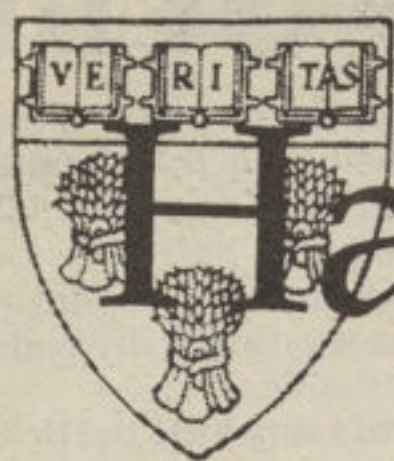




Harvard Law Record

Volume 91, No. 3

America's Oldest Law School Newspaper

October 5, 1990

HLS Police Warn Of Crime

Women complain about escort service. Story, page 16.

By Mary Flood

Students often wrongly believe that being on the prestigious Harvard Law School campus grants them an immunity from the criminal realities of urban life, warned Harvard Police Department Chief Paul E. Johnson in an interview with the RECORD.

But there has been an armed robbery near Langdell Hall and a rash of thefts in Hastings Hall already this academic year. Last year, there was a date rape in Story Hall, police records show.

"You are in the middle of a city. There are parts of the lower socio-economic level that look at [law students] as Christmas turkey," Johnson said.

So far this year on the law school campus there have been 13 larcenies, four bike thefts, one armed robbery, one attempted larceny and two threat-harassment problems.

On the law school campus in the 1989-90 academic year there was one sexual assault,

one assault and battery, eight breaking and enterings, one assault on a peace officer, 32 larcenies and 16 bike thefts, police records show.

Johnson said one of his biggest problems in policing the Harvard campus is getting students to think defensively.

At least three of the four thefts in Hastings Hall might have been avoided if the residents had not felt safe enough to leave their rooms unlocked when they went to take a shower, he said.

The armed robbery might have been avoided if the victim had not used a cash machine so late at night and then walked alone across campus.

The robbery, which took place on Sept. 23 shortly before midnight, occurred on the quad in front of Langdell Hall. Police said a man who had used an ATM machine at Harvard Square was apparently followed onto campus and robbed with a small caliber weapon.

The victim was not affiliated with the school but was just cutting across campus on his way home, Johnson said.

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Photo by Pat Miles

Students listen and wait at the diversity rally held on Thursday, October 4.

After Rally, CCR Begins To Rethink Strategy On Diversity

By Malcolm E. Harrison

Members of the Coalition for Civil Rights (CCR) have followed up their diversity rally last week by exploring ways to create a student-faculty committee to examine the faculty diversity issue.

The idea for the committee,

which Dean Robert Clark '72 has promised to consider, was first raised last week in an open forum with the dean in Pound Hall. Since then, the idea has begun to resonate with some CCR members who are impressed with the results generated by the Public Interest Advisory Committee (PIAC) created last year.

Nevertheless, two CCR members interviewed by the RECORD said the idea was "in a most preliminary stage" and would not be discussed openly until the next CCR meeting, scheduled for the coming week.

"I think it's a great idea and I think we should get on it quickly," said Peter Cicchino, 2L, a CCR steering committee member. "It is a simple idea with enormous potential ... and the dean has responded as reasonably as anybody could have."

When the issue was raised by a student at the forum, Clark said that it was "an idea worth considering."

One CCR member, who asked not to be identified, said, "The bottom line is the public interest committee worked because EPIC worked simultaneously inside and outside the administration. One part of the group took part in a dialogue while another part of the group kept up the pressure."

"So far, we have kept up the pressure but have not created a mechanism for dialogue," said the student.

In the meantime, CCR members held a "celebratory" rally last Thurs. to maintain pressure on the faculty following a Spring Semester of sit-ins and national media attention.

"This rally is to show that our

Continued on back page

Charge Of Nazism Ignites Arts Debate

By Daniel J. Greaney

If last week's HLS arts debate is any indication, the struggle for control of the intellectual and moral tone of American society will be fought fiercely indeed.

A crowd of 200 witnessed a rare display of both venom and forensic virtuosity in Langdell North Middle on the evening of Sept. 25 as a panel that included two state legislators debated the propriety of government funding for works of art that may offend some religious, racial or ethnic groups.

At one point the debate degenerated to such depths that one participant, museum director David Price, compared the thinking of another panelist who favors NEA censorship to Adolf Hitler. Price later "retracted" the comparison by saying to his adversary, "I don't think you're intelligent enough

to be Hitler."

On the right -- of both the stage and, to judge by the level of murmuring when they spoke, of the crowd -- were state representatives Thomas Finneran (Dem. Dorchester) and Philip Lawler (Dem. Brockton).

On the left of the stage and arguing against restricting government funding for ideologically offensive art were Price, Director of the Institute of Contemporary Art in Boston and Art Winslow, associate literary editor for *The Nation*.

The Institute of Contemporary Art currently houses the photo exhibit of the late Robert Mapplethorpe, which is currently at the center of the NEA censorship issue.

In the middle of the stage, serving as both neutral moderator and, perhaps not inadvertently, as physical barrier between the antagonists, sat Prof. Kathleen Sullivan '81.

Rep. Finneran, the author of

a bill which would restrict state funding for what he termed offensive art, commenced with a skillful appeal to the crowd's vanity, presenting himself as a humble, but reasonable man.

"I'm no Philistine," Finneran alleged, "I'm no Visigoth. I didn't go to Harvard Law School, but

Continued on back page

Clark Launches 'Peace Offensive'

At Forum, Trouble Over Clinicals

By Felicia Ravago

Dean Robert C. Clark made good on his promise to reach out to students by holding an open forum last week, but the Dean ran into trouble with some audience members when he suggested student-run clinical programs might suffer from school-wide budget cuts.

After stirring controversy last year on the public interest and diversity issues, Clark promised this year to hold regular forums with the student body and have breakfast meetings with student leaders. About 30 students attended the forum.

Student questioners seemed alternately friendly, indifferent, and hostile to the dean. On two occasions there was generalized laughter as the students and the usually stoic Clark shared jokes, but the overall tone of the forum was serious.

Clark opened the forum by proudly reporting the law school had secured \$31 million in pledges in his first year as dean, a 64% increase over the previous year. Nevertheless, the Dean said he was looking to cut eight to 12 positions from the administrative staff of the law school, which currently totals 360 people.

"This is the trend in higher education," Clark said, citing Stanford as an example of a wealthy school that has cut its administrative staff while collecting millions on a fundraising drive.

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Students Enjoy Breakfast At Bob's

By George Paul

Robert C. Clark '72 is on a mission to make himself into a kinder, gentler dean.

Following a year in which Clark was caught off-guard by student protest, scrutinized in the national media, and excoriated by some alumni, it seems only logical that he would attempt to clean up his public image. But the systematic way in which he is going about the task has far exceeded expectations.

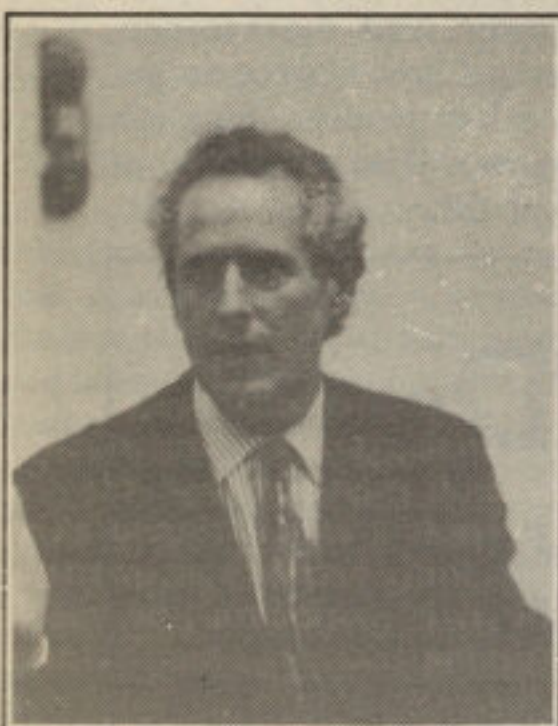
"The man is on a peace offensive," said one administrator familiar with the public relations effort.

Clark already has met twice with groups of student leaders over breakfast in his office. He has taken the initiative to schedule a series of student forums. And he no longer is so quick to duck student criticism and protest, like he did last year when he was photographed sticking his fingers in his ears in front of students chanting diversity slogans.

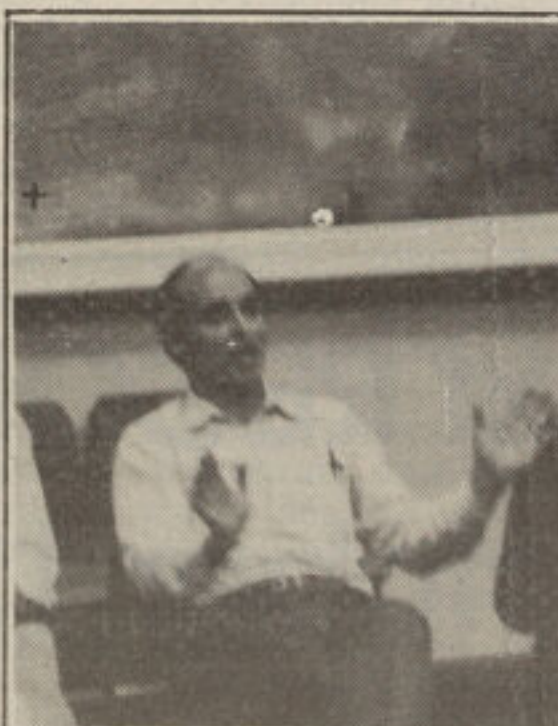
Nevertheless, the dean cannot escape criticism altogether. Some students are feeling angst that his breakfast meetings are an attempt to build support among moderate and conservative students in order to isolate the student activists who caused him such grief.

"We are not certain if the Dean's recent concern for student opinion is genuine or if this is

Continued on page 14



David Price.



Rep. Thomas Finneran

Racist Hate Mail Stuns Yale Law School

By Paul Tarr

An anonymous note found in the mailboxes of 10 black students at Yale Law School has prompted condemnation from the Dean, investigations by the New Haven police and the FBI, and has raised concern over racial tensions at Yale.

The note, signed "Yale Students for Racism", was found on Tues., Sept. 18, and appeared to be a response to the reported rape of a female Yale law student on Sept. 12. The note alleged that two black men had committed the assault, and read, "Now do you know why we call you niggers?"

Dean Guido Calabresi, in a memo to the school, decried the "vicious cowards" responsible for the act. "As this disgusting piece of garbage demonstrates, we in the law school are not at all immune from the hatred and racism that abounds in our society," wrote Calabresi. He promised an investigation of the note.

While the reference in the note to the Sept. 12 assault suggests that the act was committed by one or more Yale students, the police are not discounting the possibility of outside involvement. The Law School has already conducted a handwriting analysis on the notes.

Professor Burke Marshall, assigned by the Dean to act as a liaison between

the law school and the police, said that the investigations would be conducted in a manner that avoided "unnecessary intrusion on the integrity and privacy of the students" harassed in the incident, and would protect the identity of the student victimized by the assault.

Marshall expressed hope that this was an isolated incident, and not an indication of rising campus racism. "There's a lot of racism in the country, and some of that is going to spill out

onto the campuses," he conceded.

Kim Clayton, a second-year student who is co-chair of the Yale Black Law Students Association (BLSA) noted that, although "the law school is generally a very accepting place...the climate around the country is becoming more racist, and society is more willing to accept [these] actions." She added that the student body has responded with numerous letters of support to BLSA. Clayton expressed general satisfac-

tion with the response of the law school administration. But she also expressed concern over the possibility of foot dragging by Yale President Benno Schmidt and the administrators who oversee the University police.

"There's very little the Dean can do. It will take the President as far as getting the Yale police to finish the investigation...they haven't been too responsive up to this point."

New Kids In The Hark: One L's Arrive

By Brad Pearce

Harvard Law School's Class of 1993 is a large group of unique individuals. Together, this group will coalesce to become a homogeneous whole: Harvard-trained lawyers. Separately, though, this group already has much in common by being so uncommon.

The median age of the entering class is 24 years old. The Northeast is the region most heavily represented in the composition of the class, California also has many residents in the Class.

The 542 members of the first year class were chosen out of an applicant pool of about 8500 people.

As recently as the mid 1970s, the vast majority of HLS students were white males. In contrast, women make up 42 percent of the Class of '93. The percentage of women is a reflection of the number of women in the applicant pool. Minorities, including African-Americans, Asian-Americans, Latinos and Native Americans, comprise 28 percent of the class. This proportion of minorities is slightly higher than in American society as a whole. Harvard Law School, at least its student body, no longer resembles the bastion of privileged white males as it did in the not-too-distant past.

Class members hail from 46 states and at least 15 foreign countries, in-

cluding Korea, Taiwan, the People's Republic of China, Scotland, Great Britain, Ireland, Pakistan, India, and Ghana. The first year class also includes a larger-than-normal proportion of students who are immigrants, including at least one student from the Soviet Union and at least one refugee from Vietnam.

The youngest person in the class is 20 years old and the oldest is over 40. In between are people who have done many interesting and unusual things. One person was a cowboy before trading in his spurs for a casebook. Another fought fires in Maine. Several people served in the Peace Corps.

Veterans of the armed services are represented as a larger proportion in the Class of '93 than they have been in recent years. One person served in the Navy's special warfare community as a SEAL (Sea, Air, and Land). Another was an officer with the Army's 82nd Airborne Division and just missed getting a free trip Saudi Arabia courtesy of Saddam Hussein and Uncle Sam. The newest HLS class also includes three doctors and one professional ballet dancer in addition to the usual number of journalists and academics.

Academically, as usual, the Class of '93 heavily represents a core of "feeder" schools. Harvard-Radcliffe College provided 70 members of the class, Princeton edged out Yale by supplying 36 while Yale came in with only 34. Stanford followed closely with 33. Other schools which supplied ten or more members of the class include Brown (23), University of California Berkeley (18), Michigan (16), Penn (15), Columbia (15), UCLA (14), Amherst (11) and Virginia (11). Graduates of these twelve schools represent over 54 percent of the first year class. There are also a number of graduates of women's college here. In all, the members of the Class of '93 represent 142 undergraduate institutions.

The Class of '93 is full of academic achievers. The class includes at least one Rhodes Scholar, two Marshall Scholars, a number of Fulbright and Rotary scholars, one Mellon Fellow, one Coro Fellow, and at least ten Truman Scholars.

It appears that the stereotypical image of the HLS student is just that -- a stereotype. Many students do come from the "typical" background, but many more do not. Each member of the Class is a unique individual and as such, the administration has concluded that each has something to contribute to the HLS community during the next three years and to the world after leaving the Ivory Tower. And, most importantly, each person now shares something with 541 other people -- for each is now and always will be a member of the HLS Class of '93.

Kenyatta Gives History Of Struggle At HLS

By RECORD Staff

A former president of the Harvard Black Law Students Association (BLSA) returned to campus this week to give a lecture on the history of the struggle for faculty diversity at HLS.

Prof. Muhammad Kenyatta gave a perspective on the diversity struggle at a luncheon on Sept. 18. Kenyatta, a professor of Constitutional Law at the State University of New York-Buffalo Law School, told HLS students that "the process of social change is always one that will involve struggle and conflict." The luncheon was sponsored by the Coalition for Civil Rights (CCR).

Kenyatta, the 1982-1983 president of BLSA, has been a lifelong community activist since the 1960s, when he was a member of the Student Non-violent Coordinating Committee.

During the luncheon, Kenyatta recounted the history of the student protests that took place at HLS in 1981-83. At that time, the faculty included only two professors of color, Prof. Chris Edley '78 and Prof. Clyde Ferguson. Prof. Derrick Bell had left HLS to serve as Dean of the Law School at the University of Oregon.

When students at that time protested the loss of Professor Bell's course on "Constitutional Law and Minority Issues," the administration responded by creating a civil rights course offered only during winter term.

Kenyatta, who was a member of the Third World Coalition which called for a boycott of the class, contended that the addition of an abbreviated course did not address the need for a full-time professor of color to teach courses concerning race issues. The coalition included BLSA, the Asian American Law Students' Association, La Alianza, and the Native American Law Students' Association.

