur Miller's seven questions of jurisdiction or Duncan Kennedy's inventory of policy arguments, but I will remember Randall Kennedy's sensitivity to the concerns of blacks. He has done more to further the cause against racism within my small sphere through his discourse and example than Professor Bell has through his insults.

—Matt Kairis, 2L



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Derrick Bell's Protest

Where Was Dean Clark?

To the Editor:

Where was Dean Clark on the day Professor Bell announced that he would leave the faculty until it tenured a black woman? At the announcement we were told he was home sick. According to the New York Times "a spokesman for Harvard said Dean Clark was traveling [on Monday] and could not be reached for comment." There may be a perfectly reasonable explanation for the Dean's absence. Nonetheless the question of his whereabouts is an important one. Dean Clark has shown a remarkable propensity for getting out of the kitchen when events heat up. I was away (in Santiago, Chile to be exact) during the first diversity rally but was amazed to see the picture of Dean Clark with his hands covering his face and surrounded by body guards on the front page of the RECORD. By plugging his ears and hiding in his office in response to a student request for a meeting he seems to have accelerated pro-diversity activity on campus. As Lisa Krakow said at the Bell announcement: a Dean who listens but does not hear is not doing his job. It seems to me that a Dean who listens but does not hear is not doing his job. It seems to me that a Dean who doesn't even listen, who hides from his students, has lost control of the institution and is moving rapidly toward the end of his own tenure.

—Gordon Whitman, 3L



photo by Pat Miles

Letters To The Editor

Despite Error, A Forceful Message

To the Editor:

I am writing to correct an inaccuracy in your April 20, 1989 editorial, "Number One in Diversity." In that editorial you reported that "several law schools" had contacted me in order to "persuade [me] to take a teaching job." In reality, only one law school has contacted me to say that the faculty would be pleased to talk with me about teaching prospects at their school. Also, I would not want your readers to be left with the impression that I am lobbying for a job on Harvard's faculty. Nothing could be further from my mind.

Despite the inaccuracy, I believe your thesis remains forceful: this law school must be willing to look beyond the traditional networking chute if it is truly committed to the goal of hiring minority professors. Unless we reach beyond and actively recruit candidates, few if any will be forthcoming. My own recruitment is not an anomaly among law schools. A fellow 3L and member of La Alianza has already accepted an appointment Adjunct Professor at Texas Tech Law School in Lubbock, Texas.

Faculty members speaking at the open forum last April 13th would have us believe that this institution has made great strides in recruiting minority faculty during the past ten years. The Latino alumni who visited this campus during the week of April 6th to attend the first Harvard Law School Latino

Alumni Conference provided a different perspective. Without exception, these alumni were amazed to find that the struggles they left behind ten, fifteen, and twenty years ago were perfectly preserved as if in a state of suspended animation: the same issues, the same arguments, the same strategies, and the same faculty responses.

Each faculty member received an invitation to attend this conference, and many were personally invited by members of La Alianza. Apparently no one from the Harvard Law School Appointments Committee felt this gathering of Latinos could provide them with useful recruiting information, because none of the committee members attended. The Appointments Committee missed the opportunity to meet three Latino law professors tenured at other law schools as well as Latinos who have taught or are currently teaching at universities across the United States.

At the forum on April 13th, one professor, arguing that this institution has come a long way in recent years, asked the student body to judge the law school "by what we do, not what we say." If this reflects the majority view of the faculty, then Latinos along with other minorities on this campus are in an even worse position than we had originally imagined.

—Jorge A. Ramirez, 3L

Bell Statement Repugnant To Diversity And Equality

To the Editor:

I felt an obligation to attend Derrick Bell's speech last week. A respected scholar and teacher, Professor Bell was about to cross a personal Rubicon, and what he had to say deserved to be heard. Unfortunately, what he said shocked me, for it was utterly repugnant to the very ideals he purports to believe in: diversity and equality.

At one point in his speech, Professor Bell said that it was not enough for the University to hire somebody who looked black but thought white. Will Professor Bell tell us how white people think? Will he tell us how black people think? Will Professor Bell be the arbiter of who thinks like a white and who thinks like a black? Will he be satisfied if the Law School hired someone who "looks white" but "thinks black"? If, in Professor Bell's view, it is not enough to tenure someone who "looks black" but "thinks white" then he must believe that such a person is somehow less black than someone who "thinks black." Is Professor Bell prepared to decide, on the basis of how that person thinks, that he or she is not truly black and, therefore, not deserving of full membership in the community of persons who have ancestral roots in Africa?

Professor Bell's comment represents intolerance in its purest form. It establishes an orthodoxy of thought, and the African American must embrace it or else face excommunication for his "white" views. The ostracism of those who dissent from the mainstream is not unique to the black community, but, as the experience of Julius Lester, Glenn Loury, and Clarence Thomas demonstrate, neither is that community immune to the internal bigotry which is the enemy of diversity.

There is a second statement of Professor Bell's that should disturb people, for it rejects the concept of human equality. Professor Bell stated that because of his gender, he was unable to understand fully the black female students whom he teaches and who come to him for guidance. Only a black woman, in Professor Bell's view, can adequately serve as a teacher and role model for women of color.

As a practical matter, how will the Law School ensure that its approximately 110 black women receive the exposure to a black female faculty member which Professor Bell declares is essential to their education? Should they be segregated into a single section taught or advised by that faculty member? Will they enjoy priority in the course-selection lottery or in the supervision of written work? What of the other groups into which students can be slotted; shouldn't they have similar priority rights to faculty also belonging to a particular group? If so, should we

care if the Law School becomes an archipelago of "separate but equal" schools?

On a deeper level, what is disturbing about Professor Bell's comment is its message that human beings are fundamentally different from one another, that there is an insuperable divide of race and gender between us. Such a message is at odds with the lessons of history, so painfully learned. It is at odds with the philosophy of Dr. King, a Minister of the Gospels, that we are all God's children, and that the liberation of society consists of individuals overcoming the differences of race and religion that, in the final analysis, are superficial.

I do not doubt that a black woman

Will Professor Bell tell us how white people think? Will he tell us how black people think? Will Professor Bell be the arbiter of who thinks like a white and who thinks like a black?

faculty member would more readily understand the needs and perspectives of black women. But that is an altogether different thing from saying that others are incapable of understanding. To the extent that a woman of color on the faculty would give other women of color a sense of belonging and of enfranchisement, I can appreciate the feelings of those who form under the banner of "Diversity." But, I cannot accept the themes of intolerance and inequality that suffuse their arguments.

Professor Bell cast his die last week, but the river he crossed was not the Rubicon, it was the Alabama. Last week, Derrick Bell crossed over the Edmund J. Pettus bridge, and he crossed it heading back to Selma. He crossed it into Selma because he denied African Americans full freedom of intellectual development and because he accepted racial and gender divisions as the natural order of things. In sacrificing for what he believes in, he has my respect. But where he is heading, I, for one, will not go.

—Bob Zafft, 3L

Lack Of Diversity Not Just A Numbers Problem

To the Editor:

I am a Black second year female law student who is distressed at the course of the debate on diversity at Harvard Law School. The focus has been on disparities in numbers rather than what the lack of representation really means to the quality of education HLS offers. Consequently, students' legitimate concerns receive superficial treatment and the administration has easily escaped having to scrutinize its hiring and policy decisions. There is deficiency at Harvard and keeping Prof. Austin or attracting scholars like her will be one step toward remedying the problem.

