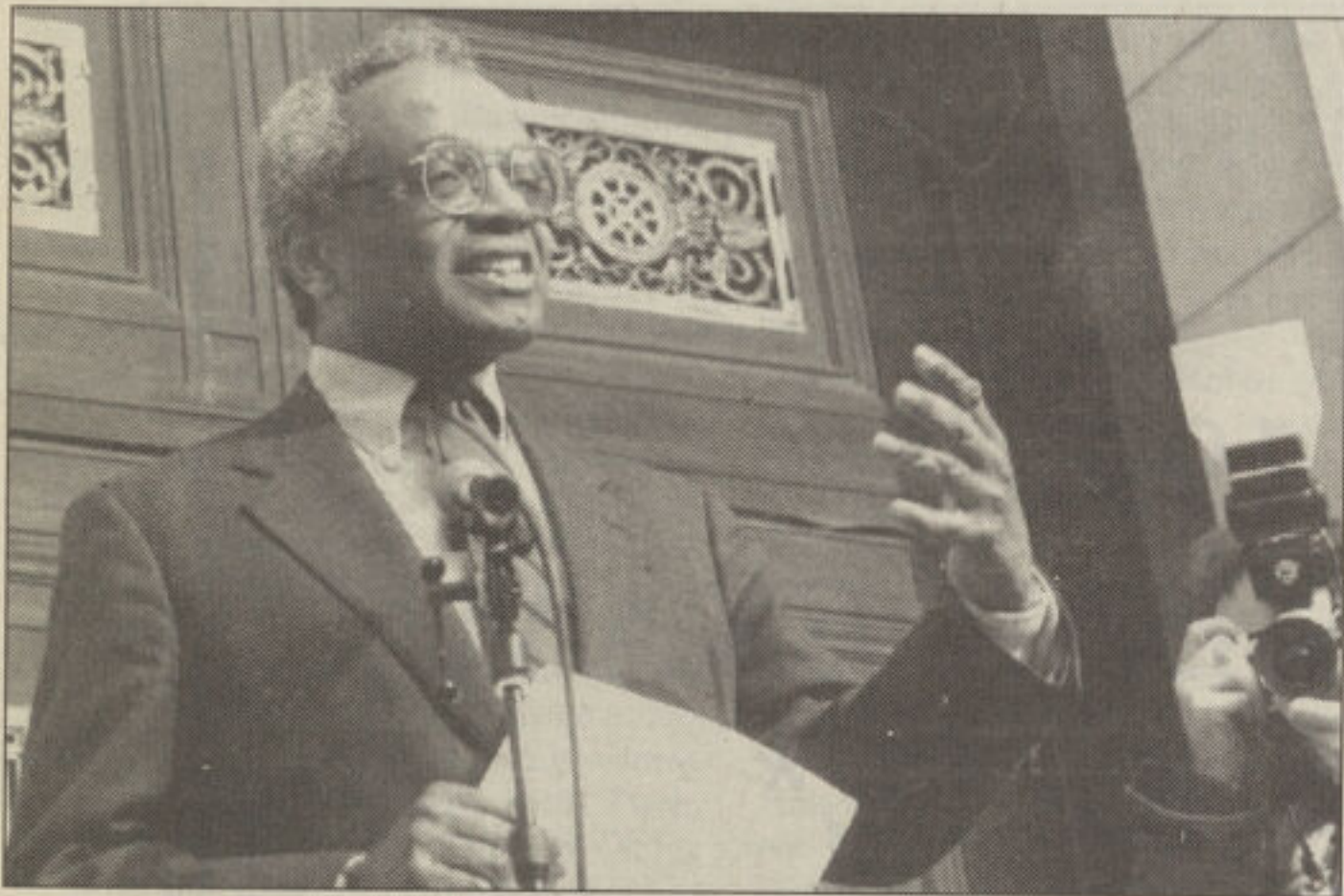




Professor Derrick Bell announcing his plans to continue his protest.

Bell Vows to Fight On

By **Natasha H. Leland**
of The Harvard Crimson

The University will not grant Harvard Law professor Derrick Bell an extension on his unpaid leave of absence, President Neil L. Rudenstine said in an interview yesterday.

The move will likely mean that Bell, who took a leave of absence in April 1990 to protest the lack of faculty diversity, will end his tenure with the University.

Before a crowd of more than 350 assembled in front of Langdell Library at Harvard Law School, Bell announced his plans to request a third year of unpaid leave and blasted the University's hiring practices.

University regulations limit to two years the time a professor may be on unpaid leave. Bell argued yesterday that the regulations should not apply because his leave was not voluntary. "[My leave] has, rather, been coerced by the faculty's rigid adherence to obsolete credential-based hiring," Bell said.

But Rudenstine said an exception will not be made for Bell. "My view is that we cannot extend the rule," Rudenstine said.

The president added that the final decision to extend Bell's leave would be made by the Corporation.

Rudenstine said he believed offering Bell the extension would make future cases difficult to decide. "It would be really difficult to know what grounds one would have for sustaining the rule in the future."

But Rudenstine said that if Bell does resign, the law professor could return if the faculty extends a new tenure offer to him.

Black Law Students Association (BLSA) members said they are not as optimistic as Rudenstine about Bell's possibility of returning. "I don't know if they would take him back, because of the political situation," said Charrise Carney, a third-year law student and president of the BLSA.

Members of minority student
please see BELL, page 4

4 White Men Offered Tenure

**Students Say
Announcement
Violates Policy**

By **Robert C. Arnold**

Through a memo authored by negotiation guru Roger D. Fisher, Dean Robert C. Clark recently announced that the Faculty voted on Friday, February 28, to request the Appointments Committee to bring to the Faculty for its consideration as soon as possible, and no later than this Fall, several promising candidates who are not White males.

However, this request comes on the heels of another, equally important announcement:

The Appointments Committee has just extended tenure offers to four White male professors.

In an interview with the RECORD on Tuesday, March 3, DBC revealed that the Faculty had reached the decision by an "overwhelming majority."

"It was a breakthrough in that in the past 15 years we haven't been able to do anything like this [attaining such a majority]."

But students involved in the struggle to diversify the faculty aren't so excited by these announcements.

"It almost looks as if they did it out of spite," according to Seth Rosenthal '93. "That's too bad."

Some students expressed more than mere consternation, saying that the announcement is not only "incredibly disheartening," but that it also violates a Law School policy. The policy in question is the "year away" rule. Three of the four men to whom offers were extended would be subject to this policy.

The Law School's "year away" rule requires that visiting professors only be considered for tenure positions a year after the end of their visit to the Law School. It was invoked by the Faculty a year ago to postpone

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**Rudenstine Wants
Written Clarification
of Hiring Process**

By **Steve Yarian**

Harvard University President Neil Rudenstine met with a group of seven Harvard Law School students on early Wednesday morning, March 4, to discuss last Friday's tenure decisions by the HLS faculty. By the meeting's end, Rudenstine had agreed to intervene on behalf of the HLS students, to the extent of meeting with Dean Robert C. Clark and the Appointments Committee to seek an explanation of Friday's decision.

Rudenstine also agreed to obtain a written clarification of why the policy prohibiting

lateral appointments to professors currently visiting at HLS, the "year away" rule, was waived for three of the White male candidates offered tenure at last Friday's meeting.

On Professor Derek Bell's "protest" leave of absence, Rudenstine was negative about the possibility of an extension. However, Rudenstine assured students that, were Professor Bell to reapply to the faculty, "within two or three years" [as has happened with other Harvard Faculty who required extended leaves of absence for various reasons] he was confident that Professor Bell would be reappointed.

The meeting was suggested in requests made by Juny Francois '94 and Peter Cicchino '92. Rudenstine's office received the requests on Monday afternoon and, shortly thereafter, at 5:00 p.m. on the same day, Rudenstine notified Francois that he had agreed to a meeting.

The students, who interpreted Rudenstine's prompt response and willingness to hold a meeting on such short notice as

please see RUDENSTINE, page 3



Kunin Address Kicks Off Women's History Month

By **Lisa Zornberg**

The Women's Law Association (WLA) kicked off Women's History Month on Tuesday evening with its Annual Dinner. Dean of Students Sarah Weld and over sixty law students attended the dinner, which featured a speech given by Madeleine Kunin, the former three-term governor of Vermont. Kunin now serves as a Fellow at the Radcliffe Bunting Institute, and is writing her memoirs on her experiences as a woman in politics.

Kunin channeled her remarks on the "astounding" absence of women in politics in the United States into an inspiring call to the women of HLS, and for all women, to enter the political arena. "We have a surrogate system of political representation in this country," she declared. "Basically women are being very genteel about politics. We might as well be in the pre-suffragist era; we have the vote, but we don't have the power."

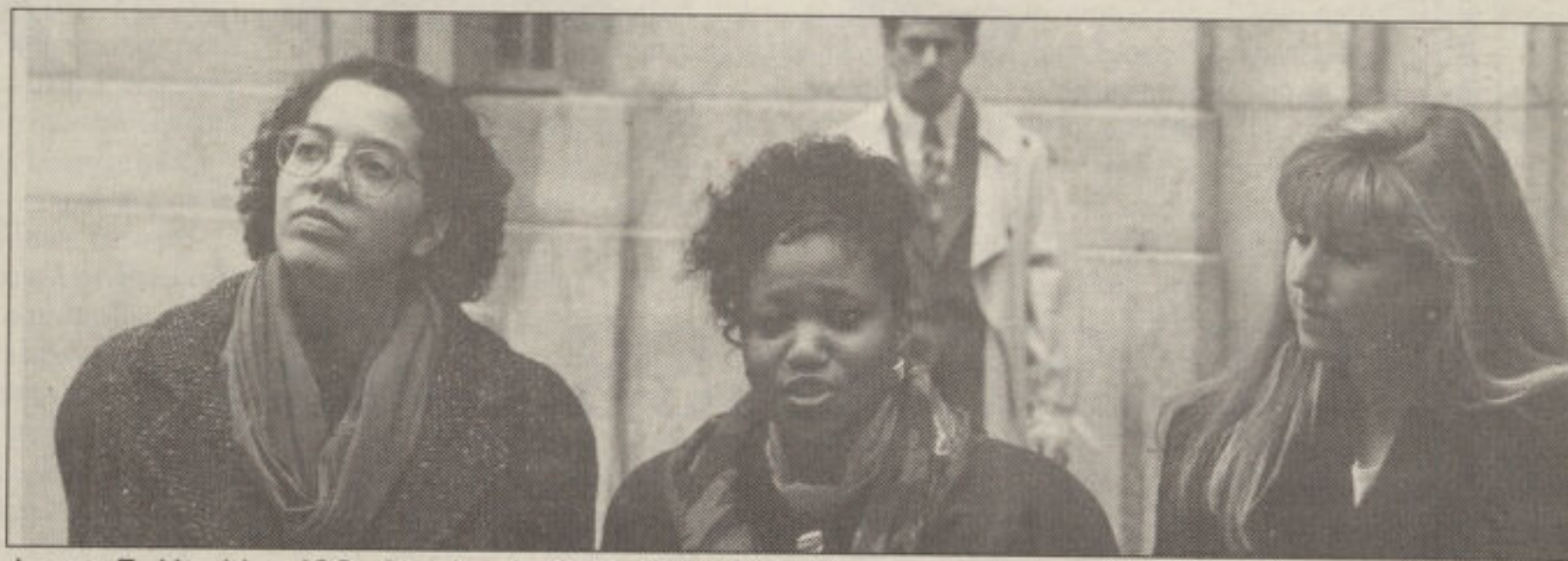
"Why not?" she rhetorically asked that "haunting question" that naturally follows. "The

major reason," retorted Kunin, "that progress has not been made in a sustained and substantial way is precisely because women have not entered the heart of the power structure. We are still on the periphery, knocking on the door and waiting our turn."

Kunin pointed to recent national events to illustrate her point, including the failure of the 1992 Presidential candidates to address women's issues, and the Anita Hill hearings as the most blaring examples (they weren't "Thomas hearings" at all, she commented). "By the 21st century, not only will the United States be the outstanding model of democracy in this world, it will be the outstanding example of patriarchal democracy."

The former Governor emphasized women's abilities to bring great advice to the political system. "The assumption among the good ol' boys is that their experience is the universal one. Their sin is not one of commission, but of omission—of the failure to recognize that there is a black experience, and a gay/

please see WLA, page 15



Laura E. Hankins '92, Stephanie C. Robinson '94 and Caroline Witcoff '92 address reporters.

CCR Argues Lawsuit Before SJC

By **Ashley Barr**
Special to the RECORD

A year and a half after the Coalition for Civil Rights filed its original discrimination suit, CCR representatives Laura Hankins (HLS '92) and Caroline Witcoff (HLS '92) presented oral argument in the case of *Harvard Law School Coalition for Civil Rights, et al., v. President and Fellows of Harvard College* in the Supreme Judicial Court of Massachusetts on Tuesday March 3, at 9:00 a.m. An overflow crowd of 150 HLS students filled the courtroom, the hallway and an anterior room at the courthouse, where the oral

argument could be heard through an intercom system.

The only issue addressed at the hearing was the students' standing to bring the suit. Appealing from the Massachusetts Superior Court's dismissal of the case in February of 1991, Hankins and Witcoff pressed the Court to recognize the students' legal right to have the merits of their claim heard. If two of the five judges who heard the case grant the students standing, all seven judges will review the matter en banc. A decision by the Supreme Judicial Court regarding CCR's right to bring the merits of their discrimination claim to a trial court in the future should be rendered by

the end of June, 1992, according to a spokesman at the Court clerk's office.

The HLS Coalition for Civil Rights (CCR), a law student group representing six minority student organizations and the Women's Law Association, initiated the case in November of 1990 by filing suit in Massachusetts state court charging that HLS has for years excluded women and minorities from its faculty in violation of Massachusetts anti-discrimination law. The historic case, in which students are representing themselves, is the first of its kind in the country, and may have profound

please see LAWSUIT, page 15

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BAR REVIEW

Lots of Women Associates — Any Partners?

By Glennis Gill

A recent survey by the Massachusetts Lawyers Weekly finds women account for more than 40 percent of the associates in Massachusetts' biggest firms but only 15 percent of the partners. Of the state's 100 largest law firms, 20 percent have no female partners. Are these statistics significant to the future of women in law school today?

Probably not. Although different theories for the disparity in women associates and partners abound, the consensus seems to be that the numbers are about to change quickly and dramatically.

A common explanation for the paucity of women partners has been the additional responsibilities many women try to juggle as associates. Ruth Fitch, HLS '83, a partner at Palmer & Dodge in Boston since 1991, explains that "there are a lot of other responsibilities that women must attend to and it ends up being difficult to focus on making partner. The partnership track is hard, no matter what, and women have major additional responsibilities for home care and family care."

But as Marie-Louise Ramsdale,

Co-Chair of the Women's Law Association asserts, "if law firms are making the argument that women aren't staying around long enough to be considered for partnership, then clearly that's something to worry about and not to be taken at face value—why are women leaving the firm environment? The blame shouldn't be placed on the women; it would be a good idea to look at the corporate culture and see what it is that makes women leave before they've finished their associate years."

Some believe that the disparity has little to do with these factors and much more to do with the simple fact that not that many women have not been up for partnership. The idea is that "it's just a matter of time." Carolyn Clark, HLS '68, who became the first woman partner at Milbank, Tweed, N.Y. in 1977, blames the disparity on the fact that it "takes longer for the diversity we see in class to be transferred to the partnership level." Clark points out that her class at HLS only had 19 women, and although enrollment changed rapidly after that, partnership levels take longer to react.

Leslie Singleton, the recruitment coordinator at the Boston firm of Sherburne, Powers & Needham chimes in on this theory. Although only 2 of

the firms' 27 partners are women, Ms. Singleton sees that statistic changing rapidly in the next few years. She asserts that "we're just now hitting the brink of women coming up for partnership. There's an incredibly strong pool of women coming up now for consideration." For example, of the 7 associates up for partnership this year, 5 are women. Last year there were only 2 people up for partnership, one woman and one man, and both made it. Ms. Singleton stresses that there have been very few women up for partnership and points out that one of the 2 women partners was the only woman up for partnership in the last five years. She had just returned from a four month maternity leave, was made partner and now works part-time.

Not everyone agrees that time will equalize the percentages. Marie-Louise Ramsdale counters that "there is not a 'pool problem' anymore. Women have been graduating from law schools in larger and larger numbers for the last twenty years, and it only takes eight years to make partner."

But it may be that the statistics are actually telling an incomplete story, at least for a lot of firms. A large number of the attorneys in these firms made partner before there were many women

associates, so a survey determining what percentage of the associates made partner in the last ten years were women would be a lot more helpful. Susan Cohen Levy, HLS '82 became a partner at Jenner & Block in Chicago in 1989 and thinks it significant that in the last few classes at her firm, a significant number of the associates up for partnership were women. Not all firms could cite such a high percentage, nor could they all say that an associate who had been on maternity leave the year she was up for partnership, as Ms. Levy was, would be made a partner. It may not be widespread, but responsiveness and flexibility certainly are growing. Ms. Fitch recalls that a couple of women at Palmer & Dodge have worked part-time as associates, made partner and then continued to work part-time.

Despite these encouraging signs, the fact remains that women make up a small percentage of partners. Ms. Clark, stressing the role that the Alumni Association can play in providing information to students, believes it would be a good idea for the HLS Alumni Association to finance a study on women and partnerships. If the reasons for the disparity were better understood, it would be a step on the way to its elimination.

RUDENSTINE, from page 1

a sign of his concern, represented several of the status minorities at HLS, along with the Coalition for Civil Rights.