Kenyatta called the boycott a great success. No students of color attended the class, while many conservative students enrolled, apparently to protest the Coalition's position, he said. Noting "the irony of conservative students attending a class they normally shun," Kenyatta said, that "it was probably a good class for them to take!"

Kenyatta also recalled the overwhelming support of the student body for the goals of the Third World Coalition in seeking faculty diversity, expressed in a student referendum on the issue.



Muhammed Kenyatta

Reflecting on student movements in general, Kenyatta urged that those who downplay the role of student protest in achieving progress are short-sighted. In fact, he declared, such agitation is essential to progress. "The bias of Western thought, that progress is inevitable is what I call a teleological fallacy; change does not automatically occur with time."

Kenyatta emphasized that although the progress achieved through activism sometimes occurs too late for the benefit of those who sparked it, it is the groundwork upon which later successes are built.

"To hope for change without turmoil is to wish for the ocean without the roar of its mighty waves," he said.

In the past, Kenyatta's work has included voter registration, civil rights, and anti-poverty campaigns in Louisiana, Alabama, and in Mississippi with the Mississippi Freedom Democratic Party. He also worked to address problems of poverty and police brutality, to organize opposition to the Vietnam War, and to advocate South African solidarity.

During the lively discussion following Kenyatta's remarks, current HLS student activists remarked on how they saw their own experiences at HLS as

similar to his. Lisa Hodges, Co-Chair for BLSA's Community Action Committee, argued that, now as then, the HLS administration seeks to convince students that the interest in diversity is a fad.

"These issues are continuing and student interest in them has not died, but rather has reached a point of new urgency," she said.

Students from CCR were interested to hear that the earlier Third World Coalition had similarly united women, lesbian and gay students with students of color and white student supporters.

"Professor Kenyatta's speech reminds us of our history, as we are committed to building a further foundation for ongoing struggle, until we have won a law school that reflects all of us," concluded John Bonifaz, 2L, a CCR founder.

**Next RECORD~
October 12th**

Labor Project Plans Picket Of Union-Busting Firm

By RECORD Staff

As HLS enters its law firm recruiting season, students in the Harvard Labor Law Project, joined by law students from more than 30 other schools, have launched a boycott of 17 law firms which, according to the AFL-CIO, are engaged in "union-busting activities."

In a Sept. 20 letter to second and third year students, the Labor Law Project asked students to join the national boycott "by signing a pledge not to work for union-busters." Four of the 17 law firms targeted in the boycott will hold interviews at HLS this month. The Labor Law Project has scheduled a picket outside Pound Hall for Tues., Oct. 9, to coincide with campus interviews by one of the firms.

"In contrast to other firms who represent management," the Labor Law Project letter read, "these firms rarely

negotiate contracts. Instead, they act to prevent workers from forming unions or they seek to destroy existing unions."

The Labor Law Project cites one firm which holds seminars on "union avoidance" that promise to teach legal and "psychological" techniques to prevent workers from unionizing. Another firm, according to the letter, "proudly boasts of its expertise in 'decertification as a management alternative,' even though, according to the National Labor Relations Act, decertification is an issue solely for workers to decide."

"By creating a climate of fear and intimidation," says Labor Law Project member Bill Kransdorf, 2L, "such firms make it almost impossible for workers to make their own decisions about unions."

AFL-CIO lawyer Virginia Diamond recently told *The Washington Post* that the 17 firms targeted in the boycott have gone beyond "the traditional labor law representation of management" and are heavily involved in "orchestrating campaigns, which essentially terrorize em-

ployees who want come together and gain a voice on the job."

This campaign began in 1986 when 200 HLS students boycotted five "union-busting" law firms that were recruiting on campus. The boycott drew national attention. Last year, students at seven other law schools joined HLS students in the campaign. This year, students are organizing boycotts at more than 30 law schools throughout the country.

HLS Professor Derrick Bell recently announced his support for the boycott effort. In a letter sent out to law students across the country, Professor Bell linked the boycott campaign to the struggle for diversity in the nation's law school faculties.

"Because the fastest growing sector of union membership is women and people of color," Professor Bell wrote, "these law firms represent a serious threat to the type of reforms that both I, and workers via collective action, are attempting to address. I encourage you to take a stand for civil rights, including the worker's

right to organize. I call on you not to interview with union-busting law firms."

As part of its campaign, Labor Law Project organizers are circulating a pledge for students to sign saying they will not work for union-busters. The pledge names the four firms planning to interview at HLS beginning Oct. 8: Venable, Baetjer, Howard & Civiletti (10/8); Seyfarth, Shaw, Fairweather & Gerson (10/9); Vedder, Price, Kauffman & Kambolz (10/15); and Littler, Mendelson, Fastiff & Tichy (10/19).

In addition, the Labor Law Project has called for a picket outside Pound Hall for Tues., Oct. 9 at 12 noon. The picket will coincide with campus interviews by the firm Seyfarth, Shaw, Fairweather & Gerson.

"At its heart, this campaign is about a people's right to organize for rights," says Labor Law Project member Marta Wagner, 2L. "Union-busting law firms need to know that their activities will not be supported with our labor."

NFL Commissioner Drafts Heymann

Harvard Law Professor Philip Heymann '60 has been named by NFL Commissioner Paul Tagliabue to investigate the alleged locker room sexual harassment of *Boston Herald* reporter Lisa Olson by members of the New England Patriots.

This controversial Sept. 17 incident has caused considerable debate among sports fans and others around the country. Olson said players confronted her, made lewd suggestions and attempted to disrupt an interview she was conducting with another player.

Boston Herald executive sports editor Bob Sales said Tues. that he's pleased with Heymann's appointment and expects a "swift and just conclusion to the whole affair."

"Perhaps the Patriots who brutalized (Olson) will be chastened by the results," Sales said.

Heymann would not comment to reporters about the investigation.

But in a press release Heymann, 57, stated: "My job is to get to the facts of the matter. I intend to do just that. I will begin interviewing as soon as I have reviewed all pertinent information...I do not intend to discuss the investigation publicly, but simply to report my findings to the commissioner."

Heymann was highly praised in press coverage of the appointment by Tagliabue and others. "His investigative experience as the Assistant Attorney General and his legal background make him well qualified for the job," Tagliabue stated in a press release.

Heymann, a former chief of the Criminal Division of the U.S. Justice Department who also served as Associate Watergate Special Prosecutor, joined Harvard's law school faculty in 1969.

He has been director of the Harvard Law School Center for Criminal Justice since 1981 and has served as faculty chairman of the Kennedy School's Program for senior Managers in Government since 1989.

Herald editor Sales said the issue here is different than the question raised this week when a female *USA Today* reporter was barred from the Cincinnati Bengals locker room by a security guard who reportedly told her: "This is a sensitive time."

"This is not about access to a locker room. This is about harassment, brutality and perhaps assault. That is about a matter settled years ago," Sales said, noting there wouldn't be so many students at HLS if people didn't keep breaking established rules.



Phil Heymann '60

LSC Forum On Pro Bono

By Michael Scher

The Law School Council (LSC) held an open forum on Mon., Oct. 1 to discuss the status of the proposed public service requirement at Harvard Law School.

Last spring, HLS students voted in favor of a pro bono requirement as part of the standard curriculum at the Law School. The referendum had asked students whether they would support the creation of a mandatory public service program at HLS for students entering the Law School in 1991 and beyond. The proposal garnered the support of 53.6 percent of the students voting. A substantial number of those voting in favor of the proposal indicated that they would support the requirement only if course credit were given for the work done in connection with the program.

Simultaneous with the vote the Dean's Public Interest Advisory Committee (PIAC), consisting of three faculty, two administrative, and three student members, was looking into the feasibility of creating a mandatory public service program at HLS. Student members of PIAC attended the Oct. 1 public forum to report on the progress they had made in defining the parameters of the proposed requirement.

Law School Council President Tom Samuelian, 3L, opened the hour-long forum, which was attended, at least in part, by approximately 25 people, by identifying the basic premises behind the proposed public service requirement: (1) to provide immediate free legal services to people in desperate need; (2) to provide practical training for HLS students; (3) to accustom law students to

Continued on page 12

LSC Sets Goal: To 'Improve Quality Of Life' At HLS

By Evette Harrison

At the first meeting of the new academic year the Law School Council (LSC) addressed the perennial student question: "How can the quality of life be improved at HLS?"

The image many students have of the LSC - that it is incapable of tactile changes on the law school campus - was challenged by the programming chair of the LSC, "The LSC wants to do a lot of things which are more practically related. Instead of being mainly a forum for airing political views, the LSC wants to do practical things to enhance the quality of life in the HLS community," stated Judy Gliniecki, 3L.

To Eric Collins, 3L, a LSC at-large representative, this means the LSC should address "everything from the

dormitories, to the Hemenway Gymnasium, to the Harkness Commons, to the use of certain rooms on campus for student activities."

Toward the goal of improving the quality of life for the student body, the LSC has high on its list of priorities several campus improvements. According to Tom Samuelian, 3L, the president of the LSC, the Council plans to work toward improving the Hemenway gym, the law school dormitories and the food service at the Hark.

Additional goals include expanding the library, building new classrooms and office spaces, and possibly new dormitories. In the short term, the LSC hopes to get the current dormitories into shape for the present occupants.

The most visible of the LSC's efforts is

Continued on page 12

GIBSON, DUNN & CRUTCHER

*will be interviewing second and third year
Harvard Law School students for
summer and associate positions at*

THE CHARLES HOTEL

Tuesday, October 16 and
Wednesday, October 17.

We encourage interested second
and third year law students
to register with the Placement Office.

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London, Los Angeles, Newport Beach,
New York, Paris, Riyadh, San Diego,
San Francisco, San Jose, Sacramento,
Seattle, Tokyo, Washington, D.C.

Harvard Law Record

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Patrick Miles, Jr.
Editor-In-Chief

Diversity Committee Needed

Dean Robert Clark '72 should form a student-faculty committee to investigate and give a recommendation on the faculty-hiring standards of HLS and the needs of the student body. Last spring, Prof. Derrick Bell's decision to take a leave of absence from teaching at HLS until a woman-of-color is hired to a tenure-track position on the faculty, and the subsequent counter that there are no "qualified women of color available" to teach at HLS, left HLS' lack of a clear, objective standard for hiring decisions exposed for everyone to gaze upon in astonishment.

In the past, the search and selection of faculty at HLS was generally as follows: the school would decide on an area that needed to be filled in the faculty. The school would then make a list of the top faculty prospects in a given field. The criterion for developing the prospect list was vague, but somewhat traditional. The factors considered by HLS to be important included: whether the person was highly regarded by peers and colleagues, the amount and quality of their published work, and their education and professional experience. From the short list, HLS would offer the person at the head of the list a position, if that person declined the offer, HLS would give an offer to the second choice, *et cetera*.

Recently, the students and faculty members who recognize the need for diversifying the faculty at HLS, have noted that there are other indicators of a professor's ability to be worthy of a tenure-track position. Qualities that add to the richness and depth of the faculty include: the particular personal experiences of professors, the variety of legal and social thought that teachers with different cultural backgrounds bring to an institution, and the ability of each teacher to function as a role-model -- a teacher that students can relate to, emulate, and aspire to achieve a like success.

Some have raised the argument that to find a role-model for every particular student need is impracticable. Others have asserted that the search process should be a matter of finding the "best" candidate representing a particular minority or group. The usual counter to this method is that the traditional factors may be ignored.

These issues, and many others, need to be addressed, discussed, and the dean needs to be given a recommendation on how the faculty-hiring standards should be listed.

Currently, Dean Clark is attempting to draw a consensus from the faculty on defining the proper standard by which prospective faculty members should be judged. The faculty response was less than conclusive.

It is axiomatic that the *best* teachers may not be the *best* scholars, and conversely, the *best* scholars may not be the *best* teachers. Thus, input from both students and current faculty members -- the two groups that receive the immediate benefits or penalties from the scholarship and the teaching of professors -- is necessary to analyze all of the possible objective or subjective factors that should be put into place for future reference.

The methodology of the selection of HLS professors does not need to be a quantifiable formula, but it is quite appropriate for a different weight to be given to different factors in the assessment of a potential faculty members, including their intangible positive or negative qualities beyond the traditional, self-perpetuating analysis.

--P.M.

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A Plea For Understanding

An Open Letter To Chris Crain:

You became an alumnus just last spring, so you probably remember what it is like to be starting law school: running around trying to find your classrooms; meeting lots of people and hoping you'll remember their names; feeling kind of lost in so large a place. Maybe you remember what a relief it is when some kindly senior student befriends you and advises you what books to get or where to go out for dinner.

Now, imagine how it would be to introduce yourself to a 2L and have him sneer, "Oh, yeah, I've heard about you." Think how it would feel, Chris, to learn that before your arrival, a 3L had made a personal attack on you in print, in a newsletter stuffed into everyone's Hark box.

You wrote an article in the "New Republican," last May, in which you noted that I'd been admitted to HLS. You talked about the civil disobedience I'd done to help prevent nuclear war, and questioned the judgment of the admissions committee which had invited me. The bulk of your recitation was incorrect -- my name, the facts of my case, my legal defense -- but you were right in saying that I'm a convicted felon.

Where you're wrong is in stating: It is therefore incumbent upon those of us who see the proverbial tunnel at the end of the light to speak out, and work for an intellectual climate to which Katya Komisaruk would never seek admission -- not because it is hostile to her ideas, but because it demands tolerance, mutual respect, and above all, civility.

It seems odd, Chris, that you should

have delivered this condemnation of me to the people with whom I'd be going to school, without notifying me, without giving me a chance to respond. Your article centered on the deterioration of discourse at HLS, yet discourse depends on willingness to withhold judgment until the opposition has made its presentation. In fact, though I've only been studying law for two weeks, I've understood that giving the other side a chance to be heard is at the heart of legal fairness, of what we call "due process."

As for civil disobedience, I'm certainly willing to talk about that with you. What I did was the result of several years of analysis and deliberation regarding a national policy that rests on the willingness and ability to exterminate millions of human beings. When taken out of moral and historical context, my action may lend itself to easy caricature; yet the truth of the matter is far more complex, far more defensible, far less dogmatic than your careless description makes it seem.

In the end, what was most hurtful and disturbing about the scarlet letter you left for me was the sense that a basic injustice, a genuine failure of fairness, had been committed. Though, I am tempted to try "setting the record straight," I've resisted that impulse in order to realize a different goal.

I write now to make an appeal, to urge that in discussing people or views we find uncomfortable, that we go beyond rhetoric and really do try to proceed with "tolerance, mutual respect, and above all, civility."

-- Katya Komisaruk, 1L

Sage Advice To A Neophyte

To the Editor:

This letter is addressed to Robert C. Arnold, the author of three pieces in the last issue of the RECORD. I write to offer some constructive criticism and a little encouragement. The criticism comes first.

Robert, your articles were the most elitist and self-righteous bits of student prose I have read in my two years at HLS, and believe me, that is saying quite a lot! You painted a portrait of the magnificence of those that attend this school and what they will accomplish

upon graduation that would have done Scott Turow himself proud. At various points, you refer to HLS students as: 1) the "creme de la creme;" 2) "people who wowed law schools across the country with their GPA's, LSAT's, and exploits outside of the classroom;" and 3) the "leaders of tomorrow."

In my favorite passage, you humbly assert that "[t]he World needs us." You have definitely fallen prey to the Harvard myth that HLS grads are "Super Beings" who will one day "rule the world." Let me

Continued on page 12

Linguistic Imprecision Mars Article

To the Editor:

Whatever one may think of the merits of Derrick Bell's position, the lead article in your September 14, 1990 issue was enormously informative in ways that I'm sure were not intended.

I had thought that the one thing that everyone was supposed to derive from an education at HLS was the ability to think clearly and to express those thoughts precisely. Obviously not all students succeed equally, but I had thought they were all driven to try.

Apparently not.

The sentence, "The tenured faculty includes no Latinos, Asian-Americans, Native Americans, openly gay or lesbians, or differently-abled persons," demonstrates that, for some purposes at least, words are still used at HLS to

convey precise nuance -- the word "openly" is a nice touch. However, the substitution of "differently-abled" for "disabled" is appalling. Obviously the author, or her editor, thinks that "disabled" is a pejorative, and must be expunged.

