



Students, wearing masks to protect their identities, occupy Dean Clark's office in Griswold Hall.

Griswold 9 Take Over Dean's Office

By Ashley Barr

Nine students occupied part of Griswold Hall beginning Monday afternoon, risking arrest and/or Administrative Board action, in continued protest of what they believe to be discriminatory hiring practices at Harvard Law School. The students remained inside the building for more than 24 hours, declaring that "24 hours of excluding the Dean from his office pales in comparison to 175 years of systematic exclusion from the faculty." Vice Dean David Smith was, in fact, prevented from entering his office on Tuesday morning. Dean Robert Clark, however, was not seen in Griswold during the protest.

Apparently following Dean Clark's instructions, Harvard security guards prevented the students from leaving the corridor in front of the Dean's office and then returning. For several hours, they refused to allow protesters to walk the ten steps to the restroom. Two dozen other students supported the "Griswold Nine" throughout the night by bringing them food and other supplies, exchanging information through walkie-talkies, and sleeping in the outer hallways of Griswold to demonstrate solidarity. Many other student supporters were locked out of the

building until late Tuesday morning.

At 9:00 pm, Harvard General Counsel Daniel Steiner arrived and told the nine students that other students outside were already being arrested. In actuality, no arrests had been made and Cambridge police had not been called. The students knew that Steiner's claims were false because of information received on their walkie-talkie. Students told Steiner that he and the administration had "underestimated their commitment to ending discrimination in hiring practices."

By 7:00 Tuesday morning, 75 students had joined ranks, informing the national media of the protest, communicating with sympathetic faculty members, and organizing a rally for the afternoon. Demands were issued, including a repeated request for "a special faculty meeting to be held to adopt a package of diverse candidates for tenure positions." Professors Christopher Edley, David Charney, Frank Michaelman, and Duncan Kennedy were granted permission by the security guards to enter the inner corridor in order to give the students advice about their protest strategy, despite Dean Clark's reported orders that no one could enter or leave the office

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Fried Riles Review at Annual Banquet

By Steve Yarian

The annual *Law Review* banquet is usually a time of merriment, joy, drink, dance, reflection, and, of course, a visit from "The Grizzer," former Dean Erwin N. Griswold. However, this year's banquet on Saturday, April 4 had a more serious tone. *Law Review* members staged a symbolic, silent protest for faculty diversity, while Professor Charles Fried's remarks as "Toastmaster" engendered controversy at the 105th annual event.

Renee Jones '93 organized the silent protest. Students wore red arm-bands to symbolize their commitment to the diversity movement.

"We organized the protest because we knew that alumni

and faculty would be at the banquet and we wanted to show them that members of the *Law Review* support faculty diversity," Jones said.

Emily Schulman '93, President for volume 106, thought the protest was both important and effective. She explained, "I think the students acted out of conscience. There are, understandably, some students who feel very strongly about diversity."

Jones agreed and added that she was pleased with the show of solidarity by fellow *Review* members. "The issue has broad support. It's not like it is supported by only a fringe element of the student body. We proved its

broad appeal on Saturday night because the demand for the ribbons far exceeded supply." Nearly 70% of the *Review* members obtained ribbons and wore them.



Prof. Charles Fried

but also for the legal profession in a way that showed respect for Professor Fried and the event. I

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A Year Later and Still No Clues

Mary Joe Frug's Death Remains a Mystery

By Lisa Zornberg

This past Saturday, April 4th, marked the one year anniversary of Mary Joe Frug's death, yet police are still baffled as to who murdered her. Frug, a prominent legal scholar and a professor at New England Law School, was fatally stabbed at least four times in a killing that left the Harvard community shocked and outraged. Only one block from her home, Frug had been walking to nearby Sage's grocery store around dinner time when her assailant stabbed her to death.

Despite intensive efforts by private detectives, the Cambridge police, and the FBI to unravel the mystery of her death, officials still cannot say whether Frug was the victim of random street crime or the target of a premeditated attack. Police puzzlement is further complicated by the fact the Frug's purse was not taken during the attack, nor were there any signs of sexual assault.

"When a street person is murdered," one investigator recently told the *Boston Globe*, "it's hard to figure out who it could be. Anyone could have murdered them. But this, this is a classic whodunit."

Frug taught at the New England School of Law for ten years, during which time she distinguished herself as a leading scholar in feminist legal studies. She is perhaps most acclaimed for an article that examined a popular contracts casebook, condemning its subtle reinforcement of gender stereotypes.

In the aftermath of her murder, Professor Frances Olsen declared, "The struggle now is how to prevent [Mary Joe Frug's] death from being a premature closure of the work she was pursuing, how to carry on without one of our most exciting and challenging feminist legal theorists."



Prof. Mary Joe Frug

Last month Frug's "A Postmodern Feminist Legal Manifesto" appeared the *Harvard Law Review*. This unfinished draft sparked great interest in the legal community, both for its provocative subject matter and style, and because it spoke with the author's final voice.

As law enforcement officials continue to search for clues to her murder, Frug's colleagues and students remember her absence. At Halloween, someone placed a pumpkin on the corner where she was killed, and at Christmas time branches of evergreen and holly also commemorated the site.

In "An Unsent Letter," also published in the March edition of the *Harvard Law Review*,

Professor Martha Minow wrote to her absent colleague: "It is your confidence, I confess, that moves me even more than your analysis, your hope even more than your deconstructions. And I hope to emulate that confidence as I face what is terrifying in this world."