Statements that declare the absence of black female, Hispanic, disabled or openly gay professors inevitably focus on numbers. Unfortunately an emphasis on numbers plays into the hands of those

who conjure up images of quota hiring whenever they hear the word "diversity". Other issues effectively counter responses based on racist assumptions that accommodating requests for diversity may herald a lowering of Harvard's standards of excellence. This is not to say that numbers are irrelevant. The number of zeroes buttresses the belief that Harvard's faculty hiring policy is unfair to certain groups.

The homogeneity of the faculty reflects the impact of institutional structures that exclude differences. In general, the legal establishment has never been receptive to dissimilarities or to "nontraditional" viewpoints. For example, the legal community has generally reacted with hostility to feminist legal theory as noted in the Time article "Now for a Woman's Point of View: Feminist scholars chal-

lenge male bias in the U.S. legal system" (April 17, 1989). Intolerance affects the careers of many talented scholars. Prof. Catherine MacKinnon, currently at Yale Law School, only very recently received her first tenure-track offer (at U of Michigan Law). MacKinnon was among the first to advocate attacking pornography as a form of sex discrimination and has been teaching for at least ten years. Also, MacKinnon actively worked to make workplace sexual harassment illegal. People did not see such harassment as a legal wrong before the 1970's.

Think of all the inhibiting and silencing that occurs when scholars are advised to develop a reputation in safe areas of the law before turning to their real interests. A truly diverse faculty provides an array of perspectives of the law and represents a variety of backgrounds. Students re-

ceive a comprehensive education when they are exposed to different approaches to the law.

Prof. Austin is conducting research on black women, black feminism and infusing black cultural notions into jurisprudence. Her research and guidance can assist students who are interested in this type of scholarship.

Prof. Austin offers a perspective on the law that is influenced by a particular race and gender consciousness that makes her unique at Harvard. Because Austin adds a perspective that is currently lacking at Harvard, she is a most suitable candidate for a tenure-track offer. Her voice and presence can continue to be an important contribution to the HLS community.

—Kerry Drue, 2L

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Derrick Bell's Protest

What Is Law School Doing To You Anyway?

To the Editor:

This is where I'm coming from: I've written open letters only twice in my lifetime. My first was cry of "unfair": my high school principal was punishing all of my fellow high school students with fewer freedoms because of the vandalism of a few misguided individuals. My second letter was a more lengthy howl of "unjust": when I was a Senior at Cornell University a fellow resident advisor had been harassed racially and sexually by one of her residents and the University had failed to do anything about it.

Today, I write because I have a voice, a barbaric yawp to sound over the rooftops. In short I just want to be heard in the midst of a machinery that is doing its best to ignore me. I do not write for spite, but for hope. I do not write to criticize, but to prod. I am a human being at Harvard Law School, and this what I see.

My Dean tells me that I'm attending the best law school on the face of the planet, that Harvard "blows away the competition." A law and economics guru, Dean Clark holds fast to the philosophy that the supply and demand of the market should determine the price, quality, and quantity of all things produced and consumed — that is, except law school educations. Thus, Dean Clark ironically accepts his consumer sovereignty theory in all but his personal fiefdom.

As a member in good standing of the Demand Curve, I honestly believe that my dollars should count for something at this, the Best, Law School. My money should buy heated lecture halls in the winter. My money should buy access to a modern gymnasium and personal and mainframe computers that I may use without paying extra (my money bought this at my college). My money should provide me with a stack of paper equal to the \$50 I pay for xerox materials each semester. My money should buy classrooms and a library accessible to the disabled. My money should buy access to childcare that isn't prohibitively expensive. My money should buy a faculty that is a rainbow of diversity, a seething cauldron of colors, sexes, physical challenges, orientations, politics, and challenging viewpoints. And it would be nice if my money bought access to a bookstore that didn't mark up a paperback textbook from \$2.95 to (no kidding, I really saw this) \$10.95.

But at the very least, my money should buy a voice in my experience here. When I suggested to the Dean that students should not pay further tuition increases without a commensurate increase in their say in law school affairs, that students like myself should feel no need to contribute as alumni to a law school that treated them like cattle when they attended — Dean Clark told me that I had a "bad attitude." As if I should be grateful that Harvard even granted me the honor of attending ole #1 (that's #5 according to *US News & World Report*).

The way I see it, Harvard is lucky to have the honor of cradling my and my classmates' minds. Institutions should not be so pompous and presumptuous as to think they are the true lasting influences on society. People are what really matter. Martin Luther King left a legacy far greater than Boston University could ever hope to leave. I defy the best of all possible law schools to stifle the voices of this country's and this world's future leaders.

For my moeny, I should expect a Dean to respond to my sincere though "emotional" inquiries with more than puerile one-liners. And for the record, I think that a dean who commands a ship of virtually all white males has a bad attitude. It's called racism. In addition, I'd like to think that I pay for a faculty that doesn't want me marginalized. Unfortunately, I quote Prof. Edley from the *Globe*: "I hope that it [Bell's decision to take an unpaid leave of absence] has impressed my colleagues that this [the issue of faculty diversity] isn't a matter of frivolous student interest. This is a serious problem that demands concerted faculty

attention." At a sit-in for this "frivolous student interest," as if any student interest could be so, Prof. Minow told students that their desire for a diverse faculty was not the issue to be staging a sit-in for. As if Prof. Minow is the barometer of what is important, wisely elevating her sit-in-worthy issues over student concerns that call into question the propriety of a group of which she is a member.

I write this not because I wish to dismiss Profs. Edley and Minow's criticisms entirely, but rather because I believe that law students have a right to be treated with dignity as adults. We do not merit addresses which boil down to "You're being babies for sitting in — you should all go home now because I'm the professor and I said so."

Furthermore, I am paying for the best, most intelligent faculty money can buy. I would expect this faculty to produce faculty committees that have the intelligence to demand the right to change the law school, i.e., not like the important Public Interest Committee that not only made no short-term recommendations about the loss of the public interest counselor, but neglected to get a firm commitment from the Administration to implement any long-term recommendations. I would demand that a professor who told me how the Law School could not make a commitment to "public interest" because we don't know what "public interest" is, be able to provide a tangible, razor-sharp definition for "negligence," "consideration," or any number of undefinables that lawyers deal with daily. Anything less is hypocrisy.

And to top it all off, I'm sad to say that I think some students act as if their concerns are frivolous. The way we behave sometimes, who can take us seriously? Take the Conservatives, championed by a club called the Federalists, a group whose beliefs are often as archaic as its name. Where I come from (Tennessee), a Conservative is someone who believes in the status quo — not turning back the clock. I quake at the thought that the idea of helping the poor has suddenly become a political question, that charity has apparently lost its moral virtue. And I find it comical that a group which champions the process of democracy in Eastern Europe and Nicaragua will whine quicker than a democrat when it finds itself in the minority. See, e.g. Brad Smith on the pro bono referendum. (Incidentally, in the pro bono issue I was in the majority for the first time since I rooted for Jimmy Carter in '76. Eat your heart out.)

