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Students Sue HLS Over Faculty Hiring

School Seeks More Time To File Reply

Excerpts from complaint, page 10
Newsweek column response, page 3

By Dan Greaney

Relying on a Massachusetts civil rights statute, several law students have filed suit against the law school alleging a pattern of discrimination against women and minorities in the faculty hiring process.

The lawsuit, apparently the first ever filed by law students against their own faculty, seeks to enjoin the faculty from continuing with its current hiring criteria and force it to establish an affirmative action plan with "specific hiring goals and timetables for achieving those goals." It names as defendant the President and Fellows of Harvard College.

The complaint asks the court to order the school to apply hiring criteria which "give weight to diversity, practical experience, and teaching ability" in addition to the traditional criteria of scholarship and academic achievement.

The complaint, filed under Massachusetts General Laws Chapter 151B and Chapter 92, Section 102, alleges injury to women and minority students in the form of denial of exposure to varied points of view, denial of access to role models, lost professional and business opportunities and suffering from "an atmosphere of intolerance."

The lawsuit, which has prompted a flood of national and international publicity, was filed Nov. 20 by the Coalition for

Civil Rights (CCR) in Massachusetts Superior Court at the Middlesex County Courthouse in Cambridge. The university has 20 days to respond from the date of filing, but has asked the court for an extension to Jan. 10, according to CCR members.

If the suit survives a dismissal motion by the university, the students will be able to depose Dean Robert C. Clark '72 and other members of the law school faculty in preparation for a possible jury trial.

Clark expressed regret at the student action.

"I think it is not only very sad but also ironic to charge the Harvard Law School with discrimination," said Clark. "The school has been exceptionally active in encouraging minority participation at all levels -- faculty, staff and students."

Professor Detlev Vagts, a member of the law school faculty appointments committee, predicted the lawsuit will "make it more difficult to hire people, including minorities. I think it will scare off various people."

"Anybody who has been involved in appointments here is disappointed with the fact the action was brought," Vagts told the Harvard Crimson.

Clark said that the in-house legal counsel is handling the litigation on behalf of the university.

The eleven signatories of the complaint cite the recent history of efforts to integrate the faculty -- including the decision by Prof. Derrick Bell to take an unpaid

leave to protest a lack of faculty diversity -- when explaining their decision to file suit.

The students claim the HLS faculty, despite student protests dating to the early 1970s, has never given a tenured or tenure-track position to a woman of color, Latino, Asian-American, Native American, openly gay man or woman, or person with a disability.

"We have negotiated. We have protested. We have taken to the streets," said John Bonifaz, 2L. "Now we use the only instrument of power Harvard Law School seems to understand."

The "lawsuit is a serious and real legal claim," the CCR said in a column published in the RECORD. "Harvard's discrimination against women and minority teachers is not simply an abdication of its responsibility as an educator and an ethical leader -- it is against the law."

The complaint alleges that law school hiring practices have had a disparate impact on women and minority candidates. In support of this contention, the complaint asserts that women comprise 8.06 (see COMPLAINT on page 12)



Keith Boykin, 2L, speaking outside of the District Court regarding the discrepancy between HLS and ABA-approved law schools nationwide in female faculty hiring.

Pub. Interest Committee Refuses To Ask For Clinical Requirement

By John Berlin
Harvard Crimson

The Dean's public interest advisory committee has released a final report that calls for more clinical courses but stops short of recommending any type of mandatory requirement.

In a 70-page memorandum which updated an earlier version released last May, the committee suggested that HLS create two or three new clinical courses designed for first-year students, to ensure that all interested students have the opportunity to take clinical courses. Clinical courses are centered on learning through practice, and often involve work with real cases.

But the committee, reversing its tentative stand in the earlier report, declined to recommend a clinical requirement for all students. Professor Christopher F. Edley '78, who chaired the committee, said some members were concerned that the requirement would be too lax or vaguely defined.

In last spring's report, the committee stated that a majority of its members were in favor of such a requirement, but put off making any conclusive recommendation until the final report.

The argument is that to make a requirement acceptable, you have to broaden the list of activities that would satisfy it," Edley said. "But as you broaden the list, you lose the focused perspective."

There was a narrow majority [of the committee] that would vote

for a requirement immediately, but that majority recognized that it was important to get a consensus recommendation and that even if the faculty were to adopt a recommendation today it would take a couple of years to implement it," Edley added. "So we made the judgment that if we could look at the next couple of years as a period of phased-in expansion that would build in a base of experience, we hope that will produce a strong consensus for adopting a requirement in light of the experience."

The debate over the public interest curriculum erupted last August, when Dean Robert Clark '72 -- in his first major move as dean -- announced that he was eliminating the school's lone public service career counseling position.

But after several faculty members supported student protests, Clark appointed Edley's committee to reexamine the school's public interest curriculum. In addition, a narrow majority of students favored instituting some form of pro bono requirement in a school-wide referendum.

The other suggestions the committee made in last May's report, which were reiterated in the recent version, included appointing an associate dean for public interest programs, as well as reinstating two public interest career counselors that would operate independently of the school's regular career counseling office.

Over the summer, Clark established that counseling office, and staffed it with one full-time public interest career counselor. In addition, he appointed Edley to be

the school's faculty director for public interest programs, although he has not made him an associate dean.

The recent recommendation to create new clinical courses had the approval of the full committee, with the sole exception of Carter Professor of Jurisprudence Charles A. Fried. The report states that Fried's dissent is largely based on concerns that such a plan would require too many resources and would provide momentum towards requiring such courses in the future.

"[Fried] thinks there is enough doubt about the value of these courses that he does not wish to elicit from the faculty the degree of commitment that these proposals and recommendations imply," the report states.

Currently, approximately 310 out of the 540 students in each class take clinical courses at HLS. The committee's suggestions to create additional courses should provide opportunities for some 150 of the remaining students, while the other 80 could take advantage of existing offerings, Edley said.

Dean of Students Sarah Wald, a member of the committee, said that she is not opposed to the idea of the requirement. But she added that she wants much more discussion by the full faculty before reaching a conclusion.

"I don't think it's had a complete discussion yet," Wald said. "There are a lot of questions about administration and exactly how it would work."

Cynthia Monaco Named Best Oralist

By RECORD Staff

The Woodie Guthrie team swept the awards in the 79th annual Ames Moot Court Competition for third year students. The team won the honor of having the best brief, as being the best team, and as having team member Cynthia Monaco, 3L, named best oralist.

Judging the competition were Cynthia Holcomb Hall of the Seventh Circuit, Frank Easterbrook from the Ninth circuit, and Solicitor General Kenneth Starr. All were apparently impressed by both teams. After the oral argument Judge Easterbrook stated, "All twelve members of both teams have every reason to be proud."

Easterbrook complimented both teams for "seizing the case and putting it on your own affirmative argument," something he deemed the "greatest skill of an appellate advocate." He likened the oral argument to "sitting down...and having a discussion."

The fictional case argued was *Wilson v. Barnes*, a dispute be-

tween the executive and legislative branches over the pocket veto clause of Article I. The petitioners, the Pocket Protector team, argued that members of the legislative branch did not have standing in federal court to litigate against the executive branch because of Article III separation of powers. The Protectors further asserted that even if there were standing, the President's pocket veto was a valid exercise of his constitutional power.

Respondents countered that Congress has standing to sue because executive officials failed to perform a constitutionally required duty. Respondents also asserted the disputed bill had become law because there was no valid pocket veto.

The members of the Woodie Guthrie team were Michael Best, Cynthia Monaco, Tim Moran, Arti Rai, Miles Tolbert, and Gregory Weingart. On the Pocket Protectors team were John Bu, Maura Grinalds, Stephen Parkinson, Michael Savitz, Rhoda Weeks, and Michael Zevenbergen.

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Lincoln's Inn Survives Neighborhood Petition

By George Paul

The Lincoln's Inn Society has survived, for the moment, a threat to its very existence in the latest chapter of a forty-year battle between the Inn and its neighbors.

Citing rowdy, selfish and "anti-social" behavior, a group of Follen Street residents had petitioned the Cambridge License Commission to revoke or severely restrict the Inn's license to function as a lodging house at the 44 Follen Street address.

The Commission rejected such drastic action and gave the Inn a six-month grace period in which to demonstrate more considerate conduct.

The Inn successfully argued that no action by the Commission is necessary since they have recently instituted a comprehensive plan to be more responsive to their neighbors' concerns. In addition, the Inn repeatedly denied that it is the source of many of the neighbors' complaints.

According to the Inn chairman, Ken Mehlman, 3L, the Commission ruled to continue the decision until April in order to give the Inn's plan a chance to work. "It has

worked for the past six weeks," Mehlman said, "and the License Commission has recognized that." Mehlman added that the decision showed the Commission was willing to objectively assess the situation, and vindicated the Inn's assertions that its members were not the exclusive source of much of the offending disturbances.

The group, "Neighbors of the Lincoln's Inn," has organized the neighborhood in an effort to drastically curtail Inn activities. Complaints filed with the Commission cited noise, late night parties, rude behavior and poor upkeep as reasons for the Inn to be shut down.

The group had petitioned the Cambridge Licensing Commission to "permanently and unconditionally revoke the [Lodging] License of the Lincoln's Inn and grant the club one year to cease all activities at its 44 Follen street premises." In the alternative, the group petitioned the Commission to place severe restrictions on the use of the premises.

In response to the complaints from neighbors, the Inn's Board of Governors designed a "management plan" whose stated purpose is to "insure that neighbors are not disturbed by noise or any activities

of the Inn." The plan defines steps to decrease everyday noise, limit noise at parties, maintain the premises in an attractive manner, and insure continuity between old and new boards.

A statement delivered by the Board of Governors to the Commission stated that "We sincerely believe that these efforts will keep the Inn quiet and a good neighbor and that no action by the Commission is necessary."

Marc Rodwin, a member of the neighbor-

hood group, hinted that regardless of the final decision handed down in April, the "continual nuisance" of the Inn will have broad ramifications in the community surrounding HLS.

Rodwin stated that the problems associated with the Inn, also affect his view of the proposed expansion of the Law School campus. "If the law school wants to expand," he suggested, the local residence groups will demand "assurances of quiet in the

(see INN on page 7)

HLS Sets Sexual Harassment Policy

Harvard Crimson

The Law School has created a six-member committee charged with developing the school's first-ever formal sexual harassment policy.

The panel -- composed of two administrators, two professors, a staff assistant and a student -- will next month begin to define precisely what constitutes sexual harassment and draft guidelines about

how the school should respond to such cases. Professor Kathleen M. Sullivan '81 will chair the committee, which expects to complete its work by June.

In a letter sent to students and faculty and staff members earlier this month, Dean Robert C. Clark '72 said he formed the group to remedy "the absence of an explicit and comprehensive Law School policy governing sexual harassment."

"The avoidance of sexual harassment is a matter of serious concern in our community," Clark said in the letter. "The Law School seeks to maintain a learning and working environment that protects each person's dignity and well-being."

Currently, sexual harassment cases fall under the domain of the school's sexual discrimination policies, said Dean of Students Sarah E. Wald, a member of the committee. Committee members said separate treatment is necessary to combat instances of harassment -- such as verbal or physical assault -- which cannot readily be classified as discrimination.

Patricia Arzuaga, a second-year law student who co-chairs the Women's Law Association, said the committee's guidelines should legitimize experience of sexual harassment and make victims feel more comfortable in reporting such cases. She added that students are of

(see HARASSMENT on page 7)

Law Student's Column Heats Up Diversity Debate

By Sharon Stone

The recent publication in *Newsweek* of a guest column attacking the movement at HLS to diversify the faculty, written by an HLS student, has helped rekindle the debate over the hiring criteria of the HLS faculty.

The object of this sometimes emotional debate is an article entitled "Fraudulent Diversity" written by Brian Timmons, 3L, and published in the November 12 edition of *Newsweek*. Timmons' position is that the clamor for diversity that has swept law schools across the country is a smokescreen for a quota system in faculty hiring.

Timmons also criticized Prof. Derrick Bell and the Coalition for Civil Rights for

not being candid about what they are seeking, which he says is "equal representation" for minorities rather than "diverse ideas." He wrote that the diversity proponents are using their campaign "to preserve control of the liberal avant-garde that has dominated institutions like Harvard Law School for the past two decades."

The responses to the article were varied.

Morrie Ratner, 3L and a leader in the Coalition for Civil Rights (CCR), said, "The whole quotas voice merit debate is a conservative smokescreen. It sets up a false opposition between quotas and quality and limits the discussion to having good people or having the right people. The point is the present faculty is not addressing these ideas because they are not impor-

tant to them."

Prof. Charles Fried, solicitor general under the Reagan administration, said backers of the diversity movement at HLS are "barking up the wrong tree."