In a statement at a brief press conference on April 8, the New England School of Law announced a \$25,000 reward to anyone providing information resulting in the arrest and conviction of the person or persons who perpetrated the murder. The statement read, "Because of the continued pain and anguish we all experience at the loss of our dear friend and colleague, this law school wishes to join in the effort to see that justice is done...It has been a year since the death of Professor Mary Joe Frug, and little has occurred offering any encouragement that the person or persons who planned or committed this violent and senseless murder will soon be brought to justice."

Any information on the murder should be provided to either the District Attorney of Middlesex County, the Massachusetts State Police or the Cambridge Police.



Edwin Cumings, or as he prefers, just "Ed."

The Man in the Hark

By Glennis Gill

You've walked by him lots of times in the Hark, but who is this man? His name is Edwin Cumings and he was more than happy to speak with the *RECORD*. Ed, as he likes to be called, lives on Wendell Street and has been hanging around the Hark since 1965.

Ed came to Harvard in 1956 to pursue a graduate degree in Biology. Before that, he had graduated magna cum laude from Depauw University in 1954 and received a Masters from Dartmouth in 1956. Ed received his masters from the Harvard Graduate School of Arts and Sciences in 1965.

In the late '60s, Ed became

interested in researching the decriminalization of consensual homosexual conduct throughout the world. Ed did most of his research in the HLS libraries, especially ILS, until 1984, when the Law School library revoked his access privileges.

This has been very upsetting to Ed because he would like to continue his research in the ILS library. Ed commented that he uses many of the other Harvard libraries, for which he has a borrower card. If he could use the HLS library, Ed said that he could then publish his paper and possibly give talks on the topic. Ed believes that this revocation of access was due to Terry Martin, the head HLS librarian, who Ed claims dislikes the topic

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New Fellowship Will Promote Faculty Diversity

By Johanna Davis

Dean Clark announced on Friday the establishment of the Charles Hamilton Houston Fellowship, designed to provide new channels of entry into law teaching to promote diversity in the profession. The Fellowship's primary goal will be to "attract candidates with genuine teaching potential who will bring underrepresented perspectives" to HLS, according to Clark.

HLS will make one award in the first year of the Houston Fellowship. Candidates admitted will receive an award to cover tuition plus a stipend of at least \$25,000 per academic year. A fellow will spend one or two academic years in residence at the Law School to complete the program of study.

The principal focus of the Houston Fellowship will be on developing the fellow's skills as a teacher and scholar. As a research fellow, each candidate will work closely with members of the faculty in the preparation of a substantial piece of legal scholarship and in other activities relating to the development of a career in law teaching. A Houston Fellow will also participate in courses and seminars that explore aspects of legal theory and law teaching, and upon satisfactory completion of the program will be awarded an LL.M. degree.

Alain Kodosi '89, who contributed almost \$9,000 to the fund, said it was "incredibly important to provide minority attorneys with Harvard's world of contacts. The program will allow them to pursue an LL.M. at Harvard even though they haven't gotten their J.D. there, and allow them to develop a strong base of support that will help them if they teach at other schools."

Recent law school graduates are eligible for the fellowship. Lawyers who

are presently engaged in law teaching or public interest, government, or private practice or other law-related careers are especially encouraged to apply for the Houston Fellowship.

The Charles Hamilton Houston Fellowship represents one of several approaches intended to increase the number of law teachers with backgrounds, qualities, skills, and interests that remain underrepresented on most American Law Schools' faculties. HLS bears a greater burden to increase the number of law teachers with non-traditional backgrounds than other law schools because approximately 12% of the full-time law teachers in law schools accredited by the Association of American Law Schools hold degrees from HLS, the highest percentage of any American law school.

"Raising \$700,000 for a fellowship like this is an ambitious undertaking, and Dean Clark made a real commitment to it. The fact that HLS is establishing fellowship of this kind will benefit the whole legal community. Harvard is a leader, and this should encourage other institutions and corporations to make similar commitments," stated Kodosi, founder and Executive director of Alumni Placement.

Kodosi opined, "This was not conceived as a scholarship to solve the pool problem. Rather, it was the school's diligent response to the more general problem the minority community faces in not being integrated in legal scholarship." Professors including David Wilkins and Charles Ogletree helped organize the framework for the Fellowship over two years ago.

While critics have charged DBC with timing the announcement of the scholarship to pacify Coalition for Civil Rights protestors, Kodosi defended Dean Clark's efforts. "It's standard fundrais-

ing practice to not announce it until you get a certain amount of money to insure you can do the project. ...[Dean Clark] wanted it to be a success before he declared it, and so he waited until a major donor came through."

The career of Charles Hamilton Houston, the distinguished African-American lawyer and teacher for whom this fellowship is named, epitomizes the goals of the program. Houston received an LL.B. degree from Harvard Law School in 1922 and was the first member of his race to serve on the Harvard Law

Review. With the aid provided by a Harvard Law School Langdell Scholarship for graduate study, Houston received the S.J.D. degree in 1923. In addition to many years in private practice and public service, Houston served for a half-dozen years as Howard University Law School Vice-Dean. As the first African-American General Counsel of the NAACP, he brought to his work skill and commitment, proving that an African-American lawyer could represent and win major civil rights victories in the courts.

JLSA Hosts Heated Debate on Religion and State

By Behnam Dayanim

"The Weakening Wall: Issues in the Separation of Religion and State" was the title of the Jewish Law Students Association's annual conference last Sunday. Approximately 70-80 students, attorneys and interested members of the community came to hear panelists and speakers discuss the latest Supreme Court jurisprudence about the establishment and free exercise clauses and to offer their own prescriptions for change. The conference, co-sponsored by Combined Jewish Philanthropies of Greater Boston, included the participation of several student groups, including the Christian Students Fellowship.