At the meeting, which lasted for slightly more than an hour, Mr. Rudenstine listened attentively as students expressed their dismay at last Friday's tenure decisions. From the start, the students made clear to Rudenstine that they took no position on, and did not object to, the merits of the individuals approved for tenure offers on Friday. They did, however, express their profound concern that, in light of the long-standing controversy over appointing women and minorities, and the Dean's public statements about his commitment to diversity, the faculty still chose not to take action on Anita Allen, while finding itself able to make lateral appointments of four White male candidates.

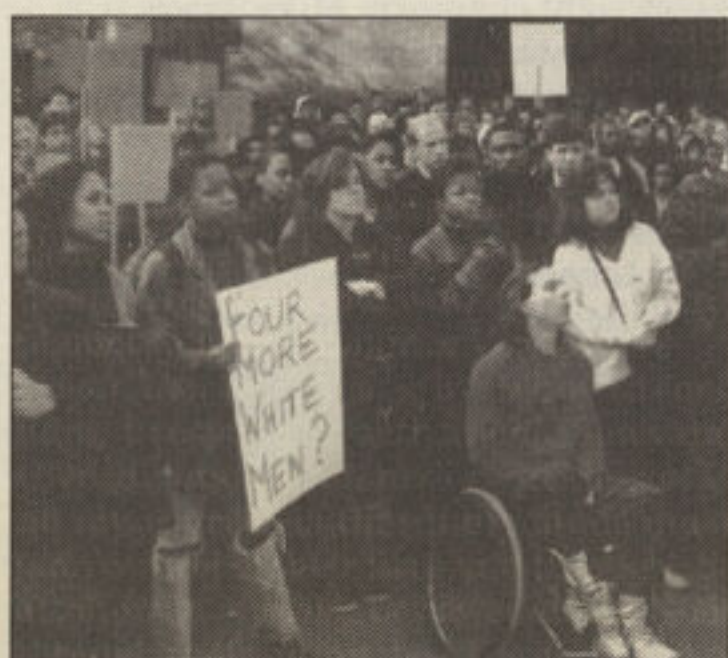
The students also made clear to Rudenstine that the decision on three of Friday's tenure candidates was made during the year in which they taught as visitors at the law school. In recent debates over offering tenure to a woman of color or Latino professor, the HLS administration has argued that it is a firm policy of the law school not to make a tenure offer to a visiting professor in the year he or she is teaching on campus. This was an integral part of HLS' administration's publicly stated, often repeated, rationale behind its refusal to consider Regina Austin or Gerald Torres for tenure positions during the years when they visited HLS.

The students who met with Rudenstine on Wednesday, communicated their perception that Friday's decision makes clear that a policy purportedly written in stone (for women and minority candidates) was actually written in silly putty (for white male candidates).

All of the students who met with Rudenstine pointed to the lack of progress HLS has made on women and minority hiring; the degree to which this diminishes their educational and professional experience at HLS; and the seeming unwillingness of the HLS Dean and faculty to redress the overwhelming dominance of White (putatively heterosexual) males on the HLS faculty.

The other, prominent concern raised with Mr. Rudenstine was Professor Derek Bell's leave of absence in protest of the law school's lack of progress on integrating its faculty.

Ordinarily, Harvard allows leaves of absence no longer than two years. At the conclusion of this academic year, Professor Bell's leave will have exceeded the two years permitted by the policy.



Students at protest on Wednesday.

Dean Clark, speaking through the *New York Times*, has shown unwillingness to make an exception for Professor Bell.

In light of the Dean's refusal to extend the policy, were Professor Bell not to return to the faculty next year, only two options would remain: a voluntary resignation by Professor Bell or Professor Bell's dismissal from the faculty by Dean Clark. Rudenstine's negative comments on the possibility of extending Professor Bell's leave make a confrontation with those two options a virtual inevitability. A summary of student requests and Rudenstine's responses follows below.

1. On delaying approval of Friday's tenure decisions pending an explanation of the process by which those appointments were made, Rudenstine did not believe he could delay approval, but agreed to obtain from the HLS faculty and Dean a written explanation of why the policy prohibiting making offers to visiting professors during the year of their visit was waived for three of Friday's appointments.

2. On extending Professor Bell's leave of absence, Rudenstine was candidly negative. He pointed out that the ordinary policy, in leaves that exceed two years, is for the faculty member on leave to submit a resignation. Rudenstine added, however, that if the faculty member returned in a "reasonable time" (which Rudenstine defined as "two or three years"), reapplication could be made and, it was his understanding, reappointment would ensue. Rudenstine expressed his confidence that, given a scholar of Professor Bell's stature, he would receive reappointment should he be forced to extend his leave beyond the two years allowed by Harvard's policy. When several students indicated that some factions on the HLS faculty might be inclined to deny Professor Bell reappointment, Rudenstine responded that he thought they would be "under considerable pressure" to reappoint Professor Bell and thought a refusal to reappoint "unlikely."

ANNOUNCEMENT, from page 1

review of three minority professors: Regina Austin, Anita Allen and Gerald Torres.

"During the last two years, the faculty argued that this policy could not be waived," commented BLSA President Charisse Carney '92. "While we continue to criticize the policy, we want to know why it can be waived for three White men, yet strictly applied to the detriment of minority candidates."

"They could at least try to hide their discrimination."

Rhonda Adams '93 believes that the announcements destroy the Appointments Committee's credibility.

"Their actions have taken formerly apolitical students and infuriated them. It's no longer an issue of the discriminatory hiring practices of one law school — it is an issue of respect, pride and fundamental fairness."

Dean Clark defended the announcements by stating that no such rule exists.

"Make sure you understand the rule. It is not a 'year away' rule. We've never had such a thing. It is a 'not on the premises rule' and it was designed to protect people from the rumor mill."

3. On further intervention in the Law School appointments process, Rudenstine agreed to intervene to the extent of speaking with the HLS Dean and appointments committee about Friday's decision, the issue of diversity on the HLS faculty, and the apparent contrast between Friday's appointment decisions and the HLS administration's public commitment to diversity. Rudenstine promised to arrange a meeting by March 18th. Rudenstine added the assurance that the meeting would be substantive saying that he did not envision a "15 minute conversation," but was willing to meet with the Dean and appointments committee for "one hour, two hours, or three hours if that's necessary."

Additionally, Rudenstine promised to meet with the HLS students to report back on his conversations with the Dean and appointments committee.

As the meeting drew to a close, one of the students asked Mr. Rudenstine how he felt about the overwhelming presence of White men on Harvard's faculty; Friday's decisions to tenure four more White men; and the impending loss of Derek Bell — who represents one-third of the tenured African-American professors at HLS. Rudenstine, seeming genuinely moved, replied that he is "very concerned and very disturbed" by the situation, and assured students that he is committed to "doing something about the situation."

tect people from the rumor mill.

"As of the Spring of 1991, many people [on the Faculty] said that we should relax this policy, and consider persons for appointment while they are visiting professors at the School. The Faculty approved the Appointments Committee's recommendation so we did have a policy change. But it has always been applied even-handedly, as was the former policy of not reviewing candidates while they are here teaching."

Some students dispute equanimity of the policy. John Bonifaz '92 said, "Dean Clark's claim that the policy has been applied even-handedly is outrageous. It is an outright lie."

"In the three years that I have been here, three qualified minority candidates have been denied consideration for faculty positions because, the school said, 'its policy prevented it from reviewing candidates while they are teaching.' Yet, if the policy changed last spring, why were Professors Anita Allen and Gerald Torres not considered at that time?"

"There is no even-handedness in what happened there. There is no even-handedness in what happened last Friday. There is only one thing clear: the school's faculty hiring practices are discriminatory and unlawful."

Students were further enraged by remarks attributed to Clark in an article which appeared in the February 28 issue of the *New York Times*.

The Dean was quoted as having said, "we are just where we were two years ago [when Professor Derrick Bell began his protest]."

Students interpreted these words to mean that "the faculty has done nothing to end their 174 years of discrimination," according to Juny Francois '94.

Clark defended these statements by saying, "they [the *New York Times*] put quotes around things I didn't say."

He added, "There is definitely a thumb on the scale in favor of diversity."

Nevertheless, the memo stating that the Faculty would make a concerted effort to consider other than White male candidates has added to student ire. Some students say that the memo makes no real commitment.

"The memo is too vague to be of any significance," said Francis Phillip '93.

Clark admitted that the focus would be placed on hiring women and not necessarily women of color or any other underrepresented group.

The four men rumored to have received offers are Joseph H.H. Hansmann of Yale, Robert Mnookin '82 of Stanford, Joseph W. Singer '81 of Boston University, and Joseph H. H. Wiler of Michigan.

BRIEFS



Symposium For Today's Children At HLS

The past decade of school reform has coincided with a tremendous growth in the number of children growing up in poverty, receiving inadequate health care, and living in single-parent families. On March 14, 1992, leading family and education advocates will convene at HLS to address how schools and families can best meet the needs of children during this time of rapid social and economic change. The conference, "Rethinking Our Schools to Serve Today's Children," is being co-sponsored by the Harvard Law School Children & Family Rights Project and the Harvard Forum on Law and Education. It will take place at Austin Hall, 1515 Massachusetts Avenue, from 8:45 a.m. to 5:00 p.m. Keynote addresses will be delivered by Dr. Ernest Boyer, President, Carnegie Foundation for the Advancement of Teaching, and Lisbeth Schoorr, Lecturer, Department of Social Medicine, and author, *Within Our Reach*. The one-day event will feature nine panel discussions on issues ranging from the provision of health services to litigation and advocacy strategies to reaching dropouts. Some of the nation's foremost educators, writers, advocates and speakers on law and education will be present. The event promises to break new ground in the debate over how schools, families and communities will share responsibilities for educating and nurturing children into the next century.

HLS Graduate Running for Congress

Juan "Paco" Vargas '91, who rose from childhood farmworker to Harvard Law School graduate, has launched a historic bid as the first Latino candidate for the United States Congress in a new district in San Diego. Vargas, 30, announced his candidacy February 7 to a cheering throng of supporters in Chula Vista, a town of 100,000 people in southeastern San Diego County. He is running in the 50th Congressional District, which was created under a recent redistricting plan and runs from the Mexican border to San Diego. A former Jesuit seminarian, Vargas seeks to become the first Latino elected official south of Los Angeles. Vargas was amazed that not a single Latino had filed for the seat, and feels that his status as a Mexican-American can only help him with voters in the 41% Latino district. "I had to run if for no other reason than that I felt we had to challenge for the seat. San Diego has never sent a Mexican-American to the Congress of the United States. I felt it was time. The redistricting presented an opportunity that we could not let go by," said Vargas. HLS graduates Joe O'Brien '91 and Steven Donzinger '91 are organizing Vargas' campaign.

Haitian Asylum Claims Training Session

Recent events in Guantanamo Bay have resulted in hundreds of Haitians being brought to the United States to seek asylum. Harvard Law School, in association with Catholic Charities, has initiated a major effort to mobilize advocates to provide assistance to the refugees. A free training for students and attorneys interested in providing legal assistance to the Haitian refugees will be held on March 7, 1992. Speakers include Cheryl Little of the Haitian Refugee Center, Miami; Jocelyn McCalla from the National Coalition for Haitian Refugees, New York; Steven Forester of Church World Service, Miami; Deborah Anker, HLS in Boston; and Richard Iandoli, Esq., Boston. Speakers will discuss human rights conditions in Haiti from Duvalier to the present, treatment of Haitian refugees in the U.S., the interdiction program, and recent litigation. A mock asylum interview will also be conducted and critiqued.

HLS Enters Team in National Moot Court

Students from Harvard Law School have entered a team in the first annual Saul Lefkowitz National Moot Court Competition, which will pit them against law school teams from all over the country. The Brand Names Education Foundation (BNEF), a not-for-profit foundation will sponsor the competition. The BNEF serves as a complement to the U.S. Trademark Association and which was founded to promote education in the field of trademarks and to advance the brand names concept. The Lefkowitz competition will examine a hypothetical trademark infringement case raising the timely question of whether the color green and the shape of a leaf are symbols of environmental concern available to all or the exclusive property of one watch manufacturer. Over 50 teams from law schools all over the country have entered the competition. Four regional competitions will be held on February 29, 1992 in Atlanta, Chicago, New York, and San Francisco. The winning team from each region will advance to the national finals to be held in Washington, D.C. on March 28, 1992. The names of the HLS students participating in the competition cannot be disclosed due to stipulations in the rules of the competition.

F. Lee Bailey Defends Cameras in Courtroom

By Rodolfo J. Fernandez
of The Harvard Crimson

The celebrated American trial lawyer F. Lee Bailey offered a careful defense of the role of television cameras inside American courtrooms in a speech in Austin Hall last Thursday, February 27.

Bailey told the audience of approximately 100 students that television cameras allow the public to second-guess its legal institutions.

"If American could get a look at what happens inside the courtroom firsthand, everybody would benefit," said Bailey, who gained renown for representing such clients as the Boston Strangler and Patty Hearst.

The trial lawyer said the presence of cameras in courtrooms can have only positive effects. Bailey argued that "the procedure" will only improve the performance of lawyers, judges and witnesses and could help improve a decaying judicial system.

The controversy over televised trials attracted widespread attention this past year with the extensively publicized trials of William Kennedy Smith and former heavyweight champion Mike Tyson.

Bailey also expressed concern about the incompetence of many attorneys today.

"The average trial lawyer doesn't know what he is doing," he said. "People should take a look."

Bailey discussed the historical con-

text of the courtroom camera controversy, including the American Bar Association's traditional opposition to the concept of television cameras inside the courtroom.

"The law profession is usually very reluctant to change its stripes," he said.

Bailey argued that the presentation of the Tyson trial by reporters — and not by television cameras — meant that the American public saw a distorted version of the proceedings.

"While the American people were able to watch everything that transpired at the Kennedy Smith trial, it had to rely on non-lawyer's opinion on what happened" in the Tyson case, Bailey said. He added that reporters tend to distort trial coverage to make it more interesting.

Bailey, who served as a commentator for Court TV during the Smith trial, said that states with good judicial systems should be made examples for others to emulate.

"If Indiana [where the Tyson trial was held] runs a good courtroom, there is no reason why the world should not be able to watch," he said. The state of Indiana does not allow cameras in side its courtrooms.

Bailey said television cameras in the courtroom results in public accountability and force participants to do a better job.

Bailey said public scrutiny has a tremendous effect on court cases and pointed out that the acquittal rate in all cases tried is 20 percent while the acquittal rate in highly publicized cases is 80 percent.



Students supporting Professor Derrick Bell rally for faculty diversity.

groups met yesterday with Rudenstine to discuss the tenure offers to three white male visiting professors—which students are citing as further proof of the Law School's discriminatory hiring practices.

Students claim the offers violate a Law School policy that forbids the faculty from extending tenure to visiting professors while they are teaching at the University.

Dean of the Law School Robert C. Clark insists the faculty voted to eliminate the policy last spring, and has applied it consistently ever since.

First-year law student Juny Francois, a BLSA member, added that the faculty's decision to tenure two of the professors, who have only been at the Law School since January, was a further insult because student evaluations could not have been taken into account.

The students said they were pleased at the outcome of their meeting with Rudenstine. The president promised to ask Clark for a written explanation of why the policy was waived for the new

appointees, according to Francois. He also arranged for a meeting with the dean and the appointments committee before March 18.

In his speech before the protesters, Bell urged the students to take action and stand up to Law School officials. "A commitment to change must be combined with a readiness to confront authority," said Bell.

After the emotionally charged rally, a group of approximately 150 students marched to Griswold Hall to post their written ultimatum on Clark's office door. The students asked the dean to provide within eight days a written explanation of Law School hiring policies.

"After eight days we want in writing what's going on in hiring, in particular with Anita Allen," said Francois.

After the march to Clark's office, members of minority groups held a strategy session to determine what measures would be taken in the next eight days.

"The time is running out on Dean Clark," Francois said.

Never a party...always a cover

495-4418

Write for the RECORD

Divergent Views Expressed on Faculty Diversity at Forum

By Francis Phillip

Over 150 people attended a vigorous panel discussion on faculty diversity last week Friday in Pound 102. The speakers on the panel, which was moderated by Professor Charles Nesson, included Professors Charles Fried and Morton Horwitz, and six Harvard Law School students: Juan Zuniga '92, David Strickland '93, Caitlin Long '94, Julianne Pardell '93, Trent Norris '92, and Jiyun Lee '92.

The Black Law Students Association organized the event because it believed that the student body needed to be educated immediately on the meaning of diversity. Not only was the CCR lawsuit slated for argument before the Supreme Judicial Court of Massachusetts the following week, but Professor Derrick Bell was to return to Harvard to announce whether or not he would remain on leave from the law school to protest the law school's failure to offer a tenured faculty position to a woman of color.

The discussion, which was sponsored by BLSA and co-sponsored by La Alianza, AALSA, the Federalist Society, Harvard Law Students for Life, the HLS Republicans, and the WLA, revealed a range of student and faculty opinions on faculty diversity.

Fried, while recognizing the importance of faculty diversity, emphasized that it is more important to find qualified professors. He said, "we demand and will continue to demand excellence from those who teach you." Fried used City University of New York Professor Leonard Jeffries as an example of the dangers that he said would occur if seeking faculty diversity became more important than finding qualified professors. Fried asserted that Jeffries, who was appointed to the chair of the Afro-American Studies program at CUNY, was totally unqualified for the position. Fried went on to defend the hiring practices of the Law School by stressing that Harvard is trying hard to find minority professors despite the small pool of available candidates.

Horwitz strongly disagreed with Fried's assertion that the Law School is attempting to recruit minority professors, stating that

"the current Dean does not have the same commitment to faculty diversity as the last two Deans." Horwitz said that, after looking at the pipeline for visiting professors, he feared that there would not be another minority visiting professor during the next five years. Horwitz stated, moreover, that he believes there is discriminatory hiring at Harvard Law School.