"HLS has six tenured or tenure-track black professors," Fried said in an interview. "This law school is way ahead of every other law school in the country, so this campaign seems ill-informed or is pursuing a rather special political agenda which does not correspond to facts or reality. The diversity of ideas taught here is better than any other law school in terms of variety of topics taught. The idea that nobody addresses these issues is factually false. As far as I'm concerned the place [HLS] is O.K."

(see TIMMONS on page 7)

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Harvard Law Record

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Patrick Miles, Jr.
Editor-In-Chief

Lawsuit A Result Of Communication Breakdown

The frustration of the students in the Coalition for Civil Rights (CCR) in their effort to change the hiring procedure at Harvard Law School and to get the school to hire a more diverse faculty, has culminated in their going to the arena of last resort to get action on this issue — the judicial system. After a year of rallies, silent vigils, marches, speeches, demonstrations, and a tenured faculty member taking a leave of absence in protest, to draw attention to the issue and to stir discussion and progress, the CCR may finally have the undivided attention of Harvard.

Regardless of one's view of the merits of CCR's hiring discrimination suit against the President and Fellows of Harvard College, one must admire the courage, commitment, and determination of the students in taking this action. The signatories of the complaint are obviously aware of the risks associated with challenging an institution such as Harvard. The risks were present even when they first voiced their displeasure with the status quo. Perhaps the students' courage inspired Derrick Bell to sacrifice his salary until a woman of color is hired to a tenure track position on the faculty. Perhaps, in turn, Derrick Bell's sacrifice inspired the students to take this action. To these people, the risks and losses are outweighed by the potential benefit of a diversified faculty.

The reason for such dramatic measures was a call for not only attention, but for sincere discussion. For over thirty years, the Harvard administration and faculty — secure in their power and position — have not yet made a true good faith effort to change their hiring practices without first being stirred by the protests of students.

There has been a breakdown in communication not only between students and the school, but also among students. The rhetoric, employed by those on either side of the diversity issue, contains words like "quotas," "reverse discrimination," "role models," and "underrepresentation." It is easier to utilize these simplistic terms to espouse one's viewpoint rather than to discuss the differences with someone who holds a presumed opposing view. It seems that both those who favor change in the faculty hiring process and those who do not, are merely talking past one another instead of with one another. Perhaps then they could all realize that they share the same goal: to make HLS the best possible place to get a legal education.

The essence of the complaints of the students and faculty members who favor change, is that Harvard needs, and deserves, a faculty that matches the diversity of the student body.

Former HLS dean Erwin Griswold once said, "Our faculties tend to reproduce themselves; and in the process may by the continual inbreeding that is involved be producing even narrower law students than they were themselves."

Diversity can benefit everyone. Andres Snader, 3L articulated this view well when he said, "Obviously, a minority can have the same political viewpoint as a person in the majority, but chances are that in the very process of idea formulation the minority will reach his or her position in a much different way because of the pervasive influence of race and culture in American society. As a result, we have a different perspective from a minority professor even though he or she might have the same actual political viewpoint as a majority professor."

Thus, people with diverse backgrounds and views, can challenge or affirm the beliefs that we hold. Whatever a person's political persuasion happens to be today, should not be of paramount importance in the determination whether he or she is worthy of educating others. What is more important is how that person came to hold their values — what influenced their thinking to form their beliefs — whether conservative or liberal. This is why different backgrounds and experience can only enrich the educational environment at HLS.

—P.M.

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Expanding Diversity

To the Editor:

In the last issue of the *New Republic*, Julie Pardell examined constraints on the diversity movement that, in her opinion, limit the "politically correct" interpretation of diversity to gender, race, sexual orientation, and disability. In the meantime, the Coalition for Civil Rights has filed a lawsuit against HLS in an

Letters To The Editor

effort to promote diversity, using the above criteria. Regardless of how one might feel about the wisdom of such an action, it clearly has served the purpose of publicizing the diversity debate. I'd like to call on the HLS community to not only support the diversity effort, but to expand it to promote true diversity.

Let me admit my own bias. I am a member of the Native American Law Students Association, and thus one of the students who is represented by the Coalition for Civil Rights. I also am a Republican. I can sympathize with both the pro-"diversity" and pro-"quality" arguments. I submit that there is an acceptable middle ground.

Let's start with a basic assumption: that the faculty composition should, ideally, mirror the composition of the student body, which should in turn be reasonably representative of society at large. (Of course, this would require extraordinary efforts to recruit and fi-

nancially support qualified students from non-Northeastern, non-Ivy backgrounds; I won't attempt to debate the merits of such an approach, other than to offer my personal feeling that it would be healthy for the institution and for society.) Obviously, such a regime of absolute faculty/student representativeness is impractical, at least in the short run, without greatly expanding the hiring process to achieve a quota system (that, I will grant Ms. Pardell, does "sap the element of individuality"). However, future faculty recruiting could reasonably be directed to attract qualified lawyers who are members of underrepresented groups. The importance of such representation to certain members of the student body cannot now be ignored.

This article is not a general defense of affirmative action. The reverse discrimination and overcategorization arguments are valid, but the perceptions of many minority students who feel alienated and the historical record of apparent bias also are valid. This article also is not a defense of the "squeaky wheel gets the grease" school of educational administration. The CCR lawsuit is a tactic with which many students, including some strong supporters of diversity, disagree; it only calls for the CCR's definition of "diversity," which is underinclusive in a leftist manner, and it is a confrontational tactic. But it does send a signal that actions, not words, count.

(see DIVERSITY on page 6)

Wanna Bet?

To The Editor:

Several years ago, the great icon of American sports betting, Jimmy "The Greek" Snyder, an analyst for CBS Sports, noticed an undeniable demographic trend in professional sports. It seems that at the time, the percentage of professional athletes who were black was much higher than the percentage of Americans who were black. The difference in the statistics was large enough that Mr. Snyder, with his keen analytical mind, figured that there must be a reason for it, outside of mere random statistical aberration.

Naturally, the socially conscious here at Harvard might have assumed that this disproportionate representation was caused by some nefarious plot on the part of owners of professional sports franchises. Perhaps the owners realized the dangers of professional sports and

wanted to subject the unsuspecting black to the increased chance of injury, or perhaps the owners realized the effect newfound wealth would have on those unaccustomed to such riches. Suspecting such insidious motives would be natural to a student body reflexively trained to sniff out prejudice where ever it exists (and even where it doesn't). Well, to make a long story short, Mr. Snyder saw things differently.

Jimmy "The Greek" had the audacity to suggest that perhaps blacks were better suited to professional sports than their white brothers. He implied that there may be some difference between blacks and whites which makes the skills and talents necessary to excel in athletic competition more prevalent in blacks than Whites. After all, Mr. Snyder theorized, how else can one explain that 60 percent of the

(see BET on page 6)

No Thanks, HLS

To the Editor:

Hello everybody who reads this paper. I would like to share with you the first paragraph from a letter I wrote yesterday to Sarah Wald, Dean of Students:

'Dear Sarah:

This letter is to announce my withdrawal from the class of 1993 of the Harvard Law School. The reason for my withdrawal is that I do not consider this place to be habitable for human beings. Seeing that I am very much a human being, and desire very much to maintain my status as such, immediate withdrawal from the class seems like a good idea.'

For me, this charade called law school must come to an end. I am putting away my cape and mask. I have finished playing my part.

I came here thinking that I could learn and talk and think about justice. But, I have found that this is not what goes on here and I am tired of faking it.

What this law school, and unfortunately all of society, is comfortable calling justice to me has nothing to do with justice at all. I don't think it is acceptable for us any longer to try curing our social problems by merely punishing those people who were not given the option of getting what they really need. I cannot sit back any longer and watch us punish the losers of the unjust game we allow to be played. I have looked at criminals, I have

looked at people who looked like they were on the verge of becoming criminals (like the guy I just bought my milk from in the Christy's on the corner), and I have looked at myself. I can tell you what is going on. It is not that those who break the law are somehow socially deficient and need to be punished. It is not that at all. The people who break the laws are doing so only because they have no other means of obtaining what they need. Criminals are confused about how to get what they want, and their criminal acts result from acting out of this confusion.

What a strange dance is danced here at HLS, and throughout the whole society I suppose. We punish those who break the rules to make ourselves believe that the rules make sense, and that we should be satisfied with the choices we have. By punishing those who act out of their dissatisfaction and confusion, we try to make ourselves believe that most of us are being satisfied. The dishonesty in our system of justice is unbearable, unconscionable. I could not bear to be around it. It made me sick to be in law class where these lies were being maintained and perpetuated, and I can't stand it anymore.

Carter Zinn

Note: Carter Zinn is now living in Manhattan and working on a book.

'Tis The Season To Buy Gilbert's

Just in case the semioccasional reader of this irregular and erratic "column" has not yet inferred this, I sometimes have problems adjusting to and accepting HLS.

Also, again, just in case this too has not yet been made obvious, I am not one

By Robert C. Arnold
RECORD Columnist

of those okey-doke, accept anything and everything without question types. That stated, please allow me to begin this week's invective.

(Warning: Readers who have found my previous writings to be offensive, unpleasant, and/or unbearable for any of a number of reasons should stop reading now. If the condition continues, seek professional help.)

I am severely concerned with the realization that, after a brief and much needed, holiday respite, I am going to have to return here and take exams on subjects about which, as of this writing, I know very little.

Don't get me wrong. Sure, I know enough of the esoteric buzzwords and scholarly twaddle in order to impress my easily impressionable and all too eagerly attentive friends and family over the holiday break, and sure I could probably convince

Robert C. Arnold, 1L, is a RECORD Columnist.

an innocent and ignorant bystander that a strict liability rule is better than a negligence rule in some cases; however, I feel as if I know little more now, in terms of the law, than I did when I arrived. And, I am appalled at what has served as my legal education.

I am enraged by the prospects of having to spend an exorbitant amount of money, in addition to the exorbitant amount of money I have already paid for tuition, fees, etc., in order to buy hornbooks and commercial outlines to learn, well enough, what I should have been learning throughout the semester.

It is additionally outrageous that I will have no need for these "study aids" (read teaching manuals), beyond these exams, and that I will be forced to enter into the already glutted marketplace as a seller of these items to the equally needy class of 1994. If legal education worked there wouldn't be a market for these sorts of items in the first place, and I am appalled.

Without sounding too presumptuous, if that is even possible at this point (probably not, but so what), I don't consider myself a bad student or even incapable of learning. If that were the case, I would never have made it this far. Also, I don't consider myself alone in feeling the way that I feel. If that were the case, I wouldn't feel comfortable exposing my own, personal shortcomings. (I

am not that divulging and/or revealing.)

However, I ask: Does "thinking like a lawyer" equate to being brainwashed in order to ignore and abandon common sense and reality? I think not. I am appalled, outraged at legal education.

The real crimes that we learn at HLS are not the ones that we read about in our case books, or more accurately, the ones that we are assigned and don't read about in our case books. The real crimes are: 1) our legal education will consist of what we learn in hornbooks, commercial outlines, and later, in bar review cram courses, 2) we pay a helluva lot of money to attend this factory in order to learn very little of substance and practical use, and 3) our professors get a helluva lot of money for merely "entertaining" (read "jading") our young, fresh, eager, and vigorous minds. The system is scandalous.

Here, it is common to confuse challenging and frustrating. Frustrating doesn't by any stretch of the imagination mean challenging. Is it challenging or is it frustrating that I go to class for 90 minutes and all of my energy is consumed by fighting an overwhelming urge to fall asleep even though I felt well-rested and energetic before I entered the lecture hall? Is it challenging or is it frustrating that I must conceive Walter Mitty like games and fantasies to occupy my mind for the duration of a class?

When Ralph Nader '58 visited the law school four weeks ago, he characterized the Socratic method as "a game that only one can play." Scott Turow '77, in his book *One L*, called the Socratic method "an invention which allowed for the mass production of lawyers." Irrespective of whichever cute anecdote one uses, it is very clear that the Socratic method doesn't work for legal education. Students teach themselves through various "study aids" (again read teaching manuals), and I am appalled.

Despite everything that you have just read, and believe it or not, I really, really enjoy being at HLS. I am enchanted by and really enjoy the student body. (Some bodies more than others). However, even though I like some things about being here, I hate the status quo, and I am appalled at what has served for far too long and quite inadequately as legal education.

Legal education is in need of drastic and rapid reform.

As a truly great person once said, "If a man hasn't discovered something that he will die for, he isn't fit to live." That...is passion!

The one thing that separates the truly great from the merely mediocre is passion: that extra something that stirs man's soul to greatness. That intense and eternal inner fire that is both untouchable and intangible, and yet very, very real: passion.

Many people, my editors included, (both shadowy and non-shadowy manifestations thereof),--with whom it is a constant battle to get printed--have recently, and only half-jokingly began to question whether or not I have lost the emotion that I wrote with at the beginning of the semester. They have, again only half-jokingly, accused me of cowering in the face of early criticism. They have, in secret seriousness, charged me with kowtowing to an all-too-eager impulse of conformity.

