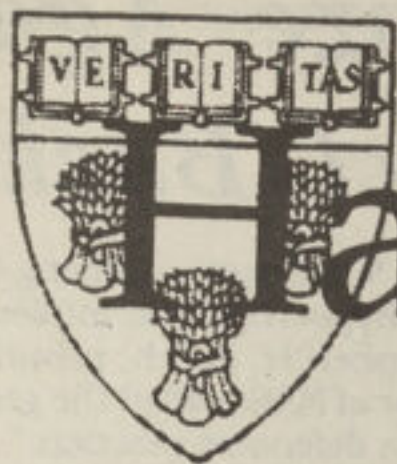




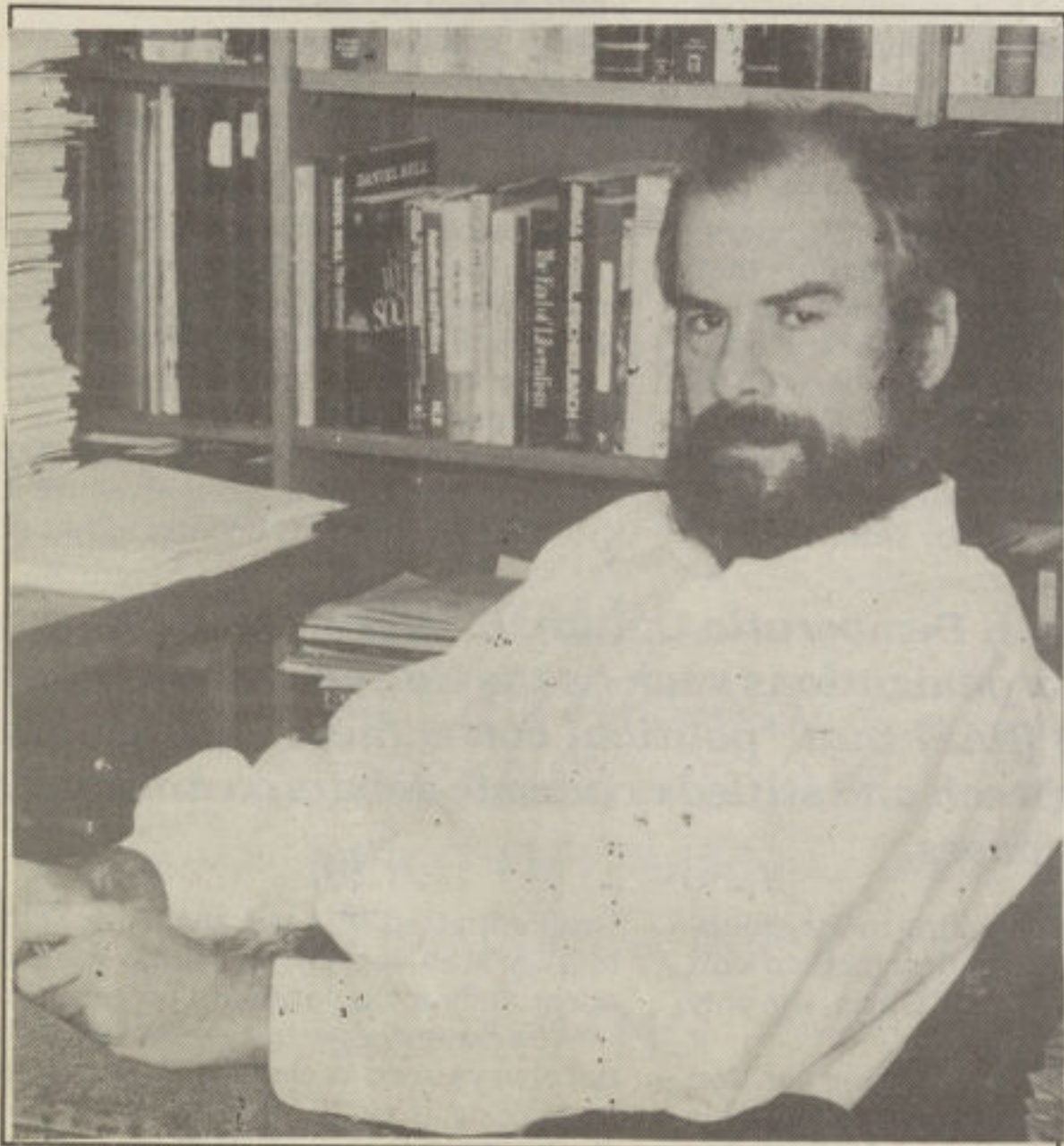
Harvard Law Record

Volume 93, No. 3

America's Oldest Law School Newspaper

October 4, 1991

Duncan Kennedy Named To Faculty Appointments Committee



Professor Duncan Kennedy, best known for his Critical Legal Studies scholarship, in a relaxed moment.

Dean Robert C. Clark has confirmed a rumor that Professor Duncan Kennedy has been

By RECORD Staff

named to the Faculty Appointments Committee. The move is seen as surprising by many members of the Harvard Law School Community because Professor Kennedy, who is a leading Critical Legal Studies scholar, is believed to be closely aligned to Professor Derrick Bell's position on diversity.

Dean Clark seemed eager to confirm the rumor when asked, and generally quite pleased with himself for having made the appointment. "There is no reason why it shouldn't be public," said Clark. "It's an exciting new world."

The Dean also immediately attempted to curb suspicion that this move was indicative of anything necessarily important. "Given the distant past, it's [Kennedy's appointment] significance can be greatly exaggerated," Clark said. "I chose Duncan for the committee be-

cause he is exceptionally qualified and because I think he will bring some valuable perspectives and criticisms to the committee...Also, I wanted to make a gesture to show that we really are going to sit down and work this thing out," he concluded.

The people who responded to our queries could only speculate as to why they thought the Dean had made such a move given the generally contemptibleness with which the committee is viewed.

Is Kennedy being set up as a "fall guy?" Is DBC trying to impress new Harvard University President Neil Rudenstine? Or is this some sort of indication that the left is employing newly found leverage?

Although students can't read the Dean's motivations, they are nonetheless pleased with the announcement.

Lisa Otero, '92, Co-Chair of La Alianza was a bit skeptical of the news, but encouraged by what it may portend.

"I personally welcome Professor Kennedy's appointment to

the committee if that is indeed the case. He's a scholar who's acquainted with the scholarship of many minority professors, and potential minority professors, and we hope that his perspectives will bring a broader range of possible candidates to the committee's attention," said Otero.

Otero admitted that she was excited by the news, but her excitement was tempered with expected caution.

"Although Professor Kennedy is familiar with our concerns, I don't want to make it sound like all of our hopes are pinned on him. La Alianza will continue to work with all of the members of the committee, including Professor Kennedy and Dean Clark, to ensure that more Latino and Latina professorial candidates are evaluated," she concluded.

Mary Ann Glendon, the lone woman on the committee, was rather indifferent about the significance of the appointment.

"I am delighted to work with whoever is on the committee," Glendon stated. "We've only met

Kennedy page 45

Law School Embarks on Historic Campaign

Over the summer months, The Harvard Law School embarked on an unprecedented drive, 'The Campaign for Harvard Law School', to raise \$150 million by

By RECORD Staff

June, 1995. The Campaign had about \$50 million as a base amount by the June 15, 1991 announcement by Dean Robert C. Clark '72, more than almost any other law school campaign has raised in its full run. At present, the drive has produced an additional \$10 million. Part of this early success is due to the large and pioneering support by four major law firms: Cleary, Gottlieb, Steen & Hamilton; Debevoise & Plimpton; Kirkland & Ellis; and Cravath, Swaine & Moore.

The Law School is also turning to its alumni, working both in and out of the legal profession, for much of the support. In addition to the many distinguished associates and partners practicing with the many of the nation's most respected law firms, the Law School is the third largest educator of Fortune 500 CEOs in America, working in almost every sector of American

industry and service imaginable, and running more than 100 of the world's major corporations, the educator of nearly 10% of the current U.S. Senate, as well as the *alma mater* of numerous U.S. Representatives, governors, mayors, and cabinet members. In addition, more than 1,100 of the 7,000 law teachers in the U.S. are alumni of the Law School.

A central goal of the campaign is to solidify Harvard's place not only as the national leader in legal education, but as the international leader as well. "I believe the Harvard Law School can - and should - match its national position as the preeminent institution of legal learning on an international scale," writes Clark.

Among the particular goals of the drive are the maintenance of Langdell Library as the world's largest and best private law library, and endowment for at least 12 new faculty chairs to permit expanded course offerings in international legal studies and comparative law and create better and more frequent interactions between students and faculty, including the institution of at least one small classroom experience for each 1L of no more than 24 students. Towards these

goals, the Law School plans to expand its buildings to accommodate more small seminar rooms, new faculty offices, and a new site for the Legal Services Center.

Student needs are a major concern of the Campaign, with plans for providing housing for one-half of the student body through the addition of 225 new dorm rooms (complimenting the recent addition of the newly-opened North Hall on Massachusetts Avenue), and a renovation of Harkness Commons. Expansion of Financial Aid, and support for the LIPP program to accommodate those students entering lower-paying career alternatives are also high priorities for Dean Clark and the Campaign leaders.

As John F. Cogan, Jr. '52 of Hale and Dorr, Chairman of the Campaign, makes clear: "The Law School stands at a critical turning point. Status quo is the path of retrenchment. Without the campaign for Harvard Law School, retrenchment is an inevitable alternative....In contrast, the School has the clear opportunity, over the next several years, to sharpen its position as the leading center of legal scholarship and teaching in the world."

Lincoln's Inn's Neighbors Continue Their Difficulties

It may not be the "mother of all battles" but there is a definite test of wills shaping up on Follen Street between the

By Malcolm Harrison

Lincoln's Inn Society and Marc Rodwin, who leads an organization called Neighbors of the Harvard Law School's Lincoln's Inn Society.

Since last year, Rodwin has been waging essentially a one-man crusade to stop Lincoln's Inn, a social club whose members are HLS students, from having loud parties at their clubhouse at 44 Follen Street. Rodwin asserts that the inn's loud parties keep the neighbors awake at night and that they often spill over into the streets

as revelers emerge inebriated. Rodwin's efforts have attracted the attention of the Cambridge City Council, the Cambridge License Commission, Boston Globe columnists, and even the New York Times which wrote a story which not only appeared in the national editions but also around the world in the International Herald Tribune.

Last year the Inn's Executive Committee instituted a management plan which was designed to address many of the neighbors' complaints. To a large degree the plan has been successful. Lincoln's Inn parties have been held on campus, and there have been no complaints from the inn's neighbors since the management plan was adopted last fall.

Rodwin, however, is not content to curb the inn's nighttime activities. His activities seem designed to stop the inn from having any type of large social event at their facilities next door to his apartment at 50 Follen Street including daytime gatherings.

To this end, Rodwin wrote a letter last week to Richard Scall, the executive director of the Cambridge License Commission, complaining about the inn's annual open house during the afternoon on September 14. According to Rodwin, the inn violated its management plan by not having an alumni present, sponsoring an event which was not "by invitation only," failing to have someone card, and allowing people to drink in the

Inn page 11



Professors and experts debate "THE JUDGE THOMAS NOMINATION: WHAT DOES IT MEAN FOR THE BLACK COMMUNITY?" in a forum held on September 18th in the Ames Courtroom, hosted by the Harvard Black Law Students Association. The forum was co-sponsored by Boston College BLSA, Boston University BLSA, New England Law BLSA and Suffolk Law BLSA.

David Kennedy to Head New European Law Research Center

Professor David Kennedy, one of the nation's leading scholars of international law, will direct a newly-formed

From the Gazette

European Law Research Center, established at HLS as part of the School's continuing steps to maintain and enhance its international curriculum and research. "The Center is an important step in our efforts to build a world law school," said Dean Robert Clark '72.

"The Law School intends for the European Law Research Center to become the foremost program for the study of European Community law in North America," said the Kennedy. "We expect it to provide a perspective unavailable in Europe. We also seek to strengthen our traditional ties to the intellectual and legal traditions of the European continent."