I hope that the confusion which this unfortunate usage demonstrates is not a sign of a retreat at HLS from intellectual rigor in defining and analyzing problems, but merely an example of the inability (not "different-ability") of one or more students to face facts and issues directly and to appreciate what they (and the words used to describe them) signify. It's too bad that you had to butcher the language in the process.

-- Carl L. Zanger '56

NEA Fight Reveals ACLU Inconsistencies

To The Editor:

As the controversy over the National Endowment for the Arts continues, the ACLU is acting to defend the expenditures of federal funds for a crucifix submerged in urine. Ironically, it is simultaneously in court asking for the removal of a crucifix submerged twenty feet below water off the coast of Florida, arguing that the presence of a sectarian religious symbol on federal land (the Continental Shelf) violates the Establishment Clause of the First Amendment.

For the cynics, the difference in fluids explains the difference in treatment. First Amendment law is crazy enough -- there is the initial letter test, for instance: state money for buses and books is permissible, but money for teachers

or time is not.

Another argument is that it is religious to exalt Christ, but secular to debase Christ. I have listened to defenders of the ACLU grope their way towards such a principle. Although this is a principled distinction between the cases, it contradicts Establishment Clause law. The Lemon test for Establishment has as its second prong that the primary effect of a state action must neither *advance* nor *inhibit* religion.

This suggests a better defense. Perhaps the crucifix in urine is art, and the religious statement is merely secondary. But why is the crucifix in water not equally art? What is so artistic about a plastic crucifix in urine?

-- Scott Somerville, 2L

Asian-American Students Call For Baker & McKenzie Boycott

TO THE HLS COMMUNITY:

During an interview at the University of Michigan Law School last fall, a Baker & McKenzie hiring partner reportedly asked a female law student expressing an interest in working in Japan how her parents would feel about her living in Japan for an extended period of time. According to the student, the interviewer subsequently suggested that her father would be upset, fearing the possibility of her intermarriage with a Japanese man. The Baker & McKenzie attorney then pressed the student as to whether she would consider marrying a Japanese man; despite her objections that such questions were irrelevant, he went on to imply that she wouldn't be averse to the idea.

Baker & McKenzie flatly denies that its interviewer uttered any such statements, insisting that the student fabricated the entire account. Following a thorough six-month inquiry by a neutral investigatory committee at Michigan Law School, however, Law School Dean Bollinger concluded in an open letter to all concerned that "...the student's ver-

sion of what happened in the interview is true." Although the Dean declined to impose any official sanctions on Baker & McKenzie, he characterized the interviewer's statements as both "insensitive" and "inappropriate." Insisting that the committee's findings were "wrong" and that Michigan Law School had "...done a grave injustice to the interviewer and the firm," the firm subsequently announced that it would boycott recruiting at Michigan for the 1990-91 interview season.

The purpose of standardized complaint procedures and neutral investigatory committees like those employed at Michigan Law School is to seriously address incidents of offensive behavior and to deter their repeated occurrence. Baker & McKenzie's refusal to honor the conclusions of the neutral investigation, and the firm's subsequent boycott of the law school (despite the mildness of Dean Bollinger's censure), reflects a complete disregard for student-protective procedures and the acknowledged concerns of minority and women law students. The disrespect demonstrated by the firm's unapologetic withdrawal -

- an attempt, in effect, to punish Michigan Law School for its findings -- undermines the credibility and effectiveness of the student complaint procedure. As the only means of securing redress in cases of law firm misconduct, such procedures and investigations are essential to the protection of all students, particularly women and minorities. Baker & McKenzie's actions ignore the responsibilities incumbent upon law firms to honor these minimal administrative safeguards.

Insofar as the comments in question were deemed by the investigatory committee to have actually been uttered, the interviewer's speech reflected both racial condescension and unparalleled parochial insensitivity. The suggestion that intermarriage with an Asian man would likely be viewed as objectionable from a Caucasian's perspective reflects an overt racial bias more characteristic of the 1940's than that which the legal community is accustomed to in the 1990's - particularly from a firm that prides itself on its international and cosmopolitan attributes.

The Asian American Law Students'

Association calls on the Placement Office to ban Baker & McKenzie from on-campus interviews this year at Harvard Law School. It is imperative that the Placement Office, as official liaison and representative of students' professional interests, express clear disapproval at the firm's challenge to established procedures designed to protect all law students at our respective institutions.

AALSA furthermore calls on all Harvard Law School students to decline any and all interviews with Baker & McKenzie; we encourage students, moreover, to alert Baker & McKenzie as to the grounds for their decisions not to interview with the firm. A firm with an acknowledged history of racial insensitivity and inappropriate conduct must be censured by law students themselves, not just administrative figures. Finally, we urge the students at HLS to defend the procedures that protect us all -- whether at Michigan or Harvard -- from unprincipled, offensive hiring practices. BOYCOTT BAKER & MCKENZIE.

- Harvard Asian American Law Students' Association

Agenda Neutral

By Eli Clark

Fenno

I am so lonesome tonight as I lie on my bed groping the humid sheets and grasping for a life line caressing a distant shore. Sadly, my soul solace is the 1990 Federal Tax Code. I will dream of a bigger basis, an excellent exemption, a doozy of a deduction.

I had thought tonight would be a better night. I thought I would have company. I thought I could be lonesome in a twosome. I was certain I would be sharing a little with a female person. For you see, today was the scheduled start of Fenno's New Adventure.

I had tried Inn parties, Lansdowne Street, Phoenix personal ads, cryptic comments in Con law, even random sincere smiling. Nada. But today was going to be the start of something different.

Interviews.

I'd heard the wild stories. Panting partners laying it all out on the line. Debauchery. Bacchanalian bonanza. What had happened?

I had trimmed the nose hairs and scrubbed the neck. I had my shirt starched and then buttoned it correctly. I had bought anti-perspirant and took the time to apply it. I had skipped out of class early, waking all the back benchers. I had run towards the river like my life was on the line. I had dried my sweat. I had smiled. I had expressed great interest in motions for dismissal.

Dismissed, indeed!

She had rejected me. She did not seem to pick up on the telepathic clues. "...yes, yes, yes... I always say yes. Let me be your coffee boy, let me be your photocopy slave, let me be your everything! Let me do all those things to you that the paralegals don't dare to do!"

But no, she kept blabbing away about the firm's remarkable growth in the past four years.

"...yes, yes, yes, I'll fix the runs in your panty hose and wax the fenders on your BMW and submit your glorious biographical update to the Harvard Law School Alumni Bulletin!"

No response. I, Fenno, alone again. Damn, I thought it would work. Why just last week on this very bed, while I was leafing through my favorite adult magazine...

I am the greying and distinguished senior partner in one of the world's largest law firms, and at 64 I thought my most exciting days were behind me. The days of Brooklyn shore leaves were over. But as luck would have it, last season one of our on-campus recruiters fell ill and I found myself faced with the prospect of conducting interviews with a slew of young, nubile soon-to-be lawyers, eager to claw their way to the top...

IT'S THE FIRST ANNUAL FALL INTERVIEW GUIDE!

③ DRESS WELL

WELL HERE MEANS UNCONVENTIONAL. ESCHEW NAVY BLUE. TRY A CASUAL DAY-GLO PINK OR GO TOTALLY FORMAL.



① CHOOSING FIRMS

REMEMBER, THE JOB MARKET'S TIGHT. CHOOSE CAREFULLY THE FIRMS YOU WANT TO INTERVIEW WITH.



② BE ASSERTIVE

ACT COCKY. YOU GO TO HARVARD. ADOPT AN AIR OF CONFIDENT SELF-ASSURANCE.



④ STIMULATING CONVERSATION

DON'T ALLOW THE DISCUSSION TO LAPSE INTO PLATITUDES.



⑤ POSITIVE ATTITUDE

WHATEVER YOU DO, DON'T GET DEPRESSED. IT COULD BE WORSE. YOU COULD BE IN BUSINESS SCHOOL.*



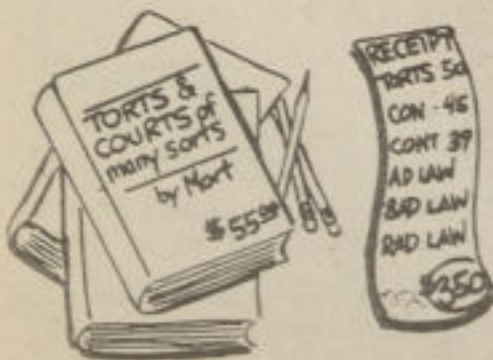
*APOLOGIES TO J.D./M.B.A. CANDIDATES

Law of the Jungle

By The Idle Rich

YES, HERE AT HLS PART OF BEING EVEN HANDED INVOLVES GETTING THE UPPER HAND! IT'S NOT HOW YOU PLAY THE GAME, IT'S WHETHER YOU MAKE THE RULES, SO BALANCING THE BENEFITS AND COSTS OFTEN MEANS TRYING TO WIN AT ALL COSTS. BUT LOOSELY PARAPHRASED CLICHES ASIDE, LET'S SEE HOW THE HEAVY HEGEMONS HAVE INSURED THEIR HIGH STATUS IN THE HYPER-HIERARCHY OF HLS!

F-UP MANSHIP TACTIC #2: BECOME A BEST SELLING AUTHOR BY REQUIRING ALL OF YOUR STUDENTS TO BUY YOUR BOOK!



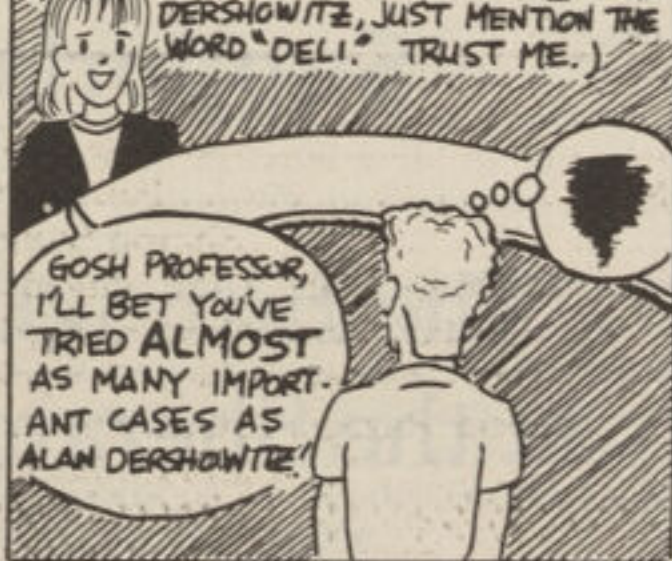
F-UP MANSHIP TACTIC #1: BRAG ABOUT THE CASES YOU'VE ARGUED (HIGH PROFILE/S.C.T. CASES A PLUS!)



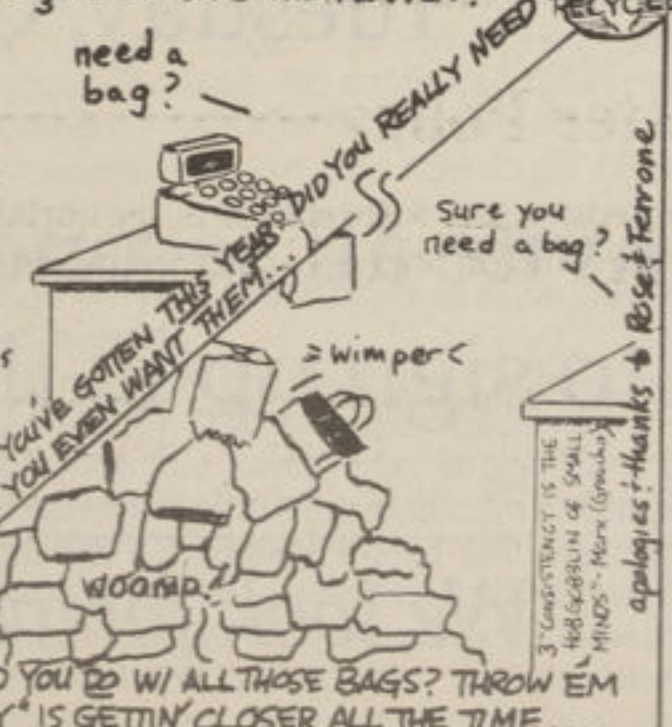
COUNTERTACTIC: BUY CASENOTES, GILBERTS OR EMMAUEL'S INSTEAD. (BONUS: AS RATIONAL BENEFIT MAXIMIZERS, WE KNOW THAT TIME IS MONEY, BUT DON'T FORGET: MONEY IS MONEY! TEXTBOOKS COST UPWARDS OF \$40 EACH, OUTLINE'S COST \$15 MAX. YOU DON'T NEED PROF. SHAYELL TO TELL YOU THAT YOU CAN SAVE A BUNDLE! USE THE DIFFERENCE TO INCREASE YOUR RECORD COLLECTION!)



COUNTERTACTIC: COMPARE OFFENDING PROFESSOR TO ALAN DERSHOWITZ (IF OFFENDING PROFESSOR IS ALAN DERSHOWITZ, JUST MENTION THE WORD 'DELI.' TRUST ME.)



WE INTERRUPT THIS COMMERCIAL TO BRING YOU A TOTALLY UNRELATED PLEA TO SAVE THE PLANET!



The Death Penalty: A Discussion

Cruel And Unusual? You Decide

On May 4 of this year Jesse Tafero was put to death in Florida's electric chair for the killing of two law enforcement officers 14 years ago. Witnesses to the execution saw fire, smoke, and sparks fly from Mr. Tafero's head as electric jolts were applied by the executioner. The apparent malfunctioning of the Florida electric chair caused the state considerable embarrassment and prompted an investigation by prison officials, who reported their findings in the following memo. Several members of the RECORD found this memo shocking and worthy of reproduction here. Some said the memo demonstrates there are still some Goebbels in our society; others felt that it was no big deal; still others compared its dispassionate sterility to legal analysts. We reprint the memo, which was obtained from the Southern Coalition On Jails and Prisons, for the benefit of our readers. Write us and tell us what you think.

- Ed.

TO: Richard L. Dugger
FROM: David H. Brierton
SUBJECT: Execution of Jesse
Joseph Tafero, #A020285
May 4, 1990
DATE: May 8, 1990

CHRONOLOGY FOR EXECUTION

(Note: All times are approximate.)

7:00 a.m. - Superintendent Tom Barton, Colonel A.D. Thorton, and Assistant Superintendent of Operations L.E. Turner escorted Inmate Tafero into the Execution Chamber. Present in the Chamber at the time were: Superintendent Tom Barton; L.E. Turner, Asst. Superintendent for Operations; Lt. Don Davis, Administrative Officer; A.D. Thorton, Chief Correctional Officer; Dr. Frank Kilgo, Chief Medical Officer; Bill Mathews, Physician's Assistant; Ron Thorton, Maintenance Construction Supervisor; Al Martin, Asst. Maintenance Construction Supervisor; Jesse Tafero, Inmate. Inmate Tafero is strapped into the chair. After routine checks, Superintendent nods to the executioner.

7:06 a.m. - Electricity was applied. Almost immediately flames and smoke were visible.

7:06:30 a.m. - Superintendent told Al Martin to stop electricity.

7:07 a.m. - Superintendent Barton instructed Mr. Martin to reset equipment.

7:07:30 a.m. - Superintendent instructed executioner to engage switch second time. As electricity was applied, flames and smoke were immediately visible once again.

7:08 a.m. - Superintendent instructed Mr. Martin to disengage the electrical equipment (the second time). Mr. Martin was instructed to reset the equipment for the third time.

7:10 a.m. - Superintendent instructed the executioner to once again engage circuit.

7:10:15 a.m. - Superintendent instructed Mr. Martin to stop the electricity. Superintendent instructed L.E. Turner to disengage manual circuit (breaker). Superintendent instructed Mr. Mathews (PA) to examine the body. Superintendent instructed Dr. Kilgo to examine the body.

7:13 a.m. - Dr. Kilgo pronounced Jesse Tafero dead. Lt. Davis advised the witnesses that the sentence of *State v. Jesse Tafero* has been carried out.

All of the witnesses report seeing essentially the same phenomena. That is, at the time that the electricity was applied, flames were seen being emitted from the area of the headpiece (beneath the cap). Smoke was also observed.