Conference coordinator Karen Dine stated, "the annual conference is our most important event of the year.

Each year, we try to pick a theme that in some way can contribute to the dialogue on a significant issue in our society." The Religion and State theme inspired sharp debate among the most eminent legal scholars in the field.

Debate over Establishment Clause

Yale Law School Professor Akhil Reed began the proceedings with an address arguing for new approaches to state action establishment cases and the role of the 14th Amendment. Reed's polemic sparked a strong debate that continued throughout the day.

Following Reed, four panelists participated in a heated discussion, moderated by Professor David Wilkins, over the proper interpretation of the establishment clause. The participants were the actual parties who clashed in *Weisman v. Lee*, the recent Supreme Court case involving the delivery of a nonsectarian benediction at a public school commencement. The plaintiff, Professor Daniel Weisman of Rhode Island College School of Social Work, and Charles Cooper, the former Assistant Attorney General and partner at D.C.'s Shaw, Pitman, Potts & Trowbridge, who represented the school principal before the Court, were joined by Marc Stern, co-director of the American Jewish Congress Legal Department, and Nathan Lewin, partner at Miller, Cassidy, Larocca & Lewin.

Stern vigorously defended the three-prong standard enunciated in *Lemon v. Kurtzman*, and maintained that "the sweep of Constitutional history goes in one direction," toward an ever more strict separation between religion and state. Nonetheless, Stern expressed pessimism over the prospect that Weisman would prevail in the Court's eventual decision.

Lewin, an experienced litigator before the Supreme Court in religion cases, contended that the Establishment Clause differentiates between majority and minority faiths, affording the latter more

leeway. He argued that a court considering a cross and a menorah in front of City Hall "is blinking the issue if [it] thinks they're the same. The whole theory of establishment, of endorsement, simply doesn't apply" to minority religions.

Derision for Scalia's Free Exercise Opinion

The afternoon program shifted the discussion to free exercise issues. Professors Michael McConnell of Chicago, William Marshall of Case Western Reserve and Frank Michelman of HLS debated the significance of the *Smith* case involving the ritual use of peyote in the Native American Church, particularly the majority opinion of Justice Antonin Scalia, Michelman's HLS classmate.

Prof. Marshall, while deriding Scalia's reasoning in the case, praised the result for virtually eradicating the free exercise exemption. Marshall lambasted Scalia for his reliance on "discredited, if not overruled, opinions" and for a "use of precedent [that] is disingenuous at best." He also criticized the free exercise exemption for leading to "nonsensical results," as it favors the "half-hearted religious objection" over "complete moral opposition."

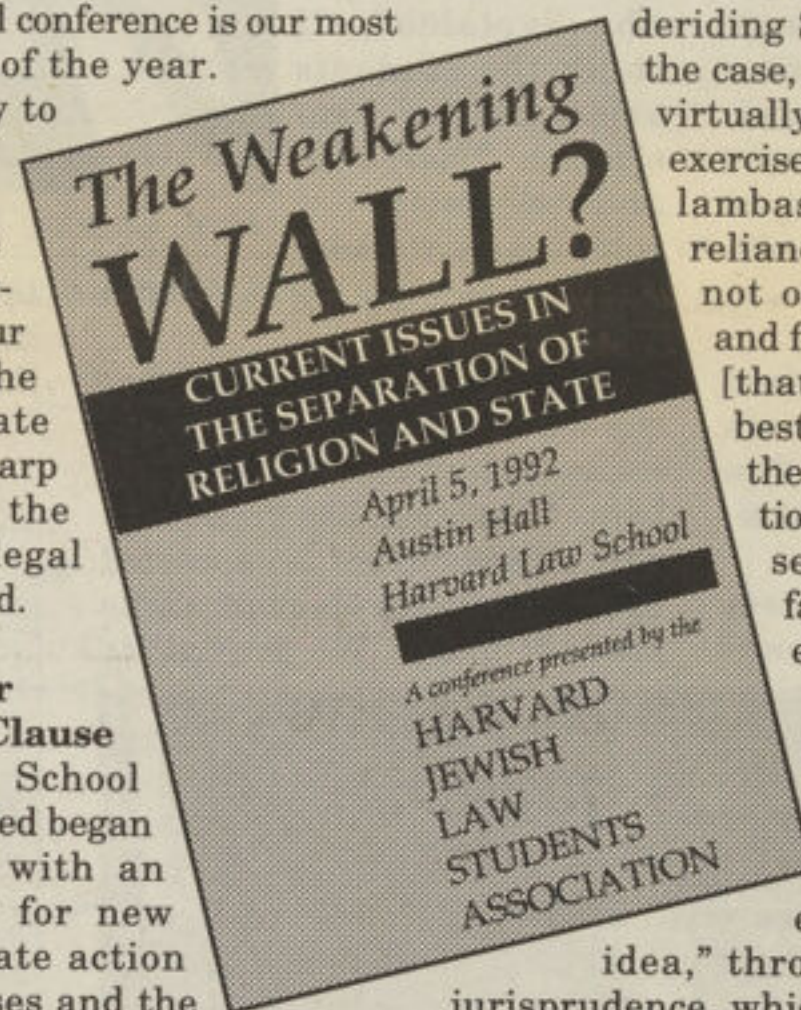
Michelman espoused the novel view that Scalia employs a "generality idea," throughout most of his jurisprudence, which relies upon equal protection and due process as a "salvation" against discrimination. However, generalized religious exemptions would require courts to inquire into the validity and sincerity of religious beliefs, Scalia's precise fear in *Smith*. Michelman concluded that "highly generalized, non-partisan exemptions" impermissibly entangle the courts, rendering Scalia's invitation to statutory exemptions "illusory."