Just as distressing, however, are my left-of-center peers. Although I consider myself a leftist, I cannot say that I've found a comfortable niche at Harvard Law. In my mind, "liberal" has always brought connotations of open minds, freedom of thought, and concern for human beings. Harvard Leftists seem to be just as willing to silence alternative viewpoints as their Jesse Helms counterparts. Liberal students who don't even know me are willing to judge my commitment to my beliefs by my unwillingness to attend long, boring meetings of egos. If I for some reason don't fit into their idea of what a liberal student is, I am dismissed as just another insincere white male — regardless of the year I have of my life as a union organizer in New York City.

As for freedom of thought, George Orwell once wrote that the problem with the left is that it is anti-facist without being anti-totalitarian. Would you believe that for some time last semester, a certain leftist group was orchestrating its open "democratic" meetings by a minority of its members behind closed doors beforehand? That people were planted in those meetings to make certain points at certain times and guide the discussion a certain way? Okay, how about this: after my "bad attitude" confrontation with the dean at the Public Interest Forum, members of the Law School Left attempted to tell me how to act in future confrontations with the dean on the diversity issue?



photo by Felicia Ravago

Letters To The Editor

You can imagine how disappointing it was for me to finally question the Left's concern for fellow persons when my best friend could no longer spare the extra sanity for late night meetings and leg work that no one else wanted to do and had to resign from active participation. Not only was she harassed for leaving, she lost friendships with people who saw her only in light of her contribution to the Movement.

I have vented my frustrations. But without a course of action, such an action would not be constructive. I am cynical about the prospects for change in the administration or the faculty. I can only jump up and down and say, "LISTEN TO ME!" for so long without beginning to babble reruns of "Pee Wee's Playhouse." But as for my fellow students, I have hope. I leave with a memory as a recommendation.

In college, I remember a time when I spoke with fellow students of ideas — not because I wanted to bludgeon someone with my point of view, but because I wanted to arrive at the Truth. And at the beginning of my 1L year, I remember a brief shining moment we students were human beings; we had former lives; we spoke of things we'd accomplished, not exams. Think: what is law school doing to you?

My first open letter began with a quote from Henry Steele Commager: "Patriotism is not passive acquiescence in the status quo." I am not quite a mercenary for the Best Law School, but I am a patriot of an idea: namely, that the students of Harvard Law are created equal, that we should strive to overcome the silly power games that are best left to administrators, and that we are worthy of a voice in our life. Lord knows we pay enough for it.

—Greg Lewis, 1L

Diversity Demand Unwise, Unneeded

To the Editor:

The current demand that the procedures for deciding whether to extend offers to visiting professors be circumvented in order to increase minority and female hiring is unjustified, unnecessary and unwise.

Proponents argue that permanent offers must be extended while the visiting professor is still on campus, lest the individual be so offended that he or she will refuse an offer extended after the individual has returned to his or her home institution. No evidence has been presented to support this contention, and it is unlikely that any such evidence exists since the procedure for review is understood and agreed upon by both school and professor in advance. Thus, there is no reason for any individual to reject a permanent faculty appointment solely because the offer was not extended until the individual had returned home, allowing time for deliberation on the individual's qualifications.

Second, it is argued that Harvard's record in hiring minorities and women is so bad that HLS must alter its procedures in order to attract such candidates. However, the differences if any among Harvard and its peer institutions in this regard are so modest that proponents can present no more than the thinnest anecdotal evidence to show that Harvard is unable to attract candidates on the basis of its normal procedures.

Third, the demand center around a particular visiting professor who has been proposed for this treatment more because of the social categories that she represents than her personal qualifications. Scholarship is and should be the principal criterion in faculty hiring and retention decisions at a premier university. Yet this individual's scholarly output is merely ordinary. During more than a decade since receipt of the J.D. and commencement of a teaching career at a major law school, this individual has yet to publish a book. During the entire decade of the 1980s, according to Legal Resource Index, this individual published only five articles. Although well placed, a total of only five articles, but one every three years, is hardly sufficient to warrant an exception from the standard procedure.

Ultimately, members of presently underrepresented groups are demeaned when they are told that they cannot compete successfully under the same procedures that apply to other persons. Students also are ill-served if the just and proper goal of equal opportunity sacrifices faculty quality on the altar of politics. For all of these reasons, the procedures for reviewing visiting faculty members should not be waived.

—Lester Ross, 3L

The RECORD thanks the Harvard Law School community for its support during the past year.

Good Luck on Exams!

Consider Better Approach To Diversity Than Bell's

To the Editor:

I attended the April 24 rally where Professor Derrick Bell indicated he would request a leave of absence without pay until Harvard Law School had appointed its first tenured female black professor. He said he was taking this action in support of student protests aimed at increasing faculty diversity. Much of what was said I found to be surprisingly self-serving and hardly conducive to achieving its professed goals.

Professor Bell began the explanation of his actions quite reasonably. He said that his appointment had had a "clear racial representational function" and that, until recently, he thought he had been adequately "keeping the faith." However, he has now come to realize that "as a black man I am not able to understand, interpret and articulate the very unique condition and challenges black women face," and that he is, therefore, unable to "comprehend and represent the needs and interests of women of color." However, it was in explaining his reasons for sacrificing so much for this cause that Professor Bell revealed the existence of another split within the black community and his own continued inability to fully comprehend its impact on his own, flawed, concept of diversity.

Bell claimed, "... the ends of diversity are not served by persons who look black and think white." I can't agree. The fact is that large economic and educational disparities which have developed within the black community have created a great number of agenda and a diversity of "faith" among people of color. At a time when all people of color were equally subjected to oppressive living conditions speaking with a single voice was a necessary tool for opening the progressively greater numbers of Afro-Americans are, at least

partially, assimilated into the middle and upper classes. These people are beginning to find that they often have more concerns in common with people in other racial groups who share their economic bracket than with those people of color who are still held in a lower economic class. This, however, does not mean that they have not been profoundly molded by the tragedy of racism.

Racists judge a person by the color of their skins, not the "color" of their thoughts. If it is true that, as Professor Mari Matsuda has said, "the victims of racial oppression have distinct normative insights" then the insights of all people of color have an equally valuable role to play. If "those who have experienced discrimination speak with a special voice," then it must be a crime against the search for truth and understanding to silence them. The fact of the matter is that a sizable number of blacks have succeeded despite the considerable obstacles put in their path. The unique challenges they face in the future are a corollary of where they are today and how they got there. That Derrick Bell cannot "comprehend and represent the needs and interest" which these people of color face does not make them any less a part of the Afro-American experience or any less an important part of the discussion of diversity. It is ironic that Professor Bell feels that increasing diversity in the faculty is best achieved (only achieved?) through the exclusion of people of color whose thoughts don't conform to the "Bellian" model. It is a shame to see the case for diversity used as a cover for arriving at intellectual homogeneity.

Frankly, Professor Bell's arguments leave me wondering if increasing the tenured minority faculty is even the best method of promoting diversity. The differences within groups spans an

almost equally diverse range as the differences between groups. The folly of pretending that any one or two people can possibly serve an effective "representational function" for a large ethnic or racial community has already been exposed. Although minority appointments to the full time faculty are an important symbolic step, their impact in developing a greater awareness of social diversity throughout the law school community, is not as significant. Perhaps the example set by

Racists judge a person by the color of their skins, not the "color" of their thoughts.