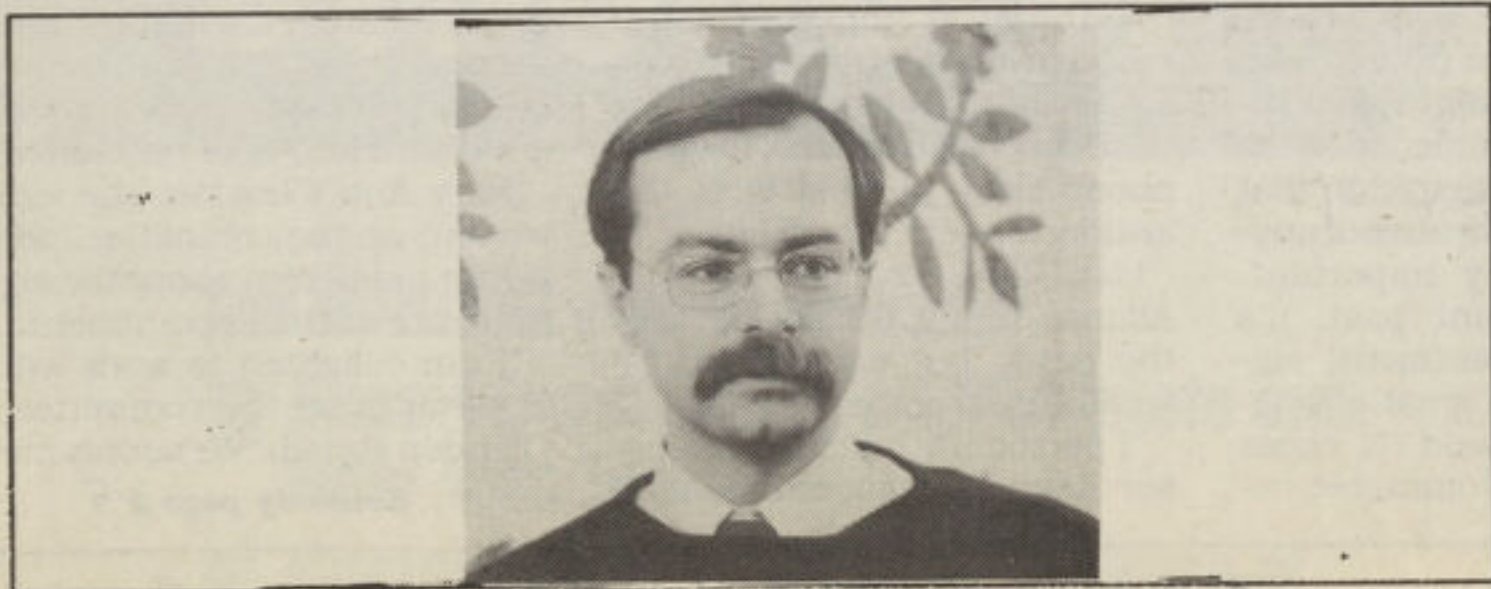
The Center will build upon the School's interest in European legal scholarship, which dates from the deanship of Christopher Langdell. It will support collaborative faculty research in European law, strengthen ties between the North American and European legal professions, promote intellectual exchange among young scholars and professional collaboration among a new generation of European

and American lawyers.

This year the Center will sponsor intensive two- and five-day training workshops for lawyers seeking to strengthen their theoretical and practical understanding of the legal and business architecture of the new Europe. Workshops will be held at HLS, Fordham Law School, and the Salzburg Seminar in Austria.

Future plans include a fellowship program, research publication program, scholar exchanges, conferences, workshops, and a named lecture series featuring European scholars and officials. To ensure permanent support for the activities of the Center, the School is seeking to endow professorships in European Community law and European comparative law.

"As Harvard Law becomes a world law school, it is particularly important that our historic ties and commitments to the European legal tradition be intensified and renewed," said Kennedy. The Honorary Advisory Council for the Center includes President Jacques Delors of the Commission of the European Communities in Brussels, President Ole Due of the Court of the Justice of the European Communities, former Mayor of Hamburg Klaus von Dohnanyi, and President of Ireland Mary Robinson.



Professor David Kennedy, shown here with moustache, one of the country's leading scholars on international law and institutions.

Scholars Organize Against Politically Correct Backlash

Responding to a wave of conservative criticism aimed at the increasing politicization of university curricula, a

From the Crimson

group of scholars from across the country—including Harvard Professor Henry Louis Gates Jr.—have banded together to present a united front against such attacks.

The group, Teachers for a Democratic Culture, was created to oppose charges by organizations such as the National Association of Scholars (NAS) that "political correctness" has endangered free speech and stifled academic debate on America's college campuses.

"The public needs to hear the other side of the story," said Gerald Graff, a professor of English at the University of Chicago and one of the group's founders.

"We feel that the kinds of changes that have been going on in the curriculum are very positive and very important and have improved the quality of education," Graff said. "Yet the way that they have been predominantly reported, one would think that it's the collapse of Western civilization."

Thirty scholars, mostly from the hu-

manities, are participating in the group. "This organization is designed to end needless polemics," said Gates, the only member from Harvard.

Lynn V. Cheney, accusing them of "blatant hypocrisy" and intolerance.

Stephen H. Balch, president and director of NAS, called the group's formation a defensive reaction.

"It's rather strange that people who have been so powerful in academic life feel the need to form such an organization," said Balch. But Winthrop Professor of History Stephen A. Thernstrom, a member of NAS and a prominent critic of political correctness, said that he welcomed the opportunity for increased debate.

"I am not trembling at the news, nor am I outraged at it," he said.

"I do think their point of view has been in ascendance in many disciplines, especially literary ones. However, most of the interesting commentary has come from people on my side," Thernstrom said.

Thernstrom has been portrayed as one of the early victims of "political correctness" ever since he was accused of racism for his treatment of slavery in a course on American History.

Calls Upon Media

In its prospectus, the group also called upon the media to be more objective in its coverage of the PC debate, although

Teachers for a Democratic Culture was created to oppose charges by organizations such as the National Association of Scholars (NAS) that "political correctness" has endangered free speech and stifled academic debate on America's college campuses.

manities, are participating in the group. "This organization is designed to end needless polemics," said Gates, the only member from Harvard.

"Given the extreme right wing position members of the NAS have taken, this organization might be useful in bringing us back to the center," said Gates.

Besides attacking the NAS, the group's prospectus criticized Dinesh D'Souza, author of *Illiberal Education* and National Endowment for Humanities Chair

Graff admitted that the academic community was largely to blame for not adequately articulating its position.

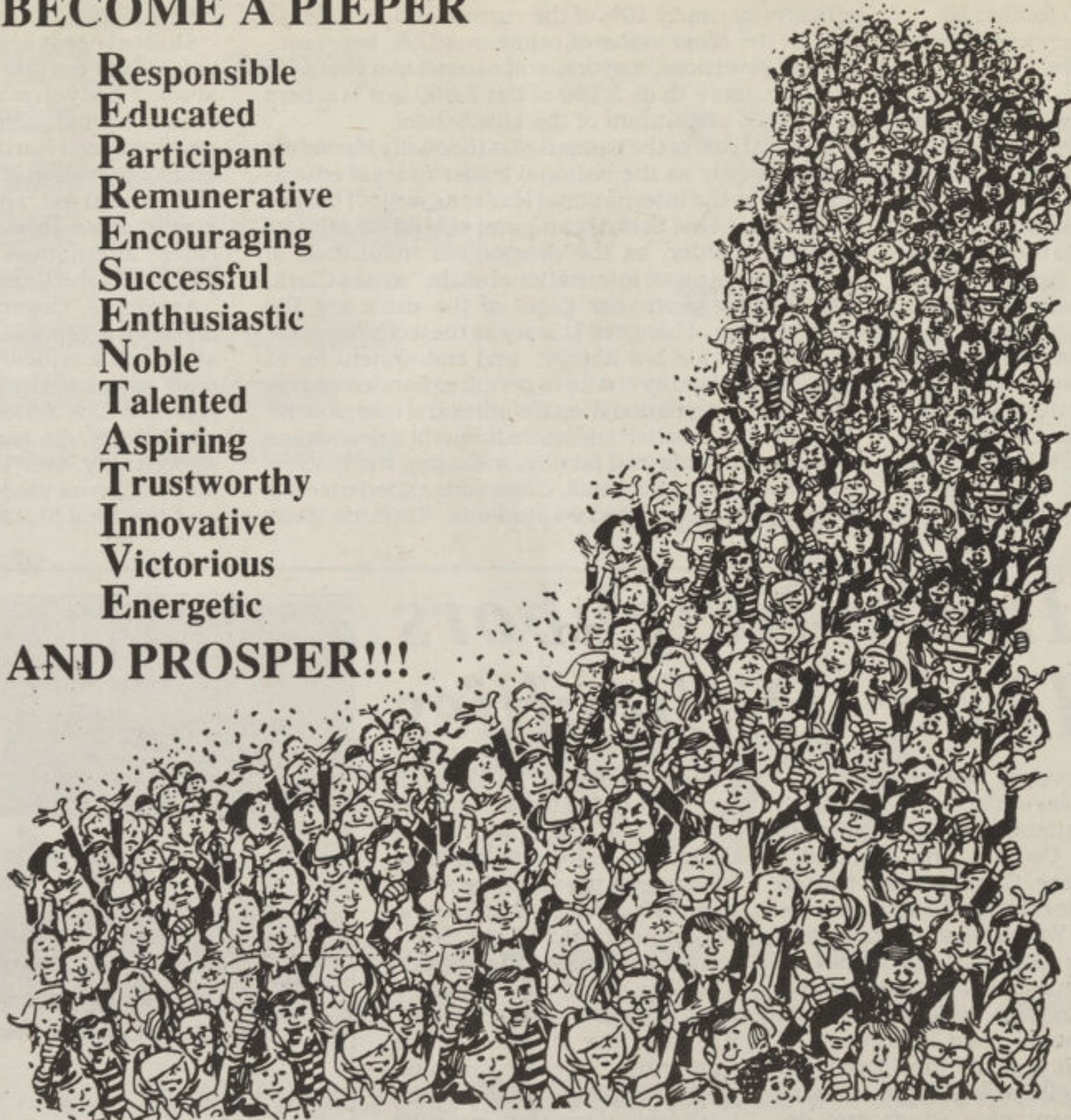
"We acknowledge that professors have not always been as clear as we should be in making it clear...what it is we do," Graff said. "[One goal of the group] is to help the quality of education between the academy and the public."

The group has called for a wider discussion of its aims at a meeting of the Modern Language Association later this year.

BECOME A PIEPER

Responsible
Educated
Participant
Remunerative
Encouraging
Successful
Enthusiastic
Noble
Talented
Aspiring
Trustworthy
Innovative
Victorious
Energetic

AND PROSPER!!!



FOR MORE INFORMATION CONTACT:

PIEPER NEW YORK-MULTISTATE BAR REVIEW, LTD.

90 Willis Avenue, Mineola, New York 11501

Telephone: (516)747-4311

LATHAM & WATKINS

HAS MADE OFFERS OF ASSOCIATION AND
WISHES TO CONGRATULATE ITS 1991

SUMMER ASSOCIATES AT HARVARD LAW SCHOOL:

KIF ADAMS
AILEEN ATKINS
ELIZABETH BLAIR
MIKE GUZMAN
JOHN HANCOCK
LEE HWANG

NANCY KAO
JULIAN KIM
MARCO MATERASSI
JONATHAN MILLER
RAQUEL SEFTON

We will be interviewing interested students on Thursday, October, 17th and Friday, October 18th.

Latham & Watkins

Chicago
London
Los Angeles
New York
Orange County
San Diego
San Francisco
Washington, D.C.

Gaston & Snow Goes Under

Faced with mounting debts, an exodus of partners, and a shrinking client

From the Boston Globe

base, the remaining partners of Gaston & Snow, one of the Hub's oldest firms, voted to dissolve the partnership in the largest breakup of a Boston firm ever. While roughly 50 of the firm's partners intend to form a new partnership (Gaston and Snow) which will continue operations at the same location with roughly 90 lawyers, the move is significant since there were roughly 180 lawyers in the old firm when it was dissolved. Roughly a year ago, Gaston & Snow employed nearly 300 attorneys.