McConnell Criticizes Conservative and Liberal Approaches

McConnell concluded the conference with a lecture entitled "Conservatives, Liberals and the Freedom of Religion." McConnell criticized conservatives, whose "preference for the mainstream, the ecumenical, the middle-of-the-road" results in an insensitivity toward minority faiths.

At the same McConnell saw religious protection at the other end of the political spectrum limited as well, explaining that, while liberals view choice as fundamental to freedom, religion bases itself on conviction and obligation. Liberals, McConnell asserted, encounter difficulties with the "idea of obligations other than those owed to the state."

McConnell concluded by offering the goal of a religiously pluralistic society in the face of an increasingly secular one. Such a society would ensure that religious believers of minority faiths enjoy protection to practice their beliefs without government interference unless they threaten the peace, safety or rights of others.



LSC Plans Ambitious Changes

By Michael J. Twomey

As the year comes to a close and elections approach, the Law School Council appears to be heading toward a changing and expanding role at HLS. Most notably, the LSC will take over the production of "course evaluation guides" from the Board of Student Advisors, and is likely to become more active in "political" issues. LSC is also likely to be in a stronger financial position than during the past year. As candidates for twenty-four council seats are now being solicited, I think it important to comment on each of these changes.

(1) By a narrow vote at the April 1, meeting of the LSC, the Council conditionally agreed to assume the responsibility for producing the "course evaluation guides" from the BSA. This action, following a request by the BSA and the Dean of Students that the LSC lighten the BSA's workload (increasing next year as argument sections are increased in number), was

viewed by the majority of the LSC as in keeping with our mission to improve legal education at HLS. This new task will significantly increase the workload of several council members and will require at least ten hours of work from each council member each year. Candidates should understand that working on the guides will be mandatory.

(2) Although the constitution of the LSC does not specifically address passing "political" resolutions, it does state that, "The Council shall exist in order to serve and represent the individual and collective needs of the student body" and shall be responsible for "official representation of the student body to the administration and faculty." Further, nothing in the constitution would seem to limit the allowable content of resolutions, although, of course, such resolutions might be binding

upon no one and simply express student opinion. In recent memory, however, the Council has limited itself to business within its jurisdiction or the purview of its standing committees. But whatever one's views on the wisdom or the efficacy of passing "political" resolutions, next year's Council may pass resolutions expressing opinions on faculty diversity, back particular political candidates, or even take a stand on the abortion debate or on foreign policy questions such as Israeli settlements or trade issues. Such debates, of course, would be an expansion of the LSC's role and would not, hopefully, be pursued to the detriment of the Council's other responsibilities.

(3) The 1991-92 Council operated under tight fiscal conditions that, fortunately, will be eased for the 1992-93 Council. Last year's LSC was budgeted for over \$4,000 and still managed to run a deficit of approximately \$1500. That deficit was immediately subtracted from \$2,850 budgeted for 1991-92. After subtracting \$600 allocated to representing HLS at the 1991 meeting of the ABA's Law Student Division meetings in Newport, R.I. and Atlanta, GA last summer, a mere \$750 remained. Nonetheless, it appears that this year's Council will finish within budget (although fiscal constraints haunted the LSC all year). Next year, it is expected that the LSC budget will approach \$3,500, including a significant expansion of its budget for social activities open to all HLS students.

Finally, I would like to describe some of the regular activities of the LSC. As most everyone is aware, IL section representatives organize class notes, T-shirts and faculty gifts for their sections. In addition, all Council members sit on one of the standing committees of the Council: legal education (responsible for everything from the library to course registra-

LSC has many exciting plans for next year.

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Artur Davis and Marshall Searcy, named Best Oralists in Ames Semi-Finals.

Legacy and Lobos Win Ames Semi-Final Round

By Francis Phillip

In a close contest, The Thurgood Marshall Legacy (Legacy) became the first all-African-American Ames team to reach the final round with an hard fought victory over the Fetal Attraction Team. The Legacy will face the Cayo Lobos Team (Lobos), which defeated Ames, Iowa 50010 in the other semi-final argument. The two winners will meet next fall in the finals of the three semester competition.

The first semi-final argument took place on Wednesday, March 18, in the Ames Courtroom, with The Honorable Robert Keeton S.J.D. '56, U.S. District Court for Massachusetts, presiding. Also on the panel were Thomas Ellis III '69, U.S. District Court for Eastern Virginia, and Albert Rosenblatt '60, Appellate Division, New York Supreme Court. The case, *Ames State Hospital v. Angela Cardozo*, considered the issue of a fetus' right to life in a woman, who was in a permanent vegetative state, and who had previously signed a living will refusing life support to artificially sustain life.

Ames State Hospital, represented by Fetal Attraction, had used a life support system to sustain the life of Angela Cardozo. Cardozo had been severely injured in a car accident and had been left in a permanent vegetative state. Cardozo's unborn child, however, survived the accident and the hospital believed that it would have been in the best interests of both the mother and child, if the child was delivered by Caesarean section when the fetus was further along in its development. Cardozo's parents demanded that the hospital abide by the terms of a "living will" and a durable power of attorney which Cardozo had executed prior to her accident indicating her desire that life support systems be withdrawn if she were ever in a permanent vegetative state.

Following a twenty minute deliberation, the judges returned to render their judgement. After indicating that both teams had been well prepared and that the arguments were well argued, the judges awarded Best Oralist to Artur Davis, Best Brief to Fetal Attraction, and Best Argument to The Thurgood Marshall Legacy Team.