Harvard's East Asian Legal Studies Program (EALS) is a more effective model for the promotion of diversity at the law school.

EALS is led by a faculty member who serves as its director. The director then has a small staff of administrative assistants to help implement the EALS's programs. Every year EALS hires several prominent outside east asian legal studies scholars to teach a number of classes related to their individual specialties. If such a program were structured for issues of diversity we could have a large number of visiting professors brought in annually, each with his or her own vision of law which chal-

lenged the assumptions of the mainstream. Over a three year education students could be exposed to a wide, and more representational, range of alternate perspectives. A program which is forced to re-define itself yearly is more likely to respond to the perpetually changing social atmosphere a study of diversity demands, than would institutionalizing a few individual viewpoints.

For those who will argue that my plan doesn't adequately promote the long-term bonding between students and teachers that full time appointments would, I must reply that what is lost in the continuity of the three-year mentorship for some is more than offset by the depth of the increased understanding of all. In fact, many more single year mentors would be made available to accommodate a larger number of minority students.

I don't wish to be misunderstood. I am not saying that the symbolism of giving tenure to minority professors is not important. What I am saying is that the important educational role they play is better promoted in other ways. We must try to make sure that current levels of minority tenure appointments are maintained, but it must be conceded that the present rate is not a problem. The crisis we have now is not one of symbolism but one of education. As an educational institution Harvard must pay primary attention to safeguarding its educational mission. There is a lack of diverse views and proper mentors for a significant number of students at the law school. A lack of diversity is a serious problem and it must be solved with serious solutions. The ends of an education which prizes diversity are not served by symbolic gestures.

—Raymond D. Jasen, 2L

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Admission Process Wades Through 8,483 Applicants

Continued from page 1

sions index were fed directly to the Admissions Committee.

Besides Fallon and Curll, there are four other faculty members on the Admissions Committee: Elizabeth Bartholet '65, Howell Jackson '82, John Mansfield '56, and Steve Bernardi '55. Bernardi acts as an alternate, reading files when the other faculty members were unavailable, according to Fallon. Curll and the faculty committee members made all of the final admissions decisions.

Middle-bracket applicants were sent to "screeners," Danny Greenburg, director of the clinical programs, committee members and Sally Donahue, director of financial aid. While they weren't involved in the final voting process, Greenburg and Donahue screened the applicants with mid-range scores, forwarded strong applications to the faculty members which "weren't going to make it in on numbers alone," according to Donahue.

Applications with the lowest numbers were read by Mary Magnuson, senior student finances coordinator, and Todd Morton, associate director of admissions, who had similar jobs as the screeners but were not members of the Admissions Committee.

Fallon pointed out that every applicant was given "due process"; no one was denied admission without having their application read. Because it would be impossible for the four faculty members to read every application, the committee assigned administrators to evaluate those applications with the lower scores, Fallon said.

Of the 8,483 applicants, approximately 2,000 either survived the initial sorting by the admissions index or screening process to arrive at the doorsteps of the Admissions Committee, according to Curll. From there, the committee narrowed the pool to 745 applicants, which, after admits make their decision, puts the HLS class on target for a class of about 550 students.

A cover sheet was attached to every application which summarized the applicant, naming the under-

graduate college, date of graduation, LSAT score, GPA, and admissions index. There was also space where previous committee members or screeners gave comments and room at the bottom where votes were cast.

Curll was the first to read every application in the final pool. After she voted and made her comments, she passed the applications on to the faculty members for their evaluations.

Votes were cast on a scale from one to seven, seven being the highest score one can get, according to Fallon.

In most cases, Fallon said, the decision was made after Curll and two faculty members voted. However, if an applicant received a "seven" by both Curll and the first faculty member to read it, he or she was admitted without any further discussion. Fallon referred to these as the applicants "walking on water" and said it rarely occurred.

On the other hand, an applicant could also be denied before the second faculty member read his or her application, if the votes by Curll and the first faculty member were fours or below.

In a few cases, the committee members had difficulty coming to a consensus on an applicant. These applications were read by more than two faculty members and possibly discussed at the weekly committee meeting, according to Fallon. Sometimes, Curll said, the applicant was put on hold until the rest of the applicants were seen.

Diversity in the student body was recognized as the most important goal by Curll, Fallon, Donahue, and Greenburg. "While it's not just diversity that we want," Fallon said, "we want it very much. We don't admit on numbers alone."

According to the HLS Admissions Policy, there are no "absolute standards" followed by the Admissions Committee. Curll said that while HLS is required to have an affirmative action program, it was only applied on an individual basis and there were "no stated goals or quotas."

"Periodically," Curll noted, "we look at the representation in the applicant group of women and minorities and the

representation in the admits. If the difference is one, two percent or even five percent, we don't get worried."

Of the 745 students admitted this year (to date), 42 percent are women (from an applicant pool of 40 percent) and 27 percent are minorities (from an applicant pool of 18 percent), which includes 13 percent African Americans (from an applicant pool of 6 percent).

Last year, 792 students were admitted from a pool of 7713. Of those, 44 percent were women, 26 percent were minorities, and 13 percent were African Americans.

Other factors which Fallon and Curll said were considered when making admissions decisions included geography, socio-economic status, education, commitment to public interest, former careers, intellectual achievements not apparent in "numbers", leadership of different kinds, and overcoming a handicap such as a physical disability, a cultural or language barrier, or even a broken home.

Public interest also played an important role in the decisions of the Admissions Committee, but none of the committee members was in favor of an explicit policy requiring applicants to have a public interest background.

"I'd be the first to admit that public interest is an important function that should be performed," Curll said, "but I would not like a policy where applicants might feel like they have to do token public interest work" in order to be admitted.

Discount factors, used to "curve" an applicant's GPA, are determined for each undergraduate college, according to Curll. She said the discounted GPA works as a rough estimate of an applicant's expected performance at HLS.

Discount factors are based on "validity studies" which look at the performance of prior HLS students; comparing law school performance against their undergraduate college and the "quantifiables" on the application, the LSAT score and GPA, Curll said.

Students from undergraduate colleges which have not sent enough students to HLS to make a statistically significant

prediction, Fallon said, were grouped with other schools with similar average LSAT scores to create discount factors for the smaller schools.

While Curll called the admissions index a "grossly inaccurate prediction" of an incoming student's performance, she explained that it was only used as a "broad rough sorting device. Strong applications," she assured, "with low admissions indices go on [in the admissions process]."

"Mentally," Curll added, those reading the applications "make adjustments to the admissions index" according to the difficulty of the school and/or courses. Fallon also noted that while a "weak school" might have dropped someone with very high averages out of the top bracket, screeners took this into account when reading applications.