Strickland, in response to Fried's comment on Jeffries, stated that Jeffries does not represent all Black candidates, and that faculty diversity is important in giving minorities role models and resources to use while at the Law School.

Lee said that it is necessary to have Asian-American faculty at Harvard Law to help fight the pervasive belief, which even the current administration has displayed, that Asians and Asian-Americans are interchangeable. Lee indicated that much of the discrimination that Asian-Americans face in this country stems from the notion that somehow they are not Americans, and that an Asian-American faculty member would be able to understand their feelings and help enlighten the entire law school to the discrimination they face.

Pardell criticized the diversity movement for wanting physical instead of intellectual diversity. She said that the movement does not embrace conservative blacks like Clarence Thomas or Thomas Sowell and asserted that Derrick Bell had said that the diversity movement is not advanced by hiring blacks who think like whites. Pardell urged the diversity movement to admit that its true goal is segregation, and to allow another group to take up the diversity banner.

Several panelists, including Strickland and Zuniga, vehemently denied that they wanted only minority faculty who share their ideology and instead stressed that minority professors, regardless of their political leanings, would serve as role models to minority students.



Dawn Johnson defends abortion rights as James Bopp looks on.

Abortion Rights Debated

By John Kingston III

Special to the RECORD

The Civil Liberties Union and the Rutherford Institute of HLS sponsored a forum entitled, "Rights In Conflict? The Emergence of the Fetal Rights Doctrine and Its Impact on the Rights of Women" on Thursday, February 27. The evening's fiery dialogue between James Bopp, who serves as the General Counsel of National Right to Life and Dawn Johnson, the founder of the National Abortion Rights Action League, represented a microcosm of this hotly contested public issue.

The crowd filling Austin East attested to this civil rights issues' significance. Professor Martha Field moderated the debate, and introduced the commentary by suggesting that there is a more obvious interest for the state in the rights of a fetus that eventually goes to term (in essence, a retroactive interest), versus the rights of a fetus which has not yet been born.

Bopp refused to concede this territory, however. Speaking first, Bopp employed state retroactive intervention on behalf of the rights of the fetus as his departure point; in his view, the common law's willingness to recognize liability on behalf of a child for tortious behavior inflicted upon it while a fetus serves as a natural analog for general fetus rights. Bopp claims that it is inconsistent for the state to recognize that a child did have rights as a fetus *ex post*, while denying the fetus its rights in simultaneous fashion.

Drawing heavily from the comparative legal analysis of HLS Professor Mary Ann Glendon, Bopp argued that the elevation of the rights of women at the expense of the rights of fetuses reflected a framework of consideration unrecognized by other Western societies.

Johnson followed Bopp by suggesting a "facilitative" paradigm for understanding the maternal-fetal relationship. Johnson claimed that "anti-choice" rhetoricians have unnecessarily created an adversarial model for the mother-child/mother-fetus association; she argued for a facilitative model which views the mother and fetus as one unit, with the mother holding the exclusive decision-making rights for the unit. On these grounds, she argued that recognizing fetus rights is actually the improper intervention of the government into a mother's exclusive province.

James Garland, a spokesperson for CLU, noted that, "we were lucky to have both Mr. Bopp and Ms. Johnson here together...the stature of each speaker required the balance given by the other's appearance at the forum." But both Johnson and Bopp invested little time in developing "legal" arguments. The real fulcrum of the evening's debate did not lie in the domain of technical points of law and logic. The boundaries were actually drawn by the radically different paradigms of understanding and terminology that Johnson and Bopp employed. Unfortunately, the debate showed that no resolution to this conflict can be established when participants operate from such disparate premises semantic frameworks.

Three Hemenway Suspects Arrested, Arraigned

By Johanna Davis

Three men suspected of stealing property from Hemenway Gym were apprehended by police last week, but Harvard police are still keeping heightened security around the University's athletic facilities.

J. Christopher Ingraham, dubbed by police, "a one man crime wave," was arrested by MBTA police last Thursday when one official recognized Ingraham from a wanted poster. Police suspect Ingraham of stealing more than \$100 from Hemenway Gym by breaking into three separate lockers last Tuesday. A police officer speaking anonymously said Ingraham, "has been known to go into gyms and get ID's and cash by breaking into lockers." Ingraham is a 5'11" well-built white male with brown hair, blue eyes and red horn rimmed glasses. His youthful appearance allowed him to go undetected at university athletic facilities, according to University Police Chief Paul E. Johnson.

Johnson said police had too little evidence to formally charge Ingraham with the Hemenway thefts, and that because he had committed so many crimes, "we're just waiting in line on this one." "We've suspect-

ed him of doing a lot of things. But the only thing police had a warrant for was assault by means of a dangerous weapon," Johnson said, referring to a February 7 incident in which Ingraham pulled a gun on several Harvard undergraduate lacrosse team members outside of the Dillon Field House and then fled into the Charles Hotel. The Maine resident was arraigned in Suffolk County Superior Court on Friday for this crime, and for a Huntington Avenue shooting on January 24 that left a Northeastern University student and two local residents injured.

The FBI and Boston Police are also investigating Ingraham's involvement in many recent bank robberies. Tom Cassano, chief supervisor of Boston's bank robbery task force, predicted that the force, "will bring up charges against him." Police found Ingraham in possession of \$2100 in cash that the FBI has traced to a recent bank robbery. He is currently being held at the Suffolk County jail with bail set at \$1 million.

Plainclothes officers at Hemenway arrested another man for possession of a deadly weapon after he and a companion were caught trespassing at Hemenway last Wednesday night. Police officials became suspicious when Charles Gray, 38, and Shawn Chambers, 30, entered the gym because they recog-

nized them from earlier police encounters. When police stopped Gray, they discovered he was carrying a large double-edged knife.

Both Gray and Chambers were arrested for trespass after notice, because they had been warned to stay off the property before. Gray is suspected of recent wallet thefts at the Law School and at the Kennedy School of Government and for various crimes near the Charles Hotel. Concord, Mass. state police had an outstanding warrant for Chambers for failing to appear in court after operating an unregistered and uninsured motor vehicle. Both were arraigned at Cambridge Third District Court last Thursday, and a pretrial hearing is scheduled for March 18.

Johnson felt these cases were isolated incidents, and not part of a trend at Hemenway. "We've had problems in Hemenway, Malkin, and Blodgett. It's not specific to the law school. Athletic facilities lend themselves to type of thieves that we tend to attract. It's just part of our problems on a day to day basis." Johnson advised students lock their valuables, but said, "unfortunately, even when they do the right thing, they're breaking into lockers." He noted that University police had stepped up protection around the athletic facilities in response to these crimes.

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Student Essays Compiled In Book, *Various Truths*

By Toy Chandler

"During my first class at Harvard Law School, my liberal White male professor explained that all the men in wigs and robes pictured on the walls of the classroom were part of the elite cadre of individuals that had created, molded and developed the law for centuries. None of them looked like me — they were all dead White men. And for the first time, I wondered whether I was anything more than a nigger, Uncle Tom, or affirmative action baby. I wondered whether they understood me and whether I belonged."

The preceding passage is taken from a proposed book entitled *Various Truths*. The book introduces readers to thirty Black HLS students who talk about issues which permeate their lives and those of most African-Americans. By examining issues from different perspectives, the writers attempt to dispel the myth of the monolithic Black community.

As Ms. Edgar puts it, "The book tells our own story instead of letting others tell it for us. Others portray us either as the drug dealer on 60 Minutes, or the Supreme Court nominee who has turned his back on his community. Actually, we are different people with different backgrounds, stories and experiences on what it's like to be Black in America."

The book is the brainchild of Spencer Overton '93. He also serves as coordina-

tor of the essays and chief editor. Overton realizes the magnitude of his task stating, "Various Truths attempts to expose stereotypes and examine them for what they are — easy answers or academic rationalizations of the condition of African-Americans."

"As students at one of the most prestigious law schools in the country, sometimes we escape stereotypical labels; more often we do not. While our pool may seem limited, the thirty narratives show that one need not look past the Black community to find diversity."

Within its three sections, *Various Truths* presents essays on race, gender and issues central to the Black community.

For example, the "Race" section contains three chapters which cover integration, affirmative action and race relations. The "Gender" section focuses on sexuality, interracial relationships and feminism. The section entitled "Amongst Ourselves" examines other issues

of importance to the Black community in chapters addressing family, religion, aspirations, and how Blacks "exclude our own," according to Overton. Each chapter is comprised of three 3000 word narratives covering an issue from a distinct perspective.

Rhonda Adams '93, one of the contributing authors, notes the importance of the book stating, "within the next thirty

years, the majority of the people living in the United States will be characterized as persons of color. The Nation will be forced to grapple with the diversity of its population."

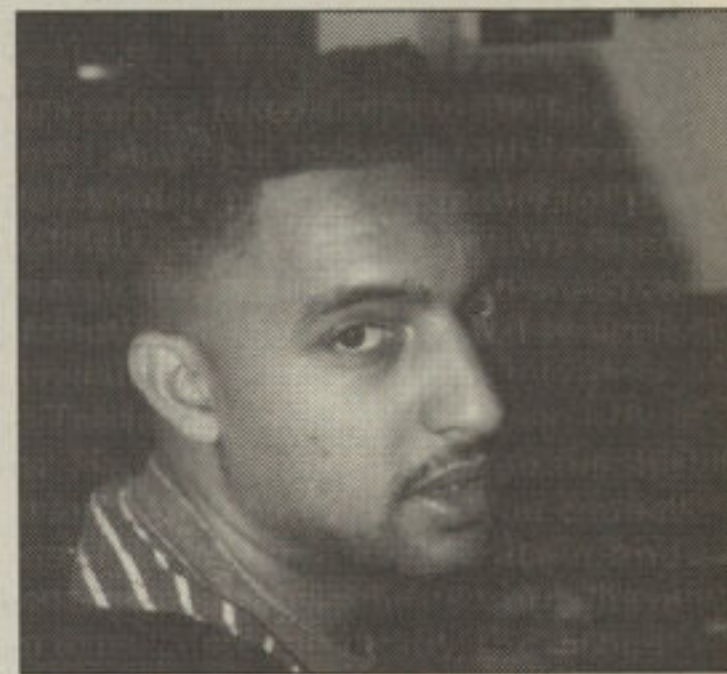
"The book's initial objectives are to celebrate diversity and to bring issues of concern to the Black community before the public eye to foster dialogue and debate."

Additionally, *Various Truths* attempts to recognize the success of members of the Black community in a society where Black people most often make headlines for dealing drugs, contracting AIDS, being a ward of the state, benefiting from affirmative action or dribbling a basketball, according to Ron Sullivan '93, who never had a class with Whites before he attended Harvard Law School.

"By casting light on a group of talented Harvard Law School students, the book attempts to celebrate the achievements of young Black Americans," he added. Sullivan talks about his happiness and success in all-Black environments and his perceptions of Whites in his essay.

The students who came together to create the project say that they are uniquely qualified to describe personal experiences. Their narratives represent vivid, thoughtful reflections on current issues with which they are personally confronted.

For example, in one essay, Keith Boykin '92, a gay man, talks of being alienated by the Black community. In another essay, Joan Brown '93, a native of Crown Heights in Brooklyn, New York, recalls the tensions that lead to recent strife between Jews and Blacks in her



Various Truths Editor Spencer Overton '93

neighborhood. Twenty-seven others agree or disagree on "various" topics, revealing their many opinions and unique experiences.

Other contributors and editors to the book include Bob Arnold, Nathalie Augustin, Tracy Ballard, Rick Banks, Deborah Broyles, Paul Butler, Karla Byrd, Carmia Caesar, Devon Carbodo, Charisse Carney, Sean Carter, Penny Codrington, Cari Dawson, Juny Francois, Liza Garnes, Stephanie Goodman, Josiane Gregoire, Cathy Hampton, Frank Harper, Derek Honore, Von Hughes, Debbie Jackson, Kobi Kennedy, Robin Lenhardt, Ron Machen, Brian Mathis, Jonathan Newton, Chaka Patterson, Earl Phalen, Kim Robinson, Stephanie Robinson, Terri Sewell, Halsted Sullivan, Jocelyn Sturvidant, Kathleen Tarr, Patrick Thompson, Joe Voyticky, Melody Webb, and Alicia Wiltz.

The group has retained a New York Literary agent who is currently looking for a publisher.

Tribe Awaits Decision from Supreme Court

Prof Leads Pro Bono Case Against Tobacco Companies

By Natasha H. Leland

Crimson Staff

Tyler Professor of Constitutional Law Lawrence H. Tribe '66 is awaiting the results of his latest case before the Supreme Court — a suit against three tobacco companies on behalf of the family of Rose Cipollone.

When Cipollone died, after smoking for 40 years, her family decided to sue the tobacco companies. On January 13, Tribe argued before the high court that the companies failed to warn Cipollone of all of the dangers of smoking.

But Tribe could have ended up on the other side of the fight.

Tribe said recently that National Public Radio reported that one of the tobacco companies involved had offered him more than a million dollars to present its case. Although he described the story in detail, he refused to comment on its validity.

"There are ethical limits as to revealing which cases you refuse," Tribe said in a telephone interview with *The Crimson*.

Josiah S. Murray III, vice-president and general counsel of the Liggett Group tobacco company, said that Liggett did not offer Tribe any position but would not speak for the other cigarette companies involved. The tobacco firms Phillip Morris and Lorillard could not be reached for comment.

Tribe — who is arguing the Cipollone case *pro bono*, based his argument on two pieces of congressional legislation in 1965 and 1969 which place restrictions on tobacco companies.

"If you read the legislation carefully you conclude that federal law limited what state courts and state legislatures could do only in a narrow way," Tribe said.

Tribe said that he disagrees with the tobacco industry's claim that the legislation provides immunity to the companies if they issue the specific Surgeon General's warnings.

"The companies think they may deceive the public. They think they're free to conceal emerging data on other hazards of smoking," Tribe said.

Tribe said he attempted to prove that the cigarette companies engaged in a conspiracy to conceal information from consumers.

The repercussions of the case, *Thomas Cipollone v. Liggett Group Inc.*, could be far-reaching, according to Tribe. "If we win, it will inaugurate an avalanche of similar cases," he said.

Murray of Liggett Group said he would not comment on legal arguments while the case was pending.

Tribe said that the case will likely be decided soon by the Supreme Court. If Tribe wins, the family will be allowed to sue the companies. But he said he may not stay on the case — but will probably continue to advise the prosecution.

Tribe said he is waiting for the Supreme Court to decide whether it will hear three other cases he plans to argue.

Tribe said he will argue on behalf of Haitian Refugees in their attempt to prevent President George Bush from sending them back to Haiti. He said he also plans to represent a group of mentally retarded individuals in Indiana who were forced to work full-time as well as a group opposing the right of Holocaust revisionists to sue people who protest their opinions.



Ever Get A Pal Smashed?

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FRIENDS DON'T LET FRIENDS DRIVE DRUNK

Private Dick Enters Harvard; Law School Saved!

By Andy Genser

Move over, *Les Mis*; move over, *Wayne's World*; the Harvard Law School Drama Society presents *The Malfeasted Falcon*, a madcap *tour de force* of the seamy HLS underworld whose existence many have long suspected but few have seen firsthand (or lived to tell about...).

In the spirit of the great mystery novels of Dashiell Hammett and Raymond Chandler, the head writers of the *Falcon*, Brian Bendig '92 and Cam Jones '92, weave an intricate plot (that doesn't even pretend to make sense) around an unlikely cast of characters in search of a stolen medieval torts treatise of manifold and cutaneous uses. But the half-hearted pretense of a 1940's retro-plot is just a vehicle for this cynical, side-splitting examination of the values, quirks and characters that comprise the place we collectively love to hate, Harvard Law School. The writers couch their satire in the deliberate, sparring dialogue style of *film noir* masterpieces like *The Maltese Falcon* (on which the plot is loosely based) and *Casablanca*, with zany revisitations of films like *Saturday Night Fever* and *The Godfather* spliced in to create a parodic effect much like that achieved in this half of the century's masterpiece in film-making, *Bill and Ted's Bogus Journey*.

Make no mistake about it, the *Falcon* is more than farcical; it is, (in its own words) truly "post-modern." The plot nearly unravels itself in a Pirandellian confrontation in which detective and transsexual *extraordinaire* Sam Gardenweasel (played by strapping Bogart impersonator and Dep aficionado Todd Hartman '93) renegotiates his stage-time with the psilocybin-sucking Writer of the Script (played by Bill Steinman). The plot doesn't come completely apart at the seams however, and after intimidating his Writer in impeccable Bogie form, Sam continues his investigation of the heinous theft through the offices of the sultry, press-mongering feminist Alma

Wickiewitz (played by Kendy Hess '93), secret dungeons of Lincoln's Inn, obscure and illicit student organizations, the Law Review sweatshop, and the Square, home to some of Cambridge's most remunerated street urchins.

I won't tell you if Sam ever solves the mystery (after seeing the preview, I'm still not sure if he does) but I can definitely say he has a good time in the process; the *Falcon* does provide its audience with some of what Harvard Law School needs the most this time of year—good, old-fashioned, protracted, gratuitous lambada. Other highlights include cameo appearances by local law school celebrities, and hilarious performances by Dave Strachan '92, Rob Schwinger '93, Frank Yokoyama '93, and Scott Bruner '92, whose characters are thinly veiled satires on well-known HLS cronies.

Director Nick Rossi '93 and producers Erin Monaghan '92 and Scott Auby '93 deserve unreserved praise for the skill with which they orchestrate the formidable talents of cast and crew in what is truly a major production. The action is fast-paced and driven by a slapstick wit reminiscent of Charlie Chaplin and *The Naked Gun, Part 2 1/2*. Almost every scene boasts original scores by Scott Auby '93, Steve Baughman '93, and Ellis Butler '93, while group dance numbers by Choreographers/Dancers Tracy Ballard '92, Rachel Mariner '92, and their troupe literally sizzle on stage.