At the time Superintendent Barton ordered that the electricity be stopped

by manually shutting down the main panel, he (Barton) ordered the panel be reset and instructed the executioner to start the electricity to be applied again. As the electrical current started, so did the flames and smoke for the second time.

After a few seconds, the Superintendent repeated the order to again stop the electricity. Once again he gave instructions to reset the panel and, for the third and final time, ordered that the electricity be applied for approximately fifteen seconds.

Two problems emerged as central to this set of circumstances:

1. What could have caused the flame and smoke?
2. What effect did it have on the inmate being executed?

This report will consider these problems in that sequence.

The first consideration, what actions or lack of actions, caused the flame and smoke must certainly center on one of two possibilities.

Either the situation was human error, or it was caused by some mechanical

failure or deficiency.

An initial inspection of the circuits proved that equipment works the same today as it did prior to May 4.

The next step was to review those variables which were present at the actual execution but not intrinsic to the circuitry itself. The most obvious was the sponges used during the execution. During the interview of Alan Martin, Assistant Maintenance Supervisor, it became apparent that the sponge used in the headpiece had recently been changed just prior to May 4. Upon examination, it becomes quite clear that the newly acquired sponge is synthetic and not the natural "elephant ear" variety that has been historically used. Mr. Martin freely admits in the interview that at the time he (Martin) elected to change the sponge after a conversation with his supervisor no thought was given to acquiring a natural sponge. Mr. Martin went to a local store in Starke and purchased a sponge which proved to be of synthetic composition.

It was important to demonstrate

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Poor And Retarded Disproportionately Killed

By Jenifer Bensinger

In July of 1989, the United States Supreme Court ruled that it was not unconstitutional to execute a mentally retarded person in *Penry v. Lynaugh*. Mr. Penry has an I.Q. of approximately 55, and the mental age of a six-year-old child. The United States Supreme Court threw out Mr. Penry's death sentence and ordered a new trial in Huntsville, Texas, where the new trial was to be held, a local community leader was discussing the impartiality



of the county, and how Mr. Penry would receive a fair trial, unprejudiced by his prior conviction for the offense, and that he would be presumed innocent until proven guilty. This community leader, when asked if he would like to be tried in Huntsville if he were Johnny Penry, responded that he could not easily answer that question, as he hadn't

killed anyone. Score one for the presumption of guilt. On July 17, 1990, Mr. Penry was again sentenced to die.

We like to think that what goes on in our own country -- what is endorsed by our legal system and enforced by our judiciary -- is fair and rational and not torturous, murderous or racist. However, right now in these United States of America, an overwhelming majority of the populace supports the death penalty. This same majority supports the rights of the mentally retarded and the mentally ill. They insist that it is those who abuse their children, not the children themselves, who are the wrongdoers. They denounce racism. Yet in this country we allow the execution of the mentally ill, the mentally retarded, children and those who were abused as children.

We allow the disproportionate execution of poor persons of color. After more than 15 years of study, officials have found compelling evidence that race strongly influences capital sentencing. In February 1990, the Federal General Accounting Office found a "pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty." Eighty-two percent of the studies the GAO examined suggested that those who murdered

whites were more likely to be sentenced to death than those who murdered blacks.

In addition, many people are sentenced to die by juries who represent neither the community nor the defendant. A jury of one's peers is meaningless when a defendant faces a jury comprised entirely of people of a different race and economic situation.

In many states, juries in capital cases are death-qualified. This means that a person who is so strongly opposed to the death penalty that he or she could not impose the death penalty can be stricken from the venire for cause by the prosecutor. In 1974, the U.S. Supreme Court, in *Furman v. Georgia*, decided that what constitutes cruel and unusual punishment (which is prohibited by the Eighth Amendment) is determined by "evolving standards of decency." When people opposed to the death penalty are routinely stricken from juries and this practice is supported by the judiciary, the voices of these people and this entire branch of government is excluded from the evolution of our standards of decency.

In June of this year, James Smith was executed in Texas. Mr. Smith believed there were demons that at times en-

Continued on page 9

DONOVAN LEISURE NEWTON & IRVINE Supports the RECORD

The firm will be interviewing
at the Sheraton Commander on

Tuesday, October 23, 1990

We invite all second and third year students
to sign up in the Placement Office.

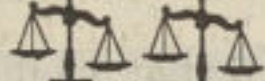
We look forward to meeting you.

Cambridge Cuisine: Goeman's Japanese

This is the first installment in a regular series of restaurant reviews of ethnic food in the HLS area. Restaurants will be rated on their dissimilarity to Hark lunch food, which is another way of saying "quality". Four scales indicates extremely dissimilar, i.e. "excellent". One scale indicates food so bad it will make you pine for those beautifully designed Hark display meals. --Ed.

By Karen Levy

Goemon Japanese Noodle Restaurant
1 Kendall Square (on Hampshire St.
in East Cambridge)
T: Redline to Kendall;
5-10 minute walk
Tel. #577-9595.

Rating: 

No reservations. Sun. - Thurs. 11:30 a.m. - 9:30 p.m., Fri.-Sat. until 10:00 p.m. Room for large and small parties. Full bar. Prices: Appetizers: \$3-\$4; Base noodle: \$3.95 + ala carte toppings from \$.50-\$1.25 (except the special smoked eel which is \$3); full dinners \$5.75-\$7.50.

Imagine the ad: Mom didn't have a chance to go to the fish market today, the kids are bringing friends home from school and Dad's staying at Mitsubishi late tonight. What are we going to serve for dinner? In America, we have Big Macs. In Japan, they have noodles. But you don't have to travel to Japan to try the Japanese version of McDonald's.

Amidst modern jazz, eighties diner-style deco and local students, one can experience "original Japanese 'fast food'" -- albeit at slightly greater-than-fast-food prices -- in Cambridge at the Goemon Japanese Noodle Restaurant.

Out of the "Goemon kettle" comes an upscale version of what one might -- not without good cause -- associate with the college staple "Oodles of Noodles." But Goemon, more a casual cafe than a fast food joint, serves a full-scale Japanese menu.

As the menu informs us, the noodle, a seemingly uninteresting species, exists in various forms, each of which harbors undiscovered history. The widely enjoyed ramen noodle, of Chinese extraction, is a thin, squiggly whole-wheat noodle and is served with vegetables and meat. Made with buckwheat flour, the thin, healthy soba

noodle was consumed within the Japanese temples by the elite.

A thicker wheat noodle, *udon* is served *al dente*. Believed to be the most ancient of the noodle types, little is known about the origin of *udon*. All of the noodles are served in a light soy and fish-based broth and -- this is the catch

-- made to be topped with almost anything.

Capitalizing on this opportunity for a variety of combinations, the featured attraction of Goemon is the *a la carte*, create-your-own dinner, noodle menu. One may choose an unlimited number

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Arnold V. The Yuppies

By Robert C. Arnold
Columnist

I recently had a telephone conversation with a very good friend of mine who is presently a medical student at Baylor University Medical School in Dallas, Texas. After reminiscing about days long since past, catching up on all the remember-when stories about the glory days, and generally commiserating in each other's current educational anguish, she ended the conversation with a resounding declaration of the bright futures that lay ahead for both of us. "Bob," she said, "we've got it made. You a lawyer, me a doctor, we've got it made. Pretty soon this will be behind us and we will be yuppies!"

Although I understood her to mean that we would soon be urban professionals with relatively lucrative salaries and positions, I am not so sure that her prognosis (pun very much intended) for us is all that appealing. I wouldn't characterize myself as a future yuppie, or Buppie (black urban profession), as the case may be.

The word "yuppie" is an 80s word which conjures, in my mind, many seriously negative stereotypes. For example, aren't yuppies the workaholic, money groping, merging and acquisitioning, wealth by any means Type As who have left a trail of destruction in their wake? Aren't yuppies the same junk bond worshiping, savings and loan deregulating, debt burdening, non-tax paying joy riders who are directly responsible for most of the country's current problems?

Again, I realize that my friend expressed the term with utmost affection and assumedly meant no malice (legalese); however, I must take umbrage with this sterile characterization. I have never been, currently am not, and have no desire to ever be a yuppie. Please let the Record (again, pun very much intended) reflect that.

I come from a generation of children born when the birth control pill was starting its still pre-eminent reign. The fact that we were born at all is, in itself, an accomplishment. (I wonder how many mistakes are reading this column written by a mistake?)

We are fighters. We were born when the country was in turmoil, transition, and unrest over civil rights and Vietnam. We were born at a time when the Cold War was being waged with unqualified abandon, and the naivete and innocence of trust was, as it still is, being constantly undermined by bureaucracy.

Having come from such dynamic beginnings, it is hard for me to sit still when someone tries to characterize me as something so singularly-purposed, easily-defined, and, quite frankly, unappealing, dull, dry, and self-destructive as a yuppie.

We, if I may be so bold as to speak for a whole generation, are forced to be concerned with more than just making a huge buck, or merging and acquisitioning. We are forced to be concerned with more than mere titles and appearances. We this multitude of between birthing booms babies, have inherited the desolation left by a generation of irresponsibility that must now be addressed.

We are the ones who are charged with protecting "the wounded skies above." We are the ones who must now be concerned with maintaining a habitable planet for ourselves and our posterity. We are the ones who must now focus on quality of life standards of measurement more closely than our predecessors focused on income statement and

other shallow standards of measurement.

We are the baby-busters, the yiffies: young, individualistic, freedom-minded, and few, as we were characterized by a recent cover story in a popular weekly magazine; or, if you like, "the new power generation makin' big noise in the 90s," as Prince referred to us on his recently released *Graffiti Bridge* LP. We represent a small, but potent, portion of the overall population, and we, by implication, are the ones who must recast the rules which shape our rapidly decaying world. WE must make the hard choices.

This is why it is difficult for me to quietly subject myself to the dehumanizing, narrowing, and superficial atmosphere of this huge institution. Harvard Law School is turning out leaders, not just lawyers -- many of us, by design, will never see the insides of a court room; we are forced, because of the "personality," or lack thereof, of this law school, to be singularly-purposed and narrowly-defined, incipient corporate types. (It is so pleasing to see even the smallest examples of rebellion. It is such a struggle to maintain a sense of identity here.)

Most of us come here with a tremendous amount of passion, character, resolve, and talent as I wrote of previously. However, I believe, as French philosopher Rene Descartes said, "To be possessed of a vigorous mind is not enough; the prime requisite is rightly to apply it."

So readers, I ask: Please forgive me if my column appears to be a condescending tirade of ill-founded, ill-natured, and turgid rhetoric. Please forgive me if I unnerve you or test your tolerance in any way. That is not my purpose here. I am here because of the things that I will have access to, and thus, hopefully by able to accomplish as a Harvard Law School graduate. With that in mind, I will try to remain subdued enough to graduate without event.

However, please don't expect me to go along peacefully and please don't ask me to serenely accept everything as given. (Always question authority!)

If I sound a little disgruntled and abrasive from time to time, or if I come off as contentious, aggressive, and even hostile, it is simply because I feel that I am representing and expressing the hopes of a future...the hopes of a generation...and anxiously "Praying for Time."

ADDENDUM

I did not intend to publicly incriminate or attack any one individual or group of individuals in my previous column. It wasn't written as a blanket indictment of everyone who has ever used a Stair Master, or drank a bottle of Evian, or obtained an advanced degree from a prestigious European university.

I had simply hoped to write in terms general enough to make a point and yet specific enough to hit home, and thus, unfortunately, there was a tremendous amount of over-inclusion. On the other hand, the people who were the focus of the column were probably, equally unfortunately, completely unaffected by it and may have even taken it as a compliment.

In the limited time that I have been here, I have encountered some fascinating people with extremely interesting experiences and backgrounds. I hope that the admittedly strong words in my column didn't off-handedly insult any of you. If that was the case, please accept this most sincere public apology.

However, for future writings, I consider it my professional responsibility as a budding attorney to issue this caveat (more legalese) to the readers of this column: I have a tendency to say what's on my mind.



Dear Gabby...

Dear Gabby,

I'm having a terrible time making some important decisions. I can't decide whether to work next summer in a large firm or a huge firm, whether to practice corporate law or corporate litigation, whether to work in a big city or a huge city, whether to get my resume typeset at ADS or laser-printed at HSA, whether to list "travel" or "squash" under the Personal category of my resume, whether to wear my red paisley tie or my red print tie. I just can't decide. Please help.

- Signed, Confused.

Dear Confused,

It's quite natural to feel bewildered and somewhat paralyzed by the vast range of choices available to you as a soon-to-be HLS graduate and member of the legal community. In the final analysis, each of the choices you face must be resolved on a personal level. How important is lifestyle to you? Do you think you would be happier practicing law in a big city or in a huge one? Do you think you would prefer the high quality work and informal atmosphere of a large firm or the top quality work and collegial atmosphere of a huge firm? How important is it for you to feel autonomous and unique? Could you be happy at a firm where you had to wear your red print tie, or do you need to feel that you could wear your red paisley tie on a whim? Ultimately, all of these choices are intensely personal. Try to get in touch with the "Inner You." If you still can't decide, let the Placement Office's new Random Personality and Placement Service decide for you.

Dear Gabby,

All of my 1L classmates seem so confident and committed and articulate when they speak in class. I haven't been called on yet, but I'm terrified that I won't have anything intelligent to say when I do get called upon. I'm thinking of launching a pre-emptive comment if any professors seem to be zeroing-in. Do you think I should volunteer any comments before I get nailed?

- Signed, Pip.

Dear Pip,

Don't be a fool. The worst thing you can ever, ever, do, especially in a first-year class, is to volunteer to speak. At the very best, you are bound to say something utterly trivial and confused. More likely, you will stammer passionately and unintelligibly, vaguely but

hotly conveying the opposite opinion from the one you actually hold. Unavoidably, you will permanently alienate three-fourths of your class, and will inadvertently align yourself with the small minority of your section whom you most hate. If your professor is kind, and this is not likely, she or he will ignore your comment, or better still, will interrupt you before your remarks trail off to a sputtering and inelegant conclusion. More likely, she or he will remain silent for a time, permitting your disconnected vocalizations to echo in the resounding silence of the horrified classroom, and will then proceed to demolish any remaining illusion that your remarks were not utterly idiotic and offensive by mercilessly exposing the absurdity of your ill-conceived ideas and by catechizing you on the facts of the next case.

My advice to you cannot be more emphatic: Do not raise your hand for any reason other than to participate in a mandatory vote, and in that event, vote only with the obvious winners. If called on, answer as briefly and non-committally as you can. "Pass" if possible. The safest course of action is to avoid class altogether. Be sure to check the exam schedule and buy Emanuel's.

Dear Gabby,

Is it true that Professor Nesson selected Duncan Kennedy to escort Nesson's niece to her polo matches because Kennedy has a 200-foot twin-jaguar-engine racing yacht, and that Dean Clark wasn't chosen because of his connections to organized crime?

- Signed, Wondering.

Dear Wondering,

I don't know where you get your information, but you would do well to verify your facts more carefully. Nesson never sought a driver to take his niece to polo matches. He wanted someone with an impeccable resume to drive his daughter to riding class. Duncan Kennedy is not known to possess a 200-foot twin-jaguar-engine racing yacht. He does reportedly drive a modest jaguar jalopy on occasion. Dean Clark does not have any confirmed illegal connections to organized crime. His son, however, is a reputed punk-rock.

If you have any questions which you would like Gabby to answer, drop a note addressed to "Dear Gabby" in the Harvard Law Record's Hark box, located against the wall of the Law Coop.

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Patience, Prudence Are The Keys To Real Progress

After reading Bob Arnold's complaints in the last issue of the RECORD of how the 1Ls have all been intimidated into abject apathy, I can safely infer that he has never met Kathy Flaherty, 1L. She is already outspoken in her classes. I can't turn around without finding her cooking another excellent spaghetti dinner for some large and undernourished group of law students. And she has already engaged in a flurry of campus activity that has left many upperclasspersons agape.

By Robert K. Niewyk
Columnist

Flaherty's most visible action has been to start a new student group called "Choice NOW!" She felt that a new group was necessary because the Women's Law Association was "not sufficiently pro-choice." I wonder about Flaherty's assessment of the WLA, since last year, in the spirit of free speech, open debate of political issues, and equal access to legal representation, its members called for a recruiting boycott of a local law firm that had dared to allow a few of its lawyers to do pro bono work for a pro-life organization.