The members of Fetal Attraction were Rob Juman (oralist), Lucy Koh, Alan Romero, Rich Wareing, Keith Wofford, and Ernest Young (oralist). The Thurgood Marshall Legacy Team, which is composed of Artur Davis (oralist), Cari Dawson, Carolyn Edgar, Kim McCullough, Kim Robinson, and Jacqueline White (oralist).

On Thursday, March 19, The Honorable Carol Los Mansmann, U.S. Court of Appeals for the Third Circuit, presided over *CDHR v. Baker*, which considered the rights of Haitian refugees to enter the United States. Sitting with Los Mansmann were John Sprizzo, U.S.

District Court for the Southern District of New York, and Thomas Penfield Jackson '64, U.S. District Court for the District of Columbia.

Lobos, whose members are Kara Cunningham, Larry Kraus, James O'Keefe, Stefanie Roth (oralist), Marshall Searcy (oralist), and Susan Spotts, represented the petitioners, the Center for the Defense of Haitian Refugees (CDHR), and named Haitian plaintiffs. The petitioners brought suit against the U.S. Secretary of State alleging that when, the U.S. began interdicting vessels in international waters carrying Haitian refugees bound for the U.S. and conducting them to Belize in 1981, the U.S. was infringing on CDHR's First Amendment Rights to gain access to the detained refugees. Furthermore, the named Haitian plaintiffs asserted that the U.S. had discriminated against them on the basis of their nationality and race in direct violation of the Fifth Amendment.

Ames, Iowa 50010 represented the respondent, James Baker, the U.S. Secretary of State. The respondent denied the petitioners allegations that the interdiction and detention of Haitian refugees was either a violation of the First or Fifth amendments. The members of the Ames team were Michael Dierks, Viet Dinh (oralist), Susan Genco, Mitch Kamin, Margaret Minister (oralist), and Jeff Udell.

After a relatively brief recess, the judges returned to announce their judgement. Following a few comments regarding the argument, the judges awarded Marshall Searcy, Best Oralist, the Cayo Lobos Team, Best Brief, and the Cayo Lobos Team, Best Argument.

For the first time ever, an all-African-American team reaches the finals.

Hill Speaks at Yale on Sexual Harassment

By Susan Clarke

In a rare public appearance since accusing Supreme Court nominee Clarence Thomas of sexually harassing her, Anita Hill spoke to a large audience at Yale Law School last week, sharing accounts of other women's experiences of sexual harassment. Hill, a graduate of Yale Law School and professor of law at the University of Oklahoma Law School, spoke passionately of the need for "finding ways to encourage victims to come forward."

Hill, whom many accused of fabricating her accusations against Thomas in an attempt to prevent his confirmation, portrayed the trauma to which women expose themselves when they complain of harassment as "humiliating," "frightening," and "financially debilitating." Hill stressed the reluctance of society to believe women's accusations as their major obstacle. "It is easier to blame the victim than to confront the depravity of the abuser and the power the abuser often has," she said.

Hill described several court cases that illustrated this reluctance, beginning with the 1855 case of a Missouri slave woman named Celia who killed her master after five years of repeated rape. The jury in that case, according to Hill, was not permitted to consider the fact of this abuse in arriving at its verdict because the woman had not spoken up before killing her abuser. "Celia's silence," said Hill, "does not suggest to me that she was not painfully brutalized. Her silence tells me that her brutalization was so severe that she could not speak." As a result, at her trial, she was "denied her status as a woman, because she was denied the rights allowed to any woman," which, according to laws at the time, would have permitted her to protect herself against rape by any necessary means, including killing her attacker.

Citing further examples of the manner in which women who complain of harassment are treated, Hill spoke of a female student whose faculty adviser asked her "questions about her social life" and "who she dated," made remarks about "her body, clothing, hair, and skin," and eventually raped her. Reluctant to speak up, the woman said nothing at the

time and eventually switched to a new advisor. Ten years later, the woman spoke to one other person of what had happened to her, and the professor responded by threatening her with a lawsuit. Such threats, according to Hill, are not uncommon results when women come forward with accusations against those who harass or rape them.

Speaking of more recent examples of harassment, Hill described a 1986 case in which a woman did not report her employer's coercive sexual intercourse with her for fear of losing her job, and a 1991 incident in which a shipyard worker was mocked by her co-workers after she filed suit in response to their posting pin-ups of nude women in her office. Many such acts of resistance, Hill said, "are met with additional abusive behavior," and in many cases, "the victim does not feel free to object."

Hill dismissed the notion that women often falsely accuse men of harassment, citing studies she said revealed that "only

According to Hill, "It is easier to blame the victim than to confront the depravity of the abuser and the power the abuser often has."

three percent of women report false accusations," and that "over 90% with legitimate claims are discouraged by the ridicule" they are likely to face if they come forward. Victims of harassment are often accused, Hill stated, of having suffered romantic disappointments, having sexual fantasies, fabricating stories, and even being lesbians. Even the sanity of women who speak out against their abusers is often questioned, she noted, apparently in a veiled reference to her own experience in testifying before the Senate Judiciary Committee. All of this, Hill concluded, is "clearly enough to make victims more likely to minimize than to exaggerate" accounts of their harassment.

Summing up her message, Hill stated, "[if] we as a society are serious about combatting sexual harassment, we must understand the process of silencing, victimization, denial, and revictimization."

Hill's appearance at Yale, her first since her 1980 graduation from the law school, came as a result of her "unusual interest and significance to the law school community," according to Guido Calabresi, dean of the law school. The address, which took place in front of an overflow audience in a campus auditorium, was also shown on closed-circuit television in two adjoining rooms.