But the *Falcon* isn't all jammin' tunes and well-toned glutei maximus. The play touches on some raw nerves and is fairly merciless in its exposure of the hypocrisy and bankrupt values that plague our legal education, from the tyranny of "political correctness" and invidious prejudice to overweening ambition and petty rivalry. The show just might offend everybody who comes to see it in one way or another, and it won't apologize either; as Sam says in the final act, if you don't like it, "go rent *Love Story*". Although some of the stock jabs recycled so often in the play lose some of their

punch towards the end, the play's honesty is refreshing, and its self-mocking sense of fun will leave only the most dour stone-faced. You may be offended, but you will definitely laugh.

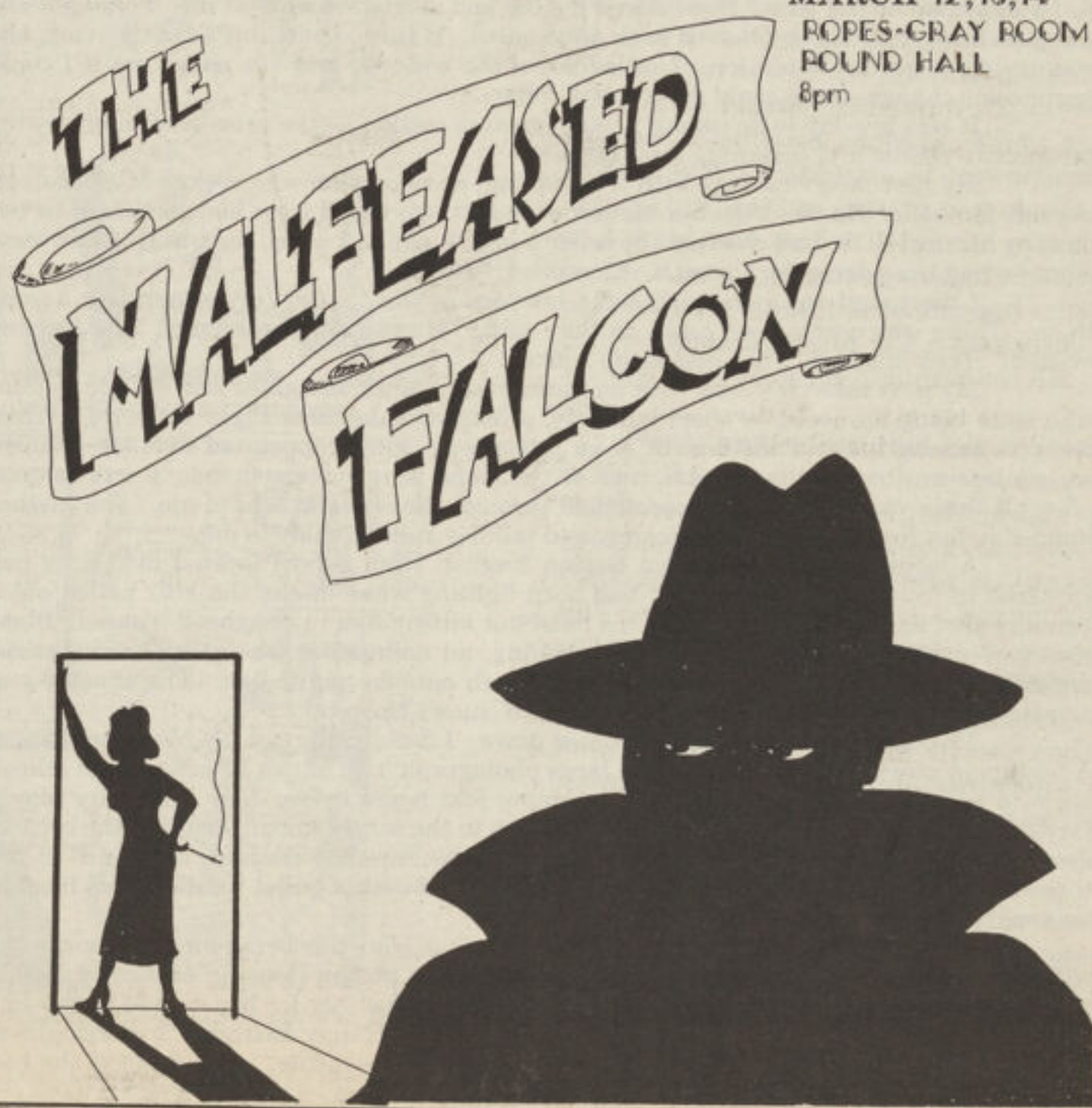
For all its sophisticated cynicism, the *Falcon* ultimately is an affirmation of the talent, energy and humor of the Law School's greatest asset, its student body (well, it's not the food!). Those in the

know already have tickets, and with only three 8:00 pm showings between Thursday, March 12 and Saturday, March 14 in the Ropes Gray Room, you are well advised to purchase your advance ticket at the Hark as soon as possible.

For more information, call Erin Monaghan at 493-9555.

HLS DRAMA SOCIETY PRESENTS:

MARCH 12, 13, 14
ROPES GRAY ROOM
FOUNTAIN HALL
8pm



Produced by Erin Monaghan, Scott Auby
Directed by Nick Rossi
Musical Direction by Steve Baughman
Choreographed by Tracy Ballard, Rachel Mariner
Conceived by Brian Bendig, Cam Jones

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Harvard Law RECORD

Founded in 1946

Robert C. Arnold
Editor-In-Chief

A Day In The Life At JP

Thursday, February 27 — I had some time to kill on the early February morning, so I decided to drive along the main thoroughfare heading South through Hyde Park. Whenever I get the opportunity, I love to explore the community just to get the feel of it.

I stumbled upon a Pizza Hut and a McDonalds. For a person from the Midwest practically weaned on fast-food, this was a major discovery in the franchise poor inner city. I decided I had gone far enough, so I did a U-turn in the Mac D parking lot.

I noticed an elderly woman walking slowly on the sidewalk that crossed the exit so I stopped to let her pass. She noticed me too and started waving at me. I thought she was just being friendly so I waved back and smiled. It turned out, she wasn't waving, she was trying to get my attention. I rolled down the window, and she asked me if I could spare some change so she could get a cup of coffee...

It was my day to do intake for the housing section — the process of interviewing prospective clients and screening their claims.

My first interview was with a trembling, anxious man who reeked of alcohol, an obvious alcoholic. He, his wife and his son were getting evicted from his apartment in two days by his uncle. He had received the order a month ago so I asked him, at this late date, what he had been doing for a month. He replied, "worrying."

I discussed the case with some lawyers in the Center, my supervisor among them. There was nothing we could do they said. "He can stop 'worrying.' He's getting evicted." They laughed. They had made a joke...

My next interview was with an immigrant mother, daughter and granddaughter who were being harassed by their landlady, a notorious Jamaica Plain slumlord. While we were talking without the benefit of an interpreter, me disappointed that my Spanish wasn't better after all these years, and at the same time surprised that it was so good after all these years, I heard a pop outside through the window behind me. The mother jumped to her feet and starting pointing, and talking unintelligibly to me.

A large group of kids from Boston English High School located next door had gathered in front of the Center and had been fighting when one of the kids pulled out a gun and shot another one aiming for his head but hitting him in the cheek instead. Blood streamed down his face, people were screaming, an ambulance was called, police came, and after a little while, the crowd dispersed both outside and inside. The shooter was arrested, the victim was rushed to Brigham & Women's Hospital...

The clients left, and things calmed down. I decided to read my *New York Times*. A front page story, accompanied with a large photograph, told of two Brooklyn high schoolers who had been shot to death by a classmate just hours before New York City Mayor David Dinkins was scheduled to deliver a speech to the school about breaking the cycle of drugs and violence they lived in. In a nearby home, another student, a "friend" of the three involved in the shooting at the school, was found with a bullet wound in his head in an apparent attempted suicide...

My next interview was with a young mother who was being forced, against her will, to move from one housing project to another by the Boston Housing Authority. While collecting information for our standard intake form, I asked her for her date of birth. She said, "2/27/69." Reflexively, without thinking, I said, "Happy Birthday!" I thought to myself, "What a great birthday present." Trying to be reassuring, I asked her if she had anything special planned for her birthday. She said, "no..."

My day continued, I talked to another woman facing eviction, another who's landlady wouldn't return her security deposit which she needed to move into her new apartment. While on intake, I received six phone calls from an opposing landlord who couldn't comply with a court order we had obtained against him because he couldn't reach my client to make the necessary arrangements. I told him I couldn't help him because I had been unable to reach her too...

Jamaica Plain is the only truly diverse community in Boston. The Center's clients come from every race, nationality, persuasion and affiliation. They do, however, have a common thread: They are all poor, forgotten, and their numbers are growing.

The work day ended. I went home and watched the evening news, all of it bad. I didn't see anything about the JP teenager who had been shot in the cheek although I was later told that one station did cover it. I made myself dinner, and watched the Simpsons. Bart had become a law enforcement apprentice.

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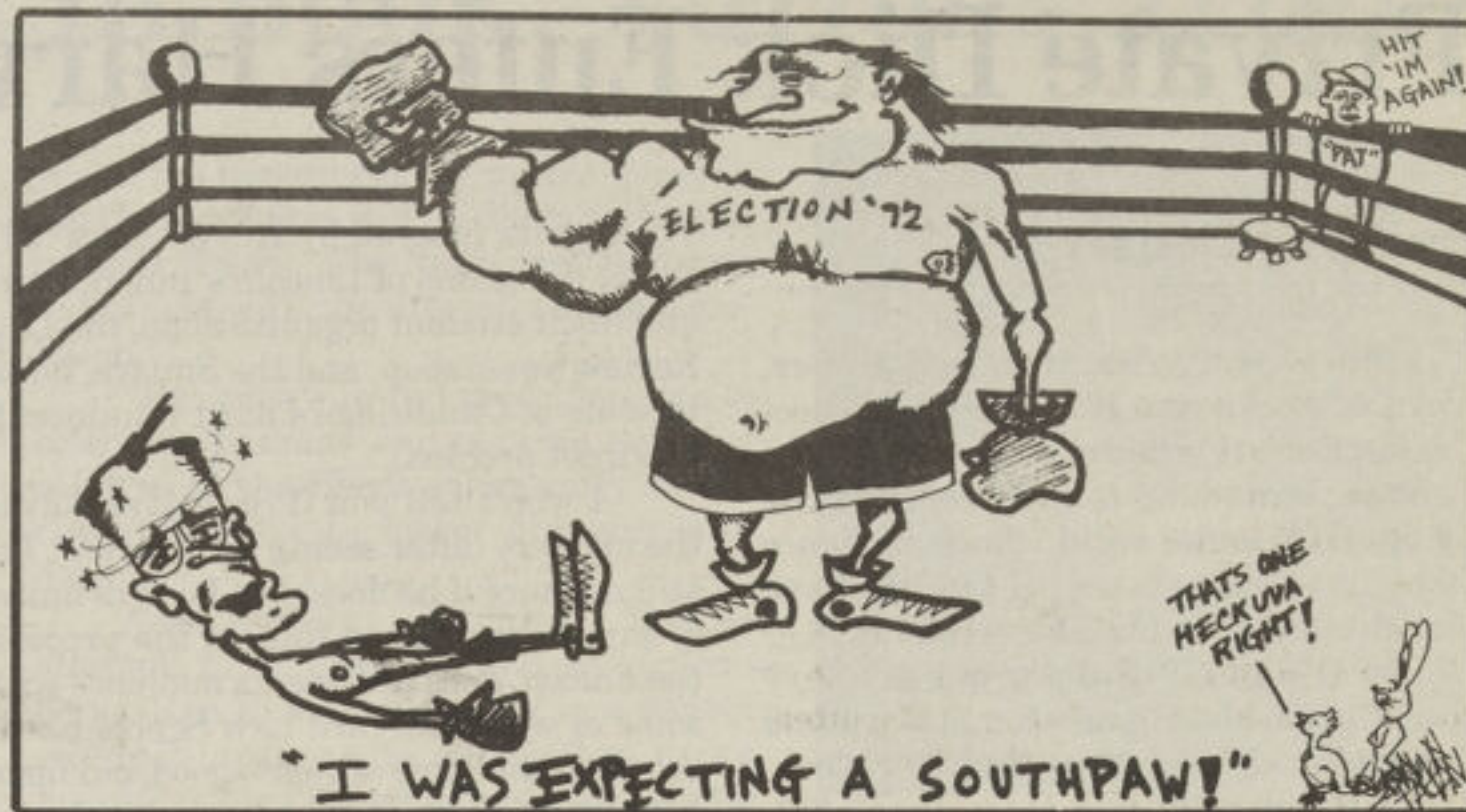
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"Congress shall make no law...abridging the freedom of speech, or of the press;..."
—First Amendment, U.S. Constitution



• Letters •

RECORD Should Seek the Real Story on Grants

To the Editor:

Imagine my surprise when I read Steve Yarian's Feb. 7 column on the new Wasserstein summer funding program and discovered that this gift had simply descended from the heavens, due solely to the generosity of Bruce Wasserstein.

I do not mean to denigrate Mr. Wasserstein, who holds an unparalleled place in my heart as perhaps the only philanthropist on the face of the earth who believes that Harvard Law School should support public interest careers. Rather, I write this letter to set the record straight on the history of this grant, and to remind students that public interest funding—not Dean Robert C. Clark's main priority—will disappear if students do not make clear their support for it.

In the case of summer funding, had it not been for the dedicated work of numerous students and several administrators, Dean Clark would have allowed the previous summer funding program (the Andres grants) to expire quietly. Although the Dean knew all along that the Andres grant would spend out during the summer of '91, he apparently made no real efforts to replace this funding until students took action this fall.

The Alliance for Public Interest Alternatives (APIA) met with the Dean early in the semester to remind him that we would not allow this program to disappear until he found the money. We circulated a petition eventually signed by more than half of the student body emphasizing the importance of the program and requesting its immediate

replacement. In addition, with the assistance of Susan Craighead '93, APIA prepared a collection of letters and essays from former grant recipients guaranteed to melt almost any heart, and presented this collection to Dean Clark for his use in fundraising.

As a result of our work and unflinching support from the office for Public Interest Placement and the Financial Aid Office, Dean Clark moved summer funding up on his priority list and persuaded Mr. Wasserstein to make his generous donation.

I hope the Harvard Law RECORD will try a bit more diligently to find the real story behind the administration's press release.

Julia Gordon '92
February 25, 1992

Alysse a Coward?

To the Editor:

The following is an open letter to Alysse MacIntyre:

Dear Ms. MacIntyre:

After reading your column on fan mail in the February 14th issue of the Harvard Law RECORD I am compelled to join your other three fans and write you a letter of my own.

Yes, I too am a fan. Any of my friends can tell you I

have many nice things to say when your name comes up in conversation.

As a Republican, I would like to assuage your fears. Not all of that group of readers that matters so much to you has abandoned your column. In fact, I read all of your columns quite closely and have been rewarded by discovering many details that would have been missed by your more casual and less devoted

readers.

For example, in the aforementioned column, you referred to the writer of one of the letters you received as "cowardly" for not signing her or his name. I found this label particularly ironic given the fact that "Alysse MacIntyre" is a pseudonym.

Wayne Herndon '93
February 23, 1992

Dershowitz Needs No Defense

To the Editor:

Stanley L. Kaufman's letter in the RECORD of February 7, 1992, requires a response from someone who has bothered to look at the records and facts in the cases as to which Kaufman is complaining about Alan Dershowitz's performance and judgment. So here goes.

It may be true that Prof. Dershowitz somewhat increased the sales of Den of Thieves by criticizing it in published newspaper advertisements (although the book was already second on the New York Times Best Seller list before the ads appeared). However, his goal was to expose the book as a fraud, and it hardly matters if sales were increased. Even if only one person read the book, a response was necessary.

As for the charge that Prof. Dershowitz does not try

jury cases, of course he generally does not (in fact, he did try one appointed jury case some years ago). The rules of the Law School make it almost impossible, and impermissible, for professors to try jury cases, since the scheduling difficulties would interfere with their teaching duties. No judge will keep a jury sitting doing nothing, while the lawyer/professor takes time out to teach a class!

The assertion that Prof. Dershowitz defended a case by claiming that "my client has overpaid her taxes so she can lawfully cheat and assert fake deductions" (a reference to the Leona Helmsley case), shows ignorance of the record of the case. The overpayment defense was made on direct appeal, as a defense to a tax evasion charge. Any assertion that the client did not cheat nor have any role in producing

fake deductions, could not be made on direct appeal, but required augmentation of the record — something that had to await completion of direct appellate review.

Mr. Kaufman's criticism of Prof. Dershowitz's theory in the Von Bulow case is laughable, because the evidence gathered by private parties turned out to be extremely material, and not only got the client a new trial, but produced an acquittal at that new trial.

If Mr. Kaufman learned anything from his legal training, one would think he would have learned that it's foolhardy to talk about cases without knowing the record at least a little bit.

Harvey A. Silverplate '67
February 27, 1992

Torres, Quigley Should Face Peninsula Bigotry

To the Editor:

To a certain extent, Max Torres and Mike Quigley are right in their call for tolerance in the controversy over the recent Peninsula issue condemning homosexuality (Letters, February 28, 1992). Mere name-calling and extreme comparisons do not really help advance debate on the issues raised.

But on the other hand, all Peninsula staffers responsible for the magazine deserve

to be called bigots for what they wrote and published. They need to be made to understand how angry anyone would be when a publication attacks something so important, intimately personal and cherished as a person's sexual orientation, calling it immoral, sick, and not worthy of equal treatment by the law and society.