I also wonder about the utility (or futility, take your pick) of Choice NOW!

Robert K. Niewyk, 2L, is a RECORD Columnist.

members travelling to Washington last week to demonstrate against a Supreme Court nominee who is about to receive an overwhelming vote of confidence from the Senate. Of course, there is value in attempting a long-term shaping of opinion by continuing to vocalize one's losing views. But I think the trip is largely an attempt to satisfy the growing need of activists on any side of an issue to be continually and publicly indignant.

I wonder as well about just how worried the members of Choice NOW! should be by a Court that might further erode the constitutional right to an abortion. Admittedly, their worst-case scenario must truly horrify them: If justices who personally opposed capital punishment could, in the face of a constitutional text that explicitly acknowledges it and an overwhelming majority of states that still employ it, "discover" that "evolving standards of decency" made capital punishment unconstitutionally cruel and unusual, then it would not seem too difficult for a rabidly pro-life justice to "discover" that "evolving standards" of what constitutes a person, paired with the due process clause, mandated a constitutional right to life for unborn fetuses. But conservative justices would not do so, because conservative justices are, well, conservative. They believe in

faithfully interpreting a text, not in trying to shoehorn their personal convictions into it.

More importantly, if pro-choicers would tear their eyes away from the Supreme Court (where the abortion debate has no business being), they would notice that their allies have recently had an unbroken string of successes at the state level (where the abortion debate belongs). In state after state, pro-life advocates have tried and failed to enact laws that would challenge the constitutional constraints as they now stand. The Court's next test case on abortion will likely have to come from that most important of political forums, Guam. In short, a constitutional end-run around our democratic process is not necessary when the democratic process gives you what you want.

This brings up a thought that law students, if anyone, should ponder: A consistent and intellectually honest approach to constitutional jurisprudence must at times lead one to conclude that a certain outcome is not mandated by the Constitution, no matter how fervently one believes in the policy merits of that outcome. I am a libertarian who would vote pro-choice as a legislator, but I still think the constitutional right to an abortion makes a mockery of constitutional law; I am overjoyed to see that a public policy with which I agree is finally coming from legitimate rather than illegitimate sources. I would wager that 95% of this student body could not give an example of a seriously debated issue in which their opinion of the Constitution and their opinion of policy differs.

All of the above is important, but it isn't what first came to mind when I noticed Flaherty's group. What caught my attention was the name, "Choice NOW!" That name is an interesting, um, choice for an abortion rights group. People usually demand something NOW! if they don't yet have it. But women do have abortion rights; in fact, women have more constitutionally-enforced choice NOW! than they are likely to ever have again.

Flaherty's decision to include "NOW!" in the title of her group, despite its poor fit, shows how much liberals love that word. A friend of mine recently added a new pin to her backpack demanding that we move "Up and Out of Poverty NOW!" The endlessly repeated slogan at last year's faculty diversity protests was this winner: "What do we want? DIVERSITY! When do we want it? NOW!" And let us not forget the event that kicked off the NOW! craze, Amnesty International's 1988 concert tour, "Human Rights NOW!" The current popularity of NOW! has something to do with faddishness, but it has more to do with how succinctly it expresses the liberal view of the world: There isn't a problem out there that couldn't be immediately solved, usually by massively funded and highly intrusive government action.

And this is exactly where today's liberalism flies in the face of reality. If we

have (or should have) learned one thing in the post-Great Society years, it is that we cannot remake the world in a day, and that if we try, we are likely to do more harm than good. The War on Poverty was waged, and it was lost; government programs and redistributions of wealth will not end poverty anytime soon. Carried far enough, they create the Romanias of the world, where everyone is poor, devoid of freedom and liberty, and surrounded by a decimated and toxic environment. Even if carried out on a limited scale, if poorly planned, they can lead to disasters such as AFDC. Eric Sevareid puts all of this more succinctly: "The chief cause of problems is solutions."

It is especially unfortunate that "[Your cause here] NOW!" was originally popularized by Amnesty International. More than any other organization I can think of, AI is an example of how realism, caution, hard work, and persistence -- not demands for a perfect world NOW! -- can lead to incremental change for the better. AI often measures success at the level of the individual; getting one person out of a South African prison is a hard-fought victory. In contrast, AI cannot be credited with much of the giant leap forward recently taken by human rights on a global scale. Successful as AI has been at documenting and publicizing human rights abuses, its efforts have still made only a small contribution to overwhelming historical forces such as the collapse of communism, the ceding of power by several dictatorships, and a worldwide embracing of democracy.

George Will has explained these tenets of conservatism better than anyone else: "Conservatism is grounded in an appreciation of the immense, constraining givenness of life. Conservatism is the politics of prudence, which begins with acceptance of the fact that, more often than not, and to a degree that is humbling to human beings, the inertia of society and history severely limits the pace and degree of change that human willfulness can bring about. Or, as a wise man once said: In the battle between you and the world, bet on the world."

None of this means we should not try to change the world; it merely means that change will require care in choosing one's means, an appreciation of the costs and unintended consequences of one's actions, and above all, patience. Liberals assume that if someone opposes their proposals, they must also oppose their goals (the faculty diversity debate comes to mind). But no one wants an underclass, and no one wants an all-white-male faculty. If someone disagrees with your idea of how to reach a certain goal, she might be less committed to that goal. But she probably still supports the goal; she may simply think that there is a better way to solve the problem, or she may realize that if it is ever to be solved, it won't be with the expectation that it can be

The Death Penalty

(Continued from page 6)

tered his body and rendered him unable to control his actions. Mr. Smith first claimed -- then suddenly denied -- killing babies as sacrifices in voodoo rituals, he requested a lump of dirt for his last meal. Prior to his execution, he was judged mentally competent to give up his appeals by the state courts, the federal courts and the U.S. Supreme Court.

There is a man currently on death row in Texas who is borderline mentally retarded, who as a child was regularly hung from a tree and whipped by his father until he lost consciousness. At the age of twelve, with several younger siblings to take care of, he was abandoned by both his parents.

Another Texas death row inmate was, as a young child, punished by his parents for stealing two dollars by having his hand placed over a flame until the skin bubbled and burst. He was on one occasion beaten until his entire face and upper body was black with bruises and then paraded around

his neighborhood by his father who was boasting of how well he had disciplined his son.

Like Johnny Penry, these men and many other inmates of this country's death rows are not evil specters for whom the only just treatment is death. Yet these men are being put to death by the state that neglected to help them or offer them any alternative when they could have been helped. It is though we, in our embarrassment at our utter failure to protect people from the horror of cruel, inhuman treatment, are now sweeping the dirt under the rug. Kill them, bury them, and there is no evidence of our racism, our neglect or our apathy.

Jenifer Bensinger, 2L worked at the Texas Resource Center this summer. She is a cofounder of the Death Penalty Project, sponsored by the HLS chapters of Amnesty International and the Civil Liberties Union. The Project will have its first meeting Oct. 9, from noon until 1 p.m., upstairs in the middle Hark dining room.

Next
RECORD
Will be
October 12th

Amnesty International

(Continued from page 6)

whether the newly acquired sponge would produce the amount of smoke that was present on May 4, so a piece of sponge was cut from the headpiece insert which had been used during the execution. This piece was subjected to 120 volts of heat by placing it in a common household toaster. It took only five seconds to begin smoking and produced a noxious odor which became more intense as the sponge burned.

Although the sponge was only in the toaster for 10 seconds, it produced a large amount of smoke and reduced in size by approximately two-thirds.

It is reasonable to conclude that problem was due to human error by replacing the natural sponge with a synthetic sponge.

The second aspect of the inquiry centered upon what effect, if any, did the set of circumstances have on inmate Jesse

Tafero. Several people present in the execution chamber and in the witness room observed Mr. Tafero move after the first surge of power as if to be taking a breath. This phenomena appeared again after the second surge. Dr. Kilgo has given an affidavit which indicates that, in his professional opinion, "what appeared to be spasmodic respiratory activity leaves no connotation that life existed." During the interview Dr. Kilgo stated that it was his opinion that Mr. Tafero was brain dead after the initial surge of electricity. Dr. Kilgo states that "in post procedural physical assessment, the areas of dermal and right calf burns were of no greater extent or intensity than that observed in prior experiences. There was no evidence of flame charring of any portion of the head." This observation is essentially shared by Dr. William Hamilton (Medical Examiner). "The injury pattern is similar to that of all other executed prisoners that we have examined."

The Duty Of Young Lawyers To The Poor

Brian Melendez, president of the Law School Council last year, is now serving as chair of the Law Student Division of the American Bar Association. This is the highest position to which a law student (Melendez is finishing a joint law-divinity degree this year) can aspire in the ABA hierarchy. This column is adapted from a speech on public interest law Melendez gave at the division's 1990 annual meeting. Under Melendez' leadership, the division later passed a resolution in favor of a pro bono requirement in legal education.

By Brian Melendez
Guest Columnist

... Soon we will be lawyers. We will earn a little more respect and a little more money, maybe a lot more money, because of the profession that we have chosen. That respect comes from the monopoly that we hold on an essential commodity -- justice. In exchange for that monopoly, we are obligated to practice in the public interest. That public interest compels both fiduciary loyalty and efficient delivery of services in the case of clients who can afford those services, and a social responsibility to compensate for the failure of the market in the case of those who cannot afford legal representation.

As young-lawyers-to-be, we are already joining a powerful profession, but hopefully we are not so captured by power that we let experience outweigh principle when we make the hard moral choices that our work involves. At this year's annual meeting, we confronted some of the hardest moral choices that we or our children will ever face: We debated whether to extend the Constitution to prospective states that may be among the neediest partners in the Union. We debated who deserves protection against discrimination. We danced around the question of how far the state can reach into one person's

body and life to protect another life yet unborn. And we did so knowing, perhaps for the first time, that our views are feeding into a process that real policymakers will take notice of.

What qualifies us, being merely younger, to answer these questions? Winston Churchill said that anyone at the age of 20 who was not a liberal had no heart, and anyone at the age of 40 who was not a conservative had no head. Of course, "liberal" and "conservative" did not carry the same ideological baggage half a century ago as they do now. Liberalism, as Churchill intended it (I think), meant being less frightened of the risks involved in change (regardless of whether the change tacks left or right politically). It meant the ability to approach a problem with the freedom of imagination rather than the burden of experience. It is this ability to bring heart and imagination to our profession that lets us outshine the more experienced senior bar.

To answer why the Law Student Division needs to exist, I ask you to use that freedom of imagination for a moment, and imagine a Law Student Division in a parallel universe next door to ours -- not a stable and prosperous American, but say a China or a Rumania or any society that now more than ever needs people who do not fear change. If we had lived in China or Rumania these past few years, we would have had the chance to fight injustice directly with our bodies and our lives. The people of those nations relied on their students, not only for youth and nerve but for heart and courage in the face of oppression.

As students in a free and wealthy society, though, do we have that same nerve and courage? America, too, needs the young to be its heart and conscience, perhaps more so in the legal profession than anywhere else. The evils that this society faces are not so concrete as tyrants, but they still oppress. They are

poverty, homelessness, powerlessness, bigotry. Most of us probably worked in an urban setting this summer, and we daily had to see the faces of people whom these evils oppress. There may be little that we as lone individuals could do, but we shirked our responsibilities as human beings if we walked past uncaring.

That is where the Law Student Division comes in. Why does this entity need to exist? Because one of us can help an indigent client or maybe two, but ten of us can staff a legal aid bureau. One of us can only donate a few old clothes, but a hundred of us can supply a clothing drive. One of us can

be ignored, but 30,000 of us cannot.

The Law Student Division exists to amplify the voice of the law student. That voice needs to be heard -- partly because our perspective as students is unique and valuable and hard to regain later in life, but partly too because as students we still remember something of powerlessness. For our whole student lives, including three years in law school, we are told what to do, where to sit, what to study, how to learn to think. Anyone who has played at student politics knows that the student perspective is often undervalued.

It behooves us, who have gotten a tiny
(Continued on page 12)

Tax Cut For Capital Gains 'Bad'

By Steve Kastenber

What is all this hoopla over Capital Gains Taxes? Is it worth all the namecalling that's been occurring down in Washington? And to think, about two weeks ago most Americans were cruising along, worrying about silly things like oil prices, war, and when L.A. Law was going to begin its new season.

Then, one evening, I was sitting back in the easy chair, watching the T.V. with some curiosity. With me were my three roommates, Larry, John, and Moe. We were listening to President Bush speak about the situation in Iraq. Patriotism, nationalism, jingoism, capitalism... the President was fulfilling all of our 'ism' expectations, but, suddenly he switched to the budget crisis. At one point he even mentioned that "revenue raising measures" might be taken. Larry turned to John conspiratorially and whispered loudly, "You can't say 'Taxes' on prime time T.V."

Bush did not avoid the T-word out of

fear of corrupting American youth into those who believe in taxing and spending (as opposed to just spending), but because, as a student of the Great Communicator, Bush knew that mentioning Tax Raises would induce taxpayers across America to immediately clean out all the teabags in their cupboard and mail them to him in imitation of Boston tea party. Tea prices would rise, and Maggie Thatcher would get mad. Bush, ever aware of foreign affairs sensitivities, did not want to anger the British with all that is going on in the Mid-East. This week's budget agreement does indeed raise taxes, doubling or more the taxes on cigarettes, beer and wine, and gasoline. Its hard to start a grass roots movement, though, favoring sins (even if venial) and polluting the environment.

As for his pre-budget crisis prime-time address, Bush knew that talking about tax policy, when not translated into simple, attackable concepts, induces immediate snoozing all across America. In fact, John was already
(Continued on page 13)

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RR 1990

Indian Chief Justice Dies After Harvard Visit

The International Law Society's first speaker for the fall semester was the late Chief Justice of India, Justice Sabyasachi Mukerjee. After a luncheon hosted by Vice-Dean Smith in honor of the late Chief Justice on Sept. 17, Mukerjee addressed a crowd of 75 students on "Constitutionalism in India and the influence of the United States." Tragically, a few days after his address at HLS, Mukerjee died in London of a heart attack.

In his speech, Mukerjee outlined the influence of American Constitutionalism on the framing, adoption, and the interpretation of the Indian Constitution. He stated that the doctrine of judicial review and the chapter on fundamental rights were borrowed from the U.S., after making allowances for the social and cultural fabric of the Indian society.

Mukerjee further stated that adopting the doctrine of judicial review posed a lot of problems for India. It endangered the sense of security and respect for the law and the judicial system. A serious issue faced by the Indian Supreme Court was the battle between the Court and the legislature on the issue of compensation payable for property acquired for "public purposes." There was a series of constitutional amendments which sought to restrict the scope of judicial review on the enforcement of the fundamental right to property. The Court rejected every amendment which stated that the state could not pay less than the market value of the property acquired. Eventually, in what is now known as the Golaknath judgment, the Court limited the power of constitutional amendments in the same way as ordinary legislation when it attempted to abridge fundamental rights. This opinion was overruled by the Court in another famous judgement, *Keshwananda Bharati v. State of Kerala*. Interestingly, the *Keshwanada* judgement enlarged the scope of judicial review to extend to any amendment



Sabyasachi Mukerjee, late Chief Justice of India at HLS.

which in the opinion of the Court damaged the basic structure and framework of the Constitution.

Mukerjee explained that the U.S. was the most important inspiration for the chapter on fundamental rights in the Indian Constitution. Almost all the fundamental rights in the Indian Constitution have a counterpart in the U.S. Constitution's Bill of Rights. In most cases the text was deliberately altered to suit contemporary standards. In others the text was altered because the Indian experience aspirations and policies were just different. For example, the right to "profess, practice, and propagate religion" is subject to the laws of public health, morality and public order. India, riddled with a host of anachronistic social customs sheltered behind religion, could not leave all "practice of religion" free from legislative reform.

Instead of making provisions against

slavery, India had to abolish "untouchability." The "due process" clause was deliberately left out of the Indian Constitution out of fear that it would pose a threat to the validity of social welfare legislation. Interestingly, Justice Frankfurter's comments that the power of judicial review implied in the due process clause was not only undemocratic but also threw an unfair burden on the judiciary was also an influence. Despite being brushed aside in the last decade, the due process clause has been worked into the Indian Constitution by imaginative interpretations by the Supreme Court.