The 147-year old firm was felled by the same over-expansion which brought down the old line Boston firm of Herrick & Smith in 1986. Gaston & Snow grew rapidly in the '80's, absorbing Casper & Bok and opening two branch offices in California and one in Florida in an attempt to diversify its client base.

The firm could not, however, seem to manage its growth, as inside sources indicated that partners quarreled and bickered about numerous management issues, including the role of Richard J. Santagati, the former head of Nynex Information Systems, who had been retained to help reverse the firm's sinking fortunes.

Firm officials will attempt to liquidate the old partnership's \$23 million outstanding debt through collection of a percentage of roughly \$35-40 million in accounts receivable. While no plans currently exist for such a move, officials have not ruled out proceedings against a number of former partners who have left the firm recently, including several in the last few months.

Though the Boston legal market continues to be tight, sources indicated that most of the 90 lawyers who will be released in the re-organization will eventually be picked up by other firms, given the overall quality of Gaston & Snow's lawyers.

Criminal Justice Institute Files Suit

Harvard Law School's Criminal Justice Institute was a party, along with the Committee for Public Counsel Services, to a class action suit filed on September 30 which alleges that Massachusetts courts fail to provide timely hearings for suspects arrested without warrants. The suit is based on a 1975 Supreme Court ruling that probable cause reviews be held "promptly". This spring, the Supreme Court defined "promptly" as within 48 hours of arrest. The law suit claims that in fact, the state has no requirement that these probable cause hearings be held at all and requests that the Supreme Judicial Court set standards for handling such cases.

"The danger," said Martin Rosenthal, director of the Criminal Justice Institute, "is that people will be held for few days, missing school or work. And some people will have to go through a long difficult process under the pressure of charges that have no basis or were much more serious than they should have been." The suit could affect thousands of people arrested each year in Massachusetts. In Boston alone last

year, most of the 37,000 arrests were made without warrants.

Rosenthal said that existing rules have reduced the function of clerks to "rubber-stamping" the criminal charges selected by the police. In the absence of speedy and meaningful reviews, some people are denied their freedom unreasonably and are being prosecuted on inappropriate charges, he said. It is often not until trial that a person arrested without a warrant gets a judicial review of whether the arrest and charges are well founded. "Basically, courts are supposed to be a check and balance on law enforcement, and they have abdicated that responsibility on both grounds," Rosenthal said. The suit asks the SJC to require that hearings be held within 24 hours, 24 hours shorter than the Supreme Court recommendation. The 24-hour limit advocated by four dissenting Supreme Court justices is more appropriate when an individual's constitutional right to liberty is a stake said William Leahy, chief counsel of the Committee for Public Counsel Services.

Lincoln's Inn

continued from page 1

drink in the streets. Rodwin further asserted that neighbors have also been disturbed by doors slamming and yelling at 2 a.m. He attributes these activities to Lincoln's Inn members and their guests.

Rodwin wrote Scali to inform him that inn members had violated a Licensing Commission order that they receive a certificate of occupancy before hosting another party at their Follen Street premises.

The Lincoln's Inn member in charge of community relations, Adam Weiss summed up Rodwin's efforts as "constant harassment." Weiss noted that inn members believed that they had received a certificate of occupancy. They had architects and a member of the Inspection Services Department de-

termine a maximum occupancy and they even sent in a check for the \$66 licensing fee which the city cashed.

In addition, inn members assert that the open house was not a "party." Prospective members were given a tour of the inn during which time they could "avail themselves of refreshments," as the inn's response letter to Scali states. There was no music, no dancing, and the only announcement was made in law school publications aimed at informing first-year students about the event. Inn members dispute Rodwin's claims that guests were allowed to take alcohol outside of the clubhouse.

Weiss also denies any special responsibility for noises which are created as people, many of whom are neither inn members or their guests, enter and exit cars.

"Follen is a street, and on streets car doors are opened and closed," Weiss noted. "Rodwin can't blame the inn for the normal hazards of city living."

Skadden Dings 45 Lawyers

The New York-based law firm Skadden, Arps, Slate, Meagher & Flom says it laid off about 45 lawyers

By RECORD Staff

last week. Some employees were dismissed because of the quality of their work, said the firm's executive director, Earl Yaffa. This is the first time Skadden has dismissed a large number of employees because of an economic downturn, he added.

According to the 1991 HLS Employer

Directory, Skadden-NY has 547 lawyers and employed 49 summer associates this past summer, one of whom was Jonathan Sichel, 2L.

"From talking with people there, I gathered that everyone was putting in more and more time in order to safeguard their jobs," said Sichel. He is considering returning to Skadden next summer. "I feel very far away from it all because we were not exposed to it during the summer. You only became aware of the problems through informal discussions with attorneys."

Proskauer Rose Goetz & Mendelsohn

is pleased to announce that the New York office will be interviewing interested second year law students and the Los Angeles office will be interviewing interested second and third year law students.

~ on ~

October 21, 1991

and

October 22, 1991

1585 Broadway
New York, New York 10036

2121 Avenue of the Stars
Los Angeles, California 90067

A GLIMPSE OF THE LEGAL WORLD

Thirty Five New York Firms Agree to Increase Minority Hiring

Thirty-Five New York City law firms, including some of the nation's largest and most prestigious, pledged this week to increase hiring and promotion rates for minorities. Conrad K. Harper, '65, the first black president of the New York City Bar Association and a partner at Simpson, Thatcher & Bartlett, hailed the announcement as "a major step toward the complete integration of the legal profession in New York City."

Currently, while minorities compose 15% of the enrollment of law schools from which New York's premier firms hire their associates, they represent only about 5% of the lawyers hired by these

firms and account for only 28 of the 1,000-plus partners at the 35 firms involved.

Harper, however, was quick to point out that despite the dearth of minority lawyers at the City's largest firms, numbers have been increasing in the last few years. He also noted that the commitment to make minorities 10% of incoming associates in each of the next five years and to address the various systemic problems relating to the retention and promotion of minority lawyers indicated a commitment to improve on these modest gains in the years ahead.

The participating firms pledged to in-



Conrad Harper, first black president of the New York Bar Association, shown here as a HLS student in 1965.

sure that minority associates would have the same access as white attorneys to "training, mentoring, guidance, feedback, and opportunities to grow and succeed." The resolution also promised to include minority lawyers in "work related social activities" and not to hold such functions at private clubs which had discriminatory membership practices.

Harper discounted the effect of the recession on the implementation of the pledge, stating "The firms clearly recognize that we're looking toward the long-term, and the economy of the moment will not be the economy over the next five years."

The recent move by these New York firms tracks efforts by numerous other local bar associations in the last few years to increase the percentage of minority associates and partners, including a 1989 resolution passed by 90 San Francisco law firms and legal departments to increase the percentage of minority associates and partners to 15% and 5% respectively in 1995 and 25% and 10% in the year 2000.

THE FIRMS

Battle Fowler; Brown & Wood; Cadwalader, Wickersham & Taft; Cahill, Gordon & Reindel; Carter, Ledyard & Milburn; Chadbourne & Parke; Cleary, Gottlieb, Steen & Hamilton; The Coudert Brothers; Cravath, Swaine & Moore; Davis, Polk & Wardwell; Debevoise & Plimpton; Dewey Ballantine; Fried, Frank, Harris, Shriver & Jacobson; Hughes, Hubbard & Reed; Kaye, Scholer, Fierman, Hays & Handler; Kelley, Drye & Warren; LeBoeuf, Lamb, Leiby & MacRae; Lord, Day & Lord; Barret Smith; Milbank, Tweed, Hadley & McCloy; Milgrim, Thomajan & Lee; Morrison & Foerster; Mudge, Rose, Guthrie, Alexander & Ferdon; Paul, Weiss, Rifkind, Wharton & Garrison; Proskauer, Rose, Goetz & Mendelsohn; Rogers & Wells; Shearman & Sterling; Simpson, Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom; Strook & Strook & Lavan; Sullivan & Cromwell; Wachtell, Lipton, Rosen & Katz; Weil, Gotshal & Manges; White & Case; Willkie, Farr & Gallagher; Winthrop, Stimson, Putnam & Roberts.

Kennedy

Continued page 4

once so far, but I'm certainly looking forward to working with Duncan."

Glendon added that she thought the work of the committee was more important than the individual members on the committee. "I most look forward to a productive year in that we get a significant crop of assistant professors, visiting professors, and laterals," she concluded.

Professor Bell could not be reached in New York for comment, and Professor Kennedy himself had nothing to say other than that he was interested to see how it plays out. Sources close to Kennedy say that he is secretly excited about the appointment.

Other professors on the six person committee are Committee Chair Paul Weiler, Mary Ann Glendon, Randall Kennedy, and Reinier Kraakman. They were either unavailable for comment or had no comment.

ASK BAR/BRI

Should I apply the Common Law Rule or the Majority Rule on the Multistate Exam?

Is an offer good upon mailing or receipt (Mail Box Rule)?

Can you be convicted of arson if you burn down your own house?

BAR/BRI's Q & A Clinic™ utilizes more than 35 attorneys, available to answer any questions and work with you, 7am-midnight, seven days a week during bar exam preparation.

BAR/BRI
BAR REVIEW

The Nation's largest and most personalized bar review

617-695-9955

800-866-7277

212-719-0200

800-479-8899



Harvard Law Record

Volume 93, No. 3

Robert C. Arnold
Editor-In-Chief

"Let the pigeons fly and let the games begin."

Too Many Lawyers

More people applied to get into our nation's law schools in the years 1989 and 1990, respectively, than at any other time in history. In fact, there were so many qualified applicants in those two years that most law schools found ways to creatively expand their enrollments to accommodate those eager, warm bodies.

In the 1990-91 school year, the institution that we one day hope to comfortably view in our collective rear view mirrors, Harvard Law School, traditionally viewed as a vanguard in many facets of legal education (of which diversity is not one of them), expanded its already huge enrollment. The class that entered the Law School through the 1990 applicant pool, the class of 1993, is the largest in the school's history and, consequently, the largest in the history of legal education. Also, the students who comprise the class of 1992 were lucky enough to gain entrance into the most highly sought after law school class in the Law School's history.

However, while everyone assumed that lawyers could always generate enough quixotic laws and unnecessary paperwork to keep themselves busy — ("If you have one lawyer in town she goes hungry. If you have more than one lawyer in town, they all eat very well.") — reality set in.

There are too many lawyers.

Just ask the huge, national firms that continue to lay-off whole groups of lawyers in giant sweeps. Just ask the huge, local firms that have lost so much weight they look like they've gone on tremendously successful Ultra Slim Fast diets.

What is unfortunate about this, besides the fact that the classes of '92, '93, and presumably '94 will have to scavenge through the charred carcass of the legal market for jobs, is that it means that there are far too many talented people in law school who would, and still will hopefully, do a lot of good in areas other than the law.

Ra

Staff

MANAGING EDITOR.....Jim Datri
DEPUTY EDITOR.....George Paul
FEATURES EDITOR.....Johanna Davis
NEWS EDITOR.....G. Sharon Stone
EXECUTIVE EDITORS.....Evette Harrison, Carol Umhoefer
STAFF.....Doug Berman, Fenno, Malcolm Harrison
Cam Jones, Ed Joy, Alysse MacIntyre
Robert Niewyck, Micheal Wang, Rich Wareing
CARTOONIST.....Paul Taylor
ADVERTISING MANAGERS.....Keith Wofford, Tony DeSpirito
BUSINESS MANAGER.....Kerwin Chung
LAYOUT.....Allen Glazier

PRINTING BY THE HARVARD CRIMSON

Editorial/Letter Policy

The Harvard Law RECORD (ISSN 0017-8101) is a publication of the Harvard Law RECORD Corporation, a non-profit, independent, student-owned and run corporation of the Commonwealth of Massachusetts. Harvard Law RECORD, Harvard Law School, Cambridge, MA 02138-9984. Telephone (617) 495-4418. Fax (617) 495-8457.

The RECORD is published on Fridays, sometimes weekly, sometimes bi-weekly, depending on the academic calendar, throughout the academic year and is distributed free of charge to Harvard Law School Students and at a minimal charge to Harvard Law School Alumni. Copy and photo deadlines are 5:00 pm, on the Monday preceding publication. Advertising deadlines are 12:00 pm, on the Wednesday preceding publication.