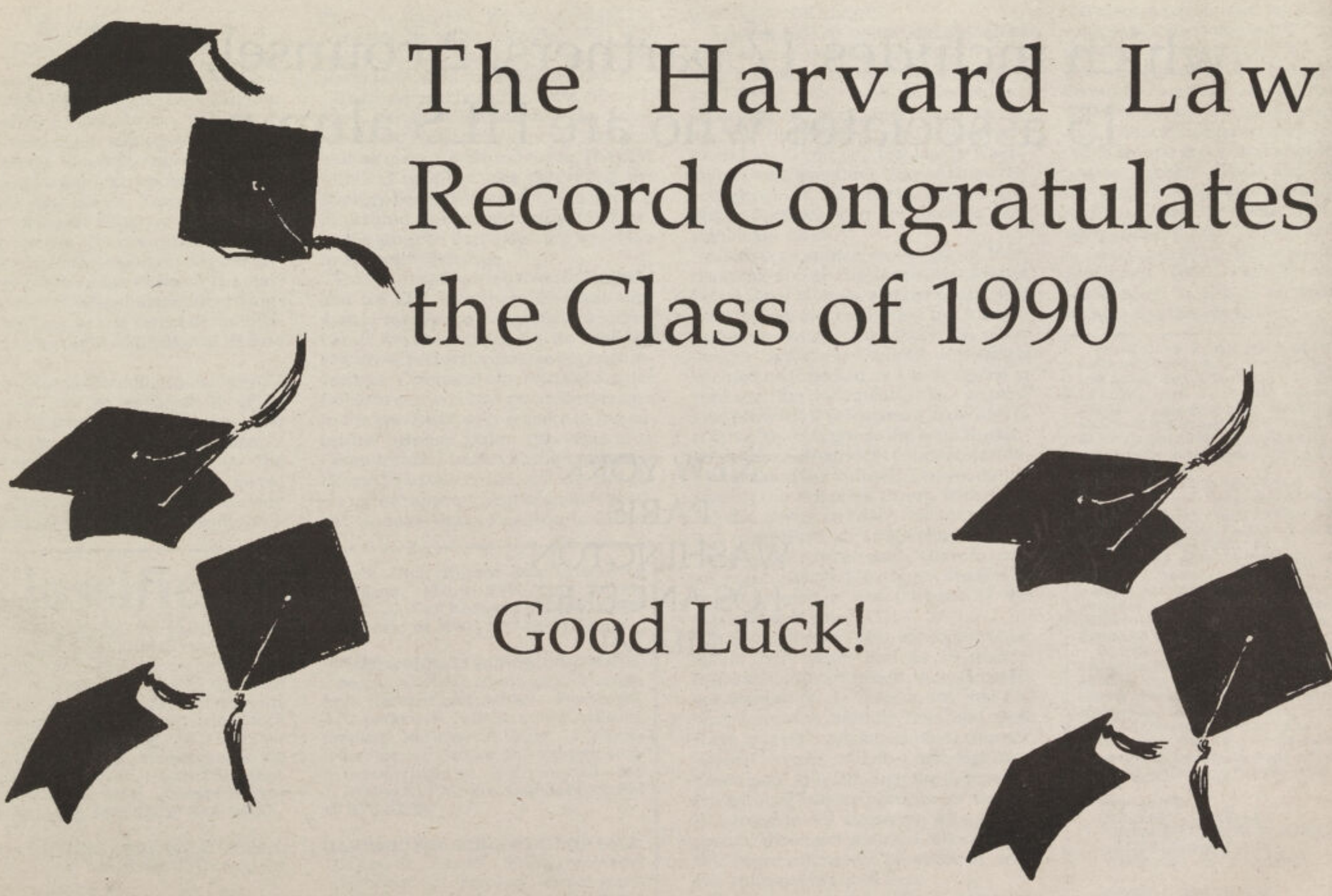
While HLS had only four faculty members making the admissions decisions this year, the entire faculty at Stanford Law School and Yale Law School were involved in the admissions process, according to Curll.

Curll, who saw "spreading out" the process as a downfall, said the problem was that the diversity and quality of the final admitted pool ends up as luck. Harvard's process, she said, is more cohesive because each faculty member sees a lot more applications and has a better picture of the applicant pool.

Fallon guessed that each faculty member read between 500 and 700 applications this year. In addition, each Committee member attended a weekly meeting to discuss the admissions policy and "hopefully to develop direction," Fallon said.

Curll, who claimed to have worked at least 80 to 90 hours every week during the admissions season, said the "faculty works harder than any other faculty I'm aware of."

"We're not compensated as screeners for the hours we work on the weekends," Donahue noted, "I do it because I feel, and I think [Greenburg] feels too, it's a way I have an impact on this school."



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ACLU And Federalists Feud Over Videotape

By Sharon Stone

A debate over whether the ACLU is about politics or principles turned into a debate between two HLS organizations over the principle of access to the video of the debate itself.

Weeks of anticipation, punctuated by an exchange of briefs by the presidents of the Harvard Law School Civil Liberties Union (HLS-CLU) and the Harvard Federalists Society, culminated with a hearing before the Administrative Board on Wed., April 25. The dispute over a videotape of a debate co-sponsored by the two organizations was finally resolved on May 1, when the Board ruled that both organizations must have free access to the tape, but organizations outside HLS must gain consent of the two speakers.

The video of a debate, described by several of its witnesses as a stimulating but largely unremarkable event, was the source of the disagreement. The jointly sponsored March 8 event, featured a debate between Prof. William Donohue, consultant to the Bush 1988 presidential campaign and author of the highly critical *The Politics of the American Civil Liberties Union*, and Prof. Norman Dorsen '53, Stokes Professor of Law at New York University (NYU) and President of the ACLU.

Warren Asher, 3L, the president of HLS-CLU, said that he was informed the morning after the debate of the Federalists' concern about releasing the video. Ron Edquist, 3L, the president of the Harvard Federalists, expressed his concern to Asher over the audience's possible identification of Donohue's position with the views of the Federalists. According to Asher, Edquist proposed that the Federalists add a videotaped disclaimer onto the beginning to the tape prior to having a copy made for the HLS-CLU.

Asher proceeded to call Dean Sarah Wald and explained the situation to her. Wald intervened by requesting that a copy of the tape be made and left in her office, and asked both organizations to present written arguments to the Administrative Board so that the matter could be resolved.