Mukerjee was sworn in as the Chief Justice of the world's largest democracy at a time when the judiciary was facing a tremendous problem of judicial delays and increasing allegations of corruption. Recently, Mukerjee had directed a sitting judge of the Supreme Court to

"desist from judicial functions" and asked him to go on vacation until investigations on charges of financial irregularities were concluded. Mukerjee stated that although he had no constitutional right or authority to inquire into the conduct of a sitting judge of the Supreme Court, he felt that as the "head of the judicial family," it was his duty to maintain "judicial propriety...and secure the working of the judicial process."

Many cases that were heard by Mukerjee and were awaiting judgement will have to be reheard, thus putting more pressure on the court. The most famous is the challenge to the "settlement" between Union Carbide Corporation and the Government of India in the world's worst industrial disaster (the methylisocyanate spill in Bhopal). This case has been pending in court since Feb. 1989. Arguments which had been going on for months concluded just before Mukerjee left for the U.S.

Overseas Placement Opportunities Multiply

By Carol Umhoefer

Tucked away in a corner of Pound Hall is the HLS porthole to another world -- Pound 308, the office of Jean Kemsley, home to the Overseas Placement Program (OSP).

The OSP was established to expand opportunities for law students to work in law firms around the world, both as summer associates and permanent positions. Recently students have been placed in Brazil, China, Egypt, Israel, the Ivory Coast, Japan, Thailand, the Philippines, Venezuela, Mexico, South Korea and nearly all of the Western European countries. Placements are custom-made and vary from firm to firm in detail, substantive work and terms of employment.

When Kemsley took over the OSP in 1986, it was an unstructured program offering 15 placements per year. Only one foreign firm interviewed on campus. "We have a sophisticated law school, a large international community and a wealth of resources," said Kemsley, who has devoted her efforts to expanding the program.

The success of her endeavor is reflected in the fact that law schools have called Kemsley asking for help in setting up their own overseas programs. More impressive are OSP's placement statistics: the number of students working abroad tripled, from about 15 in 1987 to over 50 in 1989. This past summer 70 students worked abroad, and a dozen foreign firms recruited on campus.

Despite the phenomenal growth in the program, many jobs go unfilled due to the inability of applicants to speak a foreign language. "Students could probably benefit from easier access to undergraduate language classes. This year I had about 100 offers. I don't have enough people who fit all the requirements," said Kemsley, adding, "It doesn't say much

for our educational system."

Kemsley said she often has difficulty finding German speakers, and does not always get a strong French speaking group. Predictably, over half of the 1989 placements were in English-speaking firms, in countries as diverse as Australia, England, Netherlands, Scotland, Korea, Thailand, Israel and Japan.

In addition to doing "very responsible and substantive work," students who work abroad often serve as "goodwill ambassadors," says Kemsley. She adds that this goodwill is evidenced when "employer firms report back again and again on the value and pleasure that they derive from these host experiences." The foreign student hiring programs of these firms are frequently expanded.

OSP relies in part on student volunteers. This past year students were instrumental in expanding contacts and sending out resume packages to hundreds of firms in 60 countries. "1990 was our biggest year ever, but next year will be a banner year. We did a huge amount of recruiting this past year and have had many positive responses," said Kemsley.

If 1990 has been a banner year for OSP, then Greg Herbert '90 has been its banner boy. Herbert was the first HLS graduate ever to accept three consecutive overseas placements, spending two months with a Dutch law firm, then two months with a British firm, followed by a year with a Japanese firm.

He also turned down a number of other firms. "The offers just kept rolling in. You ask, 'Why do these firms do this?' and the answer is that they want Harvard students. They're very interested in networking -- it's a long-term investment for them."

For Herbert, who had never been out of the United States before flying to Rotterdam last spring, working abroad was a great opportunity to travel and to

learn about international law practice. He adds, "Europe and Japan are just so important in the world today. With 1992 approaching, the EC coming online, Europe and Japan investing more and more in the United States, it can only be a positive career move."

"I think finances are the biggest thing that keeps people from doing this type of work. But loan consolidation is income sensitive and you pay at a level commensurate with your salary."

Norris Case, 2L, spent the summer in Seoul, South Korea working for a 30-lawyer firm dealing with copyright, intellectual property and international contract work. Case worked with three other summer interns on contracts meeting Korean unfair trade practice standards. Case had never been to South Korea and does not speak Korean, but he has been interested in the country since his days as an undergraduate student.

"It was a very different environment; we had a megalomaniac boss," said Case. "In the firm, power isn't split among the partners. Instead you have one person who controls every aspect of the firm." Fortunately, Case was psychologically prepared. "It wasn't an easy experience, but then again it was a good experience. I'm happy I did it." The thing that most shocked Case was male/female relationships. "It's a totally male-dominated society. Women will not speak unless the man initiates the conversation," he said.

Sharon Bowden, 2L, spent six weeks working for Mexico's largest law firm. "I had a fantastic time. You get a sense of how a foreign country's legal system works, at least enough to give you a basis for comparison with the U.S. legal system," she said. "You also get a sense for the different working style," she added, noting the Mexican custom of two-hour lunch breaks.

Although Bert Westbrook, 2L, wound up working in Edinburgh at W & J Burness on EC anti-competition law,

he was willing to work in any of the 12 Member States. "EC law is probably the most exciting area in which to work right now. Studying the EC at this level of generality means you could end up in any [of the Member States] and it would be incredibly interesting," he said. Westbrook was so pleased with his experience that he plans on working in the EC again this summer.

Beth Orlowsky, 3L, worked for the Australian law firm Freehill, Hollingdale & Page. She was able to split the summer between the 250-lawyer Sydney office, and the 20-lawyer Brisbane office. Orlowsky had never been to Australia but is interested in international commercial work, particularly Pacific Rim trade issues.

"Frankly, I thought it would be a lot more fun than working for another D.C. law firm. It's the best thing I've done since I've been at Harvard. I highly recommend it. One critical aspect in international law practice is dealing with attorneys in other countries. Working with Australian lawyers allowed me to see how they view international work," she said. Additionally, she spent much of her time explaining U.S. law to her co-workers. This forced her "to re-examine what I had learned in law school. I ended up reflecting a lot on American law."

Sung Hui Kim, 2L, worked for Pestalozzi, Gmuer and Heiz in Zurich. The firm has 20 lawyers and a lot of international arbitration work because many commercial contracts stipulate Zurich as the arbitration site. "Europe is very important now and it's inevitable that Germany will be the economic center of Europe." According to Kim, many Swiss want to be a part of the EC, but the issue is still hotly debated.

Kim was impressed by her first visit to Switzerland. "It's a very beautiful country that offers a lot more than the few tourist cities. It's very peaceful as well and I wanted to relax this summer. I had a really good time!"

Duty of Young Lawyers To The Poor Discussed

Continued from page 10

taste of powerlessness, to stand in solidarity with those who have tested it for years and lifetimes -- with women, people of color, the poor, the disabled, and all others that our culture marginalizes. These people, many of whom are students too, live not only in our universe but also in that parallel universe that the rest of us can just imagine. Their oppressors are not tyrants and tanks but poverty and powerlessness and bigotry. Their universes lie next door to ours, and on the borders of their universes can be found our Timisoaras, our Tiananmen Squares -- the places where we as young lawyers can take a stand against injustice.

Why does the Law Student Division need to exist? Because to us, law is not a market in which justice goes to the highest bidder, and lawyers are not hired guns or moral prostitutes. The law is a way to bring the benefits of due process, equal protection, and constitutional democracy to underrepresented, the have-nots, the discriminated-against, as well as those who can afford legal services.

If you enjoy e.e. cummings (and even if you don't), you may know a poem in which he laments the human condition with the challenge:

"pity this busy monster, manunkind,
not. Progress is a comfortable disease:

He closes his lament with the invitation,

... We doctors know
a hopeless case if -- listen:
there's a hell
of a good universe next door;
let's go"

Cummings was right to lament the comfortableness and loneliness of "this busy monster, manunkind," but he saw the "universe next door" as a chance to escape. I see the "universe next door" as the home of those whose life experience differs from some of ours; so I see it as a chance to exchange the benefits of our universe that belong to all in theory but only a few in practice -- like the rule of law -- for the diversity that the other universe will bring to ours. As young lawyers, there is much that we can offer and much that we can learn from the people of the universes next door, and our training is not complete until we learn something about how the people of those other universes live.

I ask you who are leaders this year not to waste this chance that you and I have been given to cause positive change in our profession and our society. That change may come by direct action like public service work or a clothing drive or a homeless shelter, or it may come from the political process like the resolution that we debated in Chicago. Whatever your path to a better profession and society, I ask to join me because:

...there's a hell
of a good universe next door;
let's go

Advice To A Neophyte

(Continued from page 4)

dispel that myth.

Admittance to HLS is no sure-fire indicator of inherent intellectual superiority. Obviously the halls of Austin, Pound, and Langdell are filled with some incredibly gifted people, but so are the corridors of the law schools at the University of Michigan, Chicago, Stanford, Columbia, Boalt, Yale, Northwestern, Virginia, and a host of other fine institutions.

And I would dare say that some of the most creative and intelligent people pass up law school altogether. They opt for careers in academia, the arts, journalism or business. For example, last spring I attended a lecture at the College given by playwright David Henry Hwang, creator of "M. Butterfly." At one point, Mr. Hwang indicated that he almost chose law school as a "default option" before pursuing a career in the theater. Let us all be thankful that such didn't happen. This world is full of many individuals like Mr. Hwang who will do more good for society in their non-legal careers than either you or I will accomplish with our HLS degrees. If you continue to think and write about Harvard students in such an elitist fashion, you will only be deceiving yourself and infuriating others.

In addition to elitism, your prose gives new meaning to the word "hubris." You have been here for just three weeks and already you have the HLS system and those who attend it completely figured out. In addition, you feel perfectly comfortable criticizing both. However, criticism with minimal exposure is exactly what you faulted your classmates for when they didn't understand why inner city residents sometimes resort to vigilante justice.

Your lack of real knowledge about the HLS experience is manifest in your simplistic (at best) discussion of the career choices facing Harvard students. You reduce incredibly complicated employment decisions to either selling out to Wall Street or working for the homeless.

To borrow a line from N.W.A.'s latest single (if you can quote them totally out of the blue, so can I), "you don't shit till you've been in my shoes." To phrase that point a bit differently, experience has led me to conclude that the issues are more complicated than you can imagine. Let me illustrate.

At the present time, you want to do legal work in the public interest field when you graduate. Assuming you still desire to pursue employment within the legal system when you graduate (and I can guarantee you, Robert, that many of your colleagues will not), the first thing you need to do is to find a job. As the front page of the last RECORD indicates, the public interest placement counselor, Stacey DeBroff, is overburdened. She might not have the time or the resources (compare the relative sizes of the Books of Good and Greed which you will soon receive from the placement office) to help you find the position, the very real possibility exists that it might not be there when you graduate (this has happened to friends of mine).

The largest hurdle for those seeking public interest positions is financial in nature. Most public services jobs pay between \$20,000 and \$25,000. Most Harvard students graduate owing at least twice that amount to various educational lenders. Consequently, taking a public interest job is difficult for these individuals. HLS' Low Income Protection Plan (LIPP) provides some help to students in this position, yet after closely observing statements made and actions taken by the present Law School administration, I remain skeptical as to LIPP's long-term viability.

I could continue, but I won't. I just wanted to illustrate that your self-righteous approach contributed to an oversimplification of a rather important issue.

As surprising as this might sound, despite the two major complaints discussed above, I took pleasure in your writing because within it I detected the following two beliefs which I definitely share: 1) society is screwed up; and 2) so is the law school. Twenty years after the long hot summers of the late 1960's, this world is still a ball of confusion. Judging from the way you wrote you seem to have a lot of energy to apply to these problems. That is good. However, I predict that your tremendous energy and good intentions will be largely wasted if you carry out your attempts at social reform with the same elitism and self-righteousness with which you wrote. I don't want that to happen. That is the why I wrote this letter. Good luck!

- Chris Nicholson, 3L

Forum On Pro Bono

Continued from page 3

pro-bono work; and (4) to help manifest students' stated desire to do pro-bono work.

PIAC member Sandy Hauser, 3L, citing a need to counterbalance Harvard's "institutional message," outlined five possible ways in which the public service requirement might be met: (1) through work at one of the existing public interest organizations at HLS, such as PLAP or Harvard Defenders; (2) through clinical work in conjunction with a class; (3) through partial or full-time summer employment at a public interest organization; (4) through work at an independent clinic; or (5) through work at any of a variety of public interest projects available via an as-yet-to-be-created central list.

Other features of the program would include "hardship out" provisions and the possibility of meeting the requirement through related journal work. It was also suggested that the program be

implemented as an adjunct to the existing professional responsibility requirement. Emergency Public Interest Committee (EPIC) member Steve Donziger, 3L, suggested that Harvard consider existing pro-bono programs at other law schools when creating its own program. Specifically, Donziger mentioned the Tulane program, which is oriented toward poverty law, and the Valparaiso program, which keeps administrative costs down by relying on a student "honor system" for compliance.

Student PIAC members will continue to refine the proposed public service program and are expected to present a list of options for the LSC to consider. The Council will then present its recommendations to the faculty for further refinement. Currently, only one faculty member of PIAC, Professor and former Solicitor General Charles Fried, is reportedly opposed to the public service requirement in any form under consideration.

'Quality Of Life'

Continued from page 3

the HLS Calendar located in the Hark. "The Calendar is an attempt to have a central place on which all organizations that have an event on a particular day may write and which will provide students with a quick reference to the happenings of the day." Judy Gliniecki.

Despite its current mission to improve the quality of life at HLS, some LSC members state that the LSC will continue to address the controversial issues that face the law school. For example, last Spring the LSC adopted a resolution on faculty diversity by a vote of 16 to three calling on the faculty and administration "to take all necessary steps to respond to the urgent need for a more diverse faculty."

"Diversity will be the foremost issue in the LSC for the coming year," stated

LSC Secretary Glen Miller, 2L. "When the student body expresses a position, it is somewhat important for the LSC as the advocate of the student body to follow up in a diligent and timely fashion."

Samuelian responds, "I personally think [the Women of Color Working Group] is a good idea, but we will have to wait until the next LSC meeting to make an allocation."

Samuelian sums his assessment of the LSC in 1990-91 as: "The goals of the Law School Council this year include providing a forum for discussion and promoting a sense of community and engagement in the shaping of the school, helping to articulate, advocate, and address the concerns of the student body, and improving the quality of student life at HLS."

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Tax Cut For Rich Through Capital Gains Is Bad Policy

Continued from page 10

snoring lightly, and Moe was stretching his arms over his head, fighting a yawn.]

[Bush's use of 'revenue raising measures', though, had a different effect on me.] **Bush did use 'revenue raising measures, though.** "No," I blurted. "Please Larry, don't let him say he's going to include a Capital Gains Tax cut as a revenue raising measure." Moe's head lolled to one side. [The words "Capital Gains", and he was fast asleep.] Before Larry could respond, Bush said it. I was **livid** [infused with the anger of a lonely zealot.] "Why does no one care about our tax code? People complain and revolt over their bill, but they just don't care about the delicate web of technicalities." Precisely because of this superficial attitude towards taxes, the tax code is ripe for exploitation by politicians, and true reform is difficult.

[Any critical thinker can spot most abuses; others are hidden fairly well. In an example of the latter, a columnist (not this one) several years ago followed a paper trail through the tax code. In one section, a tax incentive was purportedly offered to buildings. After deciphering restrictions spread out in seven or eight different places in the Code, the columnist discovered that the building must meet a variety of height and construction provisions, and must be in a city which has a population over 1 million, serves as a port, possesses a national league baseball team, and so on. One building in the country qualified, located coincidentally enough in Congressman Rostenkowski's district. Rostenkowski is Chairman of the House Ways and Means Committee.]

[Rosty was thinking small time there. Even after the elimination of many tax loopholes and preferential treatment in the 1986 Tax Reform Act, logging remains one of the most highly favored industries for taxation, and this despite both a national interest in maintaining forests and the availability of

cheap Canadian timber. Senator Packwood of Oregon, a big timber state, is Chairman of the Senate Finance Committee, which wrote the Senate version of the reform.]