Submissions may be sent to The RECORD at the above noted address, or left in the Hark box of either Robert Arnold (2L), or Jim Datri (3L). All copy must be typed, double-spaced, and submitted in a paper copy and on a computer disk (Macintosh or IBM). Off-campus subscriptions are available. Subscription price: \$20.00 year mailed; \$30.00 year mailed outside U.S. Individual copies: 50 cents at the Law School, \$1.00 mailed. Second-class postage paid at Boston, MA and additional mailing offices.

Copyright 1991 by the Harvard Law RECORD Corporation and by the contributors.

The RECORD is committed to equality and diversity. We strive to provide a forum for the free exchange of ideas. As a result, the opinions reflected in articles, editorials, and cartoons are those of the authors and do not necessarily reflect the opinions of the RECORD.

Congress shall make no law...abridging the freedom of speech, or of the press;...



Pardell Insensitive to Alcoholics

To the Editor:

Juli Pardell's column was particularly noteworthy. While applauding the virtues of diverse opinions and extolling

I take personal exception to this, Ms. Pardell. I assure you that although I suffer from the disease of alcoholism I am not immoral or contemptuous.

I am not attempting to silence you, but I do caution you regarding you making such narrow-minded, biased and ill-informed statements. Would you ever consider using the word "epileptic" in such a derogatory tone? Alcoholism is a disease, not a moral issue.

I think it behooves you to write an apology to those of us in the HLS community who have alcoholism and other addictive diseases (yes, the admission committee let a few others slip in besides me). Why not prove to this liberal Democrat that a conservative Republican is capable of humility and compassion.

Nancy Wooley, 3L

Letters To The Editor

the value of reasoned debate, Ms. Pardell makes some of the most scathing, biased, and ignorant statements I have yet heard uttered on this campus. Most especially, I was personally affronted by the following statement: "And if some irresponsible, womanizing alcoholic is absent from the confirmation hearings...." The implication of this is that those suffering from alcoholism are moral degenerates worthy of contempt.

Keep Public Service Funding

To the Editor:

I am writing to express my great concern about the evaporation of summer funding for public interest work. My summer doing Death Penalty work in Alabama was funded largely by an Andres Grant.

I thought a lot about where the money came from over the summer, but never more than the night one of the staff attorneys and I drove to Booneville, Mississippi to meet the family of a death-sentenced client. The family gathered around us in the living room. They had never had a lawyer visit them before, and certainly never ushered a couple of Yankees through the door. A brother-in-law started out the conversation nervously, asking us the question that was on everyone's mind: "So what are his chances?" The attorney explained the various paths through the state and

federal courts he and the client would take, and then assured them it would be at least another five years "before the worst could happen." The family started then to tell us how it has been to stand by kin folk charged with a horrible crime and how it is to imagine a brother dying in the electric chair. No one, it seemed, had ever listened to them before.

At some point someone asked my boyish colleague his age, wondering how he could possibly be a lawyer. He tried to make the family feel a little more confident by telling them that both of us were from Harvard Law School. I suppose all of us have blushed at that phrase, but that night it made me feel proud. I was proud to represent Harvard in the service of people who have nowhere else to turn. I hope that Dean Clark will do his best to make sure that tradition of service lives on.

Susan Craighead 2L

Thomas Has Promise

To the Editor:

Judge Thomas' contention that matters of law are sometimes viewed from a different perspective by a member of the judicial branch than, for example, from the perspective of an officer of the executive branch is an entirely reasonable and logical view.

While all citizens may not have had their full measure of equality under the law from the beginning of the American experiment in republican democracy, there is reason to hope that the confirmation of Clarence Thomas to the Supreme Court would help keep our ship of state headed on a course toward full protection of every citizen under the Constitution. Heading straight into the rippling winds of freedom and liberty may require an occasional change of tack, but if the general direction is assiduously maintained, the continued progress for the Republic toward "liberty and justice for all" is sure to come. In matters of education, experience,

temperament and judicial fluency, Judge Clarence Thomas has arrived at a level of ability and competence meriting his confirmation to the U.S. Supreme Court by the Senate of the United States. With the bicentennial of the Bill of Rights approaching in December, the addition of Clarence Thomas to the Supreme Court will certainly help refresh our attachments to ancient constitutional principles and re-invigorate our modern-day commitments to the Framers' noble concepts of the separation of powers, due process of law, the independence of the judiciary from political meddling, and the rights of individual citizens to be secure in their liberties regardless of their material, social or political standing in society. If he should be confirmed, we wish Judge Clarence Thomas a long and fulfilling career on the highest court in the land.

David P. McKnight

Letters continued page 11

Next Issue October 11th

Clarence Thomas Is Unfit To Serve On High Court

This is the text of the brief oral statement given by professor Chris Edley on September 17, 1991 at the Senate Committee on the Judiciary Hearings on the nomination of Judge Clarence Thomas. The Constitution forces the executive

By Chris Edley, Jr.

and legislative branches to share responsibility for picking justices, and thereby share influence over the course of Constitutional history.

In taking the measure of the nominee, you should look at the whole record, and recognize that good character and unimpeached integrity did not prevent *Dread Scott*, *Plessy*, or *Lochner*.

In the final analysis, it is not the character of this man that must be at issue, but the character of his record. Yet the heart of the Administration's affirmative case is Judge Thomas' personal story and character, in hopes, perhaps, that this strategy will undergird his credibility and present an image strikingly more attractive than the piles of speeches and abstractions.

But that voluminous written record raises many grave concerns, to which the nominee offers one of three responses:

First: "Although what I said may sound extreme, I was really trying to make a far less controversial point." Repeated so often, this lacks credibility.

Second: "That was the position I took as a policy official in the executive branch; as a judge, I do not make policy." This argument is wrong, misconceiving the role of the Supreme Court and the process of judging.

Third: "I have an open mind on that subject." When applied to fundamental matters, this is almost disqualifying. A well-qualified nominee should at least be able to suggest, however tentatively, the framework for his or her analysis.

How else can you discern someone's constitutional vision—the key question before you?

You have his documents to analyze,

and his credibility to assess. But here is what I believe you are left with in two of the more critical dimensions: civil rights and the separation of powers.

First, in civil rights, the close questioning did not demonstrate that the nominee's views fall within broad bipartisan consensus. If Judge Thomas joins the Court that gutted *Griggs* in a fit of activism, what grounds are there for confidence that he will dissent from further judicial activism of the same sort—judicial activism to reverse those statutory and constitutional holdings he attacked so forcefully over the years?

The second critical dimension is broader. Judge Thomas, on his record, is certainly an unlikely Congressional pick for referee or partner in the separation of powers structure.

Why so? The pattern of intemperate remarks (Senator Metzenbaum replayed some of them), the repeated clashes with oversight committees, the cramped and even distorted reading of Title VII and of judicial precedents (Senators Specter and Kennedy explored these)—the pattern is compelling.

The fair prediction, I believe, is that Judge Thomas would tilt strongly to-

ward the executive, defer to narrow agency interpretations of statutes, lean against generous interpretations of regulatory laws (including civil rights measures), and probably be uncharitable in appraising the rationality of statutes challenged under the due process clause or under Section 5.

The Court's referee role is more critical than ever. We seem ever more ambitious about what we want to accomplish collectively, through one level of government. And divided government—White House and Congress led by different political parties—spawned conflicts, which the courts often must resolve. These separation of powers tensions are implicit almost everywhere, but statutory interpretation, with an agency arguably hostile to congressional will, is the most common setting.

Let me be plain. When you choose to confirm or reject a nominee you influence the Supreme Court's jurisprudential view of statutory interpretation and the role of the executive. You influence, perhaps profoundly, the balance of power.

You must guess whether the man who sat before you has the same phi-

losophy of governance as the man who served two presidents, who was insensed about oversight, who praised Colonel North's performance, and who attacked the Chief Justice's opinion in *Morrison v. Olson*.

If the philosophy of governance that prevails in these halls differs from that prevailing on the High Court, then you in the Congress must prepare for a protracted guerrilla war over interpretation of your legislation—a war you are ill-suited to fight.

Rust v. Sullivan, the abortion gag-rule case, shows the danger of a world where, even if Congress has passed the law, executive agencies can distort, the Supreme Court can misinterpret it, and when Congress tries to clarify its own intent, the President can veto it.

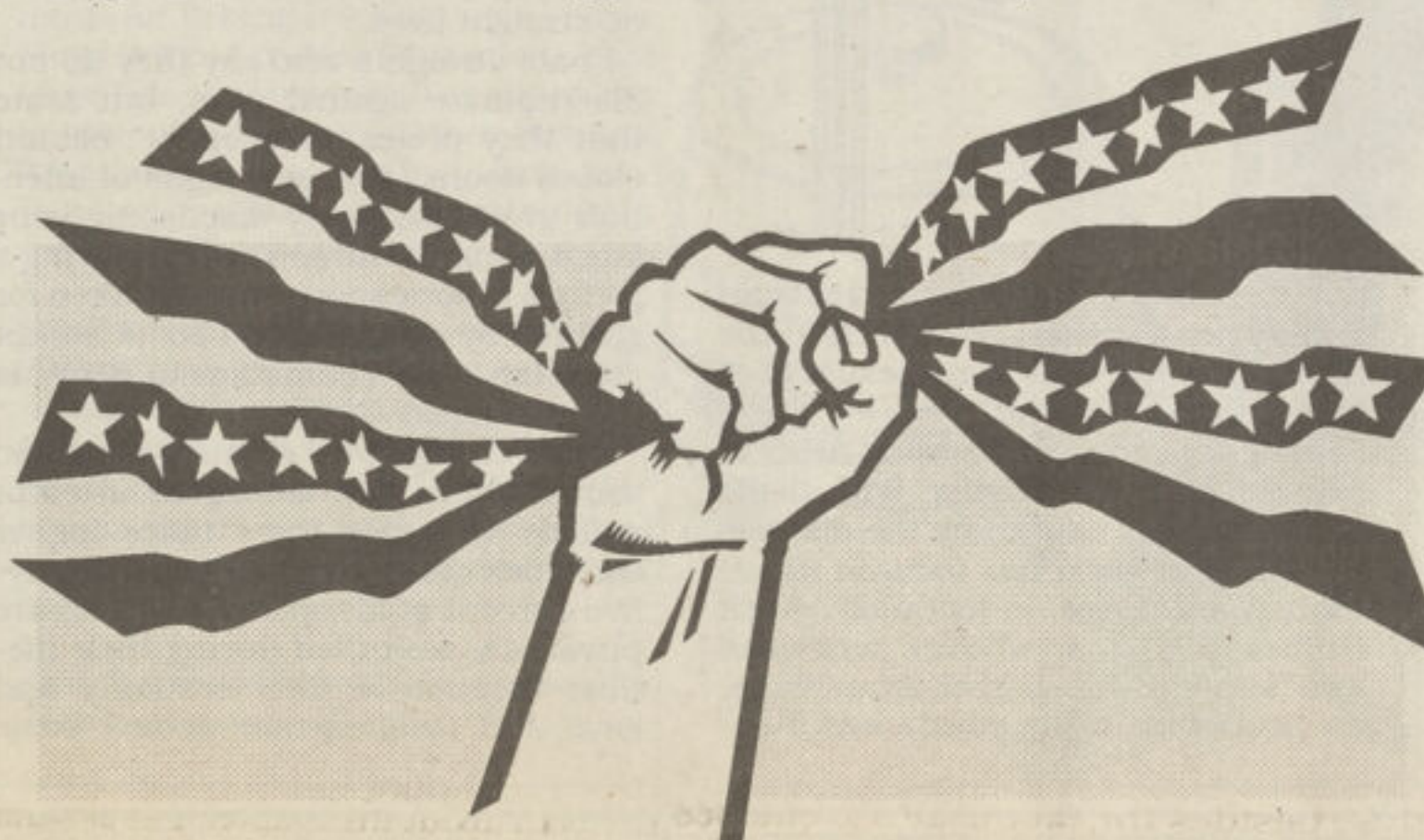
We have seen the same things in civil rights, again and again.