Well, let's let the RECORD reflect the truth: That implication is unequivocally, utterly, categorically, and decidedly bullsh--!

In this farewell edition of the RECORD, before our recess, I would like to explain to the readers of this column why I write what I write how I write. Right?

Contrary to what may be popular intuition, I don't write to offend my Harvard classmates, I don't write to condemn the institution, and I don't write to get attention. I am not a self-righteous, elitist demagogue as I have been flatteringly characterized.

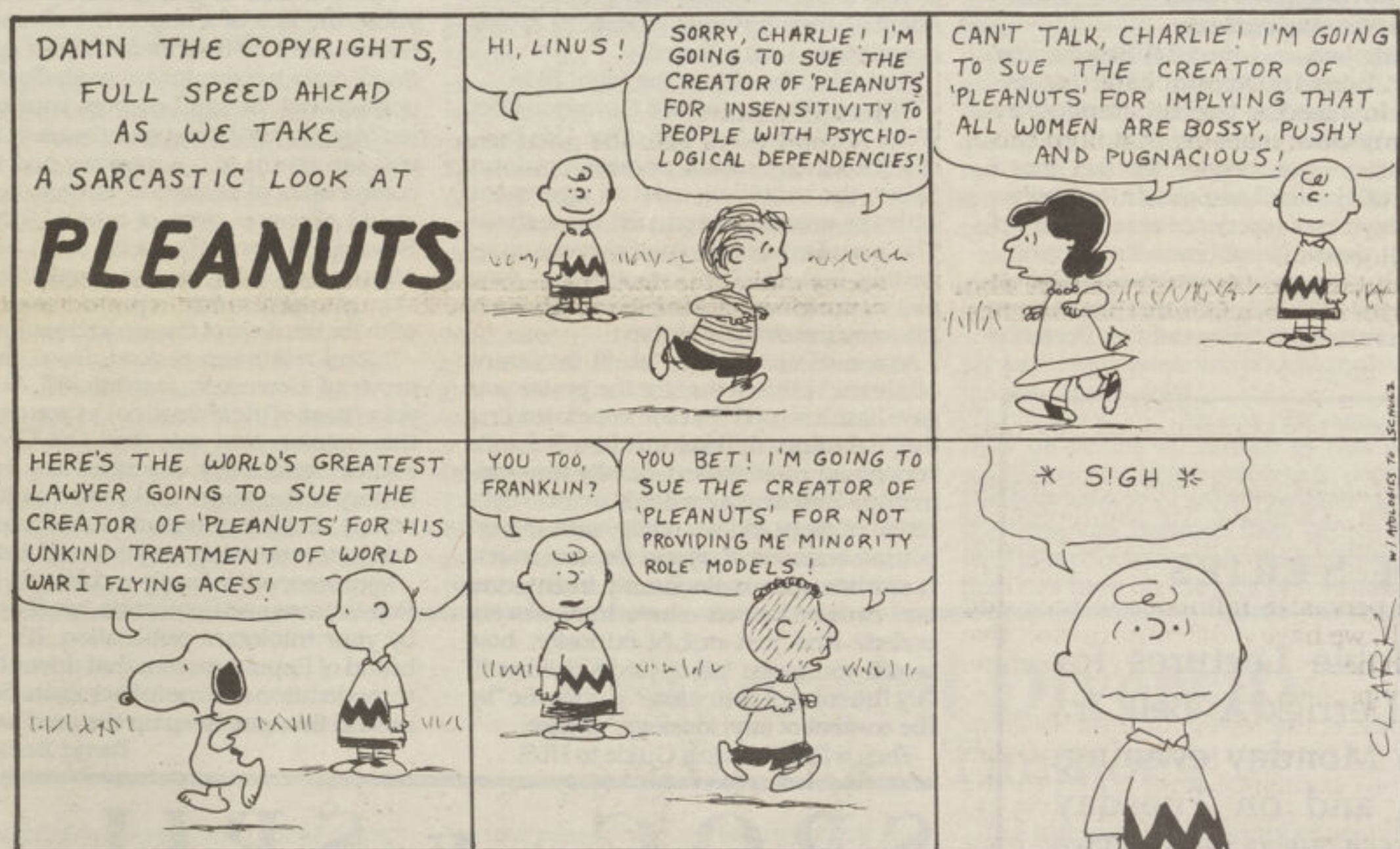
I write, hopefully, to make others think, to be provocative, to be a precursor of change, and most importantly, to stir in the reader an intense emotion, an impulsive reaction, and a personal affection: passion.

To accomplish this, I adopt whatever style I think can both best accomplish my purpose, and clear my editors. I also believe that to write in one style all the

(see GILBERT'S on page 8)

Agenda Neutral

By Eli Clark



Law of the Jungle

By The Idle Rich



Fenno

Sorry devoted Fenno fans, your fave is still stuck in Stoughton Hall (NW corner of Harvard Yard, innocent Harvard frosh learning the art of prolonged nervous breakdowns). On this situs paramedics continue in their efforts to disgorge a Butterball from Fenno's throat. The patented ThermoPop Thermometer prematurely exploded, you see, and has blocked passage of the bird through Fenno's delicate alimentary canal.

Fear not fair friends, for Fenno will soon belch the remainder of his Thanksgiving repast from his corpus. At that point he will be ready to expunge the commercial papers sitting and rotting in his lower intestines. This will make room for a pound of Entemann's and yet another holiday turkey.

Fenno did ask me to pass on a holiday toast to everyone. "Here's to all the turkeys of the world: fresh, plucked, and having their gizzards stuffed at the ol' HLS turkey farm."

Diversity

(continued from page 4)

The lawsuit should not be construed as defining the outer limit of the diversity movement. As Ms. Pardell alludes, there are other underrepresented categories of individuals that also would enhance faculty diversity. Three additional dimensions of diversity that cry out for inclusion are religious practice, military service, and legal experience.

In Section IV recently, several Roman Catholics were distressed to the point of tears by a Legal Methods assignment that was patently offensive to their religious beliefs and was handled with extreme insensitivity. This was exactly the type of incident that, the diversity proponents argue, would become less frequent under a less majoritarian faculty. Without hard information (that may be invasive to actually collect), I feel it is a defensible broad generalization to say that, in matters of religion, some traditionally liberal faiths (including no faith at all) are probably overrepresented, while fundamental Protestants, Catholics, Orthodox, and all non-Western religions are probably underrepresented. Therefore, I challenge the HLS community, in the interest of diversity, to seek out lawyers who are members of underrepresented religions. For those students affected, this nonrepresentation is every bit as deeply felt as the lack of disabled, gay or lesbian, female, or ethnic minority professors is to members of those groups.

As a veteran who spent twelve years in uniform serving the United States, I am personally appalled by the ignorance and misinformation (though often unintentional) that typically characterize any discussion of national defense issues at HLS, both in and out of the classroom. Add to this the often condescending attitudes of faculty members themselves and some students whose remarks are permitted to go unchallenged in class discussions, and the result is an environment that, I personally feel, is hostile to military service and to those who have

served the nation. Like all the CCR-represented groups and religious minorities, veterans are protected against discrimination by law. A valid *prima facie* case could be made, from the numbers alone, that the Law School discriminates against veterans in faculty hiring. Perhaps an outreach program targeted for lawyers with time in uniform would allow better-informed discussion of important topics, just as outreach for female lawyers would promote discussion of important, neglected subjects such as battered women.

A third dimension of diversity, that of experience, may be a desirable addition to our law school as well. Many faculty members have little to no non-academic legal experience outside clerkships, *amicus curiae* briefs, and high-level appellate advocacy that has little relationship to the vast bulk of law as actually practiced in the real world. This obviously has an effect on the perspective from which our legal education is taught; clearly, the student body would benefit from the experiences that practicing lawyers, rather than scholars, could bring to the classroom. (Not that the categories are mutually exclusive—some can do both well—but the focus could be on useful experience rather than law review articles.) In the interest of promoting diverse viewpoints, we should demand the opportunity to learn from players as well as Monday morning

(see DIVERSITY on page 12)

Wanna Bet?

(continued from page 4)

players in the NFL are black.

Civil rights groups, concerned citizens and leaders of the black community reacted to Mr. Snyder's remarks with outrage. How could anyone imply that the reason that blacks were overrepresented in professional sports lies in an inherent difference in the races. CBS soon caved in to the pressure and requested Mr. Snyder's resignation. Mr. Snyder resigned in disgrace and has been an icon of a different sort since. He represents all that is wrong with racism and bigotry. His name has become synonymous with the mindless classification of people because of their skin color. He has been correctly labeled a pariah and is banished from the public eye.

What bitter irony it was when I saw last week that the self-appointed guardians of truth and educational excellence at Harvard Law School, the Coalition for Civil Rights (CCR), have filed a law suit, demanding diversity in the faculty at the Law School. The alleged cause of action of this suit rests on the very same premise which led to Jimmy "The Greek's" downfall just two short years ago. It seems that Professor Derrick Bell, Keith Boykin, John Bonifaz and the rest of the CCR representatives feel that "a representative faculty" would bring "a necessary diversity" which would enhance "our

educational experience." This begs the obvious question. What is it that blacks, women, gays, the disabled, and any other disenfranchised and embittered minority which the CCR claims to represent, have that we white male heterosexuals don't?

The CCR cannot claim that faculty diversity is a prerequisite to a quality education unless they also claim that those who are "diverse" offer something that those of us who aren't can't. If I understand their position correctly, this is exactly their claim. The CCR members seem to claim that only those who have faced prejudice and bigotry which white males like myself can only read about can impart the anger and frustration this situation breeds. I can see the smile on Jimmy "The Greek's" face as I sit at the word processor.

I would like for one member of the CCR to explain to me why they feel qualified to make the exact same claim for which Mr. Snyder was crucified? Why was he ridiculed on national TV? Why are you honored in the same media? Why do I have to explain the characteristics of a class action suit over turkey dinner to my relatives because several attention hungry college students feel the urge to arrogantly decide what I need in a legal education?

My guess is that the CCR's self-anointed education experts won't be able to respond. Wanna Bet? At what odds Jimmy?

Scott Fenstermaker, 2L

A Republican Criticizes New Republican

Letter to Michael Friedland, 3L, Editor of the *New Republican*:

Having just read the HLS Republicans' latest "Journal of Opinion," I find that several points need, at the least, clarification. And to confuse your stereotypical notions from the outset, despite the fact that I arrived at Harvard Law School a Republican with six years of experience as an appointed official in a state Republican administration, I remain a Republican, and voted for George Bush and Bill Weld, and I am a Southerner who continues to "point out that Boston is

[if not] a million times more racist than Atlanta," then certainly at least as racist, nonetheless, I am a liberal.

First, The View From the Right Side. . . With all due respect for Governor-elect Weld, he did not "roll into office." He benefited from an electoral revulsion of John Silber, the candidate most in agreement with the positions espoused throughout *The New Republican*. In any event, suggesting that Weld is "conservative" may just confuse true conservatives like former Attorney General Ed Meese.

As one of Derrick Bell's "shrill, intolerant admirers," I thank you for the praise you gave him. It is good that someone is leading the "fight against [Harvard Law School's version of] merit-based faculty appointments." Despite a seemingly neutral definition of merit, do we really want to perpetuate a system that has gleaned so few non-white, non-male faculty in the over one hundred years since legal slavery ended? And just out of curiosity, how would you judge "all of God's children?" "By the color of their skin?" Judge me "by the content of [my] ideology," please.

Then a Republican's Guide to HLS. . .

I do get tired of conservatives whining about the lack of a supportive classroom environment for their ideas. Is your ego so fragile or your commitment so shallow that oppositional "hissing" silences your opinion? Are you just biding your time here until you can return to a supportive and non-confrontational "real world" environment? I would offer one piece of advice, though. Beware Bill Bennett's friend John Silber. After encountering his argumentative version of conservative "support," you may wish for the days of classroom hissing.

"Moral relativism is good. Don't disprove of Bowers v. Hardwick?" Surely your grasp of the law will not let you defend this opinion that mis-read the Georgia statute, selectively described the social history of the world, and served as thinly veiled judicial discrimination based entirely and inappropriately on personal biases.

My conservative family and friends, both Republicans and Democrats, are ill-served by your intolerant publication. It's your brand of Republicanism that drives them to moderation and me to liberalism. So, on second thought, keep up the good work!

David Beck, 3L

NOBLE LECTURE SERIES

The William Belden Noble Lectures for 1990-1991 will be given by Derrick A. Bell, Jr., Weld Professor of Law, on Monday evening, December 10 at 8:00 P.M., and on Tuesday afternoon, December 11, at 4:30 P.M. in The Memorial Church. Professor Bell has entitled his lectures "The Difficulty of Doing Good: The Unacknowledged Dilemma of Civil Rights Advocacy."