How would Mike Quigley or Max Torres feel if something so integral to their

lives, like the Catholic Church, were treated as gays or lesbians are treated now or are supposed to be treated under Peninsula's recommendations? What if Catholics were a 10% minority in a society where the majority thought that ingesting the body and blood of Christ in communion was an abominable cannibalistic practice?

see LETTERS, page 12

The Road from False Promises to True Diversity

By Derrick Bell

Derrick Bell is Weld Professor of Law here at HLS and is visiting this year at New York University Law School. This article is a reprint of the speech he delivered to students on Wednesday, March 4 outside of Langdell Hall.

The way of the trouble-maker is long and most lonely. But every once in a while, there is recognition — more often in defeat than victory — that you tried, and more importantly, you cared. This is such a moment.

To the business at hand: While I tried to publish my decision about whether or not I would return to Harvard, my announcement was garbled in transmission. Thus, it is best that I begin by answering as forthrightly as I can what I have decided to do next year. I was urged to come back, swallow my pride, work from within. It did not seem right. I considered quietly resigning, fading away as is appropriate for old soldiers who have outlived their time. That may have been right, but it was surely not in character. Then, slowly but certainly, what I should do became clear:

In the tradition of protest that pried open the faculty halls of Harvard Law School when I was hired as its first Black professor in 1969, I intend to continue my on-leave-without-pay protest — begun in 1990 — for a third school year. I will continue my protest against this school's adherence to policies that breach the commitment to diversity that the school made when I joined the faculty.

While I understand the University regulations limit voluntary leaves of absence for tenured faculty to two consecutive years, I do not consider those regulations a barrier to continuing my protest leave.

My protest leave has not been voluntary. It has, rather, been coerced by the faculty's rigid adherence to obsolete credential-based hiring. Indeed, I believe that the Dean's rejection of my oral and written efforts to convince him and the faculty to reform practices that elevate credentialism over competence, constituted a constructive ouster from the school. In effect, the school said: "We will promise you diversity, but we will honor those promises only when pressured, or when one comes along who looks like you, but has credentials like ours."

The school hires Blacks in situations of crisis — usually brought on by student protests — or when there is a need to fill special positions. I have no objection to the faculty's quest for and hiring of Blacks and other minorities whose high academic attainments seem to predict that they will be outstanding teachers. But to ignore those candidates who have achieved in practice and in teaching without having earned top grades at a few major law schools is wrong and exclusionary. Any policy that elevates grades, a mere predictor of performance, over actual performance, is illogical, unethical, and illegal. Such a policy unjustifiably rejects my achievements and others similarly situated. It results in the exclusion of many potentially outstanding teachers, while as well as minority.

I joined the faculty in 1969. And, despite the promises, in over twenty years, not much has changed. In 1992 — as in all the years of this school's history, there is no tenured woman of color on the faculty. There is no Asian, Hispanic, Native American, openly gay or lesbian, or disabled faculty member. Their absence represents loss to you and an affront to me.

Indeed, the school's hiring policies reduce my faculty membership to second-class status; my record entitles me to recommend and have treated seriously faculty candidates with records that reflect performance potential based on performance. Similarly, these policies violate my entitlement to hold a tenured appointment at a school that does not unfairly exclude persons with credentials, backgrounds, and experiences like my own.

We are told that diversity cannot take precedence over "merit." But the merit argument is no more than a smoke-screen for the practice of what I call: Academic nepotism — that is, the practice of hiring insiders, usually White males, whose qualifications guarantee nothing except perpetuation of elitism. It is a way of continuing a racist, sexist, homophobic

but only spasmodically to Whites? If so, then how does it comport with the diversity promises?

We should have known. In the wake of the appointments, the school announces a resolution urging the Appointments Committee to consider by fall several promising candidates who are not White males."



Portraits of Faculty "Diversity" at Harvard Law School

tradition with words whose viscousness is cloaked by promises to seek more diversity always — of course — within the context of what appears to be an insistence on excellence.

But where was the insistence on excellence when the faculty last Friday quietly approved a "slate of four" White men, ideologically balanced to assure log-rolled acceptance? Where were the promises of diversity while this slate was being compiled, negotiated, haggled over, bargained for? And where were the promises about diversity? This is not merit-based excellence. It is political trade-off. Whatever its political attractions, the selection of faculty candidates by ideological slate seriously departs from the school's proclaimed determination to hire "strictly based on merit." The ideological slate plan reveals the commitment-to-merit assertion's inaccuracy as well as its insult. The slate is the predictable result of the faculty's fixation on credentials to the exclusion of both the true needs of our students and the future of our school.

Beyond all the rhetoric, tell me: why are those voted tenure on such a basis willing to accept it? Why is the school not embarrassed? Why are all involved in this scheme not ashamed? Surely, no one can proclaim any of these men as the best in the world for their positions. Will they boast that they are by virtue of their tenure offer, better than any woman of color? Any handicapped teacher? Hispanic? Asian? Native American? openly gay or lesbian teacher, white ethnic?

I understand that as many as three of the slate of four are currently visitors. In the last two years, students have urged the consideration of three visitors of color, two Black women, one Hispanic man. In each instance, the administration claimed that visitors could not be considered for faculty positions during the year of their visit.

What happened to that important rule this year? It is — as it appears — a rule for minority candidates only, or one that is uniformly applied to minorities,

You may be fooled by such resolutions, but not me. I have labored too long to conform the school's hiring and promotion practices with its promises. You may be convinced at tomorrow's open forum with the Appointments Committee, that this time, the faculty is truly serious. But not me.

Oh, the school will invite more women of color. That promise they are quite ready to keep. They are likely quite ready to compete with Stanford Law School which in recent years invited four women of color to visit — and offered permanent posts to none of them.

The sequential visits for Black women visitors may differ from the revolving door featured in the Willy Horton ads, but its motivation smacks of the same willingness to take whatever steps are required to placate you and keep the faculty family intact.

I have seen what this school's promises have done to two, able Black women. Each was promised a fair opportunity to show the contributions they might make to this school. Both made those contributions while operating under a kind of pressure that most on the faculty could never imagine — much less emulate. Each undertook to pioneer where none like them had ever gone before — not unlike efforts to scale an academic Mt. Everest solo. In each instance, the evaluations of first-year students (most of whom have likely never had a Black teacher, much less a Black woman teacher) suddenly took on a serious, even critical weight.

"And why not?" the faculty would say. Must we not forget the historic implications of these visits and treat these Black women visitors like everyone else? Isn't that what the law requires? I ask you. How different was that attitude from that Justice Bradley expressed in his 1883 decision invalidating the civil rights statutes. In that year, when 52 Blacks were lynched, the Reconstruction in tatters, and Blacks at the mercy of a hostile, uncaring society, Bradley noted that slavery having ended, "there must be some stage when the former slave ceases to be

the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected."

I guess they might have been treated worse, but they deserved better.

I assume that those visitors tenured last Friday will not have to undergo the rigors of student evaluation, and when they do, those evaluations — good or bad — will be treated like most student evaluations — they will be ignored.

Well, while most of you are being placated one more time, with promises to sacrifice still more women of color to the rigors of a visit where their successes will be disregarded and their deficiencies magnified, I have initiated a complaint against the law school with the Department of Education. The complaint asserts that as they pertain to minorities in general, and women of color in particular, the faculty's hiring and promotion practices that equate teaching and scholarly performance with law school grades violate Title VI of the Civil Rights Act of 1964.

Please understand that I do not seek to have the school appoint any particular individual or number of individuals to this faculty. Applicable law and basic standards of fairness, however, entitle me and candidates like me to a hiring and promotion policy that does not, in the absence of crisis or special need, systematically reject members of my race, other minority candidates, and White candidates whose outstanding performance records in practice or teaching at other schools warrant the school's hiring and promotion of them.

Faculty quality at Harvard, like that at most schools, is quite diverse. It ranges from professors who are excellent in every regard to those who are more productive in some areas than in others. Some Professors who would be or have been excluded by nepotism masquerading as merit, including many minority law teachers, have achieved a great deal as teachers even though we did not attend first-rank law schools, or obtain the other indicia including prestigious judicial clerkships and short-term positions in major law firms. In a very real sense, minority law teachers, including several whose writings have given rise to the scholarly genre called Critical Race Theory, have made it because of our accomplishments, not our pedigrees. The failure to recognize either quality or value in writing that departs from traditional modes, is an unfortunate but predictable byproduct of credentialism.

Excluding we who have accomplished much, but by virtue of our non-White and/or non-male status are consigned to outsider status in the elite "family" of Harvard Law faculty, constitutes a denial of dignity quite like the segregation policies that prompted sit-ins three decades ago. Just as the sit-in protesters would not accept segregated Service, so my leave protest reflects my refusal to accept any longer a subordinate faculty status that demeans me and serves to bar highly qualified persons — White as well as Black — who are not given entry into the protected and nepotistic family of faculty.

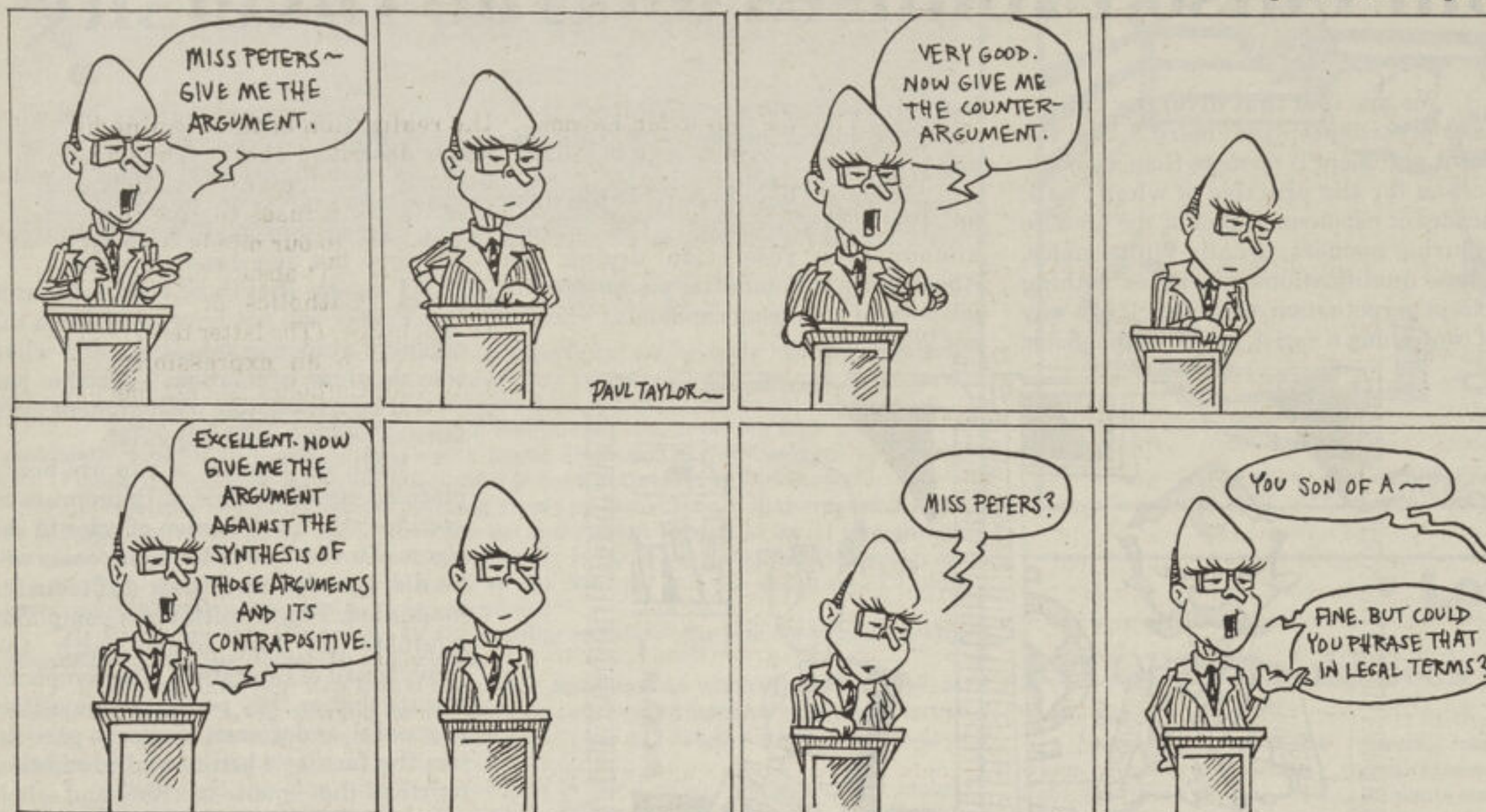
Candor requires I admit that I came here today with some reluctance. It seemed to me from a distance that the vigorous student movement that I tried to support with my protest had tired of protest and become discouraged because — you felt — we can't win. Harvard is too tough.

The first conclusion is correct. Harvard is tough and changing their minority policy from a form of regularized tokenism to true diversity is all but impossible. But, I thought you knew that. I thought as well that you recognized that your professional training has some components not listed in the catalog. One of the most important of those is gaining skill in taking risks for things in which

please see **BELL**, page 14

Liabilities

By Paul Taylor



GROMM: Barbarian at Law

By Chris Spagnoli



HLS Intramural Basketball Standings

as of March 3, 1992

Team Number and Name Wins-Losses

"A" LEAGUE

8	Assault & Battery	5-1
4	HLS Posse	5-2
2	All That Jazz	4-2
1	The One-der Years	3-2
5	Black Panthers	3-3
6	Gimme The Rock, Baby!	2-4
3	Whoopie Cushions	1-5
7	D'Bulls	1-5

"B" LEAGUE

23	Mo Knows	4-0
26	The C.B.A.	4-0
11	Well-Hung Jury	4-1
17	A to Z	3-1
20	Rodwin's Rebels	3-1
21	Black Panthers II	3-1
22	Story Too Legit	3-1
25	Lincoln Park Rules	3-1
28	The Grizzers	3-1
13	Dream Team	2-2
10	Hezekiah	2-3
24	The Hammer	2-3
14	Ames Aardvarks	1-3
15	(nameless)	1-3
16	John 3:16	1-3
19	Bildad & the shoe-hites	1-3
29	Thao's Team	1-3
27	Skywalkers	1-4
12	Los Homies	0-4
18	HLAB-The Team	0-4

Compiled by Frank Yokoyama & Jeff Wing

HLS Posse's Mitch "Miracle on Mass Ave" Lazris hit a just beyond half-court sideline bank-shot at the buzzer to send the game into overtime. Seth Rosenthal's Posse went on to beat Bob Dow's Gimme The Rock, Baby! by a controversial narrow margin... The Well-Hung Jury walked over the Skywalkers to win by 44 points. The Jury's Ryan Downs said "Our strength is that nobody is selfish. We don't care who scores as long as the points get on the board."... In a see-saw battle of last week's top two teams, Greg Dingsen's Assault & Battery pulled away late in the game to beat Bill O'Dowd's The One-der Years by 8... Harry Rothenberg's Mo Knows and Paul Marazita's The C.B.A. are the only undefeated teams in either league... Match-ups to look forward to: Well-Hung Jury v. The C.B.A., March 18 at 10 p.m.; HLS Posse v. Assault & Battery, March 19 at 7:40 p.m.

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CALENDAR

Friday, March 6

"Common Problems in Exam Preparation" is the topic of a brown-bag luncheon, 12 noon-2 pm, P204. Franklin Pierce Professor Carolyn Nygren will discuss semester-long preparations for exams...

Today is the last day to purchase Daffodils to benefit the American Cancer Society. Bouquets containing 10 flowers each can be purchased for \$4 from Kay Lawless, 5-4394, Mo leary, 6-8143, or Kevin Bartlett, 5-5521. Daffodils will be distributed on March 25...

Today and next Friday the Jamaica Plain Legal Services Center will hold informational meetings from 2-4 pm in P201 to explain its 1992-93 clinical placement program...

Future Trends of Public Interest Practice in the "90s will be discussed at a luncheon from 12:30 - 2:30 pm, ILS Seminar Room 2.

Patricio Chirinos Calero, Secretary of Urban Development and Ecology, Mexico, will speak at 2 pm in Starr Auditorium, JFK School.

Saturday, March 7

Interested in helping Haitian Refugees or learning more about the issue? A free training session for interested students and attorneys will be held from 10 am - 5 pm, AN. To register give your name and address to Deborah Anker, P511.

Sunday, March 8

Martin Peretz, editor-in-chief, *The New Republic*, will speak at JLSA's brunch, 10:30 am, P334.

Saturday, March 14

"Rethinking Our Schools to Serve Today's Children," a conference examining the role of schools in meeting children's changing needs, will be held from 8:45 am - 5 pm, Austin Hall. Keynote speakers will be Dr. Ernest Boyer and Lisbeth Schorr.

Correction:

The letter that appeared in the February 28th, 1992 issue of the RECORD by Max Torres mistakenly repeated a sentence in the penultimate paragraph.

**Next
Issue
March 20**

SPECIAL REPORT: A Letter from Latveria

By Peter M. Cicchino '92

For the past five years, I have been involved with an international organization monitoring human rights in Latveria. Latveria, often called the "forgotten Baltic state," received independence from the Soviet Union on the first of April, 1991. Snuggled securely within the Urals, Latveria is the smallest of the new Commonwealth nations, with a population of just over one million and a total surface area not much larger than the District of Columbia.

Latverian politics and culture are dominated almost completely by the *Gathering of Positivists* (GOP), a political party founded shortly after the Enlightenment and committed to furthering a state sponsored program of secular humanism. The party's program, however, has encountered stiff opposition from Latveria's small, but committed, Roman Catholic population.