How many more examples will there be, Mr. Chairman? You are not powerless in this. The opportunity and power to shape our Constitutional history are not the President's alone.

The design of the Framers seeks to balance factions and ensure that no branch has ideological domination over the others. With that in mind, the lax and deferential standard for confirmation proposed by some makes little sense. Can it be that the greatest danger to the Separation of Powers is not the abuse of executive power, or an overreaching judiciary, but the unwillingness of the Congress—in this instance the Senate—to wield its power?

And your power includes this confirmation process. It is not for the nominee or the White House to design. Mr. Chairman, this Committee will decide whether there is to be, as you put it, a "Thomas standard." You will choose whether to reward a process that favors evasion over candor, conversion over consistency, platitudes over analysis, political scripts over constitutional debate, and selective memory over substantive command.

I believe you will choose well. I hope this has been helpful.



Fenno

Fenno thought to himself that he looked awfully dapper in his imitation, grey flannel Armani suit and ever so slightly scuffed Johnston & Murphy wingtips, until he took a last minute glance in the mirror, just to check the package, and realized that he hadn't shaved in three days, nor had he wiped his breakfast off his face. This realization, coupled with the fact that his breath and eyes were laden with evidence of his activities from the previous night (it was a party night, the Eagles were on the tube), were just about enough to ensure that he would not only not get a job, but also that he might be thrown out of an interview for utter repulsiveness. Of all of the things that Fenno has done in his illustrious, checkered, distinguished, and venerable career here at Heap of Limpid Sh*t, getting thrown out of an interview was not one of them. He was convinced that the interviewer from Molehill & Deng would not look favorably upon the Armani copy.

"We're impressed with the fact that you are a thirteen-year member of DSAC, but what is your latest significant accomplishment," the interviewer asked.

"Well," Fenno panicked as he thought. He had not prepared himself for the question. "I guess my latest significant accomplishment was at a recent Lincoln's Inn party."

"What happened there," the interviewer incessantly probed.

"That was the night I got so drunk that I forgot who I was and started wondering around from door-to-door asking the neighbors if they knew who my mommy was and where I lived," Fenno blurted. "I was shouting at the

top of my lungs making sure that all of the neighbors could hear me.

"After I overcame the temporary amnesia, with the help of a nice, young woman from Wellesley College, I found my way back to the party and finished off the last keg. Then, in a fit of wild romance, the young woman and I ran over to the law school and made like wild animals on the steps of Austin Hall. I think those are all significant accomplishments."

The interviewer looked Fenno squarely in the eyes and said, "I graduated from this fine institution in 1929, and I'll have you know that getting the 'assistance' of a Wellesley girl is no significant accomplishment."

"When's the last time you've been to the library here," he asked. "And by the way, is that the remnants of a sausage patty on your face?"

Fenno, was pleasantly surprised not to have to answer that question. Before he could formulate what he thought would be a good answer — (Yes, it is a sausage patty. Or I'm boycotting the library because it is insensitive to illiterates.) — the interviewer shouted in a loud and disgusted voice, "NEXT."

QUOTE OF THE WEEK

"The early bird is red-eyed, has trouble concentrating, and takes frequent afternoon naps."

Posted on the 3rd Floor
of Ames Hall

SHOW US YOUR METTLE.



If you put a lot into scouting, now it's time to volunteer and get something back. On October 9, former Eagle Scouts will gather at The New England Hall in Boston. So call 617-522-4000 today. And show us your mettle.

**THE BOY SCOUTS
OF AMERICA**
Greater Boston Council

Gays Bash Back: Confronting The Prejudice And Scorn

I hate straights. I hate straights for teaching me as a child to feel nothing but shame and self-hate for my newly

By Ed Joy, 3L
RECORD Columnist

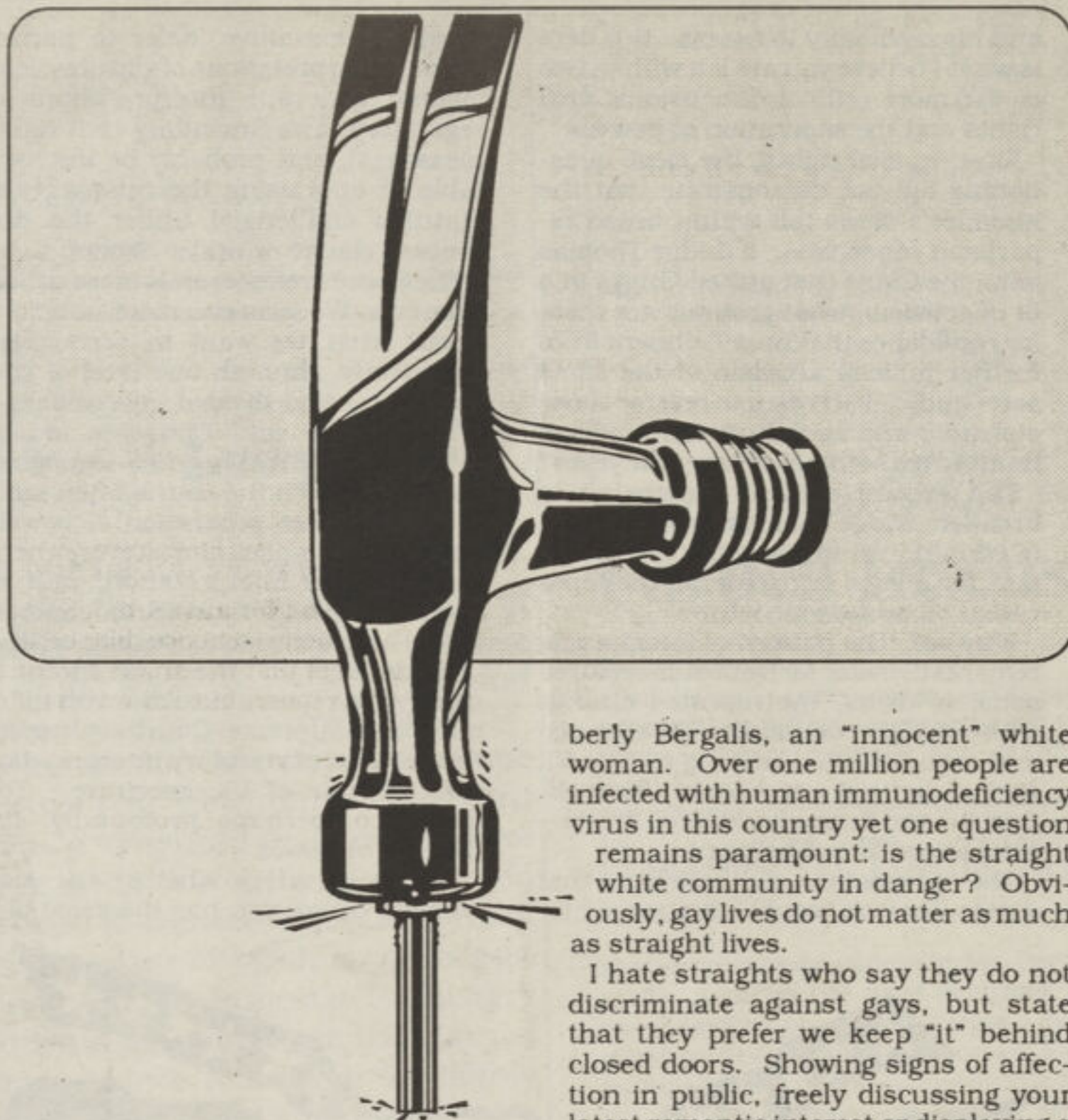
developing homosexuality. As I began to develop sexual feelings, I heard the words faggot, dyke, queer and cocksucker. These words of bigotry and scorn became an unthinking part of my vocabulary. With great efficiency, straight society taught me to hate other gays and lesbians and, although I did not understand it then, myself at the same time. These well taught lessons in bigotry haunted me for over a decade of my life.

I hate straights for denying me my carefree teenage years. While heterosexual friends were enjoying the excitement of experimentation with their newfound sexuality, I began to realize that my sexuality is considered abnormal and that any such experimentation on my part would have quickly met with the ridicule and censure of my classmates. Friends, family, teachers and religious leaders alike condemned my natural unexplored feelings as perverted and immoral. I was being taught that a fundamental part of my being made me inferior.

I hate straights for turning my family against me. Through coming out I was finally able to come to terms with my sexuality. Coming out was both painful and exhilarating. During this difficult time I could not turn to my parents for support, rather, it was I who had to help my parents to accept and understand.

I hate straights who think they are doing me a favor by being a "friend" to the little "fag." The only thing worse than a bigot is a hypocritical bigot.

I hate straights who expect me to engage in a dispassionate intellectual



debate about gay and lesbian rights when the message implicit in the debate itself is that homosexuality is inferior.

I hate straights for allowing AIDS to ravage the gay community. With all the painful deaths caused by the disease, the straight world has focused its attention on three individuals: Rock Hudson, a gay man who was renowned as a "straight" sex symbol, Ryan White, an "innocent" white youth, and Kim-

berly Bergalis, an "innocent" white woman. Over one million people are infected with human immunodeficiency virus in this country yet one question remains paramount: is the straight white community in danger? Obviously, gay lives do not matter as much as straight lives.

I hate straights who say they do not discriminate against gays, but state that they prefer we keep "it" behind closed doors. Showing signs of affection in public, freely discussing your latest romantic interest or displaying a picture of your spouse are all taken for granted by straights, yet some do not consider it discrimination to deny us these things.

I hate straights for creating a bigoted world where gay teenagers attempt suicide at a rate three times higher than their nongay counterparts, twenty-five percent of all openly gay men are physically assaulted during their lifetime because of their sexuality and gays and lesbians are denied basic

rights in employment, housing, adoption and the right to sexual intimacy with the one whom they love. Some straights even try to take away our basic human dignity by reducing all the discrimination against us to just a bunch of "fag" jokes.

"I Hate Straights," was the title of some political literature from Queer Nation that I read several months ago. I must admit, at the time I read the piece I quickly dismissed the title's message. Now, I no longer can. I have developed genuine feelings of anger and resentment for the way gays and lesbians are treated by the straight world, but "I Hate Straights," is not the answer.

In many ways, anti-straight bias is a rational response to widespread anti-gay bias. Most straights know no openly gay or lesbian people, at least not personally, and yet feel as though their anti-gay bias is warranted. In contrast, gays and lesbians know thousands of straights and experience bigotry, ranging from ignorant jokes to outright antagonism, on a daily basis. Oppressed groups rarely love their oppressors.

I too harbor resentment and anger when subjected to anti-gay prejudice. The notion of hatred toward straights as a class, however, must be rejected. It is essential that gays and lesbians afford to all straights that which is denied to us: the opportunity to be judged as an individual on the basis of character alone. A vision of the world where anti-straight prejudice prevails is no better than the current vision where anti-gay prejudice prevails. The basis of the gay and lesbian civil rights movement must not be hatred. If it were, then success by the movement would not mean attaining the lofty goals of reducing bigotry and prejudice, but simply changing the target group. A fight that does not produce a better world and does not arrive at some greater justice is not one worth fighting.

Debora de Hoyos '78 became one of the few women managing partners at a major law firm when she was chosen to preside over the 532-lawyer, Chicago-based firm Mayer, Brown & Platt.

Ms. de Hoyos' new job, in part, is testimony to the power of the pipe-line. In the 70's, the legal profession opened up dramatically to women; they poured into law schools and gradually into associate positions in the big firms.

While Ms. de Hoyos believes in an "absolute meritocracy" in which women should be judged on their performance, she readily acknowledged the importance of support from mentors and family.

"Some women have a terrible time juggling," she said. "Other people in their lives are constantly on their case." Ms. de Hoyos, who is married to a lawyer and has three young children, added: "I've been lucky. I've been able to balance." [Congratulations!!!]...

Those of us who know Lynda Hendrix '93 know that she is a very unique and interesting member of the student body. She has lived in more places than most of us can name. She has held such jobs as chicken farmer, dental assistant, legal secretary, etc. And, she now proudly displays her full head of gray hair.

However, what may be the most interesting thing about Lynda, who just turned 42, is the fact that she may be the

AMICUS BRIEFS

first student-grandmother at Harvard Law School. Lynda's son, Aaron, and his bride, Mary Beth, gave birth to a brand new baby boy, Jonathan Shane, on August 29, 1991.