Law Review Protest

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think they accomplished both goals."

Controversy arose, however, when Fried made dubious remarks about the symbolic nature of the red ribbons. As he pinned a red ribbon on his lapel, Fried said he felt like he "needed protection from diversity protesters," analogizing the ribbons to the red blood of the Paschal lamb which Jews spread on their doors so that the Angel of Death would pass over their homes.

Sam Bagenstos '93, an Articles Editor of the *Review*, took exception to the analogy, stating, "I found his reference to the Paschal lamb offensive." Noting that his concerns regarding Fried's general tone were not limited to the comment about the ribbon, Bagenstos added that he also found Fried's statements about the sincerity of the protesters to be "somewhat flippant."

"I thought he was making light of what many people regard as a very serious issue, and something I believe in. I was offended. My sincerity and depth of conviction were being cast aside. I found that upsetting."

Fried, defending his remarks, explained that it was part of his "task" as Toastmaster to "tease" everybody a little bit,

including himself. He poked fun at Schulman, calling her "tough" and saying that she "scared" him. When Review members objected to these statements, Fried opined, "It would have been an injustice to treat her differently. I would not have been giving her equal treatment." Fried pointed out that he made similar remarks about former President David Ellen '92, and former Dean Griswold.

Of the protest generally, Fried said, "I think it's fine for people to have a point of view."

Rebecca Eisenberg also discussed the issue of faculty diversity with Fried.

"During the cocktail hour, I was talking with Professor Fried and he asked why I was wearing a red arm band. I told him how important this issue is to me and he invited me to speak with him about the diversity issue during his office hours. Which I did."

Michael J. Twomey '93, President of the LSC, noted that the Council recently passed a resolution urging Professor Fried not to take administrative action against the students who staged a silent sit-in in his office.

Jonathan Dickstein '93 enjoyed himself immensely at the banquet. "It was a nice occasion. I didn't have a ribbon because they ran out, but I support the protest." He continued, "I thought the chicken was a little overcooked, but I did enjoy the fact that they had some after dinner Kahlua."



Mike Twomey



Rebecca Eisenberg

BRIEFS



Professor Paul Freund Memorialized

Memorial services were held for Professor Paul Freund at 2:30 last Tuesday in Ames Courtroom. Professor James Vorenberg introduced the services, and Former Dean of HLS Erwin Griswold, retired Supreme Court Justice William J. Brennan, NYT Columnist Anthony Lewis, and law Professors John B. Davidson, Milton Katz, Ernest J. Brown gave fond remembrances of Freund. Supreme Court Justice Harry A. Blackmun was scheduled to speak as well, but his daughter Dr. Nancy Blackmun Ccnariis delivered his comments in his stead. Currently, the exhibition, "Professor Paul A. Freund, 1908-1992" is displayed in the Langdell Library Reading Room.

Kim '92 Awarded Bosch Fellowship

Sung Hui Kim '92 has been awarded a Robert Bosch Foundation Fellowship for 1992-93. The nine-month program includes high-level, full-time work experience in the public and private sectors in Germany. Kim stated, "I'm very excited that I won the fellowship. It fits right in with my future goals with the work I'll be doing as an international corporate lawyer." "I'll spend half the year in the International Law Department at the Foreign Office, which is just like our State Department, in Bonn. And I'll spend the second half of the year in Berlin at the *Treuhandanstalt*, the largest private holding company in the world," said Kim.

The program is very selective and available only to 15 American citizens each year. October 15 is the application deadline for the 1993/94 program. Applicants should have outstanding credentials, including advanced degrees or equivalent work experience in one of the following fields: journalism, public policy, mass communications, law, economics, political science, or business administration. The ability to communicate well in German by the start of the program is required. Language training may be provided by the Foundation if necessary. If interested, contact William C. Brown, Program Officer, at (212) 760-1400.

Berkeley Law School Appoints Woman Dean

Herma Hill Kay, 57, was named dean of the law school at the University of California at Berkeley on April 2. Kay joined the Boalt Hall faculty in 1960 as only the second woman hired on the law school faculty. She became the first woman chosen as president of both the Order of the Coif and the Association of American Law Schools. She was the first woman elected to head the faculty assembly on the Berkeley campus and the first woman to be chosen for Berkeley's Distinguished Teaching Award.

A major force in bringing women into law, Kay is also the first woman to be named Dean of Boalt Hall, although the law school's 55-member faculty includes 10 women. Her appointment came after several years of student protests aimed at increasing the number of women and minorities on the school's faculty. In a recent interview with the New York Times, Kay pointed out that, "Harvard has no women of color on their faculty. We have two." Kay worked for nearly 32 years as a professor at Boalt Hall, and is a leading scholar in family law and authored no-fault divorce legislation that has been adopted in California and other states. Her portrait hangs in Langdell North Middle.

H.L.S. Grad Sues Wall Street Journal

Harry L. Freeman, '59 has brought a \$50 million libel suit against Dow, Jones & Co., the parent corporation of *The Wall St. Journal*, and one of its reporters, Bryan Burrough. Freeman charges that the Journal defamed him in article describing his connections with international banker Edmond Safra when Freeman was Executive Vice-President of American Express. The 1990 Journal article has become the nucleus of a book by Burrough, who is also the author of *Barbarians at the Gate*, which deals with the takeover of RJR Nabisco, and is currently being made into a TV movie for Home Box Office. Freeman charges that the Journal sensationalized news events in order to pander to readers and promote the careers of one of its reporters. A Journal spokesman, however, maintained the allegations were baseless, and Mel Weis, an attorney for shareholders suing American Express, its directors and executives, has suggested that Freeman's suit may be supported by AmEx. But Freeman claims he brought suit for the sole purpose of vindicating his reputation in the business community. To this end, he has promised that if he prevails, he will donate the \$40 million in punitive damages he seeks to the Barone Center on the Press, Politics, and Public Policy at the Kennedy School of Government.