Precise estimates on the number of Latverian Roman Catholics are difficult to make. Part of the problem lies in the history of discrimination Roman Catholics have suffered at the hands of Latverian society. Though several of Latveria's twelve provinces have passed civil rights legislation for Roman Catholics, in most Latverian jurisdictions, people who openly practice their Catholicism, or even self-identify as Catholics, risk penalties ranging from loss of a job to juridical termination of parental rights.

Given this history of discrimination, many Latverians who hold Roman Catholic beliefs do so in private. Some studies have suggested (See Trent & Jack, 1989) that as much as 10% of the Latverian population may be Roman Catholic, with as much as 50% of the population believing in one or more significant tenets of the Roman Catholic faith. Though these figures are hotly contested within Latveria, what is clear is that practicing Roman Catholics are a small minority in Latveria, confined predominantly to major urban centers.

Recently, the GOP created the *Association of Latverians Against Religious Masochism* (ALARM). The pur-

pose of ALARM is to "educate" the public about what the party regards as the intrinsically self-destructive nature of Roman Catholicism. The primary instrument of that educational project is *Archipelago*, the official magazine of ALARM.

In its inaugural issue, *Archipelago* published a series of articles making the case against Roman Catholicism. These pieces ranged from arguments about the essential misogyny of Roman Catholicism, to assertions that an attraction to Roman Catholic practices is rooted in an unresolved Oedipal complex. As might be expected, several of these articles relied heavily on the now well known critiques of Feuerbach, Marx, and Freud, to demonstrate the essentially pathological character of belief in God.

To the astonishment of ALARM (and, if I may interject a personal note, to my delight), response to the attack was immediate, vocal, and well organized. The *Congress Of God Believing and Loving Latverians, Inc.* (COGBLLI) organized protests and published a response to *Archipelago*. The Dean of the Latverian School of Law courageously issued a public letter in which he reaffirmed the school's commitment to non-discrimination against Roman Catholics.

It was, at this point, that I became involved. You see, I have been corresponding with Vladic Lapdog, president of ALARM, about civil liberties in Latveria. Challenging me to "be a consistent civil libertarian," Lapdog wrote me asking for assistance in defending himself (and ALARM) from charges of anti-Catholic bigotry. As Lapdog put it, "We must find a way of showing our critics that we can hate Roman Catholicism without being guilty of bigotry." Finding ALARM's views repugnant, I was not enthusiastic about offering assistance. But, not wanting to seem "politically correct," I told the official I would keep an eye out for anything that might be of use to him.

Much to my surprise, I found something in the excellent response of Sean Brady '92 to Dean Clark's recent letter about homophobia on campus (See the RECORD of last week). After reading

Sean's piece, I faxed a copy to Mr. Lapdog. Below I share his response both because of its intrinsic interest for readers of the RECORD, and because I believe Sean deserves credit for making so potent a contribution to the international struggle for civil liberties.

The letter begins:

Dear Mr. Cicchino, Thank you for the article of Mr. Sean Brady! You cannot imagine the source of liberation and encouragement Mr. Brady's words have been to us. More specifically, the theoretical apparatus provided by Mr. Brady, i.e., the distinction between "loving the sinner and hating the sin," has given us a foundation upon which we are now building a wall against the attacks of our critics.

The letter then proceeds to relate the success of ALARM's new add campaign: "We hate Catholicism, but *love* those Catholics!" After describing the advertisements, Mr. Lapdog's letter continues: Armed with Mr. Brady's critical distinction we have been able to silence our critics' accusations of bigotry. For example, we now point out that it is precisely because we believe Roman Catholic practices frustrate the essence of what it means to be human, that our advocating the prohibition of or abstinence from such practices actually shows are deep respect and abiding love for the poor souls who are victims of such practices. When we wrote, in *Archipelago*, that Roman Catholics could not be good role models; were incapable of knowing true love; fundamentally frustrated the goal of a truly human life; we were attacked for bigotry. Mr. Brady's distinction has helped us show our opponents that we did not mean to slight the human beings who are drawn to such practices. Rather, we meant the practices *themselves* prevent

the realization of the genuine human goods described above. Thus a person attracted to Roman Catholicism who steadfastly refuses to give in to such impulses is, to our minds, a moral hero. Given this, isn't absurd for people to say we hate Catholics or that we are Cathophobes. (The latter term apparently refers to an expression used by Latverian Catholics against members of the GOP and ALARM. It means, "one who hates or fears practicing Roman Catholics." — ed.)

The rest of Mr. Lapdog's letter is devoted to defending ALARM's substantive beliefs.

My point, in sharing this news with the HLS community, is not to invite debate about the internal politics of Latveria. Rather, I hoped to show the way in which the work we do here—particularly the theoretical work—can be put to practical use in situations we may not have foreseen. Certainly, for Sean Brady, the practical utility of his theoretical distinction between "loving the sinner" and "hating the sin" has had a real effect on politics in Latveria.

Quote of the Week

"What would I be doing there? I'd be standing around spitting sunflower seeds."

—Red Sox pitcher Roger Clemens, on his absence at Spring Training

Fenno

Fenno slept contentedly in his Gropius dormroom, oblivious to the fact he was living in a 10' by 10' cell with no heat, orange blinds and green carpet. Instead, he was dreaming of Alysse Macintyre, dancing scantily clad on the new pool table at the Lincoln's Inn. A loud pounding noise awakened him from this reverie.

His first thought was that he had slept through his 4:10 Fed. Lit again and someone was trying to wake him. "Crap! And I was going to try to make all my afternoon classes this semester!" But when he opened the door and looked out into the hall, it was more deserted than a Jerry Brown rally. Fenno noticed that the surround sound indicator on his stereo was blinking on and off and that the pounding was coming from his speakers but, strangely, the stereo was not on. He went back to bed, pondering why this happened. His first thought was that during the dream about Alysse he had inadvertently been fondling his remote control.

Then he remembered a friend telling him how she'd met a "parapsychologist" who had convinced her of the existence of ghosts. At the time, of course, Fenno retorted that he'd met a "paralegal" who had convinced him of the existence of motions to dismiss. Now he really began to worry. "But why use the surround sound indicator?" Ah,

the blinking red light could only mean one thing. "They're surrounding me!"

In a panic, Fenno awoke his next door neighbor. "You gotta help me, Spoon! There's a ghost in my room!" "Don't be scared," Spoon snickered. "It's only Patrick Swayze throwing some pottery."

But Fenno was convinced. He drew a few pentagrams in animal blood on the floor, then waited for a sign. Finally, at nightfall, he heard a muted hiss swelling to a deep booming voice. "If I build it you will come."

Fenno adjusted his fly and looked around. "Excuse me?"

"I am Gropius, builder. I command you to heed my words."

"What do you want, oh builder of mice mazes?"

Fenno watched his alarm clock float conspicuously out the window. "The time has come for a new building on Holmes field. I want it created after my image."

Fenno thought, "I don't think there's enough white concrete blocks in the Northeast to make that possible."

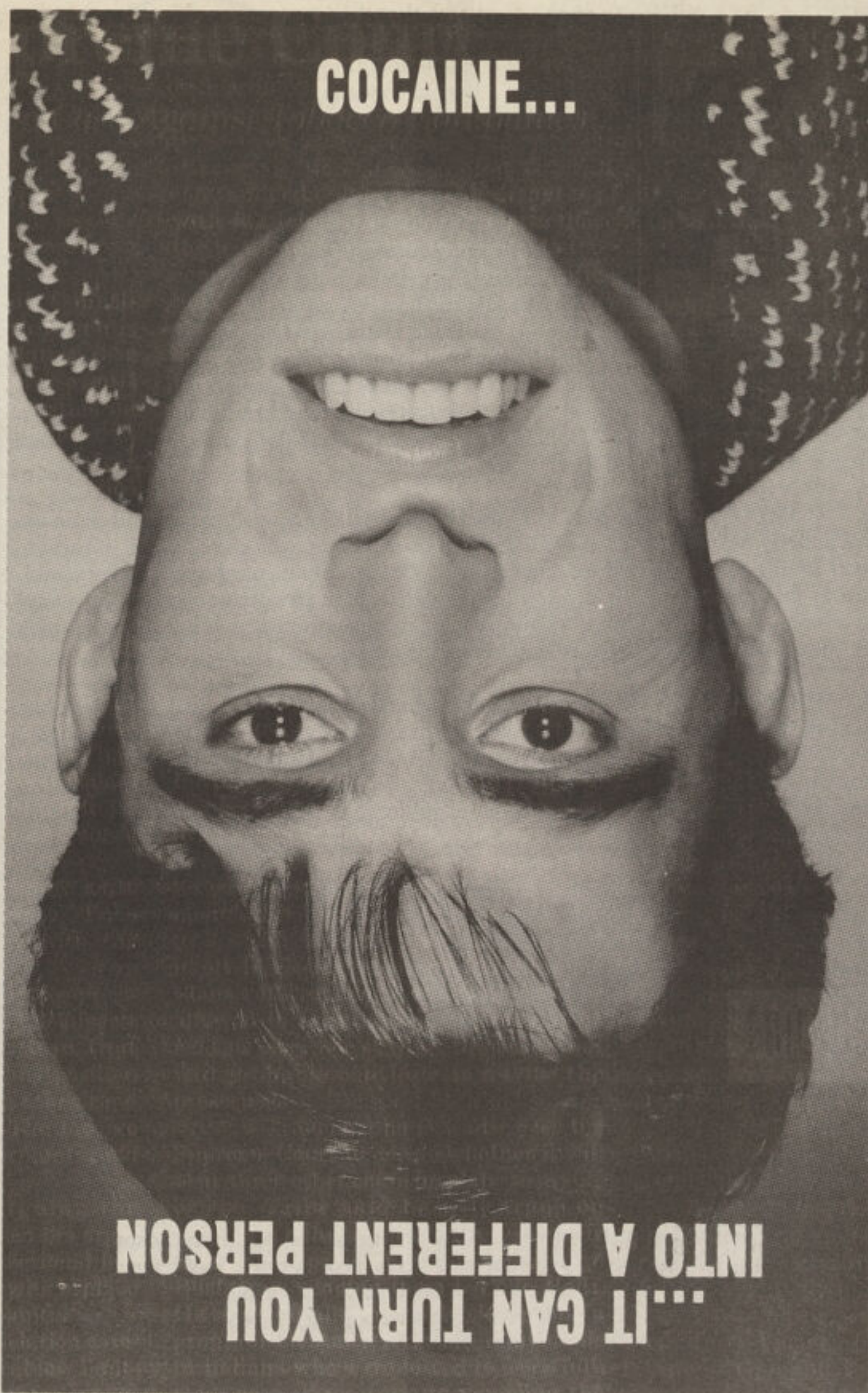
"I heard that," said the voice. "Listen up. Your mission is to find the blueprints and change them."

"Never! I'd sooner give up dating Wellsley women than compromise my architectural integrity."

"That can be arranged," boomed Gropius.

"Say, where are those blueprints?"

After being caught rifling through Terry Fisher's locked file cabinet, Spoon checked Fenno into the University Health Services, where he was successfully treated and released for an acute "Gropius Complex."



BILL'S TOP 10 BEEFS

By Bill Choslovsky

After arriving last August as an impressionable, eager beaver ready to immerse myself in this vague pursuit called "the law," what initially struck me was not the revered faculty, storied traditions, or self-proclaimed grand library (actually, they still haven't had much impact). Instead, what immediately grabbed my attention was "THE WHINE."

Although my fellow 1L's seemed to share a naive optimism, 2L's, 3L's, and especially bureaucrats and faculty alike were, diplomatically put, not so chipper. Simply stated, they did a lot of whining; so much so that their echoes permeated the law school.

Anyhow, having received my first set of grades (wow, now that's feedback) and spending six months here, I feel I have paid my requisite, proverbial dues and thus am certified to join the ranks of the WHINERS. So, with no further ado, here is Bill's uncensored, unedited, fat free cry:

11. Yeah, I know, a Top 10 list is only supposed to have 10 items, but then again my Wednesday Torts class was only suppose to be 70 minutes (touché, Professor Steiner).

10. HARK FOOD: Where do I start?! Ah, such an easy target, it had to be #10. If aggravation were a criterion, this, by definition, would be #1. I assume Harvard's crackpot negotiation team is responsible for bidding out this contract. Just because I can get a better meal with bigger portions, better service, at a cheaper price in Harvard square where they actually have real overhead (i.e. rent) and offer more than two entrée choices is no reason to believe Dean Clark gets a percentage of Gardner Merchant's profits (yeah, that sentence sure does define bad grammar, but then again, if you've ever eaten at the Hark you know how emotional of an issue this is). But in tough times, it's good to know you can find an 80 cent can of pop. Like I said, too easy a target to justify more attention (although novels could be written).

9. FACULTY ACCESABILITY: I wanted to discuss this with my profs, but...

8. ARCHITECTURE: Again, wow! When the most appealing, physical aspect of the campus is its tunnels, you have a prima facie (who says I didn't learn any law here?) case proving utter ugliness. In addition, complementing the drab interior of buildings is the oh-so-modern space needle that lures sight-seers from the four corners of the globe (more amazing than Professor Miller's ego, people actually take pictures of this).

7. LIBRARY: It wasn't until Ames when I actually tried to check out some books that I realized the world's largest law library uses a system comparable to the one I grew up with at Heather Hill elementary school. In checking out six books, I had to write my name, ID number, phone number, and address six times in addition to the author's name and book's call number on six separate index cards (NO KIDDING!). The books were then manually date stamped. Lastly, proving absurdity has no limits, a seventh book that I requested couldn't be found "until Doug comes in on Sunday!" (Again, no joke.) Considering my junior high library was infinitely more efficient and modern, it's good to know that bigger truly is better. As Dean Clark wisely noted in the last bulletin, "their [the library's] orientation is very long-term" (p.3). Well, although I can't speak much about a library's orientation (perhaps the Dean is confusing the library with his official letter concerning sexual orientation that was recently stuffed in our boxes), I can attest that it certainly has "long-term" check-out policies.

6. COMPUTERS: It's good to know that the school doesn't nickel and dime us. It's usually not a great PR move to have 1600 students, who pay \$16,000 in tuition, wait in line to pay 10 cents a page to print 7 copies of an Ames brief. Then again, it may be some new wave marketing strategy (if Max Headroom worked, anything is possible). Anyhow, that continuing education seminar the administration took on "new revenue sources" sure has worked wonders.

5. HEMENWAY GYM: Handbook for Admitted Students (p.18): "The gym has squash, handball, and basketball courts, an exercise room...." NOT!! Although I haven't studied the art of misrepresentation, one basketball court with bent rims and an exercise room with a chain link fence would make any used-car salesman proud of this sales pitch. But then again, you're only paying a mere \$75 to use this antiquated facility.

4. FISCAL MANAGEMENT: Complementing our library's theory of bigger equals better, it's good to know that students at the world's most endowed school pay \$16,000 a year for one of the highest student-faculty ratios in the country. However, a quick flip through the student directory, which shows a student-staff ratio of 7:1, proves either inefficiency is a staple, each professor has five secretaries, or 350 people are on the dole (thus explaining the new addition on Dean Clark's house).

3. ATTITUDE: Basically, the administration's attitude is, "you don't have to like us, and we don't have to like you, because if you don't, 7000 other people will." Just because the counter girl at McDonald's has a friendlier disposition is no reason to believe the administration's "service with a smile" campaign is not the '90s way.

2. COOP (not to be confused with CCCP): One of the last living testaments to Communism. Where else do you find long lines, poor service, inefficiency, and no competition. Ah, all the benefits of state regulation operating under the guise of serving the proletariat (after all, we do get a whooping 5% rebate on merchandise that is 50% overpriced). It's no wonder some Harvard professors are so comfortable shopping there.

1. HARK FOOD: Yeah, this is doubly redundant, but I am unfortunately reminded of its quality as this evening's wonderful dinner begins to settle (Flush).



The End of Innocence

By Rich Wareing '93

RECORD Columnist

THERE'S been a real rucus lately about some 23 year old scumbag who brutally murdered a little boy several years ago. Because he could be elected to the legislature or appointed to the Superior Court in Massachusetts, this upstanding citizen was tried and convicted as a juvenile, meaning he should have been released at 21. Although every brain cell in D.Y.S. has been committed to keeping him locked up, two psychologists have said this kid has been "rehabilitated." As such, they reason, he should be released so that he can get on with his life. According to these psychologists, this poor boy has suffered enough. The Governor, along with anybody else with a shred of common sense, is doing everything possible to prevent his release, but right now, it looks like the psychologists will win and this kid will eventually walk.

When I was home a couple of weeks ago, my dad told me a story about a 14 year old kid, who has already been convicted of dealing heroin and shooting down a patron at a Dunkin' Doughnuts who had the nerve to chastise him for being rude to a waitress. Of course, the

suburban white liberal crowd ignored the victim, who was nobody important to mourn for, and immediately sanctified the defendant, calling for him to be tried as a juvenile, so that he too could be "rehabilitated" and sent back into society (though one suspects not into a halfway house in their neighborhood). It was not his fault that he shot that guy down in cold blood. Society made him do it.

While the stupidity of a process by which murderers can be released when two egg-heads pronounce them "rehabilitated" could be rich fodder for me, I bring up these two debacles only to help talk about a bigger one.

Unfortunately, stories like this are all too common. Kids are slaughtering each other with automatic weapons over who dissed who. Teenagers are packing more heat than a S.W.A.T. team and terrorizing neighborhoods simply because they have got nothing better to do. Drive-by shootings avenge past drive by shootings and result in more drive-by shootings. It goes on and on, seemingly

without end. Kids shoot each other at an age when they should be worrying about acne and the junior prom.