Because Lynda has been busy with the life of a student here, she has yet to see her new grandson. The family is planning a Christmas reunion in Lynda's home state of Alabama the December...

Hilari Hanamaikai '93 became a member of the ranks of married Harvard Law School students this summer when she joined Chris Elson in holy matrimony on August 17, 1991. The wedding, held in Los Angeles, CA, was in traditional Hawaiian style, complete with luau food and Hawaiian dancing. About 350 people attended.

Chris and Hilari met on January 15, 1990 through a mutual friend at the University of California - Berkeley. She was in her last semester while Chris had already graduated. Although Hilari thought he was very "cute" after their

first date, she wasn't head over hills crazy right away.

"It took me 2 or 3 dates to realize he was interested in me other than as a friend," she said. "I started to look at him differently after that."

Though she thought the relationship was basically over when she decided to come to HLS, they continued to communicate. Absence made their hearts grow fonder and Chris left his job in San Francisco to move to Boston to be closer to his sweet pot of honey. He found a job with a local consulting firm, and proposed in Hastings Hall in November of last year. (Proving once again that dorm livin' ain't bad.)

The rest as they say is history. Aloha!!!

HOLLIS Adds New Features

The library's computer catalog, the Harvard On-Line Information System (HOLLIS), has several new features this year.

The system now provides electronic



mail service, which enables users to transfer HOLLIS database records to their own electronic mailboxes. HOLLIS has also expanded to include references to the Physics Research Library.

In addition, new changes include access to the Public Affairs Information Service International database — a computer list of public policy documents, as well as an upgraded system for locating references.

According to Julie Wetherill, a HOLLIS coordinator, orientation sessions will be held today, October 4, in Cabot, Hilles, Lamont, Littauer and Widener libraries to acquaint students with the new additions to HOLLIS...



de Hoyos as a student in 1978)



New father Aaron Hendrix visiting his mother Lynda '93 last year in her dorm room in Hastings.



Grandson Jonathan Shane will see grandma for the first time over the upcoming Christmas Holidays.



The Elsons honeymooning in Cabo San Lucas, Mexico."

Endorsement Ideas For Photogenic HLS Profs

If the Thomas Confirmation hearings and hoopla were not a victory for the tattered remains of the Democratic Party, they were at least a Photo Op for

By Alysse MacIntyre
RECORD Columnist

several members of the Harvard Law School faculty. Not that I really watched the hearings, of course. Like many others, I was awash with apathy over the whole thing, having long ago conceded the inevitable.

But, whenever I did happen to pay attention, I couldn't help but notice one member of the law school faculty or another. And I was impressed. I'm going to have to start paying attention in class now too.

The poise and eloquence of Chris "Deadly" Edley in particular got me thinking. Why do we always see the same parade of professors on the TV? And why is it only for their commentary on the law? Celebrity Endorsements are the way of the world, and a great way to augment your income. Why should pro athletes and actors have all the fun? Harvard is a much celebrated law school full of much celebrated professors who by the weight of their accomplishments and integrity could go far in the endorsement field. And so I offer the following suggestions:

Lou Kaplow for Nike: I envision Lou in a basketball uniform, his undoubtedly skinny legs (I haven't actually seen them) sprouting out of a pair of high tops. Underneath, the caption: "Lou Knows Efficiency."

Todd Rakoff for chalk: There are lots of professors who get the Chalk Stripe on their butt during class, and then there are those professors who get out and out Chalk Butt. "Todd the God" is one of them. "After a long class, there's only one chalk I want on my butt..."

Detlev Vagts for Sominex: "For those times when I can't be there to put my students to sleep, I recommend Sominex."

Mort "The Tort" Horowitz for Crazy Glue: "When deconstruction gets out of hand, I reach for Crazy Glue."

There are lots of professors who get the Chalk Stripe on their butt during class, and then there are those professors who get out and out Chalk Butt. "Todd the God" is one of them.

Bob Clark for Dreyers Grand Light: An unbelievable spokesperson for an unbelievable product. "I know you didn't believe me when I said we are committed to diversifying the faculty."

Duncan Kennedy and Steven Shavell for Miller Lite Beer: Steve: "Less Filling!" Duncan: "Tastes Great!"

Lloyd Weinreb for Chapstick: Famous for licking his lips during class, Lloyd is a natural for Chapstick. That Lloyd has a problem with chapped lips is mere speculation. Other theories have been suggested, including that he's part reptilian. At any rate: "Call me Lloyd Chapstick!"

Randy Kennedy for Guess Jeans: Having had the sincere pleasure of seeing Randy one Saturday in black jeans and a tight black T-shirt, I can attest to his qualifications for this endorsement. You might never guess it from seeing Randy in a suit, but the guy has genuine sex appeal.

Alan Dershowitz for Alan Dershowitz: (Needs no explanation.)

Vice Dean David Smith for Sony Handicam: "The protesters had Griswold blockaded for 12 hours when the order came down from DBC to start taping. It's times like these that I'm glad to know that I can rely on my Sony."

Charles Nesson for Just for Men hair dye: "Whether I choose blonde or brunette, I get just the shade I want. Sure it costs more, but I'm worth it!"

Alysse MacIntyre: What would I endorse, you ask? O-Cedar Brooms. "When I need to fly around in a hurry, my O-Cedar never lets me down."



**LeBoeuf, Lamb,
Leiby & MacRae**

will be on campus

Tuesday, October 15th

Please sign up for
interviews
in the Placement Office

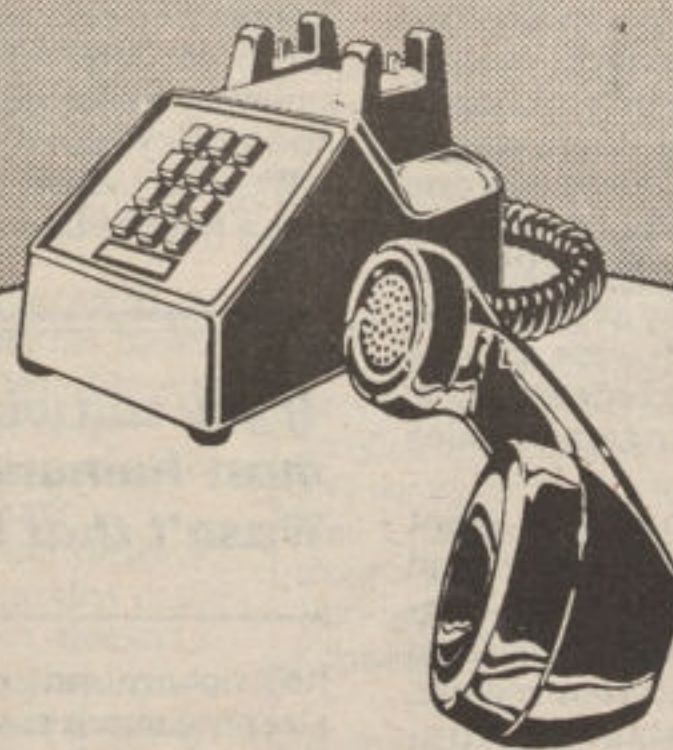
Res Parents' and
Children's Services

**Volunteers
Needed**

FOR THE

PARENTAL STRESS LINE

**A toll-free 24 hour line for
parents in crisis.**



You can help prevent child abuse.

**For information,
call (617) 437-1990**

CCR Discrimination Lawsuit: Alive And Still Kicking

As another academic year begins at Harvard Law School, charges of discrimination in the school's faculty hiring

By Coalition for Civil Rights

practices linger on. Last November, the Coalition for Civil Rights filed suit in Massachusetts state court charging that for the past 20 years HLS, through its faculty hiring practices, has violated Massachusetts anti-discrimination law. The lawsuit is believed to be the first of its kind in the nation. In what may be a test case for other states, we are arguing on appeal that, as students, we should be granted standing to sue our school to allege discrimination in the school's hiring of our teachers.

CCR was founded as a coalition in March 1990 by the following HLS groups: Black Law Students Association, La Alianza, Asian-American Law Students Association, Committee on Gay, Bisexual, and Lesbian Legal Issues, Native-American Law Students Association, Students for Disability Rights, and the Women's Law Association.)

For at least 20 years, students at Harvard Law School have protested the school's discriminatory faculty hiring practices which have effectively excluded qualified women and minority candidates from consideration for teaching positions. Despite these years of student protest, institutional racism, sexism, and homophobia remain entrenched at HLS and the attitudes of many of the school's administrators and professors remain dangerously similar to those of another century. All of this at a school which purports to be the best in the nation at training people to enter the legal profession.

A few statistics tell much of the story. Today, Harvard Law School has 66 tenured or tenure-track professors. Of those 66 faculty members, only five are women (all of whom are white) and only six are African-American (all of whom are male). The rest are all white men. In its 174 year history, Harvard Law School has never hired a Latino/Latina, an Asian-American, a Native-American, an openly gay or lesbian person, a disabled person, or a woman of color for its tenured faculty.

Harvard Law School is, admittedly, not the only law school facing student protests for faculty diversity. Last April, for the third consecutive year, students at dozens of law schools across the country participated in a nationwide

strike for diversity. The filing of the CCR lawsuit against HLS last November followed a series of protests on the campus the previous spring. Those protests culminated in the announcement by Professor Derrick Bell, a distinguished constitutional scholar and Harvard's first African-American tenured law professor, that he was taking an unpaid leave of absence until the school hired a woman of color for its tenured faculty. A year later, with no change in sight, Professor Bell remains on unpaid leave of absence and is currently teaching as a visiting professor at New York University Law School.

The calls for change by thousands of law students in this country need the support not only of professors and administrators but also of society as a whole. For, in the end, all of us suffer when those trained to be members of the legal profession are denied the benefits of association with an integrated faculty. Racism, sexism, and homophobia in legal education only perpetuate racism, sexism, and homophobia in our nation's courts.

It is significant that the United States Supreme Court cases which paved the way for the Court's historic 1954 decision in *Brown v. Board of Education* were cases which dealt with segregation at law schools. In *Sweatt v. Painter*, 339 U.S. 629 (1950), for example, the Court found it unconstitutional for the University of Texas Law School to deny entry to an African-American applicant on the basis of race. In its opinion, the Court addressed the particular invidiousness of discrimination in the context of the law school setting: "The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts." 339 U.S. at 634.

Harvard, like many law schools, argues that it is trying but that "things take time." It claims that the pool of qualified candidates of people of color, women, lesbian, gay and bisexual people, and persons with physical disabilities is small and that this has impeded the school's efforts to diversify its faculty. Yet, somehow Georgetown Law School has managed to find five African-American women professors for its tenured faculty. And somehow Stanford Law School has managed to hire a faculty, 29 percent of which are women and minorities. The "pool" ar-

gument is really a smokescreen for attitudes which reflect the old boy network of legal academia.

The Supreme Court's decision in *Sweatt v. Painter* and the desegregation efforts of the Civil Rights Movement resulted in dramatic changes in student bodies at schools across this country, including law schools. Over the past two decades, thousands of women and minority law students have graduated and entered the legal profession. While all may not be qualified to teach, Harvard Law School's faculty hiring practices certainly have prevented many who are qualified from even being considered.

The discriminatory nature of the hiring practices lies principally with the school's criteria for determining who is "qualified." While unstated publicly, these criteria can be inferred from an analysis of the composition of the Harvard Law School faculty. They include: attendance at a prestigious law school, membership in a law review, and a law clerkship. Teaching requires an ability to convey complex ideas clearly, to engage students in the educational process, to create a classroom environment conducive to the free exchange of ideas, and to interact with students as role models, mentors, and advisors. Writing for a law review, clerking for a judge, or attending a prestigious law school have nothing to do with whether or not someone can teach. The use of these criteria has effectively excluded many women and minority candidates from consideration for teaching positions at the school. Added to this is the fact that Harvard Law School does not accept applications for teaching positions but rather relies on a word-of-mouth network for hiring. With an old-boy network in control, it is difficult for women and minority candidates to break through the barriers.