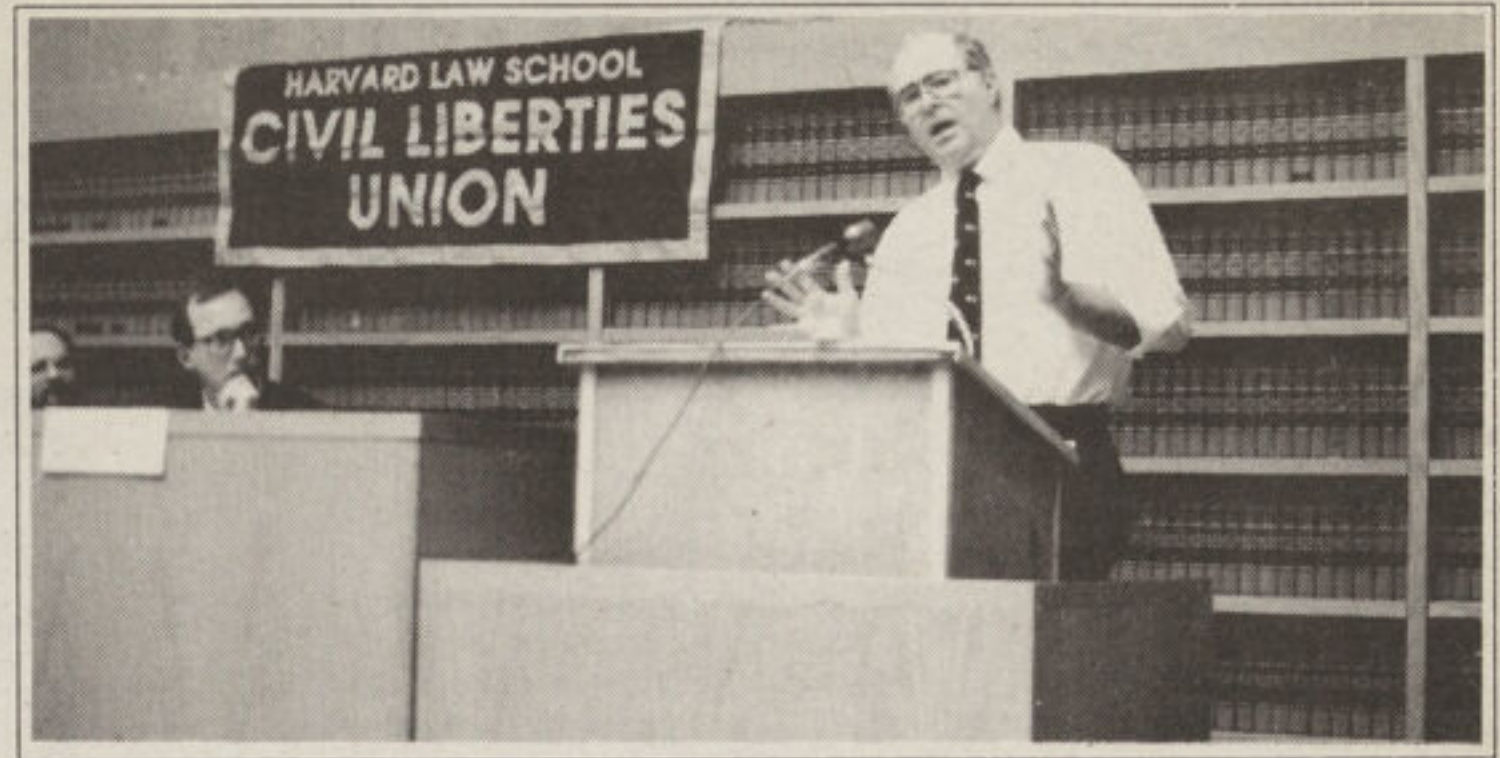
According to Asher, the Federalists

initially suggested that they share the cost of making the video, but he indicated that the HLS-CLU did not have the funds to pay for the \$30 per hour expenditure. The Federalists indicated their intent to go ahead with the video anyway since they had sufficient funds to bear the cost. Both Donohue and Dorsen gave their permission to be videotaped. Asher reported that when he requested Dorsen's permission for the videotape he was overheard by John Roberts, Executive Director of the Civil Liberties Union of Massachusetts (CLUM) who requested a copy of the tape and indicated CLUM's willingness to contribute to the cost of producing the tape.

Edquist, in his written submission to the Administrative Board, disavowed a Federalist claim to ownership of the video and conceded that since the Federalist Society is a student organization of the law school the tape belonged to HLS. The Federalists nevertheless asserted that the Student Funding Guidelines that provides that such tapings are permitted "so long as the items are available for general use" should be interpreted so as to restrict availability to non-Harvard organizations. Edquist admitted in his submission that "my intent in ordering the taping of this event was simply to accommodate a speaker. If free to proceed as I wished, I would simply send the tape to Professor Donohue as I had originally planned." Edquist went on to state, "I believe it would be irresponsible to release the tape to the ACLU without assurance that only proper use will be made of the material."

Edquist further asserted that there were possible copyright violations with regard to the taping but still would provide Donohue with a copy.

In a letter dated March 7, Dorsen wrote Wald's office requesting a copy of the videotape, since the HLS-CLU could not provide him with one. The letter stated, "when I agreed to debate Donohue and to be taped, I understood that a copy of the tape would be made available to the CLU chapter and to me. It did not occur to me that access to the tape would be restricted." The dean's letter of April 4 responded that the Administrative Board had not decided "some disputed issues regarding ownership, copyright and



Prof. William Donohue at ACLU - Federalist Debate

access to the tape".

In a call from New York, Dorsen told the RECORD, "I assumed from the beginning that any tape made of the debate would be generally available so that members of the public could draw their own conclusions about Donohue's allegations concerning the ACLU. It is surprising, to say the least, that anyone would try to deep-six the record of an open debate, at an academic institution, about civil liberties."

The Administrative Board stated, "As conceded by both parties, Harvard Law School owns any video and audio tapes of the forum. Therefore, any law school student or group should be able to view and obtain a copy for their own viewing or hearing of the tape." The decision then stated, "Finally, any use of tape outside of the law school needs to be based on obtaining the permission of the two speakers."

Asher when asked to comment on the Ad Board's final decision stated that he was pleased. "We got what we expected, we're pleased that HLS saw it proper to release the tape with no restrictions and that the tape will be available to people who want to see it." He expressed concern however with the school's treatment of the issue. Asher noted that since March 27, the Federalists conceded that the tape belonged to the Law School, yet despite this concession, the law school still denied the HLS-CLU and Dorsen access to the tape. Asher said he felt that since the debate was sponsored

by law school organizations and was open to the public, the presumption should have been in favor of open access and consequently, the law school's restriction of access to the tape while awaiting the decision of the Ad Board was an inexcusable prohibition.

Edquist, in responding to the Ad Board Decision, said "The Ad Board gave us what we wanted. The HLS-CLU did have to comply with copyright law in its use of the tape." He added, "Our concern was misuse of the tape by parties outside the law school. The Ad Board decision addresses that concern."

Mark Cowan, 3L, a member of the Federalists who saw the debate in person, said, "The Federalist speaker got fired up in front of the audience, but by Harvard Law School standards, when we consider the sit-ins and other panel debates, this was tame." Cowan further stated that because some of the Federalists are civil libertarians, "some of [Donohue's] views especially regarding free speech were diametrically opposed to the Federalist's views. His statements may have taken some of the members by surprise, but it would not be a healthy debate if invited speakers were coached on what to say beforehand."

When asked about the feud between the two organizations, Cowan said that he felt that "it's much ado about nothing. Just because a group brings a speaker to campus doesn't mean that the speaker speaks for that group."

Former Assistant Attorney General Tells Of Legal Odyssey

By Mike Guigley
Special to the Record

A former Assistant Attorney General recounted a harrowing tale of having the legal tables turned on him, going from one of the highest ranking law enforcers in the nation to facing criminal charges, stemming largely from a political dispute over his legal advice. Theodore Olsen, former Assistant Attorney General under the Reagan administration and currently counsel to Reagan in the Poindexter case delivered his views on the statute and described his independent counsel experience as the target of an independent counsel investigation at HLS on April 12.

"If Congress is exceeding its authority," Olsen said, "it's the responsibility of the Assistant Attorney General to resist and to advise the president to claim executive privilege or veto the statute. The threat of an independent counsel investigation hanging over his head has a very substantial *in terrorem* effect on his abil-

ity to do that job. When advising the president he must consider what will happen to him. This gives Congress the power to weaken the executive branch."

Olsen's ordeal began in 1982, he said, when Congress subpoenaed the Environmental Protection Agency's (EPA) records on open Superfund cases. The EPA withheld sensitive files describing the strategy being developed to enforce the Superfund statute, according to Olsen, on the grounds that they were protected by executive privilege.