The causes of this tragedy are complex, but a lot of it stems from the disbelief of the concept of personal responsibility. Kids see it on T.V., they hear it from the business tycoons, and from their elected leaders - get everything you can however you can. If you screw up, it's somebody else's fault. If you fail, or don't even bother to try, the government will pay for the mess you've made. Borrow more, the banks are insured and who cares about debt restrictions and credit limits anyway? Do not work too hard. Take it easy and get your guaranteed B's - it goes on and on and on. Personal responsibility, hard work, and self-discipline are sacrificed on the altar of the quick strike, the easy way out, more debt, more consumption, more greed, and more selfishness.

This national moral failure is what justifies to these kids killing for sneakers. This moral bankruptcy is what tells kids that human life is worthless. Thirty years of liberal finger-pointing and corporate greed has ended in the hangover of a generation of kids without morals, without standards, without a clue.

Their parents, sadly, are not much better. From the Thirtysomethings to the

Homer Simpson types, responsibility is out. Instead of a blessing, kids are a burden, to be gotten away from, put in day care, sent to the baby sitter, left on the street to their own devices, or at best, scheduled in for "quality time" like another client. Too many kids, rich and poor, grow up without guidance, without

support, and without love.

For us, of course, the results are "social problems" to be over-analyzed, turned into case studies, and preached about with the usual air of pompous self-righteousness that defines this city. For the politicians elected to deal with this mess, the kids provide a rich source of tough-guy quotes and a topic to be avoided like leprosy when hard questions are asked or solutions are sought. For the cops, judges and doctors who deal with the problem on a bullet-by-bullet basis, they are evidence of the slow death of our country. For the people who endure this violence and terror every day, they are evidence of the hopelessness of life and the indifference of those in power.

For these kids, the result is the corruption of youth, the end of innocence.

Thirty years of liberal finger-pointing and corporate greed has ended in the hangover of a generation of kids without morals, without standards, without a clue.

Letters

Continued from page 8

What if the majority then made illegal the practice of communion, and denied the Catholic Church equal benefits under the law, like tax exemptions given to other faiths? How would Peninsula staffers then perceive of members of the majority saying that they should treat Catholics with charity and love, while trying to dissuade them from their bad ways? Of course, the Catholics,

like gays and lesbians now, should calmly try to "debate the issues" and show others that there is nothing wrong with them or their practices. But they would also feel angry and persecuted, and would want to let the majority know that they were bigots. That would be their right of free speech.

So instead of self-righteously defending themselves as misunderstood oracles of Truth, Max Torres and Peninsula should try to put

themselves in our shoes and understand why we perceive bigotry in their publication and react with anger. Gays and lesbians on campus have responded to them with well-thought out arguments, but it is also our right of free speech to label Peninsula's so-called love and charity for exactly what it is: BIGOTRY.

Michael Herman '92
March 2, 1992

Prof. Freund Among Greatest HLS Grads

To the Editor:

I have just received my copy of your February 7 issue with the sad news of the death of Paul Freund. I had the privilege of having him as my Constitutional Law teacher, and during a LLM year for a seminar dealing with Constitutional Litigation. He was not only a great thinker but a man of extraordinary

gentleness and compassion. I have always treasured the experience of being his student.

Happily, on the occasion in 1972 when I received my Ph.D. from Yale University, Paul was given his honorary doctorate.

I hope that the memory of this kindly, brilliant man will be appropriately pre-

served at "The Law School."

We should grieve that he was never appointed to the Supreme Court — there never was an HLS graduate better fitted for that work, though William Brennan comes close.

James F. Bresnahan, JD '54,
LLM '55
February, 27 1992

Hanging Around at Harvard Law

By Alysse MacIntyre

I WAS at a museum last summer that had a visiting show of nineteenth century sketches of lawyers and barristers. And I said, "Who would pay \$7 to come in here and see this when you can spend 15 thousand and see this everyday at Harvard Law School?"

Yes, the portrait collection is the pride of HLS; it consists of the portraits of lots of white guys, a few black guys, and some women, all of them having something to do with the law. Many of the women are concentrated in the lobby of Langdell. Very few students ever go through here, which is fortunate or else we might get the idea that women have made some kind of important contribution to the law or something.

Knowing that concentrating the portraits of African American legal scholars in one place would upset some people, the school has sprinkled these portraits around the school; there's one in the lobby, one in Pound. Thurgood Marshall shows up in two places, and he didn't even go here. I suspect this is to give the illusion that the school has more respect for African Americans in the law than it does. Maybe they figured if they put up both Thurgoods they'd get off without having to give tenure to any more of them.

The real Pink Collar ghetto is in Langdell North Middle. The school seems to like having at least one recruitment day function in LNM, I've noticed. It certainly worked on me; Professor Charles Ogletree standing up there surrounded by the portraits of women. Why, it warmed my PC heart. However, I've since discovered that the collection of photo portraits of women in Langdell North Middle is really just an illusion. There's actually only two of them and the rest is done with mirrors. I mean, certainly if there were this

many important women in the law HLS would be able to go out and find a few more to teach here, right?

It's my theory that the real reason they have all those pictures is so that no one has to feel bad when women like Professor Susan Estrich blow this firetrap. That way the folks up in Griswold can say "Hey, I don't know what the problem is. We like babes, and we put up The Girls of Langdell North Middle to prove it."

After close study and observation I have discovered that there is in fact a kind of rhythm and reason to the portraits. I discerned that you definitely get one if you make dean. The 20th century deans of the law school are in the south end of the library. Also in this same room is one of the Thurgood Marshall portraits.

Looking at his portrait, you could be misled into thinking that Holmes' great contribution to the law was the Ten Commandments.

I love Thurgood and I use to remember him every night in my prayers: "...and God bless Mommy, and God bless Thurgood and let him live until we get a Democrat in the White House..." Just looking at his portrait I would worry; You can see he's a man who has not been watching what he eats. Every time I would look at it I could just see him helping himself to second servings of sausage and biscuits with gravy. Not a week before

his retirement I sent him a bottle of corn oil and note about his cholesterol. Ah, but it was too late.

I can't help but express my profoundest disappointment in both Marshall and Brennan. I think they should have been put on life-support systems and rolled into court if need be; they'd still be registering greater brain waves than the likes of Rehnquist and Kennedy. I mean, come on, Kennedy. If he had any pride at all he would have turned down the nomination. Being asked third if you'd like to join the Supreme Court is like being asked to go to the Prom by a guy who's already been turned down twice.

Of course, the grandest portrait of all is that of Holmes, located in the north end of the library. The artist has created a halo effect by surrounding Holmes with light, just in case you thought Holmes was a mere mortal. Looking at his portrait, you could be misled into thinking that Holmes' great contribution to the law was the Ten Commandments.

Of course, Bob Clark will be getting a portrait, too. I imagine him up in his office in Griswold contemplating his choices. What should he wear? Where should he pose? I don't even think Bob should waste his time having his done; he's such a busy man, schmoozing with the alumni in order to fill the law school piggy bank. Instead I think we should just ask the American Express office down on Brattle Street for the picture in the window of that Buckingham palace guard. It looks just like him plus it lights up. Now that would look cool in the library.

But if DBC really wants to pose, I think his office would be a nice setting. I imagine the scene this way: Bob with the latest brief of the CCR lawsuit on his desk, his nose all brown from fund raising and Duncan Kennedy's boot print on his butt.

The North End Comes to Cambridge



La Grocerie

853 Main Street
(near Central Square)
876-4162
Rating: ★★★★★

By Mike Wang

It's time to shatter the myth that the North End is the only place to be in Boston for *cibo squisito*, bona fide Italian cuisine. Nestled between two storefronts several blocks down Mass. Ave.—just one T-stop away from Harvard—is an honest-to-God *ristorante* that makes its own pasta fresh daily, is family-owned, employs native Italians as waitpersons, and serves up a damn good cup of cappuccino.

La Grocerie celebrates its 20th anniversary this year. Owned by the Mastromauro family, this charming place embraces all the trappings of an Italian café: dessert counter, brick walls, wood floors, lattice ceilings, vases with fresh flowers at every table, leather-covered menus—but it's cleaner than many of its North End competitors.

Be sure to order an antipasto. La Grocerie boasts in advertisement that its hot antipasto platter is "famous"; we left that untested and tried a cold dish instead, the salmon carpaccio (\$7.95). The salmon was sliced extremely thinly, rolled with peppercorns, roasted peppers and dijon mustard—almost to the point of sogginess—and topped with capers, onions and artichoke hearts. This dish is so delicate it's impossible to chew. The salmon slid straight from our forks to our throats, which left us thinking that the meat had been overmarinated.

Entrées range from \$10 to \$17. We tried the little necks mare chiaro (\$12.95) and a half order of the spinach fettuccine ai Vegetali Aglio Olio (\$5.95),

a dish that's difficult to order by full name. The little necks were plump and sumptuous; 18 of them were served in their shells with chives, stewed tomatoes, and a white wine sauce over a bed of fresh spaghetti. The dish would have been perfect had the chef been less generous with the chives and extracted the shell fragments from the meat.

The spinach fettuccini was, in a word, verdant. No less than five fresh green vegetables—sauteed broccoli, artichokes, asparagus, peas, squash—were served over green spinach pasta with cherry tomatoes and olive oil. Melted parmigiano topped off this delightful symphony of flavors.

A slice of chocolate mousse cake (\$3.95), multi-layered and richer than a New York corporate partner, and fresh fruit with raspberry sorbet served as pleasing dénouements for our repast.

La Grocerie offers an extensive wine list as well as a variety of Italian coffees and coffee cocktails. The cappuccino alone will make your jaunt over to Central Square worth its while. Early bird dinners are available for \$9.95 before 7 p.m. Sunday through Thursday, and include salad, choice of entrée, coffee and dessert. All dishes may be ordered for take-out.

Our waitress was a native Italian woman named Silvia, and she was quick and courteous. She will enthusiastically advise you on what to order if you're not sure, and if you're lucky you might even hear her utter Italian exclamations. Ask her what she thinks about Olympic giant slalom champion and folk hero Alberto Tomba.

La Grocerie is elegant yet informal; satisfying yet relatively inexpensive; and an ideal place to take a professor or your parents. Alternatively, it's highly recommended for a cup of cappuccino if you want to get off the beaten tracks. For a *favolosa cena*, La Grocerie is a fine local alternative to the North End—without having to make the long trek up north.

Objection!: Transforming Law Students into Perry Masons

By Kurt Copenhagen

Heiress Sandra Stiff's lifeless body was found during a New Year's Eve party at her posh Beverly Hills mansion. The player represents the unnamed defendant, a guest of the party and acquaintance of the victim, who has been charged with the murder. The defendant also happens to be innocent. Testifying at the defendant's murder trial will be the county coroner, guests of the party, the victim's best friend and the police detective.

The game is called *Objection!* from TransMedia Productions. As the defense attorney, the player must respond to the prosecutor's direct examination of each witness, indicating whether the questions are proper or objectionable. If the question is objectionable, the player is asked to identify the nature of the objection: whether it's argumentative, violates the best evidence rule, calls for a conclusion, assumes unestablished facts, violates the hearsay rule, is irrelevant or immaterial, is leading, is multiple, is privileged, is speculative, or is vague. As you progress from witness to witness, the questions get trickier and during the direct examination of later witnesses, the player is asked to identify whether hearsay exception is applicable. After your response, the judge (who resembles Judge Wapner in his younger days), strikes his gavel and sustains or overrules your objection.

The player scores points for every correct response to the prosecutor's questions. Also, if the player correctly indicates that the question is proper, the witness answers the question with information valuable to the defense. There is also a time element in scoring, the quicker you indicate the propriety of the question or the nature of the objection, the more points you score. The player must obtain a fixed number of points before reaching the next level.

Objection! is not only a recognition drill for trial lawyers, it is also contains a mystery. At the end of the direct examination of each witness, the player is asked to answer several questions based upon the testimony given by the witness. If the player answers any of

the questions incorrectly, the player loses and must start the game over from the beginning (there is no save game feature.) Unfortunately, the defendant is sentenced to 20 - 40 years in prison. If the player answers the questions correctly, he or she is allowed to move on to the next witness and by the end of the trial, the true murderer will be revealed.

Objection! is a challenging and fun game. Emphasis is placed on the exact form and structure of questions and not the substantive answers. The game contains thousands of questions so it will not become repetitive the more you play it. *Objection!* teaches the player to recognize the structure of questions and to make objections quickly.

The game also teaches that while making the proper objections is important (especially since 70+% of the questions are objectionable), it is equally important to listen to and note the answers given by the witnesses to proper questions, as advancing to the next level requires the player to answer questions based on the testimony of the witness during direct examination.

Objection! does have a few failings. It lacks a "save game" feature, forcing a player to start over from the beginning if he or she is unable to move on to the next level. The game also fails to give an explanation of the correct answer when the player responds incorrectly. Although these failings arguably make the game more realistic, such realism detracts from the game's function as a teaching tool.

Objection! is written for IBM compatible computers. The game is available from TransMedia, Inc., 27404 Drake, Road, Farmington Hills, MI 48331; or call 1-800-462-1606. The cost is \$89.00 plus \$10.00 shipping and handling.

The RECORD:

We're hooked on phonics!

Priapic Screed Urges Men to Go it Alone

By Harry Mittleman '94

RECORD Columnist

Having driven the last of many spikes through his hand-fashioned, life-sized cross, the German mystic Susso is said to have "shrunk in womanly cowardice" when he fully beheld the exquisiteness of his torture. And so, like Horatio "distilled almost to jelly with the act of fear," he blunted each point in vain consideration of the vulgar flesh. But no sooner had he attended to the last prick than he summoned up within him a bold and iconoclastic machismo, sharpened the steel with religious vigor, and thrust his wretched frame upon it.

Discussing Susso, this man of genius who flourished around the Middle Ages, William James was dismissive: "there is little about him to suggest flourishing." A fascinating priapic screed appearing in the March issue of *The Harvard Salient* suggests an avenue of challenge to such lamentably conventional wisdom.

"Men go it alone," the author writes, an insipience "apparent without resort to modern science." And such is his modesty that he does not seek to impress the reader with lengthy supporting block quotations drawn from the roll-call of the mind—The Fountainhead, Protocols of the Elders of Zion, Meet Fonzie, or the Harvard Journal of Law and Public Policy—though such veritable hagiographies of Man illuminate the depth of this truth like bright lights seen from the bottom of a well. What he does is bring to bear upon his intellectual Satyricon the full weight of modern sociology. It may be objected that if "women are not as good as men at abstract thinking," sociology's distinctive and muscular methodology, viz. Hard Science, must elude the understanding of his feminist target audience just as surely as the will-o'-the-wisp eludes the March hare. But such illogic presumably stinks of the "democratic ethnocentrism and twentieth-century parochialism" the author rightly decries but does not define.

Where others "thought they were describing men, they were only describing women and emasculated men, the least passionate or spirited men." Their failures indeed cry out for condemnation. They have failed in some very high quar-

ters. The Apostle Paul spoke of "eunuchs for the kingdom of heaven," thus encouraging a historical personage whose name escapes me to crush his testicles between two stones. Socrates and Alcibiades, whom the author's tenaciously inguinal analysis correctly celebrates for refusing to be dissuaded "from the objects of their strongest desires," limited themselves to an inhibited frotteurism, mere spiritual succor. R.J. Reynolds new "manly" smoke, Camel Wide Gauge cigarettes, is pleasingly thick in contrast to the "slims" sinisterly marketed to insinuate that women will balloon up if they kick the habit, but how much even this salutary effort comes up short can be measured by the length of El Ancho's effeminate filter tip.

And it happens in our own community. Is it not significant that the letter "U" has fallen from the sign atop "Nick's Beef and Beer Ho se"? To each Man the loss of the "U" is a measure and a marking: "You—how far fallen!" "Still dominant and still aggressive," is Man's essence, and yet He is no longer swaggeringly defiant, chivalric, and hairforested: "given the prevailing climate of opinion, men sometimes feel the need to apologize for themselves, and have more difficulty in being understood correctly."

The house of Beef, the house of Beer—this is what Robert Bly would call male spiritual space, full of flesh, free of harlotry, prefigured by Piltown Man's ancestral hunt for the mastodon. Man has lost this "House" but retained his "Ho se," empurpled and venal, a vulgar vestigial tail in the absence of its celestial moorings in sacrament, jackbooted statism, penitential oblation and tithe. A lifetime of digesting fulsome morsels of sensitivity, understanding, cooperation and consensus has bloated the "Ho se" handsomely, to be sure, but at this banquet it was purely Dutch treat and there were no tables for two. Courting feminism as his *idée maitresse* has caused Man to neglect his mistress: he has become an onanist. To borrow the words of the ideamonger, "sexual liberation...has only made men less likely to take responsibility and more likely to be coarse and callous towards women." And thus we have it that the swaddling cloth has given way to the tissue.

Bell to Continue Protest

BELL, continued from page 9

you believe, changing things you sense are wrong.

That is what is really tough. Taking risks. After all, there is at Harvard as in the rest of our modern world a rather distressing commitment to the unwritten commandment: "thou shalt comply and not confront." The seeking of security seems to be a principal priority even though here, faculty members are tenured, most key staff are equally secure, and students, compared to most of their counterparts around the country, have it made. There is a perverse reliance on the Beatitude: "Blessed are the meek, for they shall inherit the earth."

Harvard status and meekness though are almost contradiction in terms. In asserting the supremacy of our University, we are seldom meek or humble or submissive. Nor, in my experience, are we very tolerant of those within our midst who dare venture beyond the accepted procedures in an effort to bring change and reform.

At bottom, my protest leave was undertaken less to change the school than to influence you through example as well as exhortations of perhaps the most important truth my life experience has taught: a commitment to change must be combined with a readiness to confront authority. Not because you will always win, not because you will always be right, but because your faith in what you believe is right must be a living, working faith that draws you away from comfort and security and toward risk through confrontation.