In late February 1991, Judge Patrick Brady of the Massachusetts Superior Court in Cambridge granted Harvard's motion to dismiss the CCR lawsuit on the grounds that we did not have standing to allege employment discrimination at HLS. The judge acknowledged during oral argument on Harvard's motion that this was a case of first impression and suggested that the issue of standing ought to be decided by a Massachusetts appeals court before proceeding further with the case. It is significant to note that Judge Brady did not grant the motion to dismiss on

Harvard's other argument—that CCR had not made out a prima facie claim of discrimination at HLS. Judge Brady explicitly stated in his decision that it was too early in the litigation (particularly since the students had been denied discovery) to rule on that issue.

CCR is now in the process of preparing for its appeal. In March, CCR filed its notice of appeal. We are currently waiting for the trial court to assemble the documents in this case so that the matter may move to the appellate level.

As student plaintiffs, we will continue to represent ourselves in this case. We anticipate receiving renewed support from several national civil rights groups which joined together on the trial level with a friend-of-the-court brief in support of our arguments for standing. These groups included: the Lawyers' Committee for Civil Rights Under Law-Boston Chapter, Mexican-American Legal Defense Fund, National Council of La Raza, Center for Constitutional Rights, LAMBDA Legal Defense Fund, National Lawyers Guild-Massachusetts Chapter, National Conference of Black Lawyers-Massachusetts Chapter, and the National Rainbow Coalition. In addition, the Society of American Law Teachers, which represents hundreds of law professors throughout the country, signed on to the amicus brief.

We have received this kind of support from the civil rights community because a favorable decision in this case is likely to open the doors to lawsuits by students across the country seeking to eradicate discrimination in the faculty hiring practices of their schools. If the wall of exclusion at Harvard Law School can come down, then perhaps many others will begin to crumble. We recognize that this is an uphill fight. Harvard has made it clear that it intends to devote significant resources to oppose our argument that we have the legal capacity to bring this suit. We have a chance, however, that in this case of first impression a Massachusetts higher court will follow the strong civil rights tradition of previous Massachusetts courts and will once again lead the nation in breaking down an ugly barrier of discrimination in American society.

For those interested in finding out more about the CCR lawsuit or how you can help, please call John Bonifaz, 876-2172, or Laura Hankins, 776-1665.

Cambridge, MA: The Little Town With No Parade

It's time for another victory parade! New York's had a big one. The Capitol had one. There were many little towns

By Jim Datri, 3L
Managing Editor

all across America that had one. But I don't remember seeing one in Boston. Hellooooo, BOSTON! Knock, knock; anybody home? How about Cambridge's parade? Oh, that's right, there wasn't one. Come to think of it, I never saw one in Holmes Field either. What's with this law school? Is everyone asleep? We just reigned victorious in one of the most important and decisive wars in our history (in fact, in all of recorded history) and I don't remember seeing any parades around here.

In case everyone is having a giant case of collective amnesia, let me remind you about our victory. First and foremost, we freed the Kuwaiti people from an undemocratic, totalitarian regime, and helped them reinstall their undemocratic, totalitarian ruling family. Our only failing here was that it took the Emir a few days to get back to his beloved oil fields - I mean homeland, after it was freed. He probably got used to the luxury hotels he stayed in during the war, and what with his palaces destroyed back home, what was there to come back to? Why weren't his

people rebuilding his palaces? They seemed preoccupied with things like food shortages and busted water mains. Anyway, with lazy subjects like that, you can hardly blame us for not getting the Emir back quickly enough. And even with all the suffering he has had to endure, he is still willing to give his people free elections - in a year or two. Or three. After all, they promised - and on every major network, too. Where is the victory parade?

We also helped topple the evil dictator, a man as bad as Hitler. Good thing

understand it, we killed (I mean neutralized) a whole bunch as they were fleeing our fire. (And I don't ever remember hearing how many Iraqis were killed - I mean, fell or were disengaged. Funny about that.) Where's the victory parade?

And those nuclear weapons, the single biggest reason we all wanted to go in there and kick butt, in the first place. I'm glad they're all gone. Whew! Well, maybe Iraq still has some left. Just one or two. Or three. But that's no big deal. What's a few nuclear weapons? And I'm

One big American weapons company is even agreeing to help us out. Everyone was so impressed by our display of weapons mastery that now everyone is buying them. Everyone being all the Middle Eastern countries (except Iraq - they already have enough weapons). I'm sure they don't ever intend to use them against each other. The Gulf War has given them all a renewed trust in each other. It's a New World Order. Maybe we need a New World Order flag. Maybe we should have a New World Order parade.

And let's have one quickly because even though we were so victorious the first time, it seems the President thinks we may need to show them again. He has clearly demonstrated that war is the answer - there is no doubt here. If you can win, and win decisively, war must be the best and most humane long-term solution to your problems, right? Wasn't that the Vietnam lesson? We gave the U.N., international law, and sanctions quite long enough! But if we are to attack again so soon, there are other things to consider. Some places will have a parade for the second victory before others get one for the first. Is this fair? I think not!

Jim Datri is a former lobbyist and currently heads the Law Students National Network for Children

If you can win, and win decisively, war must be the best and most humane long-term solution to your problems, right? Wasn't that the Vietnam lesson?

he's not around anymore. I for one am sleeping much easier at night. Alright, we may not have gotten the evil one himself, but at least we picked off a lot of those dangerous, dastardly Iraqi Army troops. We had to do it - after all, those guys were just itching to kill our troops. Do you really believe that a guy like the evil one/Hitler-type would force them to be there at gunpoint? Nah! He may be bad, but not that bad. As I

sure Iraq won't be able to build any new ones in the near or far future. And if they do, we can always go in and bomb them again. In fact, in the years to come, when more and more small nations gain nuclear capacity, we can bomb them, too, as long as we've set the precedent with Iraq. By the year 2010, we'll have a parade every week. Dare to dream...

And then there's the peace we've won. Everybody is buddy-buddy over there.

Those %\$#*&! Red Sox: Will The Nightmare Ever End?

Those %\$#*&! Red Sox have done it to me again. I know, I know, there's still about a week left as I write this, but

By Rich Wareing, 2L
RECORD Columnist

these guys are finished, kaput, stick a fork in them - done.

Oh, I know that I shouldn't have expected the Sox to go too far with no speed (what would we have done with Willie McGee, anyhow?), little defense (or Dwight Evans?), and a rotation of The Rocket, two kids with peach-fuzz on their cheeks, a career mediocre middle reliever pitching way over his head, and whatever stiff Joe Morgan had a hunch would make it through the third inning on a given day. But you see, I'm a Red Sox fan so I hope for the impossible.

Every year the Sox trot out the same lineup of flat-footed sluggers, an array of utter incompetents who they pass off as pitchers, and some dolt they call a manager.

They try and convince everyone that this will be the year but every year the sluggers ground into a billion inning-ending double plays, one of the fielders makes a critical error, the so-called "pitching staff" collapses altogether at the most critical time and the skipper does things which probably make Earl Weaver and Whitey Herzog cringe.

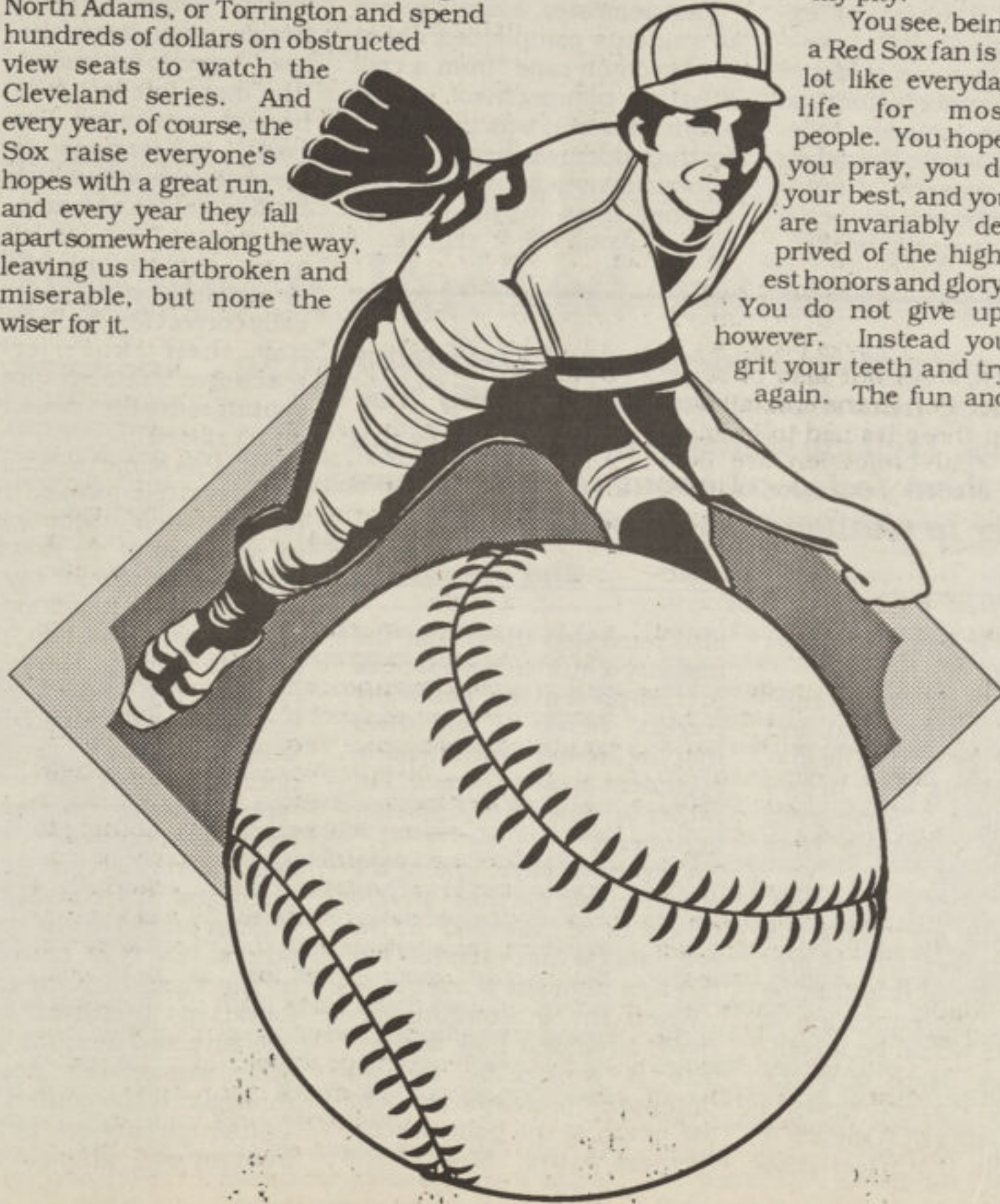
Every year the management (and dignifying those bums with that title is doing them no small service) promises to respond to the previous year's collapse with major changes and promptly proceeds to sign another Tony Perez or Mike Easler and a bum like Mike Torrez, Skip Lockwood, or Tim Lollar whom they tout as the next Cy Young.

Every year, of course, hundreds of

thousands of normally intelligent fans, against every principle of logic and common sense, buy this line of crap and take their vacations in fabulous Winter Haven, Florida to watch Spring Training, or drive for hours from Bangor, North Adams, or Torrington and spend hundreds of dollars on obstructed view seats to watch the Cleveland series. And every year, of course, the Sox raise everyone's hopes with a great run, and every year they fall apart somewhere along the way, leaving us heartbroken and miserable, but none the wiser for it.

Unless you were born in New England, you're not likely to understand or even care about this phenomena (unless, of course, you happen to be a Cubs fan). To these unfortunate souls, I can only offer my pity.

You see, being a Red Sox fan is a lot like everyday life for most people. You hope, you pray, you do your best, and you are invariably deprived of the highest honors and glory. You do not give up, however. Instead you grit your teeth and try again. The fun and



satisfaction is in the process, not the result, and you take your satisfaction from the trip, not the destination.

To see Ted Williams hit .403 or Yaz become the only American League player to collect 3,000 hits and 400 home runs, or just to watch him play the Green Monster, or to see Dwight Evans patrol right field year after year with the grace and class of a true champion, or Carlton Fisk wish that ball fair in Game Six of the '75 series, or the Rocket mow down the Seattle Mariners like a scythe through wheat, or just to see the natural grass, steel, and brick of that curious bandbox called Fenway - these are things worth bringing your kid hundreds of miles and several hours to see, things worth the pain of endless disappointment.