The ensuing dispute between Congress and the EPA over these files was ultimately resolved by a limited examination of the documents, but in 1983 the House Judiciary Committee began to investigate Olsen and others in the Justice Department who had given legal advice to the president with respect to the executive privilege claim. Two years after Olsen testified before it, the committee claimed that Olsen had misled it and obtained the appointment of an independent counsel Alexia Morrison to further

investigate the matter.

"A governmental institution, unlimited in resources and virtually unaccountable to anyone was created to investigate me," Olsen said. Such an institution, according to Olsen, has the power to destroy the innocent, even if it doesn't intend to. "If you practice law in Washington, which requires that you have the confidence of the courts, clients and public agencies, you are under a very significant cloud."

After six months of investigation Morrison said she felt that there was no basis for criminal charges against Olsen, but nonetheless she continued her investigation to obtain information on other Justice Department official over which she had no jurisdiction. Olsen agreed to turn over the documents in his possession provided that Morrison allow him to reserve his objection to the constitutionality of the independent counsel statute.

When Morrison refused, Olsen took his case to the Supreme Court, which decided in *Morrison v Olsen* that the statute was constitutional. "I regret having been involved in it," Olsen said. "I hate to have my name attached to what I consider to be an erosion of the doctrine of the separation of powers."

In September of 1988, after Olsen had spent three years and \$1.25 million dollars defending himself, the independent counsel finally determined that his testimony was literally true and that there was no basis for criminal charges against anyone under her investigation, Olsen said. And although the independent counsel statute provides for the reimbursement of attorney's fees in the case of those not indicted, Olsen said, the court ultimately reimbursed only two-thirds of his legal fees.

The fee issues aside, Olsen objects to the independent counsel statute because

it creates separate standards for the investigation of certain people. "The higher standard is based upon whether you were appointed by the President, confirmed by Congress, and left the private sector to work in the public interest," he said. "Should we have one set of standards for one group and another set for another group?" Olsen also objects to the statute because it investigates the person and not the crime, with the vast potential for abuse. "You can always find something that will look suspicious to a grand jury," Olsen said. "The folklore in Washington is that a prosecutor can indict a ham sandwich."

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Students Gear Up For May 9 Faculty Meeting

Continued from page 1

held in escrow until the faculty becomes more diversified;

— the entrance of Prof. Roger Fisher '48, an expert on negotiating techniques, as mediator in the dispute between Clark and Bell;

— the planning of a new protest by students from the Coalition for Civil Rights, to possibly include an outside speaker of national stature, before the final faculty meeting of the year on May 9.

As for the faculty efforts to support Bell, one proposal being circulated as a memorandum to the faculty calls on all negative votes on minority faculty appointments by the faculty appointments committee be reconsidered by the entire faculty.

The appointments committee — composed of Professors Randall Kennedy, Martha Minow, Paul Weiler LL.M. '65, Louis Kaplow '81, and Clark — has been under attack by students for not being more aggressive and innovative in its recruiting of minority faculty.

"There are a number of minorities currently in law teaching considered by many members of the faculty [to be] well-qualified for appointment here," said the memo, which was written by Professors Elizabeth Bartholet '65, Gary Bellow '60, Gerald Frug '63, and Duncan Kennedy. "Most of these individuals have never been considered by the faculty because the appointments committee has not submitted their names for consideration."

"A policy of faculty consideration of every minority appointment will, in our view, be a positive step toward increasing the number of minorities on the

faculty."

In the meantime, Bell said in an earlier interview he wanted to give the Dean and faculty "the maximum amount of time" to make progress on the hiring of a woman of color before he definitively decides not to return for the next academic year. If he is not satisfied with the progress, Bell said he planned to submit a formal request for a leave of absence to Clark by the end of the week.

Fisher, who has been trying to mediate the dispute between Clark and Bell, said he is "exploring possible steps that might be in the interests of all concerned." Fisher has met with Clark, Bell, and student members of the CCR.

The anger of student leaders of the CCR deepened last weekend when Clark reportedly told a large group of visiting alumni that the uproar over diversity is about the hiring of "a particular black woman" rather than the more general goal of hiring qualified members of all historically unrepresented and under represented groups, which is the formal position of the student protestors.

Clark never mentioned Regina Austin by name.

"Clark blatantly mischaracterized the entire issue," said Marie Arnold, a 2L who was at the alumni conference. "He totally shifted the issue from diversity in legal education to Regina Austin's qualifications."

Arnold characterized the Dean's speech as a "deliberate attempt by the administration to manipulate the alumni/ae and steer attention away from the very real issue of faculty diversity and its effects on our legal education"

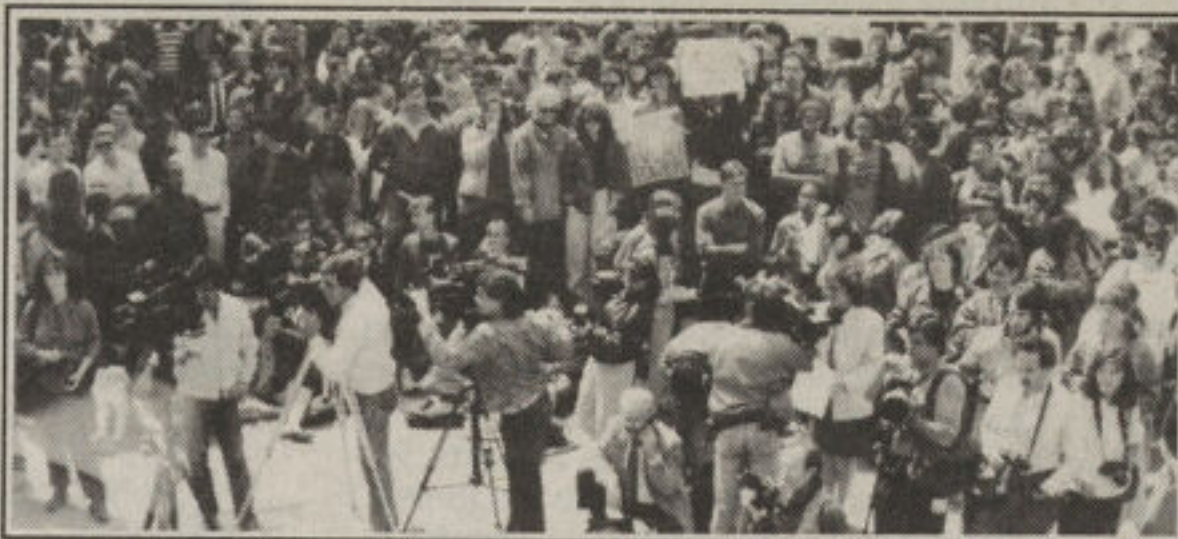


photo by Felicia Ravago

Students and media gather for Prof. Derrick Bell's announcement.

Coalition member Linda Singer, 2L, reports "enormous support in the wake of Prof. Bell's decision" including calls from professors and students of other law schools across the country.

Prof. Duncan Kennedy called Bell's action "very courageous and very constructive," and said he "think[s] it will increase the faculty's sense of urgency about finding and hiring a black woman on the tenure track."