The William Belden Noble Lectures were established in 1898 by Nannie Yulee Noble in memory of her husband to advance the understanding of Jesus Christ as the Way, the Truth, and the Life, with special reference to the ethical, spiritual, and moral needs of students in Harvard University. The last lectures in this series were given in 1986 by the Archbishop of Canterbury, The Most Reverend and Right Honorable Robert Alexander Kennedy Runcie, D.D. Oxon.

The public is cordially invited to attend these lectures free of charge.

S.P.O.C. v S.P.I.L.

To the Editor:

Having read Daniel Greenberg's column in the last RECORD, I feel compelled to correct a misstatement and several misleading intimations.

First and foremost, I truly hope that Mr. Greenberg's vehement denial of his statement (i.e., that he could not accept an organization representing small landlords before the rent control board as a legitimate use of the school's resources and in the public interest) can be attributed to a memory lapse. I also hope that Mr. Greenberg did not intend to imply that Mr. Cook or his source, Joel Delman, was lying. This statement was made last spring to Richard Clobeck, 3L, when he sought Mr. Greenberg's advice and opinions of such an organization and how it might best be created at the law school.

Mr. Clobeck was the student who "came forward" to speak with Mr. Greenberg; after receiving this warm welcome from the clinical department, those interested in the creation of what is now the Small Property Owners Coalition (SPOC) decided that the Dean of Students Office would be more open minded about our goals. That is why Mr. Greenberg has "heard nothing else" directly from members of the organization.

Second, I wish to make it clear that SPOC does not seek the de-funding of SPIL; SPIL serves a valid purpose and has provided many students with a valuable and rewarding educational experience. While it is true that some members of the Small Property Owners Association (SPOA) have

called for such drastic action, SPOC has informed them that we only desire equal representation for both sides of this issue. SPIL did not begin solely by a group of students banging on the clinical department's door. There was community involvement and a receptive attitude from the law school. In the case of SPOC, we have student interest and community demands (including the Chairperson and Executive Director of the Rent Control Board). What is severely lacking is an open-minded attitude from the law school to accept such a program.

Lastly, I must point out the failure of Mr. Greenberg to respond to Mr. Cook's concerns. Greg's letter was not about SPOC; rather, he used the organization's experiences as an example of the inherent bias of our clinical department and the probable effects of such attitudes on any mandatory pro-bono activities available to students were such a program to be implemented. If the majority of students' desires and political views are to guide a pro-bono program, those of us in the minority will indeed be compelled to engage in activities with which we do not feel comfortable. Apparently, the "student interest" said to shape clinicals does not include those interests contrary to the clinical department's (and the majority of students') view of what is in the "public interest." Smaller groups of interested students must be given similar opportunities to those of the majority for any pro-bono program to be non-ideological.

Joel G. Delman, 3L
President SPOC

Inn

(continued from page 3)

surrounding neighborhoods. If the law school cannot even control seven students, how can we be sure it will control the noise level with new dormitories?"

In a letter to the Commission, another neighbor, Gail Gardner, wrote: "As a Harvard alumna, I have often been ashamed in my building and neighborhood to admit my affiliation. These rude, ignorant adolescents ... must understand that their privileged position is not a cover for their bizarre behavior."

Local resident Sheila Cook wrote to the Commission: "In the fifteen years I have lived on Follen Street the members of Lincoln's Inn have done nothing but disrupt the neighborhood with their illegal parking, their loud and late parties, and their trash which spills over the entire neighborhood ... It is clear that the Inn's members care only for themselves."

Mehlman recognized that "there have been some legitimate gripes, no question." He noted that he felt that the "problem of the past" was continuity. "We just didn't know how vehement their concerns were," he added.

Rodwin stated, "This is not against Harvard Law School. We like students. We are just objecting to anti-social behavior. If you want to have a party, there are better places to have it."

The controversy's biggest casualty may be the open Inn parties. Like many fra-

ternities nationwide, the Inn's parties will now be closed — only members and invited guests will be allowed. To avoid legal problems relating to the sale of liquor at the parties the Inn will no longer accept seven dollar "donations" from nonmembers attending the parties.

Boardmember Neil Gorsuch, 3L, downplayed the impact of new "management plan" of the Inn. "There are only six to eight parties a year," Gorsuch replied when asked if fewer and smaller parties would hurt membership. "The Inn is more of a place to hang out." Members cited the weight room, the chance to meet new people, the billiards table, and Thursday night dinners as reasons for joining.

Rodwin added further that the effort to revoke the Inn's licenses stems from the failure of past efforts to amicably resolve the problem. Graduate students Kimberly Adams, a six-year resident of Follen street, claims she was told by a former Inn vice-president, "If one chooses to live across from the Harvard Law School, one has to put up with the noise from law students."

The Inn has continually denied that they are responsible for all the problems on Follen Street. Mehlman kept a log of noise on the street after meeting with neighbors. Based on information from the log, the Inn wrote to the Commission, "We believe that many complaints the neighbors have had about noise... are not legitimately attributable to the Inn... Many of our neighbors exaggerated, misrepresented, or misattributed

problems involving the Inn."

Rodwin dismissed such assertions as "ludicrous."

Resident board member Bob Kroll, 3L, noted that Follen street is not as quiet as neighbors had portrayed it. "This street is noisy. We've got apartment buildings and are next to the Cambridge Commons, Radcliff, the Longy School of Music and Harvard Square."

Mehlman said the drastic action the neighborhood group sought was not necessary because of several features of the management plan, some which were suggested by neighbors. Continuity is the key to the program according to Mehlman. Mehlman noted he would personally meet with the new board before they take office. "Making the [new] board aware of the

concerns of the neighborhood will be the first thing we will discuss."

Furthermore the management plan calls for "[a] board of local alumni ... to insure, among other things, smooth neighbor relations." The plan dictates that interested neighbors be given the phone numbers of the Inn and members of the Alumni Board so that complaints can be handled effectively.

According to Mehlman, the Inn has already invested over \$10,000 to respond to neighbor's complaints. Mehlman listed the installation of noise reducing thermopane and storm windows, while other windows have been bricked, the hiring of professional landscapers have been hired, and the disabling of a piano as changes implemented to accommodate the neighbors.

Harrassment

(continued from page 3)

ten unsure of how and whether to report incidents of verbal or physical assault, especially those occurring in job interview situations.

"People are very conscious of the fact that [reporting sexual harassment] will affect whether they get a job," Arzuaga said. "Some people feel they risk being seen as troublemakers."

Wald said she thinks the group's precise definition of sexual harassment will also prove to be valuable, for both educational and administrative purposes.

While praising the formation of the

committee, some student leaders said they think it would be more effective if the Law School Council could choose more than one student member. The panel's other members are "far removed from what it's actually like to sit in an interview and have someone give you a rude comment," Arzuaga said.

Law School Council (LSC) President Thomas J. Samuelian, 3L, said one student member might not be representative enough of student concerns, but he added that he still considers the committee "very broadly conceived."

Although an informal group met regularly last year to discuss sexual harassment issues, committee members said it did not represent an adequate substitute for a formal policy.

Timmons

(continued from page 3)

For Prof. Bell, this complete disavowal of any legitimate issues is particularly disappointing. "I think it is alarming that those whose ideology and practices have been exclusionary and subordinating over generations, have been so quick to place their sins on the heads of their victims. They are quick to charge racism over the attempts of the victims to have a few more who share a similar viewpoint."

"The lack of recognition of any problem is at the essence of the protest," Bell added. "The struggle is against the entrenched culture of HLS. This culture extols upper class backgrounds, law review editorships and judicial clerkships. The assumption is that if you have these credentials there is nothing you can't do and if you don't have them there is nothing you can do that is

worthy of attention of those with those credentials. This culture tends to exclude racial and ethnic minorities, query why there are so few Italians or Poles on the faculty. This culture tends to limit the ideological perspective. Diversity asks for people with unique views, experiences and perspectives because these unique perspectives add to the educational potential of the person."

Timmons asserts that HLS needs candidates who are "qualified by traditional academic standards. Prof. Bell argues that the criteria is inherently biased. But we can't solve the problem by getting a person off the street who is not particularly qualified to teach, to be a role model to black students."

"To say that the standards are inherently discriminatory belittles minority groups. Derrick Bell is advocating that race should be put on the same level as grades, supreme court clerkships and other standards of merit. Standards should never be

less than scholarly achievement. The purpose of an academic institution is to provide society with a repository of knowledge and information. When we start appointing people who are less qualified, based on race, or any other criterion, the fact is the quality of the teaching and the quality of the research will go down. We will not do society, including minority groups, any favors by hiring people who are not qualified."

Bell himself asserts that "diversity assumes quality. We assume that we'll be getting people who will satisfy the range of scholarship, teaching, etc. Diversity simply wants representation of ideology that is unrepresented at HLS."

Timmons said, "The lack of a woman of color on faculty is terrible, in that it is suggestive of a larger problem in society. However we cannot solve it by focusing on the symptom because then people will tend to overlook the real cause. Emphasis here has been on the lack of a woman of

color, when the fact is there aren't that many people in the pool regardless of qualifications. In fact everyone [in the administration] would do a backflip if they could find a black female to hire. Everyone wants to hire more minorities. The fact has been there has not been qualified people. It would do more to harm the cause of social reinforcement and cultural identification to hire unqualified people."

Andres Snader, a 3L from La Alianza who immigrated to the United States with his family from Ecuador as a child, said, "Timmons mischaracterizes what diversity means. It is not a call for quotas or another political movement."

"Diversity tries to get minority perspectives, including those of blacks or Latinos who 'think like whites.' Obviously a minority can have the same political viewpoint as a person in the majority, but chances are that in the very process of idea formulation the minority will reach his or her position in a

(see TIMMONS on page 9)

Fraudulent Diversity

By Brian Timmons

Diversity is a special word these days, especially on college campuses. It's a catchy word that appeals to most people's sense of pluralistic idealism. As such, achieving diversity has become the much-touted mission of many institutions of higher learning. Everywhere student-admissions officers and faculty-appointment committees are clamoring to acquire "diverse" students and "diverse" faculty members. At law schools alone, for example, hundreds of students and faculty members from more than 40 different law schools participated in a nationwide day of protest last spring demanding greater diversity.

This seems like a perfectly noble goal for people in the business of educating others. Indeed, John Stuart Mill thought of the diversity of opinions as an intellectual "marketplace of ideas" and argued that it formed the very foundation of individual liberty. If recent events at Harvard Law School are any indication, however, what academics mean by diversity is something quite different from the noble goal we all envision.

Derrick Bell, Harvard Law School's first black professor, is the central figure leading the crusade for diversity at Harvard. Professor Bell has taken a leave of absence without pay this year and vows to stay away until "a woman of color is offered and accepts a tenured position on this faculty." (Of the school's 62 tenured professors, five are white women and three are black men.) Bell's much-publicized decision resulted from his failure to persuade the law school's tenure committee to extend a special

tenure position to a visiting black female professor.

The word diversity at Harvard and other universities is used euphemistically to denote the following physical characteristics: being black, or belonging to some other racial minority; being female; being either openly gay or lesbian, and, most recently, being disabled. This physical topography might be an appropriate measure of diversity if we were selecting fashion models for the Sears Christmas catalog, but what does it have to do with the "marketplace of ideas" we hope to encounter in academia?

The assumption is that by increasing members of disadvantaged groups, diverse ideas are likely to follow. This assumption is both prejudiced and implausible. That black people think differently from white people is a racist premise. It is puzzling that this kind of racial stereotyping doesn't offend the acute racial consciousness of progressive college campuses like Harvard. Why should we believe that a difference in people's skin color is likely to correspond to a difference in their ideas? It may well be true that there is some correlation between people's ideas and their backgrounds. But the color of someone's skin is only one of many factors that make up a person's background. The greatest divergence found in academia is among male professors, not between whites and blacks, or males and females. If college administrators truly want diverse ideas, the focus should be on people's ideas, not their backgrounds, sexual orientation, gender or color.

The intellectual diversity of people is infinitely more complex than a diversity of physical characteristics. It is morally reprehensible to think otherwise. Indeed, it is odd that the same iconoclast academics who denounce the law for its formalism champion so formalistic a view of diversity. Proponents of diversity should concede that they are seeking not diverse ideas, but something more akin to distributive fairness, or equal representation. There may be some valid reasons for attempting to achieve this proportional representation, but achieving it in the name of diversity is disingenuous. Hiring people in a manner that reflects the makeup of society as a whole is usually referred to as a quota system. If quotas are what the academics and administrators are after, then they should be candid about it. The "coalition for diversity," at Harvard, sounds more palatable than the "coalition for quotas."