Even generalized manipulation is common. One selling point of the 1986 Tax Reform was its revenue neutrality. To achieve this, personal taxes decreased while corporate taxes jumped. When predicting these changes, Congress looked only five years ahead, and many of the corporate revenue increases had transition rules that artificially raised revenue for five years. One example is an accounting rule change on inventory valuation that Congress said would raise \$12 billion per year. Almost all of the revenue though came from the transition rule, and, after year five, revenue estimates plummeted to about \$400 million per year.

Over the past few years, President Bush has tried to pull [another] massive tax trick. He and other politicians tried to pass off a capital gains tax cut as a revenue raising measure that would affect the wealthy and poor equally, and as necessary to encourage needed investment. In truth, revenues may (or may not) rise for one year, but will then drop. Voters who have been listening to Bush call for a capital gains cut for the last two years may have held on to assets, hoping to pay less taxes if he fulfilled his campaign promise. They would now complete these held up sales of their stocks, artwork, and prize Angus bull Pinky. After the first rush of selling, the tax cut will be a big money loser, just as one would expect to happen when you cut a tax rate by 1/3. The Reagan income tax cuts and past capital gains cuts have provided repeated empirical evidence that cutting taxes does not raise revenue.

Some capital gains tax cut supporters further argue that any gains will not go disproportionately to the wealthy. To argue this they have relied on some slippery statistics. The first column of

the pictured table appeared in a Wall Street Journal (WSJ) Op-Ed (7-28-90) and a Journal editorial (7-25-90). The author and the WSJ editors both rely on the chart to argue that the poor old widow who is cashing in her lifetime savings of I.B.M. stocks makes up as much of the capital gains income as upper income individuals. However, if you ignore categories of income that were overwhelming tax-shelter (fake or 'paper') losses when dividing people into income categories, the story changes significantly. The second column of the table does just that (WSJ letter to the editor 8-3-89). Those earning \$75,000 or up (less than 5% of the working population) reported 57% of capital gains. Those earning \$50,000 or more (less than 10% of workers) reported 71% of capital gains. Those earning less than \$10,000 reported 4% of the gains, not the 17% cited by the Journal.

Even the WSJ version shows that those earning \$75,000 and up had 44.5% of earnings. Perhaps those relying on the table counted on the readers of the Journal, who probably are mostly high income earners themselves, to think such people make up more of the population than the under 5% they do. Otherwise even their version of the table describes the wealth-fare of a capital gains cut.

Due to the magic of statistics, only persons aware of the complexities of the tax system would read the Journal's version and question the results. Indeed, the paper's own editors may have been unaware of their misreading. Only by questioning the counterintuitive conclusion of the first editorials and seeking multiple views can the nonspecialist pierce this particular veil of distorted information.

Lastly, Bush argues that the cut is needed to increase investment by increasing the value of venture capital returns and of raising money by issuing new stock. While both of these

would effects occur, such transactions are a tiny minority of the favored sales and can be encouraged by less overbroad incentives. The typical 'investment' falling under capital gains is simply the purchase of an already created asset, not one which improves the economy. Almost all stocks bought and sold fall under this category, since people and institutions buy and sell virtually all stock traded on a given day. Only when a company issues new stock does the purchase help the economy by allowing investment. A few examples of other favored sales considered capital gains (though economically useless) are art, prize bulls, or antique cars. Much narrower incentives, such as allowing deductions for research and development can be, and were, adopted in the budget agreement.

Why did Bush insist on a tax cut then? For one, favorable tax treatment of capital gains did occur until 1986, and the special tax treatment still exists in many people's minds as an entitlement. Second, the socio-economic class who vote and particularly who donate large sums to political campaigns stands to gain a great deal. Incidentally, Bush, and most national politicians, fall in this class too. Lastly, the issue is complex and dry enough that people without a direct, vested interest won't protest as they did for a far less costly measure, a Congressional pay raise. After all, no one pays more taxes under a tax cut; only the deficit looms larger.

... It was the morning after Bush's speech. I glanced around the room. Purple fingers of pre-dawn light were visible through the window. My roommates slept peacefully in their chairs; the farm report is on T.V. In 2 hours the stock market will open. I'm a new uncle (and godfather), and I think I'll buy a share of I.B.M. When I die it'll have gone up 1,000% or so and I'll leave it to my nephew. He can then pocket the profit - tax free, of course.

At Student Forum, Clark Meets Resistance On Clinicals

Continued from page 1

Clark, who caused a furor last year when he eliminated the job of public interest job counselor, also said it was easier for him to raise money when he can tell donors he is paring back the law school staff. "Donors like that," Clark said.

One student promptly asked Clark if the cuts might include student-run clinicals, such as Prisoner's Legal Assistance Project (PLAP) and Harvard Defender's. Both PLAP and Defender's have fulltime administrative positions that, if cut, might effectively force the clinicals to close their doors.

Clark said all law school programs, including the student clinicals, were being studied for cuts. But he downplayed the student concerns.

"No specific program is being targeted," said the dean.

"I find it hard to believe that you can get up here and tell us you raised \$31 million and then suggest student clinicals might suffer," said John Bonifaz, 2L, a board member of PLAP.

Clark countered by saying that a large portion of the new money was yet to be collected, so it might not be as much as it appears. He also said that much of the money was to create new programs for which the school would have to pay overhead and other expenses.

Finally, Clark suggested that many of the cuts would come from the library, which employs about 100 people. It is also true (although Clark did not mention it at the forum) that overall clinical funding rose by 26% this year, although

much of that increase went to Prof. Charles Ogletree's new Criminal Justice Institute.

Contacted after the meeting, Bonifaz was dissatisfied with the dean's explanation.

"His response was, 'We are all going to have to tighten our belts.' I heard the same language last year when he tried to explain away the Ron Fox fiasco. I have no problem with cutting fat, but I get frightened when he makes these kinds of noises about programs that give students valuable educational experience by helping those sectors of our society most in need.

"We have to remember clinicals are a critical part of the law school mission. Their purpose is to expose people to the workings of our system of justice, particularly as they relate to the concerns of the disadvantaged. For the dean to not explicitly rule out cuts for student clinicals is of tremendous concern."

Bonifaz also said it was "contradictory" for the dean to portray himself as supportive of public interest law and then suggest student clinicals would not be immune from cuts. "He can't give to students with one hand and threaten to take away with the other," added Bonifaz.

Aside from the clinical issue, Clark spoke on six areas affecting the quality of education and resources at HLS: the faculty, the students, curricular and programs, career services, alumni relations, and the physical plant.

The Dean cited "tremendous efforts"

to hire more minorities and to build up the faculty to improve what he himself described as a "rather awful" faculty-student ratio.

Stephen Bernardi, Asst. Dean for Academic Administration, said that HLS is embarking on a capital drive, which has among its goals adding 10 to 12 more endowed chairs over the next decade.

Clark said standards on hiring (subject-matter needs, methodology, and scholarship and teaching experience) are also being re-evaluated along with the question of whether diversity should be a separate category. A 1L complained about not having any female professor in her first year at HLS.

Fewer faculty meetings and more workshops are part of Clark's strategy to steer the faculty towards more intellectual work. Clark noted that the drawing power of HLS remains as eminent scholars visit here in spite of more lucrative offers from other top schools.

Clark said that despite an influx of 18 visiting professors this year, courses in fields of growing importance -- such as health care and patents and copyright -- remain scarce. One third-year student said he is cross-registered at BU for intellectual property classes.

While gaps remain in the nearly 230 courses offered this year, Clark found the changes in the curriculum over the past 10 years worth noting. Part of this he attributed to the demands of students, half of whom take clinical courses

and a third of whom take international and comparative law.

Students also expressed support for instituting mandatory public service in their coursework. While Clark expressed appreciation for their feeling of a sense of obligation "to make the world better," he cited an instinctive reservation saying "Virtue is best where it is voluntary."

Nevertheless, Clark said he was thinking carefully about the issue and had yet to make up his mind. "Ultimately this will be decided by the whole faculty," he said.

Pursuing former Dean James Vorenberg's goals of increased pledges, Clark mentioned the \$150 million target of the yet-unofficial campaign and praised the alumni as being "by and large very loyal and very generous." He said that 56 percent of the graduates contribute, more than any school at Harvard and unsurpassed by most law schools, "except perhaps by Yale."

Without the endowment income and alumni generosity, Clark estimated, tuition would be 25 percent to 30 percent higher. In spite of the ever more expensive cost of education, Clark noted that applications this year rose from 7700 to 8500.

The number of students attending the forum was a far cry from the 200 students who packed Pound 101 last spring to question the dean during the height of the public interest controversy.

Several students -- despite expressing differences with the dean -- said they hoped the dialogue would continue.

**Have a question?
Ask Gabby.**

Dean To Hear Student Concerns

(Continued from page 1)

political maneuvering," said Roger Normand, 3L and a member of the CCR. "I suspect it is a combination of both."

Clark also seems to have overcome his propensity for saying the wrong thing at inopportune times. Last year, for example, he called the public interest counseling position "guilt-alleviating"; in another interview, he was quoted as saying the law school might be providing too many litigation services to the poor. Both comments fueled student anger.

This year, he has created a new and expanded public interest office. He also is seriously considering backing a mandatory clinical requirement, a position most members of EPIC thought unthinkable as recently as last summer.

Nevertheless, it is the student activists in CCR and EPIC who continue to ask Clark the tough questions about everything from faculty hiring standards to his commitment to public interest law. Whether or not the "peace offensive" will truly pacify student activists depends on how quickly the faculty moves to add people of color, and whether Clark implements the full

recommendations of the public interest advisory committee.

"The reality is that this law school is still seriously undercommitted to public interest law and is still stuck in the past as far as its faculty hiring practices are concerned," said John Bonifaz, 2L, and a member of the CCR steering committee.

"These changes are positive, but we have to remember they are the result of student pressure and do not necessarily reflect a change of heart in the man himself. The fact he is suggesting that student clinics might suffer from budget cuts is evidence enough that his fundamental conservatism is not dormant and will surface without student pressure to keep it suppressed. Students cannot be lulled into inactivity because of relatively minor changes.

"I also don't think the dean deserves a lot of credit for taking us one mile when our journey is one thousand miles," added Bonifaz.

The success of the public relations effort also depends on whether Clark reaches out to the student constituencies with which he appears most uncomfortable. This includes groups representing minority and gay and

lesbian students.

Noticeably absent from the list of student leaders who have breakfasted with Clark are Julie Ferguson, 3L, president of the Black Law Students Association; and Kirsten Dodge, 2L, and Peter Cicchino, 2L, co-chairpersons of the Committee On Gay and Lesbian Legal Issues. Several other leaders of minority student organizations also said they had yet to hear from the Dean.

Asked if the breakfasts were a way for the dean to exclude the most confrontational student groups, BLSA director Ferguson said, "That's a good question."

Students at the last breakfast included Mike Quigley, 2L, the leader of the conservative Federalist Society; Pam Silberman, 3L, the head of the Roscoe Pound Society, which caters to second-career students; Jon Harwitz, 2L, with the National Association of Students Against Homlessness; Brad Pearce, 3L, from the Southern Student Union; Tom Samuelian, 3L, from the Law School Council; Kevin Jenkins, 3L, representing the interests of Vietnam Veterans; and Heather Kendall, 3L, with the Native American Law Students.

Kendall said at first she was skeptical of the breakfast but afterwards decided

it was a good idea.

"I really liked the setting of a small informal breakfast," said Kendall. "It is a way of getting students together informally to discuss those things that concern the organizations. And it was clear the Dean heard things he hadn't heard before."

Kendall said it was clear to her that the dean "recognizes the importance of listening to student concerns. Whether or not he'll act I don't know."

Quigley, the president of the Federalist Society, also thought the recent breakfast was a good idea. "We talked about a lot of things including what students organizations were involved in, diversity, and the dorms," Quigley said. "Dean Clark is interested in finding out what we [students] think is important here at Harvard."

"The moves reflect the administration's desire to communicate to and get input from the student body," said Dean of Students Sarah Wald, who has helped coordinate the effort.

Wald said the dean is planning to schedule two or three more forums before the end of the semester, as well as several breakfast meetings.

Patience The Key To Conservatism

by Robert K. Niewyk

After reading Bob Arnold's complaints in the last issue of the RECORD of how the 1Ls have all been intimidated into abject apathy, I can safely infer that he has never met Kathy Flaherty, 1L. She is already outspoken in her classes. I can't turn around without finding her cooking another excellent spaghetti dinner for some large and undernourished group of law students. And she has already engaged in a flurry of campus activity that has left many upperclasspersons agape.

Flaherty's most visible action has been to start a new student group called "Choice NOW!" She felt that a new group was necessary because the Women's Law Association was "not sufficiently pro-choice." I wonder about Flaherty's assessment of the WLA, since last year, in the spirit of free speech, open debate of political issues, and equal access to legal representation, its members called for a recruiting boycott of a local law firm that had dared to allow a few of its lawyers to do pro bono work for a pro-life organization.

I also wonder about the utility (or futility, take your pick) of Choice NOW! members travelling to Washington last week to demonstrate against a Supreme Court nominee who is about to receive an overwhelming vote of confidence from the Senate. Of course, there is value in attempting a long-term shaping of opinion by continuing to vocalize one's losing views. But I think the trip is largely an attempt to satisfy the growing need of activists on any side of an issue to be continually and publicly indignant.

I wonder as well about just how worried the members of Choice NOW! should be by a Court that might further erode the constitutional right to an abortion. Admittedly, their worst-case scenario must truly horrify them: If justices who personally opposed capital punishment could, in the face of a constitutional text that explicitly acknowledges it and an overwhelming majority of states that still employ it, "discover" that "evolving standards of decency" made capital punishment unconstitutionally cruel and unusual, then it would not seem too difficult for a rabidly pro-life justice to "discover" that "evolving standards" of what constitutes a person, paired with the due process clause, mandated a constitutional right to life for unborn fetuses. But conservative justices would not do so, because conservative justices are, well, conservative. They believe in faithfully interpreting a text, not in trying to shoehorn their personal convictions into it.

More importantly, if pro-choicers

would tear their eyes away from the Supreme Court (where the abortion debate has no business being), they would notice that their allies have recently had an unbroken string of successes at the state level (where the abortion debate belongs). In state after state, pro-life advocates have tried and failed to enact laws that would challenge the constitutional constraints as they now stand. The Court's next test case on abortion will likely have to come from that most important of political forums, Guam. In short, a constitutional end-run around our democratic process is not necessary when the democratic process gives you what you want.

This brings up a thought that law students, if anyone, should ponder: A consistent and intellectually honest approach to constitutional jurisprudence must at times lead one to conclude that a certain outcome is not mandated by the Constitution, no matter how fervently one believes in the policy merits of that outcome. I am a libertarian who would vote pro-choice as a legislator, but I still think the constitutional right to an abortion makes a mockery of constitutional law; I am overjoyed to see that a public policy with which I agree is finally coming from legitimate rather than illegitimate sources. I would wager that 95% of this student body could not give an example of a seriously debated issue in which their opinion of the Constitution and their opinion of policy differs.

All of the above is important, but it isn't what first came to mind when I noticed Flaherty's group. What caught my attention was the name, "Choice NOW!" That name is an interesting, um, *choice* for an abortion rights group. People usually demand something NOW! if they don't yet have it. But women *do* have abortion rights; in fact, women have more constitutionally-enforced choice NOW! than they are likely to ever have again.

Flaherty's decision to include "NOW!" in the title of her group, despite its poor fit, shows how much liberals love that word. A friend of mine recently added a new pin to her backpack demanding that we move "Up and Out of Poverty NOW!" The endlessly repeated slogan at last year's faculty diversity protests was this winner: "What do we want? DIVERSITY! When do we want it? NOW!" And let us not forget the event that kicked off the NOW! craze, Amnesty International's 1988 concert tour, "Human Rights NOW!" The current popularity of NOW! has something to do with faddishness, but it has more to do with how succinctly it expresses the liberal view of the world: There isn't a problem out there that couldn't be immediately solved, usually by massively funded and highly intrusive govern-

ment action.