I'll be mad as hell for a few weeks that this highly paid collection of bums and whiners has let me down once again, but I know I'll eventually get over it. I'll pack away my vintage Sox cap which really doesn't fit me any more, and turn my attention to other, less pressing matters, like getting a job, or the latest developments in the Middle East or Soviet Union.

Sometime this winter, though, I'll start to scour the Sunday Globe Sports for free agent pitchers, and try and convince myself that whoever we do sign will prove everyone wrong and win 20 games and that you really don't need speed or defense to win a World Series.

I'll start calling my friends, and make plans to go to some games. I'll watch Spring Training like it was the World Series. And once again, my old, trusty cap will re-appear, and with it, the hopes and dreams of a new season and a fresh chance. Until then, however, I don't think I want to talk about the Red Sox any more.

Letters To The Editor

Stop Whining, Get A Job

To the Editor:

For lack of anything else to whine about this week, Bob Arnold has chosen to bemoan the fact that Harvard brings so many firms to his doorstep. My heart bleeds for you, Bob. If it disturbs you so much that "the Career Placement Office continues to play match-maker with HLS students and law firms," why don't you try going out into the real world where you actually have to find a job?

Page Lichtenfeld, 2L

Alysse, Vulnerable? Surely Not

To the Editor:

In her perceptive article, "The Sensitive Man in the Nineties: Just a Big Cry Baby," Alysse MacIntyre rightly points out that we're in a very sorry state nowadays, what with the US turning into a vale of male tears.

But why is Ms. MacIntyre worried (or at least, mock-worried) that this might mean men are no longer "emotionally stable enough to run the country?" Is she actually suggesting these tears should be taken at face value?

Granted, anatomy is partial destiny, and there are some things males can't fake as deftly as women. But, doesn't a shortcoming in one sphere just mean you try even harder with whatever strategies remain, if you're worth your salt?

I enjoy Ms. MacIntyre's feisty humor and worldly-wise bluster. But this latest column flirts with a disconcerting naivete. Why? What's her agenda? Is she trying to tell us that beneath here bluster and feistiness lies an endearing vulnerability? Please, spare us!

Greg Smith, 3L

O'Rourke Misquoted

To the Editor:

Your "Gratuitous Quote of the Week" (September 20 issue) was not from P.J. O'Rourke's "latest book, *Vacations in Hell*." O'Rourke's latest book is *Parliament of Whores*, which hit the shelves earlier this year. *Vacations in Hell* was published in 1988.

Like his prior works, *Parliament of Whores* is replete with witticisms both biting and baiting. My personal favorite is:

"Democrats are...the party of government activism, the party that says government can make you richer, smarter, taller and get the chickweed out of your lawn. Republicans are the party that says government doesn't work, and then they get elected and prove it."

Mark Landis, 1L

Wiley, Rein & Fielding

Washington, D.C.

cordially invites Harvard 2Ls and 3Ls

to a reception

Tuesday, October 15, 1991

6:30 - 9:00 p.m.

Charles Hotel

The Compton Room

Wiley, Rein & Fielding presents an excellent opportunity for new lawyers and summer associates. The firm, while relatively new, has gained the critical mass, significant clientele, and reputation for quality performance essential to achieving a leadership position among law firms in the Nation's Capital.

We have a general Washington practice with a strong emphasis on matters of public policy and litigation. Our work includes controversies before federal and state courts, federal agencies, Congress and the Executive Branch. The resolution of these matters often has considerable public policy implications.

The principal areas of the firm's practice now include: communications, litigation, insurance, international trade, election law, food and drug, government contracts, antitrust and trade regulation, government affairs, health and safety, corporate, and intellectual property.

If you would like additional information about our firm, please refer to our firm description on file at the Office of Career Services.

We will also be interviewing Harvard 2Ls and 3Ls on Tuesday, October 15, and would like to encourage all interested students to sign up to meet with our firm's summer associates. Students who wish to learn more about our firm and are not available on this date should contact: Terina McGrath, Director of Professional Services, Wiley, Rein & Fielding, 1100 K Street, N.W., Washington, D.C. 20004-2029, to make alternate arrangements.

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the RECORD as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

Each alumnus/a receiving a RECORD subscription through the Harvard Law School Assn. should be on notice that \$5.80 of H.L.S.A. annual dues are used to purchase the RECORD subscription he or she receives. Dues are paid at any time during the H.L.S.A. fiscal year that began in April 1, 1991 and ends in March 1992 will purchase a subscription that begins in September 1991 and expires in May 1992, and so on in following years.

return address:
HARVARD LAW SCHOOL ASSOCIATION
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138

SECOND-CLASS POSTAGE PAID AT BOSTON
MA AND ADDITIONAL OFFICES

The Politically Correct Police Strike On Campus

By Alan M. Dershowitz

This article is a reprint of an article which ran in the September 23 issue of the Boston Herald. We have reprinted it at the request Section 4 members of the Class of 1993.

I have written about the dangers to freedom of speech, academic freedom and diversity posed by the "political-correctness cops" who patrol campuses these days. Now a personal experience has made it clear how threatening this trend can be, especially to professors without tenure.

In my criminal law class at Harvard, I teach the law of rape as an example of a cutting-edge subject that poses a sharp conflict between the rights of defendants and their accusers. As usual, I take a "devil's advocate" position on politically correct issues. For example, although I oppose capital punishment, I argue in favor of the death penalty and ask students to come up with better arguments. Unless they can, they will never be able to persuade the 85 percent of Americans—including judges—who favor the death penalty.

Similarly, in the area of rape I argue positions that students are reluctant to defend but which many Americans believe. I point out that according to FBI statistics, rape is both the most underreported and the most overreported crime of violence. For every reported rape there are an estimate 10 that are not reported; but at the

same time, 8 percent of all reported rapes turn out to be unfounded—and this rate of false reports is higher than for other violent crimes.

Because some rape defendants are innocent, I warn against the dangers of expanding "rape-shield" laws—which exclude some evidence concerning the prior history and actions of the accuser—especially in cases where the defendant claims consent. I argue that women who accuse men of rape should generally be iden-

about their opinions, but rather to challenge their every view. That is what the "Socratic method" of law teaching is all about. That is also what the reality life practice of law demands.

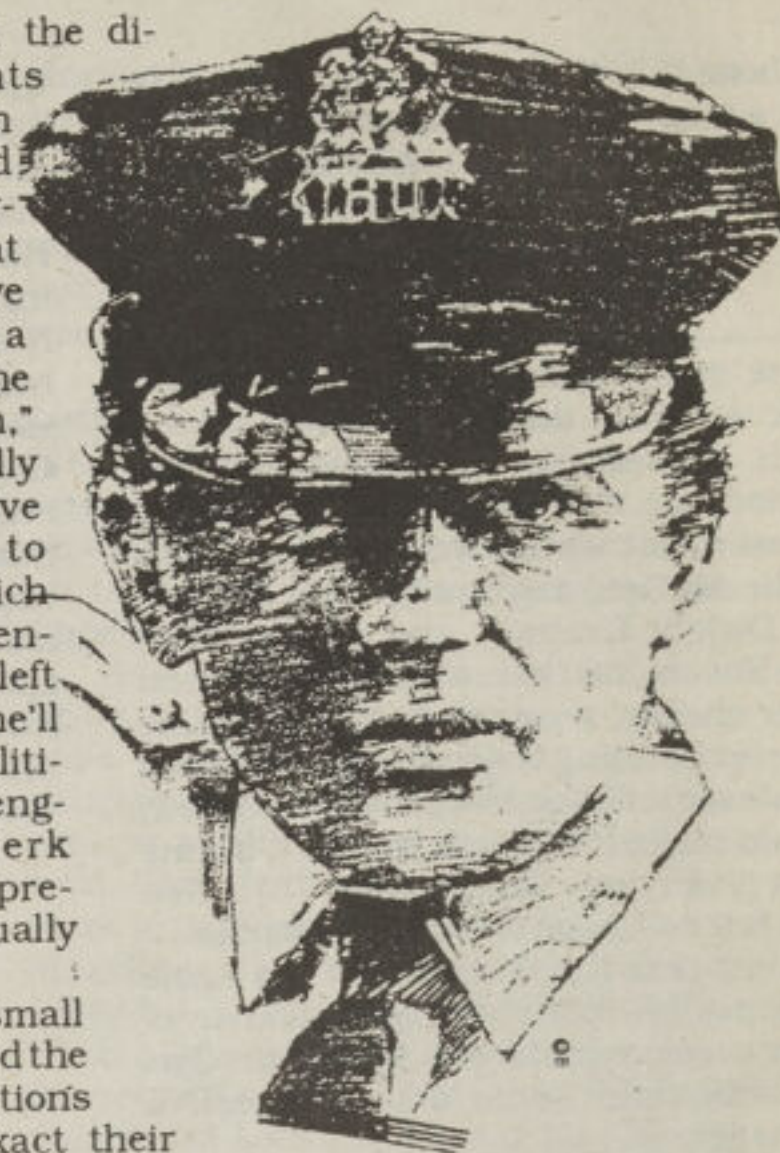
Last semester, a small group of students complained about my teaching rape "from a civil liberties perspective." I responded that it was important for the students to hear a variety of perspectives about rape just as they hear—without objection—about other crimes. I

students appreciated the diversity of viewpoints ("willingness to broach sensitive subjects and take unpopular viewpoints," "very good at presenting alternative views," "helped me get a less dogmatic view of the law," "open to criticism," "the most intellectually honest professor I've had," "eagerness to present views with which he disagrees is a tremendous asset," "as far left as you can get (but) he'll be assailed by the politically correct for challenging their knee-jerk reactions," fair in presenting sides that usually aren't raised").

But this time a small group of students used the power of their evaluations in an attempt to exact their political revenge for my politically incorrect teaching. One student said that I do "not deserve to teach at Harvard" because of my "convoluted rape examples." Another argued that women be allowed an "option" not to take my class because I "spent two days talking about false reports of rape." Another demanded that my "teaching privileges" be suspended. One woman purported to speak for others: "Every woman I know in the class including myself found his treatment of rape offensive and disturbing." Another woman felt "oppressed throughout the course."

Although I always try to learn from my evaluations, I will not

be bullied into abandoning a teaching style that I believe is best designed to stimulate thinking. It takes no courage for me to exercise my academic freedom, since I have tenure. But if I were an untenured assistant professor, would I have the courage to risk the wrath of the P.C. cops? Are other, less established, teachers being coerced into changing their teaching by the fear of negative evaluations, which can be fatal to tenure? You bet they are; and it poses a real danger to academic freedom and good education.



The education of my students would be incomplete if they heard only the comfortably "correct" views. I tell my students that my job is not to make them feel good about their opinions, but rather to challenge their every view.

tified in the media, as should the men they accuse.

All in all, my classes on rape tend to be controversial and emotionally charged. The majority of students seem to love the exchanges. Some even change the opinions they brought to class.

But my "devil's advocate" views on rape are "politically incorrect." Indeed that is precisely why I insist that they be expressed. The education of my students would be incomplete if they heard only the comfortably "correct" views. I tell my students that my job is not to make them feel good

also reminded them that the majority of students who speak in class present the "politically correct" views. I told them that the answer to an offensive argument is not to censor, but rather to come up with a better argument.

A few days later, one of the students told me that I should expect to be "savaged" in the evaluations that each teacher receives from the students.

When the evaluations arrived, I realized how dangerous it would be for an untenured professor to incur the wrath of the political-correctness patrol. Most of the

Cadwalader, Wickersham & Taft
New York

will be interviewing
second year law students
for
summer positions
on
Thursday, October 15, 1991
1:00 pm to 7:00pm
at
The Charles Hotel

Rogers & Wells
Two Hundred Park Avenue
New York, N.Y. 10166

WASHINGTON, DC

PARIS

LOS ANGELES

LONDON

FRANKFURT

We look forward to meeting
Harvard Law Students
during our on-campus interviews
on
FRIDAY, OCTOBER 18, 1991