North Hall Construction Continues

Major construction on North Hall continued over Spring Break, with contractors demolishing the swimming pool, digging up the Wendell Street fence, and preparing the parking lot for landscaping work. Frank Lamentea, Director of Building Operations said the most major change in the near future would be a new wrought iron and brick fence around the building. "The fence will enhance the look of the building. It'll be more of a Harvard-looking fence," said Lamentea. The Krueger Landscaping Design Co. will make further grounds improvements after commencement, and Harvard Grounds Department will plant islands of trees in the parking lot to "make the building look less like a hotel and more like a dorm," according to Lamentea. Only one-third of North Hall's rooms are assigned to returning students, but Lamentea predicts that the dorm will "sell out" after the entering class picks dormitory space.

Dershowitz, Miller Examine Witch Trials

As part of the City of Salem's commemoration of the 300th anniversary of the Salem Witch Trials, Professors Alan Dershowitz and Arthur Miller will conduct a ninety minute lecture and round table discussion which will examine the evolution of the American Court System since 1692. Various legal issues such as the presumption of innocence, the rules of evidence, the impact of pre-trial publicity and conduct of the jury will be reviewed in the context of the trials of 1692 and related to our present system of due process. The program, co-chaired by Attorney Samuel Hoar of Goodwin, Procter & Hoar in Boston and John Serafini of Serafini, Serafini & Darling in Salem will take place in Salem State College's Auditorium on Thursday, April 30, 1992 at 1:30 p.m. Admission is \$10.00. Proceeds will go toward further educational events for the Tercentenary year. Tickets can be purchased by calling The Salem Witch Museum at 508-744-1692.

Students March for Choice

By Gail Brashers-Krug

Harvard Law School was represented by several students in what is being called the largest march ever on the nation's capitol. The demonstration for abortion rights attracted between 750,000 and 1,000,000 participants, according to estimates by the National Organization for Women, which sponsored and organized the event last Sunday, April 5.

About a dozen HLS students turned out to hear nationally renowned speakers, including Gloria Steinem, Geraldine Ferraro and the Rev. Jesse Jackson, and to march with hundreds of thousands of others past the White House, Capitol Hill and the United States Supreme Court. The march attracted celebrities such as Jane Fonda, Cybil Shepard, Morgan Fairchild and Ron Silver, as well as several pro-choice candidates running for political office.

The rally was the third such national event to be held. The first, in 1987, attracted about 100,000 participants. That number increased dramatically to 600,000 in the second march in 1989, when pro-choice voters were galvanized by the Supreme Court's controversial decision in *Webster v. Reproductive Health Services* just days earlier. *Webster* allows states to impose drastic limits on the Constitutional right to choose abortion as enunciated in *Roe v. Wade*. Local and regional abortion rights groups, women's organizations and gay and lesbian rights groups joined forces to sponsor and support all three marches.

The demonstration, an all day affair, attracted families, older men and women, and a huge contingent of students. Marchers carried signs ranging from pre-printed NOW posters to placards bearing such slogans as "Leggo My Eggo" and "Bleach Blondes for Choice".

Many of the rally's speakers focused

on protecting and enlarging abortion rights through legislative action, as opposed to judicial determination, pointing to the increasingly anti-abortion stance of the Supreme Court. Several speakers noted that an estimated 44 million women lack meaningful access to abortion due to poverty, lack of consent from parents or husbands, or the fact that they reside in rural areas. The Freedom of Choice Act currently under consideration in Congress would prohibit state limitation of abortion rights.

Organizers planned the march so that it would occur just days before the Court heard arguments challenging as unconstitutional a controversial Pennsylvania law which restricts abortion. Boston NOW officials are planning local demonstration on April 22 to coincide with the time set for oral arguments in the case, as well as the later date when the decision will be announced.

Many expressed disappointment with the relatively small turnout of HLS students, particularly as compared to Harvard College, which sent several busloads of student marchers, and Northeastern Law School, which sent more than twice as many students as HLS. Jill Thompson '94, a member of the Women's Law Association Reproductive Rights Committee attributed the poor participation level to the heavy academic workload and a lack of pre-march publicity. She said that, while fifty-five HLS students indicated their interest in attending the march, only five eventually purchased bus tickets. Thompson felt that greater publicity would have sustained the interest and energy of pro-choice students.

Although the Women's Law Association has taken no stand on the abortion issue, Thompson and other WLA members hope to increase awareness of reproductive rights issues next year in order to boost campus pro-choice activism.

24 Hour Sit-In at Griswold Hall

SIT-IN, continued from page 1

foyer. Michaelman said of his motives in meeting with the students "I wouldn't be here if I didn't think it would expedite the process of resolving this situation."

The protesters issued a formal statement of their purposes Monday afternoon, which explained, "The Dean can take no comfort in the University Statement of Rights and Responsibilities, which asserts that 'interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University.' There is nothing 'normal' about discrimination; the 'essential processes' of the law school cannot be served by the exclusion of women and minorities from the legal academic community." Charisse Charny '92, President of BLSA and active CCR member read a statement to cheering supporters at a rally held Tuesday afternoon, which concluded that "We have reached our goal today. We have successfully escalated this struggle."