Liberal avant-garde: But something even more fundamental than quotas is at stake. Bell's decision to protest came at the heels of the law-school administration's refusal to make a special advanced-tenure offer to a black female professor. It was no coincidence that the professor espoused a political agenda that was, like Bell's, radically to the left. What lies at the heart of Bell's demand for diversity, like many of his white male cohorts, is not pluralism nor quotas, but politics. In the name of diversity, they seek to preserve control of the liberal avant-garde that has

dominated institutions like Harvard Law School for the past two decades. In one of the diversity rallies I attended, held on campus last spring, Bell denounced Harvard for giving tenure to another black professor who had published an article critical of Bell's perspective on race scholarship. Bell emphatically declared that the law school should simply not hire black people who think like white people.

Curious that he should put it that way. Bell himself advocates views that are more representative of the white liberal establishment at Harvard Law School than those of most black people. Several polls have shown that most blacks favor the death penalty, support stronger criminal-law enforcement, are for prayer in school, are against abortion and are against quotas in hiring. Yet Professor Bell, like the majority of his white colleagues at Harvard, appears to disagree with average blacks on all those issues.

Charles Baudelaire wrote that it was by "universal misunderstanding that all agree. For if, by ill luck, people understood each other, they would never agree." Perhaps if people begin to understand what some academics have in mind when they speak of diversity, there will be more reluctance to embrace it so wholeheartedly. And yet to begin to understand what is meant by diversity may be the first step in truly beginning to achieve it.

Brian Timmons, 3L, *Newsweek*, Nov. 12, 1990.

A Nice Place To Sample, Not To Overindulge

By Karen Levy

Tapas
2067 Massachusetts Avenue
T: Porter Square + 2 minutes walk
Tel #576-2240

Reservations for groups of five or more. Weekdays 11:30 a.m. - 11 p.m.; Sat. & Sun. 12 noon - 11 p.m. Room for large and small parties. Full bar. Prices: Tapas (Appetizers and half-portion) \$2.50-\$8; Entrees \$11-18.

Over one hundred years ago -- or so goes the tale -- in southern Spain, where Spanish Sherry is made, a tavern owner placed a small piece of cured ham or chorizo (sausage) over the mouth of a wine glass, presumably to keep out the flies. The meat covered the glass, so from the verb "tapar" ("to cover" in Spanish) evolved the "tapa." From slices of ham years ago in Spain to international hor d'oeuvres today, the tapa has evolved from a bite of food to a way of life. Eating tapas involves sampling several mini-dishes, one right after the other, lingering over drinks, and leisurely conversing with friends, business associates, waiters, bartenders or your neighbors at the next table over. For the tapa itself, basically anything that can be reduced to an appetizer-sized portion goes.

Admittedly bearing little resemblance to southern Spain, Cambridge nevertheless offers a pleasant, but modified, version of the tapas experience. The casual Tapas on Mass. Ave. offers an

international menu of both hot and cold tapas (or appetizers), half-portion of entrees and full dinners -- entrees served with rice or potato and vegetables. The variety of portion sizes, the all-day-long service, and the interior of the restaurant reinforce the tapas tradition: that is, that the food serves as an accompaniment to the dining out experience, rather than as the focal point. If sampling, variety, and leisure is what you're after and time is no object, Tapas is the place to go. However, if you're very hungry, very rushed and don't really want to spend \$25 per person, stick to Three Aces.

Seated at one of the many large tables, and surrounded by bold, colorful, Span-

Cambridge Cuisine

ish murals, we selected first from the 20 or so hot and cold tapas. The tapas are roughly divided into three groups: the Oriental flavored dishes such as chicken sate and Peking ravioli; the Mediterranean vegetable dishes such as olives, marinated artichokes, stuffed grape leaves, pumpkin kibbeh with mint yogurt and the Middle East platter; and, American-influenced selections such as baked brie; dirty shrimp and smoked bluefish pate. We enjoyed our selection of the marinated artichokes served cold with pimientos, black olives and lemon vinaigrette, the tangy oriental eggplant roasted and served hot in a spicy black bean sauce, and the cold smoked bluefish pate with horseradish sour cream and pumpernickel slices. Just the right consistency and degree of fishiness, the

bluefish pate stood out for the unusual flavor combination of the pate and the sour cream spread.

The long wait between tapas and the second course, a selection of the half-entree portions, afforded us the chance to take in some more of the Old European atmosphere of the restaurant embodied in the dark wood panelling, tables and chairs and the large potted plants reminiscent of a warmer climate. Not quite tavern-like, the spacious one-room restaurant successfully emanates the aura of a casual meeting place rather than a private dining room. Finally, when we had sufficiently absorbed the old world atmosphere, our half-portion arrived. When the menu says half-portion, it means half-portion. Yet, what our small plates did hold was excellent. Chosen from the several seafood selections, the Catalan fish stew contained chunks of fresh fish, flaky scallops, shrimp and mussels soaking in a rich tomato-based, saffron-scented stock. From the meat selections, the veal scallopine a la russe featured high quality meat in a thin sour cream sauce and finished off with olives and wild mushrooms. Standing in contrast to the portions of the first two half-entrees, the generous portion of red beans and rice with andouille sausage was packed with smoky, cajun flavored sausage and rice done just right.

Once again, the meal seemed to stall between courses. Tapas apparently does not feel that their authenticity relies upon conforming to the traditional practice of serving the tapas immediately upon ordering. However, when the dessert tray finally arrived, we for-

got the wait and helped ourselves to the best "sampling" of the meal. Forced to reject several appealing pastries, including a tiramisu (Italian trifle), fresh fruit tart, chocolate roll, we confined ourselves to three: a warm, spicy apple tart, a creamy hazelnut cheesecake, and a chewy, rich fudge walnut raisin pie. The substantial portions, enhanced by good coffee, left us with a good feeling for Tapas.

Also worth noting, Woodley's Pub downstairs from the restaurant serves tapas and pretty good, reasonable priced drinks. Featuring darts, cable TV, games, a somewhat limited jukebox and a lot of tables and chairs, this cozy bar diverges in atmosphere from the European restaurant above it. With the homey feel of a living room, and a very attentive bartender, this club-like bar drew a nice yet lively crowd.

Under the right circumstances, Tapas could be a satisfying, enjoyable experience. In Spain, where lunch may take place as late as 3 p.m. and dinner as late as 10 p.m., tapas as a way of life may be necessary. The starving Harvard Law student, however, rarely needs to run out for that quick \$12 snack when kept in class through lunch or rudely awakened by the guard in Langdell at closing time. But, carefully chosen for the occasion, i.e. a light, late dinner desserts after the movies; a midday "business" meeting place; a meal for a group of people with differing tastes and appetites; or any special celebration where food is not the focal point and money is not the issue, Tapas offers a nice change from the usual Porter Square fare.

Americans Must Share Burden In Gulf Effort

The heat is rising. Over 200,000 American troops and well over 100,000 of our allies' troops are stationed in the Saudi desert, facing Iraqi forces. Another 150,000 men and women are on their way. Secretary of State Baker recently visited world leaders to bolster support for a military offensive, and President Bush has turned up the rhetoric to scare Hussein, but also to

By Roy Edelstein
and Stephen Kastenber,
RECORD Columnists

prepare the American public for war.

While war talk heightens and human lives are mere means to protect our oil dependent "way of life," back at home we continue to drive gas guzzling cars carrying an average of 1.3 persons per car, and to waste energy on other supposed necessities. We have placed the entire burden and huge risk on a fraction of the population, while far away we continue in our wasteful ways, contributing to our continuing dependence on Middle East oil imports. We have ignored our own responsibilities in this conflict.

We, as Americans, and especially as draft age students and possible future community leaders, have a duty to conserve. Our high school and college classmates are out in the desert, as would we be if the draft were instituted. If we are willing to risk human lives for our oil dependency, we should make some sacrifices of comfort back home. Conserving energy today not only reduces our dependence on foreign oil, but also symbolically reminds us that while we sacrifice only a little, our peers may sacrifice all.

There are many ways to conserve energy, both in our individual lives, and through larger public policy. A simple action is to turn off unnecessary lights. The dormitory kitchen, bathroom, and lounge lights are often left on all night for no reason at all. Granted these are energy efficient bulbs etc. but the half second required to flick off a light is the least we can do.

In our homes, Americans consume more than twice as much energy as Europeans or Japanese. The greatest

amount of home spent energy is used for space heating -- 48 percent (all energy use statistics are cited from "the Official New England Earth Day 1990 Action Guide"). If all Americans lowered their thermostats by six degrees, we would save 570,000 barrels of oil per day!

As winter approaches and the dorm furnaces heat up, don't just open the window to keep your room comfortable. Call maintenance at x5-5521 and ask them to adjust the heat. Off campus, consider lowering the thermostat a few degrees. Wearing a sweater is still more comfortable than fatigues.

Water heating accounts for 14 percent of home energy use. There are several ways to reduce the amount of hot water used daily, and, accordingly, the amount of oil used to heat that water. For example, you can turn off the water while shaving and brushing teeth (saves 4-6 gallons of water per day); wash and rinse dishes in a filled sink basin (saves 8-15 gallons/day), run the dishwasher or laundry machine only when full, and take shorter showers. You can also lower the water temperature in your boiler from 140 degrees to 120 to use 18 percent less oil. It is too easy to lose track of these heating costs, especially living in dormitories or in rented apartments where utilities are included in the rent.

An even more significant area for reducing oil consumption is transportation. The average commuter car today carries 1.3 people. If we increase this by 1 person per car, we will save approximately 600,000 barrels of oil per day!!! And of course we can cut consumption much more by filling the car, or better yet leaving it at home and using public transportation or a bicycle.

Sharing a cab from the airport with a stranger is counterintuitive to an American, especially if "the firm" will pay for it anyway. But it is ridiculous that when a shuttle lands at LaGuardia, dozens of cabs ride almost empty to practically the same three or four locations in Manhattan. At Logan there is always at least one other person going to Cambridge. Why don't people share cabs? Maybe they are embarrassed or uncomfortable asking. Maybe they just don't want the inconvenience.

An even better alternative is to use mass transportation. For example, from LaGuardia there are two bus shuttles, one that goes to several midtown locations for \$7.50, and the other which in

12 minutes arrives at the new orange subway line which is a 10 minute ride to midtown. Although this is even faster and much less expensive than taking a cab downtown, two weeks ago I rode the bus alone! Now there's a real waste.

In addition to what we can do as individuals today, we should also maintain a longer range view and consider larger national policy conservation possibilities. For example, regarding transportation costs, we need to encourage and enable alternative transportation sources such as bicycles and mass transit. In the Netherlands, a 1986 national campaign to use bikes for short trips resulted in bike use for 20-30 percent of urban trips. Such a policy requires both advertisement and a true commitment to bicyclists' safety, with respected bike lanes and cautious driving.

Improvements of public transportation might include increased security, reduced rates, or disincentives for urban car use. For example, Florence, Italy allows almost no parking in the older parts of town. Also, San Francisco is currently considering eliminating all free parking in non-residential parts of the city. If necessary, the costs of public transportation and bike access might be supported by increased gas tax.

Our nation's broader goal should be alternate, safe, energy sources. We need an explicit energy policy which places an emphasis on inherently safe energy such as solar energy or nuclear fusion. While fusion is not yet feasible and solar energy not yet economical, if our government attacks the problem the way it attacked the goal of a man on the moon after Sputnik, or star wars, results will follow. Let's make Iraq our Sputnik and safe reusable energy our star wars science crusade for the 1990s (as a complement, not a substitute, to our social goals).

America unfortunately seems to require a crisis to spur action. Certainly there are many reasons to work toward conservation beyond the present crisis at hand. It would be loftier to conserve for future generations, rather than AGAINST Hussein and dependency on foreign oil; but either way, conservation is a must.

Considering the importance of conservation in today's oil crisis, why hasn't President Bush publicly urged conser-

vation as Carter did in the 1970s, or as Hussein is doing with Iraqis now? Hussein has called upon Iraqi women and children to conserve and recycle clothing, toys, food, and anything else that requires purchase from the West. Why has our focus been entirely on military force, with no mention of oil conservation? Perhaps the Administration fears that a focus on self sacrifice and constraint on Americans' comforts will cause unpopularity, while at least currently, high oil prices can be partly "blamed" on "greedy oil companies."

As over 200,000 Americans wait in the desert and risk their lives, the least we can do is shut off the lights, share a cab, and shorten our showers. Further, we should look beyond the immediate crisis and consider our long term implications and our need for a serious energy policy, research and development, and mass transit.

Gilbert's

(continued from page 5)

time would be extremely boring; and, I think most people are probably already bored enough by their classes.

To have accomplished significant GPA's and LSAT's, or to have otherwise been afforded the privilege of attending HLS, is hardly an accomplishment worthy of celebration. For HLS students to be truly great, we must be passionate. We must have something that we care about more than BMW's and merging and acquisition, something other than CD players and petty disputes. Something like the advancement of justice, in the truly comprehensive meaning of the word, immediately comes to mind.

If, by saying these things, I incense some of the readers, then I have partially achieved my purpose; however, I wish I could write completely anonymously. On one hand, what I have to say has very little to do with who I am: a law student just like so many others here. On the other hand, however, there is a revolutionary fire that burns in the heart that no amount of abject criticism or condemnation, or unceasing drudgery can ever hope to extinguish. That...is passion!