Bell's tactic was criticized in a recent press conference by Kaplow, who stated that he and Dean Clark "believe his [Bell's] taking leave would not be an appropriate or effective way to further the goals of diversity." However, in a recent interview, Kaplow said he guessed that Bell's action "will not have any serious negative effect on faculty action" in the area of diversity.

Although Singer expressed dismay that no faculty members stood up with Prof. Bell at last week's rally, Bell explained that "a number of faculty members support my position, but most faculty got here by conforming. I got here by confronting."

Bell, saying these tactics have worked in the past, attributed

his hiring and the hiring of several other minority professors to student protests.

Bell predicted that a woman of color will be given a tenured position sometime during the next school year.

Clark agreed that Bell's threatened departure would be a "loss to the students," but said "it is not proper to base decisions on [such an act]."

Clark maintains that HLS has done a great deal to increase faculty diversity including "a major effort to get good, young, promising women candidates" for assistant professor positions. Clark emphasized that two black men currently hold assistant professor positions, and another will be joining the faculty next year.

"I do think the law school has demonstrated in good faith that it is attempting to hire more women and minorities," commented Charles Oellermann, 2L, referring to statistics quoted recently by Prof. Kaplow.

According to Kaplow's estimates, half of the school's 26 tenure offers in the past nine years were to women and minorities, and almost 45 percent

(eight out of 18) of acceptances during the period were from women and minorities.

Lisa Krakow, 2L, argued that Kaplow's statistics "reflect how narrow Harvard Law School's opinion of diversity is," and she said "the fact that the dean refuses to waive the year away policy for visiting professors raises big questions about their good faith."

"It is ironic [for Bell] to deprive students of his perspective by leaving," noted Clark. Carol Platt, 1L, agreed, commenting that "perhaps [Bell] could have added a more constructive voice to the debate by having stayed."

Bell has no intention of leaving HLS, however. "My plans are to be here everyday, but on leave and off the pay roll," Bell said in a recent CNN interview. Bell also hopes to offer his Fall courses to students on a non-credit basis.

Clark, who must approve leave requests, would not indicate how he plans to respond to the formal request.

Meanwhile, Coalition members continue their efforts to promote faculty and curricular diversity on a number of fronts. Members are currently soliciting pledges for the "Endowment for Diversity," an alternative alumni contribution fund that will be held in escrow until HLS offers a tenured or tenure-track position to a woman of color and "takes other credible steps towards diversity," said Singer.

The Coalition is seeking faculty sponsors for a proposal that would allow visiting professors to choose whether or not they are considered for tenure during their stay at HLS.

Watkins' Criminal Trial Begins

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reportedly looks into the camera while performing oral sex on Watkins and says, "Live, it's Candid Camera. Whee."

How this tape will influence the jury, and whether or not either side will wish to show it, is not easily predictable.

At the trial's onset on Tuesday, Judge Paul Chernoff, prosecutor George Fisher, and court appointed defense counsel Willie Davis culled seven men and seven women to serve as jurors from an all-white pool of 51.

During the selection process, Davis apparently consulted Watkins on when to use the six peremptory challenges to exclude a prospective juror from the group that will decide his guilt or innocence.

Asked if he was surprised that the jury pool was all white, Davis responded, "No, I was not surprised. There just aren't that many people to choose from in Middlesex County."

While waiting in the back of a

courtroom on Tuesday, Watkins engaged a *Crimson* reporter, exhorting him as unprofessional for not disclosing in his articles that the alleged victim of the crime works on the *Crimson* staff.

Crimson reporter Josh Gerstein admitted that the woman did indeed work for the *Crimson* at the time he and another reporter were writing stories on the Kevin Watkins case. Gerstein said that he had seen the woman only once, had never spoken with her, and that she was on the business staff where she had no editorial influence.

During the voir dire hearing on Tuesday, Judge Chernoff asked prospective jurors a variety of questions from whether they tend to believe police officers more or less than the general public and if they worked for agencies that assisted crime victims, to if they felt they could respect the "great Constitutional principle" of presumed innocence in a case of this nature.

The trial is expected to last

until Tues., May 8, and Judge Chernoff did not expect to sequester the jurors.

Meanwhile Watkins, who would have been a 3L before his forced "administrative leave," continues to pursue his \$150 million dollar civil suit against HLS. Watkins recently failed to persuade Justice Thurgood Marshall to subpoena telephone records for the civil suit allegedly showing that the woman continued to call Watkins after alleged incidents of rape.

Watkins' major complaints with the university center around what he claimed was the gross unfairness of the Administrative Board's proceedings and the impropriety of investigating aspects of his private sex life that had nothing to do with the law school.

If Watkins is found innocent of the rape charges, HLS may decide to readmit him or may resume Administrative Board proceedings of the rape and assault charges that were postponed until after the criminal trial last fall.

Focus Shifts To Austin

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said they felt that HLS needed immediate action for diversity and that the students' actions were justified in light of the circumstances. Narine said students "need to be exposed to different perspectives." She stressed that many students, not just black women, feel that now they have no choice whether it be in course selection or third year papers. She commented that the issue was "not just about role models."

Others disagreed calling the diversity coalition's tactics "questionable." "It is unfortunate that they have a 'if you're not for us, you're against us' attitude," said Weiss. "Students should not pretend they can influence the appointments committee by chanting or sitting in. It would be terrible if appointments were made that way." Weiss said it would be better for students to represent

their views in "the most rational way possible." He continued, "The problem is you can't tell the truth around here anymore without being accused of being a racist. That is a serious accusation and law students should be more judicious in their application of labels like that."

Throughout the controversy the dean has insisted that HLS is not lax on diversity. He has pointed out that of the 12 visiting professors coming next year, seven are woman one of whom is black, one is Hispanic and two are from Japan. Traditionally, visiting professors have been a major new tenure track faculty appointments.

In a *New York Times* article, Clark was quoted as saying, "I think it's clear the law school faculty should make appointments based on the merits of each case, not because of protest. We do have high standards and we aren't going to compromise them."

Law School Remembers Snyder

Continued from page 1

Clinical Program, Director of Financial Aid, Associate Director of East Asian Legal Studies, and Acting Director of the International Tax Program.

Under Snyder's leadership, significant changes in the administration of the School's Graduate Program and in the recruitment, admission, and teaching of American and overseas graduate students.

As a Lecturer, Snyder designed and taught several innovative courses in the areas of international and comparative law, legal education, and dispute settle-

ment.

"Fred has made important contributions to the School," said former Dean James Vorenberg '51 in announcing Snyder's resignation. "We have been beneficiaries of his great ability and his commitment to the School."

He received the B.A. in 1966 from Georgetown University, the M.Phil. in 1969 and the Ph.D. in 1970 from Yale University, the J.D. in 1974 from Georgetown Law Center, and the LL.M. in 1977 from Harvard Law School.

He clerked for Chief Justice John P. Cotter '37, Supreme

Court of Connecticut, from 1974 to 1975, and was an associate attorney from 1975 to 1977. He also served as Adjunct Instructor at the Boston University School of Law from 1976 to 1977 and was Visiting Lecturer at Yale College from 1977 to 1978.

Snyder has authored or co-authored several books and written numerous articles.

Persons interested in contributing to a memorial fund should contact Vice Dean David Smith '81, Griswold 200, Harvard Law School, Cambridge, MA 02138.



Prof. Regina Austin