And this is exactly where today's liberalism flies in the face of reality. If we have (or should have) learned one thing in the post-Great Society years, it is that we cannot remake the world in a day, and that if we try, we are likely to do more harm than good. The War on Poverty was waged, and it was lost; government programs and redistributions of wealth will not end poverty anytime soon. Carried far enough, they create the Romanias of the world, where *everyone* is poor, devoid of freedom and liberty, and surrounded by a decimated and toxic environment. Even if carried out on a limited scale, if poorly planned, they can lead to disasters such as AFDC. Eric Sevareid puts all of this more succinctly: "The chief cause of problems is solutions."

It is especially unfortunate that "[Your cause here] NOW!" was originally popularized by Amnesty International. More than any other organization I can think of, AI is an example of how realism, caution, hard work, and persistence -- not demands for a perfect world NOW! -- can lead to incremental change for the better. AI often measures success at the level of the individual; getting one person out of a South African prison is a hard-fought victory. In contrast, AI cannot be credited with much of the giant leap forward recently taken by human rights on a global scale. Successful as AI has been at documenting and publicizing human rights abuses, its efforts have still made only a small contribution to over-

whelming historical forces such as the collapse of communism, the ceding of power by several dictatorships, and a worldwide embracing of democracy.

George Will has explained these tenets of conservatism better than anyone else: "Conservatism is grounded in an appreciation of the immense, constraining givenness of life. Conservatism is the politics of prudence, which begins with acceptance of the fact that, more often than not, and to a degree that is humbling to human beings, the inertia of society and history severely limits the pace and degree of change that human willfulness can bring about. Or, as a wise man once said: In the battle between you and the world, bet on the world."

None of this means we should not *try* to change the world; it merely means that change will require care in choosing one's means, an appreciation of the costs and unintended consequences of one's actions, and above all, patience. Liberals assume that if someone opposes their proposals, they must also oppose their goals (the faculty diversity debate comes to mind). But no one wants an underclass, and no one wants an all-white-male faculty. If someone disagrees with your idea of how to reach a certain goal, she might be less committed to that goal. But she probably still supports the goal; she may simply think that there is a better way to solve the problem, or she may realize that if it is ever to be solved, it won't be with the expectation that it can be solved NOW!

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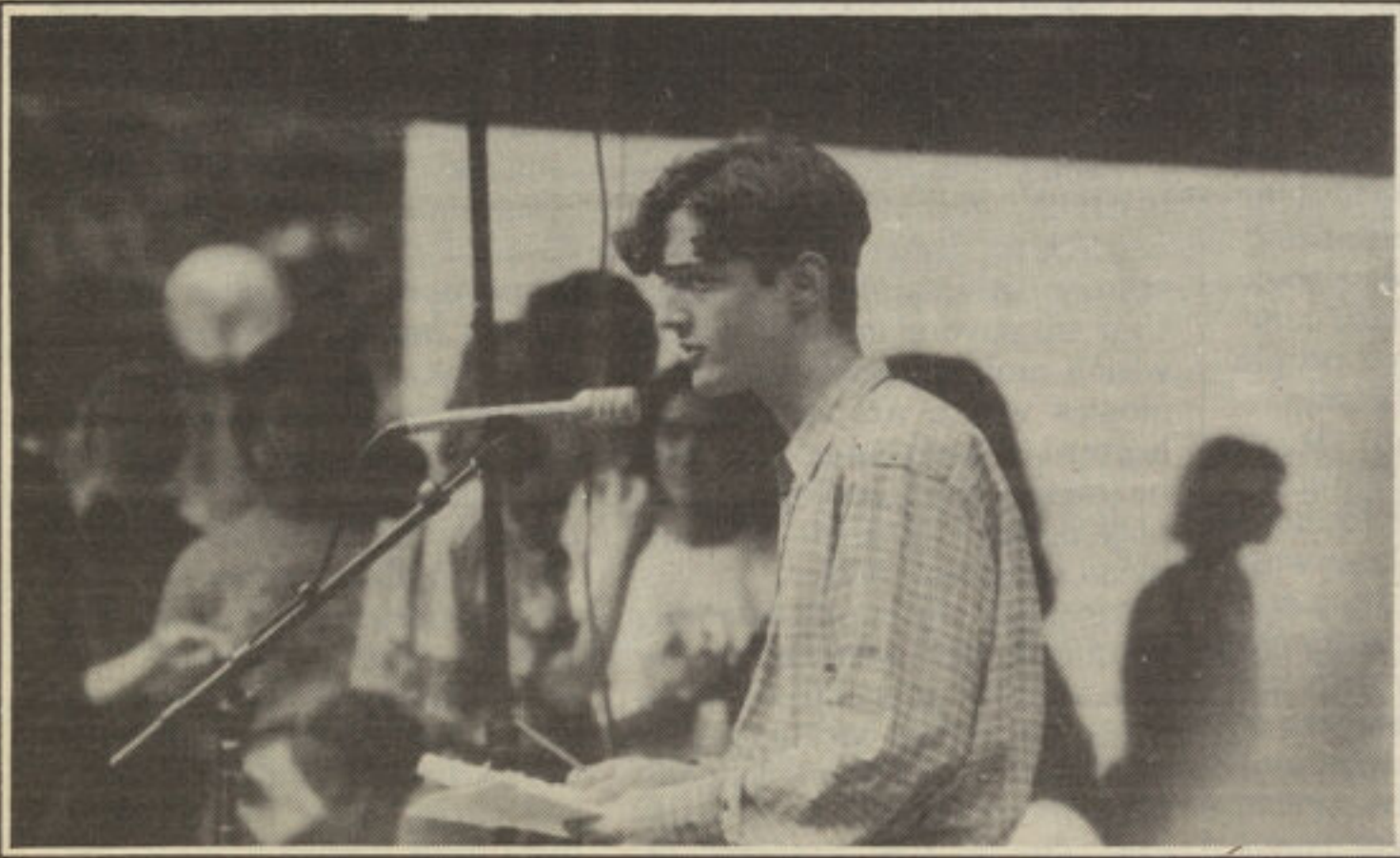
CANDID PHOTOS OF RALLY



Professor Derick Bell at the Rally.



Julie Ferguson, 3L, addressing the Rally crowd.



Morrie Ratner, 3L, reads Dean Clark's letter to the audience.



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Iraqi Ambassador To The United States To Visit HLS On October 10

According to Sima Sarrafan, 3L, the Iraqi Ambassador to the U.S., Mohamed Sadiq Al-Meshat, will participate in a panel discussion about the Iraqi invasion of Kuwait and the crisis in the Persian Gulf. The forum will be held on Wednesday, October 10 at HLS.

Zachary Lochman, Professor of Middle Eastern History at Harvard University, and Alfred Rubin, a professor at the Fletcher School of Law and Diplomacy at Tufts University, will be the other panel members.

The forum, which will include a question and answer period, will be sponsored by the HLS Middle Eastern Law Students Association.

Campus Crime Cops Counsel Caution

The Hastings Hall thefts, which police suspect all occurred in the morning hours, were all from women's dorm rooms. Money, a wallet, keys, a date book and a portable stereo were among the items taken from the rooms, according to the victims.

Police said in the last theft it appeared that the room was locked but the intruder used a room key stolen in an earlier theft in the same dorm room.

"A thief will find a soft touch and until something happens they might just keep stealing there," Johnson said.

Hastings residents may have been lucky. No thief was caught and the outside door locks were not changed, but the thefts did stop.

Jan-Michelle Lemon, 3L, one

of the resident assistants at Hastings Hall, said she doesn't advocate paranoia, but she said many of the students need to be more cautious -- especially about letting people in the dorm doors and keeping their room doors locked.

"Thieves of this sort are very, very bold," Johnson said of the dorm intruders. "They exploit the inherent weakness in our open society on campus. There is only so much you can do to protect residents."

The chief said it is highly unlikely that the dorm thief or thieves, assuming they were not law students, looked like they didn't belong. The thief was likely to have dressed like a student to steal from students, Johnson said.

"We don't expect people to be

totally defensive. But you need to be aware of your surroundings," Johnson said.

Johnson said student caution could help keep crime down. He suggested these precautions:

- Keep dorm room doors locked and do not open outer doors to people you do not know.
- Watch your belongings in the library and dining halls, where many larcenies take place while people are engrossed in reading or conversation.
- Don't walk on campus alone late at night.
- Lock more than just the front wheels of bikes to bike racks.
- Engrave your social security number on items like televisions and stereos so they can be returned to you if they are stolen and recovered.

Harvard Law School Crime Statistics

August & September 1990

Armed Robbery	1
Larceny - More than \$250	6
Less than \$250	7
Bike Theft	4

Academic Year 1989-90

Sexual Assault	1
Assault & Battery	1
Larceny - More than \$250	13
Less than \$250	19
Bike Theft	16
Breaking & Entering	8

Women Complain About Escort Service

By Mary Flood

"If you want safety at Harvard Law School you have to beg for it," said a first year student who said she was refused a ride by the campus police escort service.

The woman, who asked her name not be used because she hopes to try to get an escort again in the future, said it was 1 a.m. when she asked for an escort from Hastings Hall to Story Hall.

"They said: 'You've got to be kidding.' They were very condescending," said the unhappy law student.

She is not alone in her disdain for the escort service.

Another first year student, who also asked that her name not be used, said she was twice stood up by the escort service.

The second student said the first time she waited more than 25 minutes, perhaps as long as 45 minutes, for a promised escort. The second time she gave up after 10 minutes, which was about five minutes after the time the escort had promised to arrive.

"I thought it was the smart thing to not want to walk alone on campus," said the student. "I know you can become a victim anywhere, anytime. And I think we pay enough here to have a service like this."

The other woman complained that when she sees the signs around campus for the escort service, she feels like it's almost false advertising.

Paul E. Johnson, Harvard Police Department Chief of Police, said he plans to investigate the complaints brought to his attention.

"If she called and she was afraid about walking any distance we should have responded," Johnson said.

He said there are only two cars for the entire university and the wait can be up to 20 minutes.

The escort cars will take people anywhere on the Harvard campus and he encouraged people to call despite the criticisms.

Jan-Michelle Lemon, 3L, a resident assistant at Hastings, said she was sorry to hear women have had problems with the escort service because she knows of several other students who have been happy with the escort service they have received.

Johnson said there is not enough money in the police budget for a much larger escort service. He said last year there was a volunteer escort service out of the library but it was dropped.

Art Debate Provokes Passion

Continued from page 1

I don't drag my knuckles on the ground. I'll try not to drool on the floor."

Having established his credentials, Rep. Finneran proceeded to argue that it was simply unreasonable to insist that taxpayers finance works which embody ideas and ideologies which are utterly abhorrent to them. As an example, he raised the possibility of a play based upon the life and ideas of Adolph Hitler.

Price, the museum director, countered by asserting that the essential issue was freedom of speech and that avoiding divisive topics was no way to remedy deep-rooted problems in society. "I'm for free speech," he said. "And when there are problems I'm for even more free speech."

An argument ensued as to which side of the stage was more genuinely concerned about bringing artistic opportunities to poor inner-city black children, who were referred to by both sides by the eerily inhuman epithet "area B residents." Area B is the Boston police precinct encompassing Roxbury, Mattapan, and parts of Dorchester.

Rep. Finneran said his guidelines would mean that less money went to fund choral societies in suburban Weston and Dover, and more went to funding artistic productions in Area B -- such as church choirs or a production of the life of Dr. Martin Luther King, Jr. Price countered by asserting that restricting the range of acceptable ideological content for government-funded art would prevent grants from reaching young black artists whose point of view might differ from that of the legislature.

The back-and-forth volleying of the two factions reached a climax half-way through the hour-long program when Rep. Lawler leapt out of his seat and threatened to walk out of the debate unless Price stopped interrupting him.

"You keep saying you're in favor of minority views, yet you won't let me give my view," exclaimed Rep. Lawler. "If you keep interrupting, I'm going to walk right out of here."

Apparently reassured by Price, Rep. Lawler resumed his seat. A few minutes later, however, he protested Price's repeated references to Nazism: "You know, I'm getting a little tired of being compared to Hitler."

"You don't have the intelligence [to be Hitler]," Price snidely retorted.

The debate, however, ended

on a more civilized note, with Art Winslow making a reasoned but passionate plea for government funding for voices which are not necessarily those of the mainstream. "Once you've decided to fund the arts, it's inappropriate to discriminate on the basis of ideology. You may look at Mapplethorpe's art and not know how to react, but that art has enlarged the homosexual art world. And homosexuals are taxpayers, too."

Prof. Sullivan preserved her prudent neutrality to the finish. "It was a great debate," she commented following the end of the discussion. "Both sides were articulate and passionate. I've rarely seen these issues discussed so well."

Price, however, remained intransigent. "I would not have come if I had known he would be here," he said nodding towards Lawler. "He's a liar."

Apparently recollecting that the person to whom he was speaking had introduced himself as a reporter for a campus newspaper and had asked for comments on the debate, Price thought a moment and then added: "Don't print that. I'm warning you."

All in all, it was a great night for freedom of speech.

CCR Rethinks Approach To Diversity

dedication to diversity was not a passing fad," said Cicchino. "Diversity is an issue of justice for us. We want to be taught not just what we should be advocating but about the people that we will be representing."

CCR members who spoke to the group of approximately 150 students gathered outside of Harkness Commons pointed out that the diversity of the student body has not been mirrored by the teaching faculty. Of the 66 tenured professors at HLS, there are three tenured black males and five tenured white women. There are no Hispanic Americans, openly gay or lesbian, Native Americans, or disabled scholars on the faculty.

The students further asserted that the preponderance of white male professors at the law school means that students are not being exposed to the wide spectrum of political and social views which would enable them to relate to and better serve the needs of the nation's increasingly heterogeneous population.

"The kind of people we want teaching us are the kind of people who are going to need our help as lawyers," explained Morrie Ratner, 3L, an openly gay member of CCR. "We are not satisfied with visiting professors. We want people who are here permanently, either tenured or on tenure track."

First-year student Jeff Lubell told students at the rally that he had a keen interest in civil rights, even though as a straight, white male he has never been the victim of discrimination. Lubell said he expected to find apathy at HLS, but during a visit here last spring he was pleasantly

surprised by the sit-ins in Dean Clark's office.

"Instead of merely hearing about diversity and civil rights, I found a community charged with energy in the process of defining and adopting some of these goals for itself," he told the people at the rally.

"This activism reflected well on the law school community as a whole. For it demonstrated the commitment of students to protest that which they believed to be wrong and to struggle for that which they believed to be just."

The CCR steering committee also wanted students to show their appreciation to Prof. Derrick Bell, who has taken an unpaid leave of absence until a black woman is added to the faculty.

In contrast to last year, when the controversy centered on the appointment of visiting professor Regina Austin, a tenured professor at the University of Pennsylvania Law School, who is black. Members of the CCR's steering committee have said that they will expand the scope of their emphasis beyond a single person's position.

"Last year the national media tended to look at this as a nutty quest for quotas," Cicchino said. "This year we are trying to do greater justice to the depth and complexity of this movement."

Since last spring, the demographics of the faculty have not changed. However, of the 18 visiting professors at the law school this year seven are women - one of whom is African-American, two are Japanese, one is Korean, and another is Hispanic.

However Prof. Randall Kennedy, who heads a subcommittee of the appointments committee which has been actively trying to increase the pool of minority candidates to be considered by the faculty, has noted that the law school has had a long-standing policy of seeking out minority candidates and actually has developed hundreds of files.

Prof. Louis Kaplow '81 noted that with the addition of Scott Brewer, who will join the faculty next year, the percentage of African-American professors at Harvard will be nine percent - well over the national average of law school students that are black.

"There's overwhelming evidence that our faculty has good motives," Kaplow said. "There is a special mandate for people on the appointments committee to pay attention to women and minority professors, and we spend a very large portion of our time doing that."

In a letter sent to the members of the CCR, Dean Clark, who was unable to attend the rally, pointed out that "different faculty members have rather different views, but diversity is clearly an issue which the faculty takes seriously, and it will be one of its central concerns over the course of this year."

Some students, however, remained highly skeptical.

"The dean has always had the right language, but when we ask him for a commitment he does not react substantively," said Ratner who read a copy of the letter at the rally. "I hope that his rhetoric is backed by action."

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