Enjoy the break...Knock them boots...See Ya!

Roy Edelstein and Stephen Kastenber,
2Ls, are RECORD Columnists.

Timmons

(continued from page 7)

much different way because of the pervasive influence of race and culture in American society. As a result, we have a different perspective from a minority professor even though he or she might have the same actual political viewpoint as a majority professor. Timmons completely ignores the fact diversity can bring in different perspectives, regardless of politics."

Ratner added, "We can't separate people from their ideas. The fact is the faculty teaches what it cares about, and with a predominantly white male faculty there are gaps in our education. We are not being taught about how most people experience the law. HLS is largely a training ground for corporate clones. We simply want people here who have experienced the law the way our communities have experienced the law so we in turn can service those communities."

Jodi Misher, 3L, felt that the column was persuasive despite the fact that she disagreed with the conclusion. "This is the first well thought out argument I've heard from the other side, but I think he failed to acknowledge that in a lot of instances one will get different viewpoints by hiring minorities," she said.

David Gross, 1L, feels that the Timmons' quota argument is disingenuous.

"Quotas are seen [by Timmons] as an attempt to give underqualified people opportunities they would otherwise not get. This idea is insulting to minorities. These people are already capable of teaching us. All we ask is that they be given the opportunity to do so."

Fried, agreed with Timmons that diversity proponents were drawing a strict correlation "between race and mind."

"That is the sort of thing that racists have said for a long time," Fried said. "If we want diversity of minds, there is something troubling that diversity of mind correlates with diversity of race. The premise is in terms of subject matter, and interests and the conclusion is in terms of race, it is a conclusion that does not follow."

Timmons asserts that the call is for

cultural diversity, not ideological, or intellectual diversity. "This is evidenced by the fact that certain disadvantaged groups are identified with the movement such as gays, lesbians, racial minorities, etc. This indicates that they are not necessarily looking for people with different ideas."

Cassandra Butts, a 3L who is active in the diversity movement, strongly disagreed.

"There are enough qualified people out there who could be on the faculty. Anita Allen and Gerald Torres have been out there for a while and this is the first time HLS has extended invitations for them to come here. The law school has not indicated that it has had to lower its standards to get them here. This indicates that there are qualified people out there who could give some representation for the students on campus. Brian is making it safe for people to be against diversity. He is simply giving an argument that people can find shelter in and therefore avoid addressing the issues."

Brad Berenson, 3L, defended Timmons.

"There are respectable and powerful arguments that the diversity cause is destructive even for the minority communities it purports to help. Generally the rhetoric of diversity is a mask for racial preferences of various types. If you believe that racial preferences are in themselves destructive, then this cause is misdirected. Racial preferences can destroy the collective self-esteem of minority beneficiaries and foster resentment among majority groups and actually create a greater climate of racism than would exist without them."

John Lee, 2L, said, "To portray the diversity movement as a conflict between a candidate's background and his competence is rather unfair and this is what portraying it as a quota system does. A quota system implies that you want to achieve diversity at any and all cost. It is better to look at the diversity movement as a request to the administration that in considering a candidate's qualifications to teach at HLS that the administration consider, in addition to excellent scholarship and exceptional expertise in a legal field, the candidate's particular perspective with regard to the law. Ethnic background cer-

'Sex, Lies, And Veritas': Gender Bias Takes The Stage

By Carol Umhoefer

"Sex, Lies, and Veritas: A Revue of the Battle of the Sexes" provides wholesome entertainment the entire family can enjoy, and may enable viewers to answer the important question, "Why is attendance at HLS one of the world's most effective methods of birth control?"

This two act musical revue showcases a variety of home-grown HLS talent all too easily overlooked, while highlighting Broadway's treatment of heterosexual relationships over the past few decades.

Some of the production's more memorable moments are also some of the most offensive. First years Scott Auby, Steve Baughman, Ellis Butler, Rich

The show also presents the darker side of gender clash. Ellen Chubin, 1L, and Cameron Powell, 2L, glorify vivisection and dismemberment in "Then You May Take Me to the Fair," as do Auby and Jennifer Walker Elrod, 2L, in "Masochism Tango." Thanks to the energized talents of second years Jennifer Bensinger and Dave Sander, little of the dangerous dance is left to the imagination. Nor is Erin Monahan's, 2L, intent to put a glass up her husband's rectum, after she and Butler have finished their version of "Master of the House" from "Les Miserables." It seems that hubby's other body parts don't hold a large interest for her. These numbers give new meaning to S&M -- snuff and mutilation.

For those who like their sex with a bit more subtlety, there are innuendoes galore. "So screw me, screw me..." croons Adam Leiman 2L to grimacing lover Nancy Novagrodsky in one of the show's best numbers. In "A Secretary Is Not a Toy" lecherous executives learn that a secretary is not an erector set, or a caboose with a "Lionel" tattoo, for that matter.

And in case by this time the theme is not yet obvious, count on Auby's hilarious "Making Whoopee," complete with trumpet solo, to get the message across loud and clear.

The musical revue, "Sex, Lies, and Veritas," is produced and directed by Annabel Shull and Jennifer Walker Elrod, and presented by the HLS Drama Society. Shows will be held in the Ropes Gray room on Nov. 29-30 at 8 pm, Dec. 1 at 7 and 9:30 p.m. Admission is \$5.00.

Record Review

Cicchillo, Todd Hartman and Rob Rader's strong rendition of "Nothing Like a Dame," besides being grammatically incorrect, is politically incorrect as well. So for that matter is Kirk Lipsey's Dylanesque, 1L, assertion, "The more forbidden, sweeter tastes the pie."

There is abundant sweetness, especially as typified by the well-matched voices of Melissa Barnes, 2L and Baughman extolling the joys of "People Will Say We're In Love." The duet is only equalled in cuteness by first years Hartman and Kendy Hess singing, "I Remember It Well" or, as it turns out, "I Don't Recall at All."

tainly is not an exact indicator of a person's ideology. However, it is not unreasonable to believe that a person from a traditionally underrepresented group has encountered and viewed the law in a profoundly different way. What we're saying is that we want those perspectives represented and ad-

dressed by the faculty here at HLS."

Berenson stated, "He [Timmons] has performed a valuable service by making it clear to people within and without the Harvard Law School community that there's more than one side to the diversity debate."

R.M. ROCK'S CAREER GUIDE

Which one would you promote?

This is Your body...



This is Your body in a Rock Suit...



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DECEMBER 1 - 8
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Custom Suits \$295 - 500
All Cotton Shirts \$38 - 50
Tuxedos, Blazers, Overcoats
100% Satisfaction Guarantee

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Stuart Burch 497-9055

~ or ~

Don Greiner 864-2228

Portions Of The C.C.R. Lawsuit

[The following is as much of the C.C.R. complaint as space permits. Interested students can view the entire complaint on reserve in Langdell Library. Omitted from the beginning of the complaint below are the portions concerning jurisdiction, standing, and parties.]

FACTS

A. History of Hiring at Harvard Law School

11. HLS was established in 1817. Until 1971 — 154 years later — the tenured and tenure-track faculty of HLS was composed exclusively of white men. There were no women, no African Americans, no Latinos, no Asian Americans, no Native Americans, no openly lesbian or gay persons, and no persons with physical disabilities on HLS's tenured or tenure-track faculty.

12. In 1971, Derrick Bell was appointed to a tenured faculty position. Professor Bell was the first African American professor to be appointed to either a tenured or tenure-track faculty position at HLS. Professor Bell is currently taking a leave of absence to protest the lack of diversity on HLS's faculty.

13. One year later, in 1972, Diane Lund was added to the tenure-track faculty as an Assistant Professor, and Elizabeth Owens was hired as a tenured Professor. They were the first women to join HLS's tenured or tenure-track faculty. Neither Professor Lund nor Professor Owens currently teaches at HLS.

14. No Latino has ever been appointed to either a tenured or tenure-track position at HLS.

15. No Asian American has ever been appointed to either a tenured or tenure-track position at HLS.

16. No Native American has ever been appointed to either a tenured or tenure-track position at HLS.

17. No African American woman or any other woman of color (Latina, Asian American, or Native American) has ever been appointed to either a tenured or tenure-track position at HLS.

18. No openly lesbian or gay person has ever been appointed to either a tenured or tenure-track position at HLS.

19. No person with a disability has ever been appointed to either a tenured or tenure-track position at HLS.

20. From at least as early as 1969 until the present, students have continually petitioned the Administrations of Harvard University and HLS and the HLS Faculty to hire professors from underrepresented and unrepresented groups.

25. In 1990, HLS's faculty includes sixty-six tenured and tenure-track professors. Five of these sixty-six faculty members (7.58%) are women, all of whom are white; five are African Americans (7.58%), all of whom are male. None is Latino (0%); none is Asian American (0%); none is Native American (0%); none is openly lesbian or gay (0%); none is a person with disabilities (0%); none is a woman of color (0%).

B. Defendant's Current Hiring Practices

26. There are several categories of law teachers at HLS. They include, *inter alia*, tenured faculty members, otherwise known as Professors; tenure-track faculty members, otherwise known as Assistant Professors; and Visiting Professors.

27. Tenured faculty members essentially have lifetime positions. They may serve until they choose to leave or retire; they can only be removed upon a showing of exceptional cause. Only tenured faculty members can vote to recommend a candidate for tenure. They are the highest paid of the HLS faculty and enjoy the greatest job security.

28. Tenure-track faculty members are full-time teachers with some, but not all, of the rights and privileges granted tenured faculty. Tenure-track faculty are eligible to be considered for tenured positions. There is no standard time period that must elapse before tenure-track faculty may be considered for tenure.



Derrick Bell outside of the Massachusetts Superior court after the filing.

A.P. Photo

29. Visiting Professors are those who come to teach at HLS for a fixed period of time, generally for one year. Under a two-year old policy of HLS, Visiting Professors may be considered for tenured positions only after they have completed their visit at HLS, usually in the following school year.

30. Visiting Professors serve only limited roles on the faculty of HLS. Unlike tenured and tenure-track faculty members, Visiting Professors cannot serve on permanent faculty committees. They cannot vote at faculty meetings. They are restricted in their ability to serve as academic advisors because of the limited duration of their presence on campus.

31. According to the 1990 HLS Affirmative Action Plan ("the Plan"), faculty members are identified and recruited through four primary processes: solicitation of current faculty, canvassing of HLS honor graduates, canvassing of graduates of other law schools, and "other efforts." The Plan continues: "Periodically, the Dean writes to all other accredited American Law Schools for recommendations of minorities and women." The Plan also states that a faculty committee on minorities purportedly reviews the Minority Law Teachers' Directory annually. Segments of the Plan are attached as Exhibit "B."

32. In contrast to HLS's stated policy regarding minority recruitment, representatives of HLS did not attend the 1990 Latino Alumni Conference sponsored by La Alianza, a student organization representing Latino students at HLS. The conference was attended by Latino graduates of HLS from across the country — including a number of graduates who are currently Professors at other law schools. Although the Dean and members of the Appointments Committee were invited to attend the conference, not a single one of these invitees attended any part of the conference.

33. According to former-Dean James Vorenberg, writing in October, 1984: "The authority to appoint members to the Harvard University faculty resides in the two governing boards of the University, the President and Fellows of Harvard College... and the Board of Overseers." The Dean of HLS is charged with reporting the recommendations of the HLS faculty, along with his or her own recommendations, to the governing boards' Joint Committee on Appointments. A copy of Dean Vorenberg's statement is attached as Exhibit "C."

34. Recommendations to the faculty for appointments to tenured and tenure-track positions may be made either by the Appointments Committee or the Lateral Appointments Committee. The Appointments Committee has two subcommittees, which are specifically charged with the function of finding women and minority faculty candidates, and bringing them to the attention of the Appointments Committee.

35. When recommendations are made to the faculty, individual members of the appointments committees may report their views on the candidates' scholarship, teaching and other qualifications, as well as the committees' recommendations regarding the appointment. Other faculty members

may also voice their opinions.

36. After discussion by the faculty, tenured professors vote on whether to recommend a candidate to Harvard University's governing boards' Joint Committee on Appointments.

37. On April 27, 1990, four HLS professors submitted a resolution to the HLS faculty proposing a reform in the recruitment process for minority law teachers. According to these professors: "There are a number of minorities currently in law teaching considered by many members of faculty well qualified for appointment here. Most of these individuals have never been considered by the faculty because the appointment committee has not submitted their names for consideration." The professors proposed that "every appointments committee decision concerning a member of a minority — even when the decision is negative — be reported to the faculty, giving the faculty itself, and not just the committee, the opportunity to vote the appointment up or down." As far as Plaintiff is aware, this proposal has not been considered or voted upon by the HLS faculty.