As we learn in the Book of James, "For as the body without the spirit is dead, so faith without works is dead also." (James 2-26, King James Version.)

When people ask me what I teach here, I respond Constitutional Law and Civil Rights, but an underlying lesson in all my courses is that individuals must gain control of their lives, not through the attainment of riches or power or fame, but through confronting the evils and wrongs that we witness every day.

The opportunity to illustrate my commitment to that belief has been worth the sacrifices I have made (which, in fact, have been few). I say this even if the warnings are accurate that my protest retards in fact the improvements in diversity the faculty all claim to support in principle.

Neither you nor I can determine where this school hires and tenures the first woman of color in the school's 174-year history. If my experience is a predictor, even that event will not herald the adoption of policies intended to insure either diversity or merit in the hiring process.

I know though that social reform, when it comes, at Harvard or elsewhere — is borne on the scary wings of risk. But again, we must commit ourselves to a better school, in the very face of overwhelming evidence that change is simply not possible.

Some of you have seen the piece I wrote for *The Student Lawyer* some ten years ago, called "The Student As Slave." There, I suggested analogies between the plight of slaves and that of law students, the similarity of subordination, and abuse — not physical certainly — but mental and emotional.

But in the enslavement of African peoples in this country — a condition infinitely worse than anything we will find at Harvard or elsewhere — there is a model of fortitude and faith. We can find in the lives and the legacy of music, art, and religion of this oppressed people, defiance of

social death imposed on them. They insisted on their humanity despite a social consensus that they were 'a brutish sort of people'.

Knowing there was no escape, no way out, the slaves, nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of selfhood. Their lives were brutally shackled, certainly: but *not without meaning despite being imprisoned*.

Armed with this knowledge, and with the enlightened, humility-based commitment that it engenders, we can accept the dilemmas of committed confrontation with evils we cannot end. We can go forth to serve knowing that our failure to act will not change conditions and may very well worsen them.

What I guess I am trying to say to those of you who intend to do more than attend this rally, applaud these speeches, enjoy the camaraderie of the moment, is to commit yourself to change that may not come and seek, no expect triumph in the commitment itself. The coalition leaders cannot expect to find total solutions, or to formulate sure-fire plans. Nor will there be either success or triumph in actions that give the oppressors the excuse to call in the police — an opportunity they await with great glee.

Rather, you must understand — as my enslaved forebears surely did — that in their commitment to living, to ward off their oppressors, harassing them when they could, helping their brethren, there was the stuff of triumph. marring Luther King in an essay, *A Testament of Hope*, published after his death, wrote of his setbacks, the time he spent in jails, his frustrations and sorrows, and the dangerous character of his adversaries. He said those adversaries expected him to harden into a grim and desperate man. But then he writes: "they fail, however, to perceive the sense of affirmation generated by the challenge of embracing struggle and surmounting obstacles."

So, while Dr. King led a struggle toward a goal — racial equality — that in the 1960s, seemed possible, if not quite feasible, there was a deeper message of commitment to courageous struggle whatever the circumstances or the odds.

It is right to hope and expect that our diversity efforts will be crowned with success, but what we really want — want even more than success — is meaning. "Meaningfulness," as Stanford psychiatrist Dr. Irvin Yalom tells us, "is a by-product of engagement and commitment." This engagement and commitment is what Black people have had to do since slavery: making something out of nothing. Carving out a humanity for oneself with absolutely nothing to help — save imagination, will, and unbelievable strength and courage. Beating the odds while firmly believing in, *knowing* as only they could know, the fact that all those odds are stacked against them.

Continued struggle can bring about unexpected benefits and gains that in themselves justify continued endeavor. We can recognize miracles we did not plan and value them for what they are rather than always measure their worth by their likely contribution to our traditional goals.

That is the real truth, the meaningful goal, all too easily lost in political squabbles and yes, even in ceremonial occasions like this one. Our commitment must be to an unremitting struggle that leaves no room for giving up. The powers at Griswold Hall and Massachusetts Hall may wish it were otherwise, but we are all a part of Harvard Law School history, and know it, that history is still unfolding.

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Write for the RECORD

Peninsula Editors are Homophobic Bigots

By Ed Joy '92

RECORD Columnist

WHAT message did the *Peninsula* espouse that caused so much offense to so many? Attempts by the opposing sides to summarize the publication of over fifty pages, have resulted in inevitable complaints that the message has been mischaracterized. However, I think all parties would agree that at least one theme runs throughout the *Peninsula*: homosexuality is inferior to heterosexuality. Because of this theme, I believe the strong title of this column is warranted.

Those who identify with the message of this publication, should rightfully be labelled homophobic bigots. Sean Brady and Max Torres, both law students, are no exception. Although I do not know these two men personally, I do not doubt the proposition that they are both people with strong integrity and character. However, I also do not doubt that they are homophobes. Does this necessarily mean that they hate gays? No. A person may not hate blacks, but if he believes that they are inferior, he is still a racist. Likewise, someone who believes in the inferiority of homosexuality, and consequently the inferiority of gays and lesbians, is a homophobe.

"But," my adversaries cry out, "we are not anti-gay. It is homosexuality we find inferior, not the homosexual." Mr. Brady and Mr. Torres, I cannot indulge you in your intellectual fantasy of separating the "homosexuality from the homosexual." The fact that I am gay has very little to do with what I do and a great deal to do with who I am. One can no more separate the "homosexuality from the homosexual" than one can separate the blackness from a black person. While the intangible nature of homosexuality makes the former a more difficult concept to grasp, I would submit that homosexuality is no more intangible than a Jewish identity. Would you

preach the inferiority of Judaism and condemn its practice and then claim, "It is Judaism we oppose, not the Jew?"

No, I cannot imagine the *Peninsula* editors would apply a similar ideology, and all its implications, to Jewish people and, then, stand before the world having the unmitigated gaul to claim that they are not anti-semitic. One who opposes the right of Jewish people to marry, to be adoptive or foster parents, to serve in the military, to work, reside and enjoy public facilities free of discrimination and to discuss Judaism as a counterpart to Christianity in elementary schools and high schools is anti-semitic. I believe it is fair to say that such is the position of the editors of the *Peninsula* with respect to homosexuality. If I have wrongly assessed your positions on these issues, I humbly prostrate myself before you in apology and ask that you join me in fighting for these rights for gays and lesbians. If I am right, then, I would submit, you are homophobic bigots.

Further, the next time you resort to your failsafe abstraction that it is "homosexual conduct you oppose, not the homosexual," I would suggest you take into account a particular constituency: the over 10,000 men and women like Joseph Steffan who served their country valiantly only to be dismissed from the military because of their homosexuality; the thousands of lovers like Karen Thompson who must fight to hold the hands of their loved ones during periods of disability because no state will recognize their relationships; the countless number of employees like Robin Joy Shahar who cannot earn a living because they are fired without regard to merit; the young gay teenagers like Bobby Griffith who take their lives because they never had the opportunity to hear that they were alright just as they were. Next time, think about what meaning your distinction has for their lives. Next time, think about the harm they suffer before you

shamelessly whine about being labelled what you in fact are: homophobic bigots.

I know strong language can often be counter-productive. Nevertheless, I do not worry that my use of such language might alienate people like Sean Brady and Max Torres from a gay and lesbian community in dire need of allies. The *Peninsula* and the gay and lesbian community share no common ground regarding the ultimate issues of homosexuality. If the gay and lesbian community is to move forward, it must move in opposition to the likes of the *Peninsula*.

Nor do I feel retrained by any fear that my strong language might pollute the air of public discourse. Due to publications like the *Peninsula*, there has been a stench in the air for far too long, and too many gays and lesbians are suffocating.

Discussion over the issue of homosexuality cannot be an antiseptic, ivory tower debate. No false distinction invoked to preserve the comfort of those who espouse the inferiority of homosexuality can change the nature of this debate. We are talking about real people, real lives and real pain. I do not intend that no debate take place on this issue. While I long for the day when the inherent equality and dignity of all human beings is beyond debate, that day has not yet come. Until then, it is imperative that those engaged in the debate, debate with candor and acknowledge the consequences of their convictions rather than avoiding responsibility by invoking illusory distinctions.

Having exposed this false distinction, I would say to the editors of the *Peninsula*: If you still believe the value of your convictions outweighs the human toll they take, stand behind those convictions. In the alternative, if you cannot stomach the real human consequences of your convictions, discard them or get out of the debate.

WLA, from page 1

lesbian experience, and an Asian experience....

"Simply by having been outsiders for so long, women have a marvelous clarity of vision on political issues. We can be catalysts for change. Women have precisely that energy and idealism so necessary to the system."

Kunin expressed concern that women are now in a "feminist recession" and called on them to take action. "We have been very nervous about moving and shaking our own structures. Even women who have the power to create change are often reluctant to do so. And I think we are often very tough on other women before accepting them as our sisters."

"We don't have equality," she concluded. "And we won't have it until we take full and equal responsibility for the conditions of the society we live in."

Women have a marvelous clarity of vision on political issues

The Annual WLA dinner was the first of many upcoming events celebrating March as Women's History Month. On March 6, WLA will sponsor a happy hour at the Backbench Pub; on March 7th it will feature an International Women in Law Panel; March 11th is Women's Historical Films Night, and on March 16th students and speakers will gather for a forum entitled, "The F Word: Why is Feminism a Dirty Word?" Speakers at the forum will include Ann Lewis, Political Consultant and former Political Director of the Democratic National Committee, and Ellen Goodman, Columnist for the Boston Globe.

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implications for dozens of other law schools if it is allowed to go forward.

Wittcoff, arguing first, noted that after 40 years of civil rights gains, the "invidiousness of discrimination in education" still characterizes the hiring practices at Harvard Law School. On the basis of Massachusetts General Laws, chapter 151B, Wittcoff claimed the students were "aggrieved" within the meaning of the statute, and that they have suffered "direct" and "substantial" harms as a result of HLS' discriminatory hiring practices.

Chapter 151B of the Massachusetts General Law prohibits discrimination within any "employment relationship." Attempting to show that the students' harms are "within the area of concern" of the employment statute, an important consideration for the purpose of standing, Wittcoff rejected Harvard's contention that students at a law school are like customers at a department store or viewers at a movie theater. Instead, she argued, "students' direct interaction and ongoing relationship with professors" at the law school constitute a bond much more like that of employees to employer. Students "work with professors on third-year papers, serve as research assistants, and represent Harvard in clinical programs," she noted.

Arguing against Harvard's proposed narrow interpretation of the language of 151B, Wittcoff emphasized that if the students' claim to standing is rejected, "an anomalous result will have been reached: a part-time employee in the computer room," whose ties to Harvard are relatively minimal "would have standing to sue, but a student would not."

Calling the suit "The *Brown v. Board of Education* of the the 1990s,"

Wittcoff argued that "legally cognizable harms" suffered by women and minority students included the "badge of inferiority" acquired by students who learn that, "though they may be welcome to sit in the back of the classroom, they are not welcome to stand up in front of the classroom."

Wittcoff cited previous civil rights cases to refute Harvard's position that the harms claimed by the students are "too intangible" and "essentially aesthetic." Moreover, Wittcoff argued, HLS hiring practices result in a "denial of the benefits of association" with a diverse group faculty members for all HLS students. Drawing on several Massachusetts and Supreme Court rulings concerning segregated neighborhoods and workplace environments, Wittcoff demonstrated that courts have recognized previously the kinds of harms the students claim to have suffered.

Laura Hankins, the second representative of CCR to argue before the Court, presented the students' claim that they have been discriminated against under the Massachusetts Equal Rights Act (MERA) which provides that all persons, regardless of sex, race, color, creed or national origin have "the same rights enjoyed by white male citizens to make and enforce contracts. . . ." Hankins noted that MERA prohibits Harvard from fulfilling its contracts unequally and that, although all students suffer from the "denial of the benefits of association" of a diverse faculty, women and minority students experience additional harms.

Hankins cited the statistical

absence of women of color on the faculty, emphasizing that the case is one of disparate impact, and not of intentional discrimination. She also noted that documentation crucial to substantiating the discrimination claim will remain unavailable until formal discovery is allowed, since Harvard's records on hiring practices are kept confidential.

With regard to the students' third claim, breach of contract, Hankins referred to Harvard's statement in its catalogue and other literature that the University "does not discriminate." Hankins argued that a student choosing to attend Harvard Law School would understand that statement to refer also to discrimination among faculty, but she

CCR members call the case the *Brown v. Board of Education* of the 90's

pointed out that such issues were appropriate at the trial level and not pertinent to a consideration of standing.

Allen A. Ryan, Jr., Harvard's in-house counsel, responded on behalf of the President and Fellows of Harvard College, stressing that the record before the Court failed to delineate any substantial harms suffered by the students or any other person. He claimed, "there is no evidence that those women of color who applied were discriminated against or were not hired by Harvard." On the contrary, he said, "students are not inhibited in any way, shape or form from studying at the law school and completing their degrees." The students' claims, Ryan said, amount to the contention that Harvard is "too male, too white and too heterosexual" for their taste.

Noting that "there is not one other case in Massachusetts in employ-

ment or any other context where students have brought suit" against their university, Ryan concluded that the Court should not "referee student disputes." Specifically, Ryan argued, the Court should not grant CCR standing in this particular case because doing so would invite "collateral or later claims by other students [that Harvard should also] meet their needs."

Ryan expressed concern that if the Court intervened in this dispute that the privacy of others, presumably those who are asked by Harvard to apply to the law school and the professors on the Appointments Committee, would be "put at stake." Moreover, he said, the Court should resist the students' request to become "guardians *ad litem* for all future law professors." "There is no group who needs guardians more," the Chief Justice quipped in response.

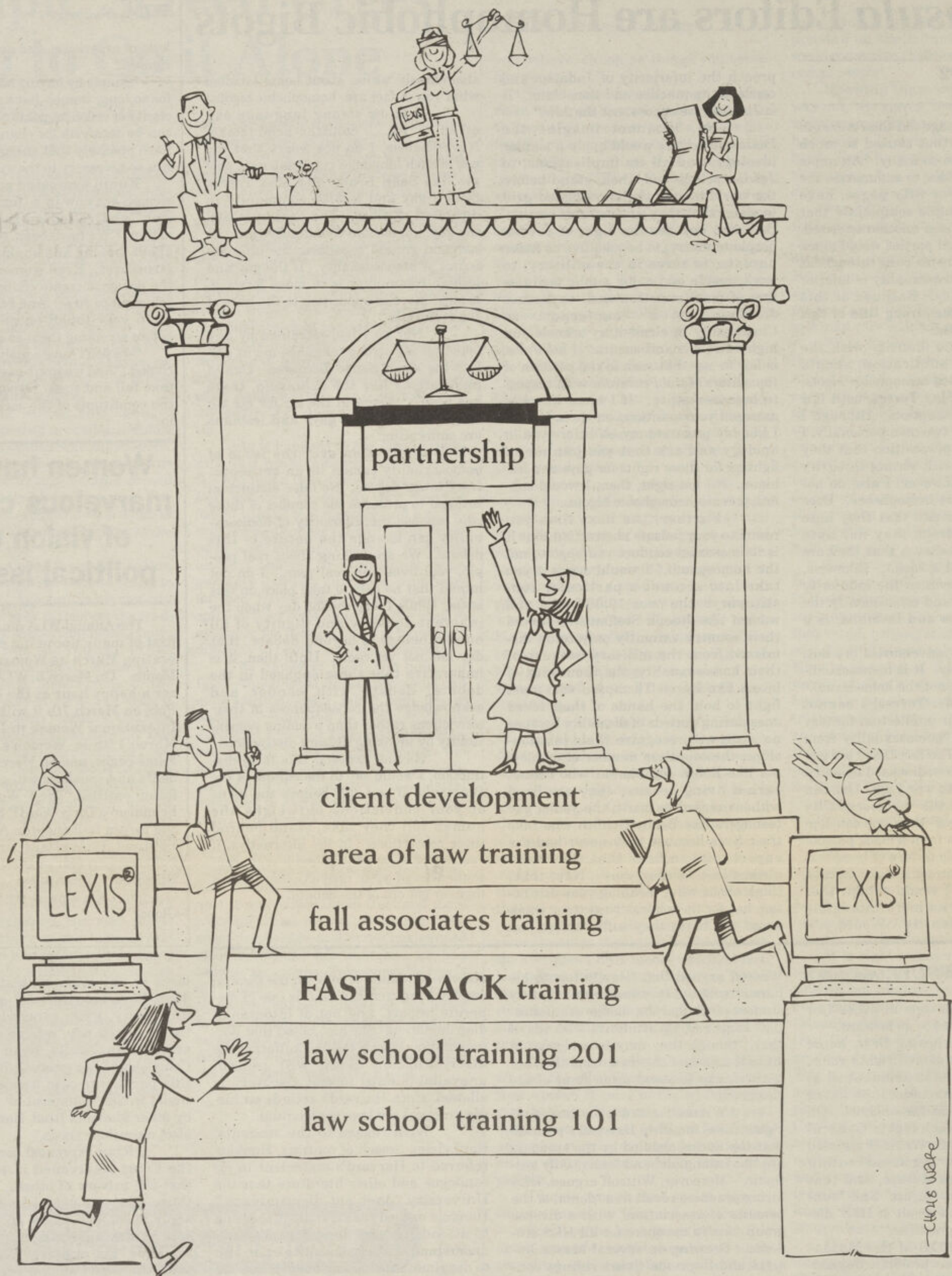
Rejecting Hankins' statistics regarding the results of Harvard's hiring practices, Ryan pointed out that "if Harvard hired even one of any of these people [women of color, Latinos, Asian Americans or Native Americans], then the substantial impact disappears like a puff of smoke." Wittcoff, speaking with a reporter from the Associated Press after the hearing, noted that, in fact, Harvard has not yet taken that step.

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