38. On October 22, 1990, Plaintiff requested from HLS a list of candidates considered for and/or offered full-time faculty positions over the last fifteen years. In a letter dated October 22, 1990, from Associate Dean Louis Kaplow, HLS refused to provide the information requested. Dean Robert Clark failed to respond to Plaintiff's request. The letter to HLS is attached as Exhibit "D."

39. In a letter dated October 9, 1990, Plaintiff requested from Assistant Dean Stephen Bernardi a list of Visiting Professors at HLS, inquiring which of these professors received permanent employment offers from HLS. A similar request was sent to Dean Robert Clark on October 22, 1990. Plaintiff received no written response to either of these requests. A copy of these letters are attached as Exhibits "D" and "E."

40. HLS does not accept unsolicited applications for tenured or tenure-track positions. Persons are considered for positions based solely on the discretion of the faculty and the appointments committees.

C. Subjective Nature of Defendant's Hiring Practices

41. The Defendant's evaluation of potential candidates for tenured or tenure-track positions is highly subjective. No formal written qualifications exist to evaluate candidates for tenured or tenure-track positions. The substance, detail and depth of discussion or consideration vary widely from candidate to candidate.

42. According to Assistant Dean of Academic Affairs Stephen Bernardi, who administers HLS's faculty hiring process and policies, there are no written statements of criteria to be used in selecting tenured, tenure-track and visiting professors. In response to a request by Plaintiff for any written statement of HLS's policies, procedures, or criteria regarding the hiring of tenured, tenure-track, and visiting professors, Assistant Dean Bernardi produced the following non-binding faculty resolution as the sole written reduction

of HLS hiring criteria. The resolution dated September 17, 1986, states: "That it is the sense of the faculty that the prima facie scholarship standard for promotion of assistant professors to tenure is the demonstration of promise of excellence in scholarship by means of substantial scholarly achievement of high quality" (emphasis added).

43. To the extent that the faculty employs any criteria in evaluating candidates for full-time faculty positions, such criteria are applied inconsistently. When asked to articulate HLS's faculty hiring policy, Assistant Dean Bernardi responded: "There is no statute adopted as to the context in which to consider each candidate. It differs within the faculty. There are [also] no unwritten norms. You are generally either persuaded or unpersuaded. . . . Everyone is just a one man band." Bernardi also stated that HLS has no uniformly or consistently applied standards for faculty hires. He stated that there is no "talk of a comparison between A and B, like we tenured A three years ago; B is like A so we should tenure B. Or B is very different from A and shouldn't be hired." Generally, candidates are presented on teaching scholarship and "colleagueship."

44. The only other written statement of criteria is part of a statement by Assistant Dean Louis Kaplow. According to Kaplow, "Harvard Law School's standards for hiring focus primarily on (1) whether a candidate is the leading available academic or academic prospect in the field in the country, and in addition, (2) whether a candidate meets an independent standard of extreme excellence." The statement does not specify how the faculty determines who is a "leading available academic or academic or academic prospect."

45. The faculty determines whether a candidate meets independent standards of extreme excellence by soliciting comments from persons outside the HLS faculty. The HLS faculty chooses the persons from whom comments are solicited.

46. Another subjective element of Defendant's hiring practices is the discretion accorded the Dean in choosing the members of the faculty appointments committees. By selecting the members of the appointments committees, the Dean may effectively regulate the breadth and depth of candidates to be considered for full-time positions.

47. In the entire history of HLS, no more than three women, and no more than one at any given time, have served on the Appointments Committee. The Appointments Committee has only recently included its first African American professor. No other minority faculty member has ever served on the Committee.

48. Defendant's substantial reliance on subjective criteria for evaluating potential candidates allows for a disparate impact on candidates from underrepresented and unrepresented groups for two main reasons. First, Defendant's substantial reliance on subjective criteria allows ample opportunity for Defendant's unconscious biases to influence their opinions as to the qualifications of candidates from diverse backgrounds. Secondly, reliance on subjective criteria allows Defendant to fall into the common pattern of defining "qualified candidates" as being those that most closely resemble the predominate number of tenured faculty members. Thus, the Defendant's use of subjective criteria results in its disproportionately choosing candidates from the same backgrounds as a majority of the existing tenured faculty and failing to consider potential candidates from underrepresented and unrepresented groups.

49. Defendant's subjective hiring practices constitute a pattern or practice of employment that is not justified by business necessity. Defendant cannot show that such unconstrained subjectivity is necessary for the goal of maintaining a vigorous and intellectually stimulating academic environment.

(See COMPLAINT on page 11)

Complaint

50. Defendant could achieve its legitimate employment goals through the use of employment practices that have less of a discriminatory effect on women and minorities.

D. Objective Nature of Defendant's Hiring Practices, As Inferred

51. Although HLS has no formal articulated hiring criteria, indications of a *de facto* set of objective criteria can be inferred from analysis of the composition of HLS faculty.

52. Examination of the current HLS tenured faculty indicates that certain qualities tend to be present among a substantial number of the faculty. Several qualities are sufficiently prevalent to allow an inference that they are typically relied upon by Defendant in selecting tenured and tenure-track faculty members.

53. Approximately three quarters of HLS professors served as law review editors in law school. A majority of the faculty held clerkships; a majority graduated from prestigious law schools; and a majority published in legal journals before they were granted tenure. These qualities amount to unwritten qualifications for tenured and tenure-track positions at HLS. This data is documented in Exhibit "F."

54. Defendant effectively maintains a "ten year policy," requiring law school graduates to wait ten years before being considered for tenured positions. Defendant's Affirmative Action Plan for 1990 implies the existence of this policy by restricting the pool of qualified candidates to those law graduates more than ten years out of law school.

55. Upon information and belief, the objective criteria used by Defendant have a disparate impact on women, minorities, openly lesbian or gay and persons with disabilities. Defendant could achieve its legitimate employment goals through the use of employment practices that have less of a discriminatory effect on these groups.

56. The objective criteria used by Defendant constitute a pattern or practice of employment that are not justified by business necessity. The objective criteria are not useful proxies for the candidates' teaching ability, nor are they accurate predictors of the quality of the candidates' future scholarship.

57. Howard Glickstein, in *Law Schools: Where the Elite Meet To Teach*, explained that criteria used to select law school professors are not job-related:

It was 18 years since I had graduated from law school. During those years, I had worked for a leading New York City law firm, and for the Civil Rights Division of the United States Department of Justice, where I argued cases in the federal district and appellate courts, prepared briefs for the Supreme Court and helped draft major legislation. I also had been the General Counsel of a federal agency [United States Commission on Civil Rights] and served in a position to which I was appointed by the President of the United States and confirmed by the United States Senate. Now, I was applying for my first job as a law school faculty member. I was in the presence of a law school dean who was reviewing my resume. After a few minutes of reading, he looked up, smiled and said: 'Oh, I am glad to see that you were on the Yale Law Journal.' I can think of no better example to demonstrate the elitism and narrow hiring criteria that permeate American legal education.

58. Much of the highly-respected scholarship in the country is produced by professors who lack one or more of the qualifications traditionally relied upon by Defendant.

59. Many outstanding minority professors do not possess the qualifications HLS uses to consider candidates for tenured and tenure-track positions. For example, Professor Patricia Williams at the University of Wisconsin, Professor Eleanor Holmes Norton at Georgetown, and Professor Drew Days at Georgetown, are among those highly regarded law professors without the qualifications effectively relied upon by

the Defendant.

60. Some non-minority professors at HLS also do not possess the qualifications Defendant requires of its professors, and have successfully performed their duties as professors. For example, noted Constitutional Law Professor Laurence Tribe did not serve on law review while he was in law school.

61. Since the diversity of background and experience enhance professors' teaching effectiveness, the use of the defendants' objective criteria that, on information and belief, have a disparate impact on qualified women and minorities may actually result in the selection of candidates of lesser teaching ability.

F. The Impact of Defendant's Hiring Practices on Qualified Women

62. Five of the sixty-six tenured and tenure-track professors at HLS are women. Women thus constitute 7.58% of the tenured and tenure-track faculty.

63. Five women faculty members hold tenured positions, and no women hold tenure-track positions. Women therefore comprise 8.06% of the sixty-two tenured positions at HLS. Women hold 0% of the four tenure-track positions.

64. According to data compiled by the American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar, there are 1,223 full-time women law professors in ABA-approved law schools. This data is attached as Exhibit "H." As indicated in Exhibit "G," there are a total of 5,151 full-time professors teaching law nationwide. Women thus constitute 23.74% of all full-time law professors in ABA-approved law schools.

65. The proportion of full-time women law professors nationwide is more than three times that of full-time women law professors at HLS.

66. According to Professor Richard Chused, who conducted a survey of law teachers on behalf of the Society of American Law Teachers ("SALT"), "Of the thirty-eight northeastern law schools, only two had less than twelve percent of their faculty positions occupied by women. One of the two was Harvard." This survey was based on faculty data from 1986-87. Since that time, HLS has hired no new women faculty members.

68. As indicated by Exhibit "L," HLS's hiring of women has actually declined over the years. For instance, the percentage of professors hired by HLS who are women since 1970 is 18.18%. By contrast, the percentage of women hired by HLS since 1982 is 11.76%.

69. On information and belief, the percentages of faculty members hired by HLS who are women, measured from any year since 1980 until the present, are substantially below the percentages of faculty members who are women hired in the equivalent time period nationwide.

70. The percentages of women law graduates nationwide from 1972 to 1989 who are women is detailed in Exhibit "K." Since 1980, approximately 131,648 women have graduated from ABA-approved law schools.

71. Women comprise 36.75% of law graduates since 1980. Women comprise 38.10% of law graduates since 1982. Women comprise 39.76% of law graduates since 1985.

72. According to *The Lawyer Statistical Report*, published in 1985 by the American Bar Foundation, women lawyers admitted to the Bar between 1971 and 1979 pursued careers in or related to law teaching at over twice the rate of males admitted to the Bar during the same period.

73. Upon information and belief, the percentages of tenured and tenure-track women faculty members hired by HLS, measured from any year since 1980 until the present, are substantially below the female percentages of lawyers qualified for and likely to be interested in full-time law teaching positions over the same time period.

74. Defendant's reliance on the subjective criteria alleged in paragraphs 41 through 47 has a disparate impact on otherwise qualified women.

75. To the extent that Defendant relies on the objective criteria alleged in paragraphs 51 through 54, these objective criteria have a disparate impact on otherwise qualified women.

G. The Impact of Defendant's Hiring Practices on Qualified Women of Color

76. Women of color include women who are African American, Asian American, Latino, or Native American. Of the 66 tenured and tenure-track professors at HLS, 0 are women of color. Women of color thus constitute 0% of the tenured and tenure-track faculty.

77. According to data compiled by the ABA Section of Legal Education and Admissions to the Bar, there are 131 full-time women of color faculty members in ABA-approved law schools. This data is attached as Exhibit "J." As indicated in Exhibit "G," there are 5,151 full-time law professors nationwide. Women of color thus constitute 2.54% of all full-time law professors in ABA-approved law schools.

78. Compared to the percentage of law professors nationwide who are women of color, the percentage of full-time law professors at HLS who are women of color is infinitely small.

79. No woman of color has ever been hired by HLS for a tenured or tenure-track position.

80. On information and belief, the percentages of women of color tenured and tenure-track faculty members hired by HLS, measured from any year since 1980 until the present, are substantially below the percentages of women of color full-time faculty members hired nationwide in the equivalent time period.

81. On information and belief, the percentages of women of color tenured and tenure-track faculty members hired by HLS, measured from any year since 1980 until the present, are substantially below the women of color percentages of lawyers qualified for and likely to be interested in full-time law teaching positions over the same time period.

H. The Impact of Defendant's Hiring Practices on Qualified Latinos

84. Of the sixty-six tenured and tenure-track professors at HLS, zero are Latinos. Latinos thus constitute 0% of the tenured and tenure-track faculty.

85. According to data compiled by the ABA Section of Legal Education and Admissions to the Bar, there are at least 68 full-time Latino faculty members in ABA-approved law schools. This data is documented in Exhibit "M." As indicated in Exhibit "G," there are 5,151 full-time law professors nationwide. Latinos thus constitute at least 1.3% of all full-time law professors in ABA-approved law schools.

86. Data from the three ABA-approved law schools in Puerto Rico is not included in this calculation. On information and belief, nearly all professors teaching law at these law schools are Latino. The actual percentage of those teaching law full-time in ABA-approved law schools who are Latinos must therefore be higher than indicated in paragraph 83.

87. Compared to the percentage of law professors nationwide who are Latinos, the percentage of full-time law professors at HLS who are Latinos is infinitesimally small.

88. No Latino has ever been hired by HLS for a tenured or tenure-track position.

89. On information and belief, the percentages of Latino tenured and tenure-track faculty members hired by HLS, measured from any year since 1980 until the present, are substantially below the percentages of Latino full-time faculty members hired nationwide in the equivalent time period.

90. Since 1980, approximately 9,963 Latinos have graduated from ABA-approved law schools. This figure is based on the numbers of Mexican-Americans, Puerto-Ricans, and "Other Hispanics" enrolled as third-year students at ABA-approved law schools from 1979 until 1989. Information for these statistics is attached as Exhibit "N." The ABA does not maintain data on the number of Latinos actually awarded J.D.s.

[The complaint next describes the impact of faculty hiring practices on African-Americans, Asian-Americans, Native Americans, Openly Gay and Lesbian persons, and disabled persons.]

N. Impact of Year Away Policy on Qualified Women and Minority Vis-

iting Professors

137. On information and belief, the requirement that Visiting Professors leave HLS before being offered a tenured or tenure-track position (the "Year Away Policy") has a disparate impact on qualified women, women of color, Asian Americans, African Americans, Latinos, Native Americans, openly lesbian or gay persons, and persons with disabilities.

INJURY TO PLAINTIFFS

138. Plaintiff's members are aggrieved persons under Massachusetts General Laws Chapter 151B and Chapter 93, Section 102. Plaintiff's members have been directly and substantially harmed by the absence of diverse group professors. See affidavits attached as Exhibit "R."

139. As members of the HLS community, Plaintiff's members have a significant personal stake in the composition of the HLS law faculty. In particular, as students, they come into contact with professors in a variety of ways which are integral to the academic experience and social and professional development of members of Plaintiff organization. Professors, among other things, teach classes and grade student work, serve as role models, supervise research and writing projects, serve with students on committees, advise seminar and third year papers, provide career advice, offer business and professional contacts, write letters of recommendation, serve on extracurricular panels, advise first year students, judge moot court arguments, and work with student organizations.

140. Plaintiff's members have been injured in that they have been denied the social, educational and professional benefits of association with an integrated faculty.

141. Plaintiff's members are also directly aggrieved by the lack of an integrated faculty which denies them equal and adequate educational opportunity, perpetuates badges of inferiority, and fosters insensitivity and intolerance, which are contrary to the pursuits of an academic institution.

A. Quality of Education

[The complaint here marshals legal precedent and other evidence in support of the general proposition that diversity is beneficial to education. It then returns to HLS specifically.]

150. Slavery, women's rights to own and inherit property, marital property, landlord-tenant law, zoning law, and other property law issues are frequently neglected in first year property classes. In fact, in the 1989-90 academic year, one group of first year students approached their property law instructor to ask that a unit on slavery be included in the course. The instructor — a white man — replied that he was not familiar enough with the law of slavery to teach such a section. No arrangements for supplemental reading or an alternate instructor better versed in the field were made by the professor.

151. In contracts courses, topics such as lesbian or gay cohabitational or non-marital contracts, surrogate parenting and adoption agreements, for instance, are also not covered. Criminal law professors often neglect subjects such as domestic violence, anti-sodomy laws, capital punishment, vagrancy ordinances, and hate crime.

152. Other subject areas are almost entirely ignored. American Indian law is taught once every two years in a three week course. Courses on domestic violence and sexual orientation were first added to the course offerings in the 1990-91 school year. These two classes are being taught by Visiting Professors, not tenured or tenure-track professors, and are not permanent course offerings.

153. The extent to which diversity can expand the scope of class discussion is evidenced by the broadened legal discourse brought about by the significant numbers of women entering the fields of law and legal education. Women lawyers and law teachers are now litigating, writing and teaching on privacy and reproductive rights, pornography, employment discrimination, marital and family law and other legal fields which had been historically neglected.

Complaint

(continued from page 1)

percent of the tenured professors of the law school although women constitute 23.74 percent of all full-time law professors in ABA-approved schools.

The complaint further asserts that women of color, Latinos, Asian Americans, African-American, Native Americans, Latinos, disabled and openly gay and lesbian people are all under-represented on the Harvard law school faculty in comparison to other law schools. The students cited statistical data from the American Bar Association to support the claims.

According to the complaint, the alleged under-representation results from a faculty hiring process that first restricts the pool of possible candidates through the use of objective criteria of questionable relevance -- such as law school academic record and published work -- and then allows the final decision to be an unstructured exercise of subjectivity.

The complaint also includes an account of the history of racial integration of the faculty from the school founding to the present. The complaint notes that the school tenured its first black faculty member in 1971, 154 years after the school's founding.

"Ten years ago there were three women and two black men on tenured faculty. Now there are five women and three black men," said Keith Boykin,

2L, one of the signers of the complaint. "Ten years of progress amounts to the hiring of a single black man."

"There are a number of objectives for this suit," said Boykin. "The foremost objective is to end discrimination at the school. The other objective is to call attention to the shocking under-representation of minorities and women. In that regard we have succeeded far beyond even our most optimistic expectations."

Dean Clark, like Prof. Vagts, saw a detrimental effect to the suit and its attendant publicity. "The mere fact of the suit casts a cloud over whatever minority appointments we might make while the suit is still pending," he said.

More importantly, said Clark, the suit attests to a discouraging degree of misunderstanding between the student complainants and the faculty. "My main impression is that I am rather sad that they have failed to perceive the good faith of our efforts," said Clark.

Clark also expressed concern that the real object of the suit was not eliminating discrimination but imposing a particularly rigid form of affirmative action upon the school. Said Clark, "The suit seems to me to read as an ideological statement intended to forward the norm of proportional representation."

Clark did, however, acknowledge one possible silver lining to the suit. "There is a certain poetic justice to this. I can't help but admire their ingenuity, however misguided. In a way, I'm proud of them."

Diversity

(continued from page 6)

quarterbacks.

Achieving true diversity would entail a healthy examination of what makes a good law teacher:

1. If there are other qualifications (such as teaching ability, experience in practice, and "real world" non-traditional subject matter knowledge) that are at least as important to a professor's ability to teach law as the traditional qualifications, then a selection process based primarily on success in traditional areas of scholarly legal expertise would necessarily result in a more narrowly focused faculty.

2. If access to traditional credentials requires members of minority groups to direct their efforts toward achieving them to the exclusion of advocacy on behalf of their people, it places them in a morally difficult position not faced by members of a majority.

3. Approaching a legal issue from a viable position of advocacy or scholarship that does not reflect the consensus of at least one faction of the faculty may be detrimental to candidates who, by so doing, violate "majoritarian" norms; this could result in the quality of their scholarly work being considered insufficient.

4. If access to the traditional credentials is biased against members of minority groups

(as it may well be), then a selection process that relies on such specific criteria is itself biased.

Whether any of these discriminatory measures--too few selection criteria, qualifications more difficult for minorities to attempt, academic bias against non-"mainstream" views, or credentials biased against minority group members--actually exist in the hiring process is a question that the CCR lawsuit can help to answer. By the way, this is not wholly a "liberal" issue. Most conservatives would agree that opening the hiring process to ensure equal opportunity for all potential faculty members removes an unnatural restraint in the market, and that the result would be improved delivery of services for all students. For this reason, the CCR lawsuit intensifies a debate that is in the interest of all law students, not just the members of the specific groups at issue.

We should not stop there. I have argued for greater religious, veteran, and experience diversity in the faculty; Ms. Pardell herself argued for political diversity. (It would be interesting to be presented on this campus two sides on issues such as abortion and the death penalty; for the record, I'm pro-choice and pro-death.) Of course, I also haven't raised the age issue, because I really don't have any idea how much effect it has on hiring. Discrimination, in this case, is in

nobody's interest, whether it's based on age, race, gender, disability, sexual orientation, religion, former military service, or professional experience.

How do we achieve diversity without a "quota" system? One practical approach would be to employ greater numbers of adjunct faculty members from underrepresented groups; this would enable them to continue to practice in their communities (which often need their services desperately) as well as to keep their skills current. This would not immediately achieve what CCR wants, which is a greater number of tenured minority professors, but it might be a reasonable solution in the short run; in combination with a career development plan that allows adjunct faculty to become tenured and possibly transition into full-time faculty status, it would ultimately arrive at the same result. Another, complementary, approach would be to focus attention on the skills that are actually important to the task of teaching law students, then reorient hiring criteria as necessary to ensure equality of opportunity for all lawyers. Regardless of the success of the CCR lawsuit, if the diversity movement is serious about embracing true diversity, we should give it our unqualified support.

Jim Bowen, 1L

C.C.R.

(continued from page 11)

154. Similarly, minorities, openly lesbian or gay persons, and persons with disabilities are challenging traditional legal boundaries. The expansion of civil rights and anti-discrimination litigation, writing, and teaching is largely attributable to the increasing presence in law practice and law teaching of individuals from these groups.

155. The identity of the faculty member affects how a professor will cover a topic in class. The professor's life experience affects whether he or she recognizes the implications of standard cases and doctrine for women, minorities, and others. The professor's identity also influences how classroom discussions will proceed even when these implications are addressed.

156. For example, in criminal law, professors often present *Terry v. Ohio*, 392 U.S. 1 (1968) (upholding a police policy to stop and frisk persons based upon a reasonable and articulable suspicion) without any recognition of the way such police power has uniquely affected minority persons or the fact that the suspect in *Terry* was African American. Professors use *Martin v. Wilks*, 487 U.S. 1204 (1988) (upholding white firefighters' challenge of a consent decree used to hire African American firefighters) to discuss collateral attacks to consent decrees without discussing the impact of this decision on civil rights litigation. Professors discuss *Walker v. Birmingham*, 388 U.S. 307 (1967) (upholding the rule that defendants charged with violating a preliminary injunction may not challenge the constitutionality of the injunction) in classes examining

the "collateral bar rule" without acknowledging the context of the case, which involved an injunction against a civil rights march in Alabama led by Rev. Martin Luther King, Jr. While professors cannot present every subject or issue, women and minority professors are more likely in the aggregate to address these issues.

157. Even when issues which directly impact women and minority groups are discussed, these issues are handled in ways which demean or devalue the perspectives and experiences of these individuals.

[The complaint here details other effects of the lack of diversity on education, including superficial discussion of issues important to minority groups, inability to find faculty advisors for third-year papers, and poor preparation for the practice of law.]

B. Quality of Environment [The complaint here states that minority and women students are harmed by a generalized environment of intolerance, stigmatizations of minority group membership, lack of role models, and lack of professional contacts.]

171. The injury to the members of Plaintiff organization is compounded by the fact that professors often address subjects in ways which stereotype or offend women and minorities. For example, one contracts professor used rape as an example to illustrate the complexity of offer and acceptance doctrine.

172. Plaintiff's members are also harmed because the absence of women and minority faculty limits their ability to participate meaningfully in class. Minority and women students frequently report that they are not called on in class. One professor went an entire semester without calling upon a single African American student. It was not until the last

day of class, when one African American student interrupted the professor to state that he had waited all semester to present a case that an African American student was finally recognized.

173. Often when Plaintiff's members are called on in class, it is only to discuss issues thought to have particular relevance to them. For example, African American students are asked to speak about slavery; women are called on to discuss violence against women; and Latino students are asked to discuss immigration.

PRAYER FOR RELIEF

Wherefore, plaintiff prays that this Court, after a hearing:

(a) declare that the hiring practices of Defendant, the President and Fellows of Harvard College, have a disparate impact on women, and/or women of color, and/or Latinos, and/or African Americans, and/or Asian Americans; and/or Native Americans, and/or openly lesbian or gay persons, and/or persons with disabilities, in violation of Chapter 151B and Chapter 93, Section 102 of the Massachusetts General Law.

(b) award equitable relief in the form of the following:

(i) enjoin Defendant from employing hiring practices which have a disparate impact on women, women of color, Latinos, African Americans, Asian Americans, Native Americans, openly lesbian or gay persons, and persons with disabilities;

(ii) enjoin Defendant from failing to establish and implement immediately an affirmative action plan in consultation with students, faculty, and administrators to address underrepresentation of women and minorities on the HLS faculty. This affirmative action plan shall include

specific hiring goals and timetables for achieving those goals;

(iii) enjoin Defendant from applying hiring criteria which do not give weight to diversity, practical experience, and teaching ability;

(iv) enjoin Defendant from failing to consider women and minority candidates for tenure-track, and tenured faculty positions;

(v) enjoin Defendant from preventing visiting professors from being considered for tenure during their visits to HLS;

(vi) enjoin Defendant from failing to reform its faculty appointments process by permitting women and minority candidates to be considered by the full faculty, irrespective of recommendation from the Appointments Committee.

(vii) award Plaintiff all other such relief as this Court deems necessary.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

Harvard Coalition for Civil Rights

Pro Se for Plaintiff

Keith Boykin
Linda Singer
Laura E. Hankins
Jeffrey Lubell
Pat Gulbis
John Bonifaz
Inger Tudor
William Anspach
Lucy Koh
Chris Jochnick
Christian Arnold

Happy Holidays and Good Luck on Exams — The RECORD

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