Ad Board Charges Pending

The HLS Administrative Board called a special emergency meeting early Tuesday morning to consider bringing charges against the "Griswold Nine," who have already been identified by the administration. An Ad Board statement, issued Tuesday morning, indicated that the body could "issue charges against the individuals involved that, if sustained, could lead to reprimand, suspension, expulsion, or dismissal." Dean Sarah Wald, though unable to discuss the details of the proceedings as a Board member, confirmed that no charges had been "voted" as of Tuesday night. Noting that the Ad Board is "exceptionally busy" this month for "completely unrelated reasons," she was unable to speculate as to the timing of any decisions regarding the CCR protesters. Professor Richard Parker, she noted, will replace an absent Professor Arthur Miller during the

Board's consideration of the case.

Professors Charles Fried and Reinier Kraakman initiated Ad Board actions against another group of students who staged short, silent sit-ins in their offices two weeks ago. Those student actions brought furious and immediate response, although other professors whose offices were temporarily occupied did not ask the students to leave or bring any charges.

Contradictory Messages From DBC

The sit-in is the most recent in a series of actions by students at HLS to force the administration to hire a diversity of professors in tenure track positions immediately and to permanently change the procedures by which faculty members are hired. Weeks of painstaking and hopeful negotiations among students and faculty have temporarily broken down as student angrily to contradictory messages from Dean Clark. In recent weeks, Dean Clark had expressed a commitment to the "general" goals of hiring more men of color and women, and of communicating with students more clearly and consistently.

During spring break, however, an article in the *Wall Street Journal* entitled "Harvard Law School Finds Its Counterrevolutionary" quoted Dean Clark as saying that "At some level, [minority students] are worrying about what role affirmative action played in getting them here. [They] need a sense of validation and encouragement with the fundamental problem being a need for self confidence. . . ." Student reaction was passionate and angry. Flyers plastered the campus last week declaring that "The issue is discrimination, not self-confidence." Camille Holmes '93, coordinator for CCR, remarked that Dean Clark's words "reeked of intentional discrimination." She further noted that "People who say sit-ins are 'counterproductive' have to realize that statements such as those in the *Wall Street Journal* are also counterproductive and undermine Dean Clark's credibility" in future supposedly good-faith negotiation with students.

HLS Takes Gold in Criminal Justice Institute Competition

By Todd Hartman

The Criminal Justice Institute team of Jenifer Bensinger, Anthony Brown, Joe Metcalfe and Inger Tudor, (all '93) were crowned National champions in the American Bar Association's National Criminal Justice Trial Advocacy Competition at The John Marshall Law School in Chicago on Saturday, March 28th. Rising to the top of a twenty team field representing 15 states, the CJI team brought HLS a rare victory in the area of trial advocacy.

"Obviously, I'm ecstatic," said CJI instructor Charles Ogletree. "It reflects incredible commitment among the four students against great competition. Our students' first place finish reflects that Harvard has risen to the top of criminal advocacy instruction."

The HLS team avenged a disappointing 1-2 record in last year's inaugural competition with unprecedented unanimous victories in the first three rounds, on the way to the championship, with sweeping victories over host John Marshall Law School, Whittier

College School of Law, and the University of Georgia School of Law. After a close semi-final victory on the 27th over Golden Gate University School of Law, the Harvard team took the title by a comfortable margin over the University of San Diego School of Law.

"Our students just outtalented every-

body," stated team coach and CJI clinical instructor Bill Talley. "The only thing that made it close was a lack of competitive know how. But it was so clear throughout the competition that our students were more talented."

"The team's talent, self-belief and preparation all came together," agreed co-coach Abbe Smith, also a clinical instructor. "For CJI, this is a feather in our cap above and beyond our duties. We wanted to give students this incredible, intense training in trial skills since there is no place else at Harvard to get the same experience. It tested CJI's commitment to its goals and the students proved we were on the right track."

The team members felt that the coaching made the difference. Said Brown, "Their instruction really showed in our performance."

"Not only did we have two incredible trial lawyers coaching us," agreed teammate Bensinger, "but we also had the full support of CJI in making us the best team possible. This award affirmed the commitment of Charles Ogletree, Bill, Abbe and the

whole clinical program, to providing an excellent trial advocacy education was affirmed by this award."

"Clearly the difference this year," said Metcalfe, the only returning member from last year's team, "was superior preparation." The team spent 96 hours on team meetings alone during the eight week



training period.

"That doesn't include independent work," recalled Tudor, "Never have I been through such an intense and rewarding legal experience."

Harvard's reluctance to participate in any such competition over the last ten years magnifies the team's achievement. Ogletree and Talley admit that smaller law schools have tended to focus greater attention on trial advocacy and competitions because of the Ivy League's weak reputation in trial advocacy.

"I think other schools focus on trial advocacy more because they believe that is one area where they can beat the Ivy League," said Talley. "There is year round commitment to such competitions at other schools."

Said Ogletree, "Everybody wants to beat Harvard." Ogletree and Talley expressed hopes that this victory would resuscitate Harvard's commitment to criminal advocacy and CJI specifically.

"I'm hoping the school and the student body will take more notice of clinical education because in fact, at least part of what lawyers are supposed to do is try cases," said Talley, "It seems ridiculous to me that a school like HLS would let students go through three years of classes and not make them do a trial. I would be like going to Juilliard and never playing in a recital."

"Our victory," added Ogletree, "shows that we have the ability to compete with any trial advocacy program in the country. What's unfortunate is that we don't have the financial support to take advantage of that. We have shown the capacity of our students to excel and yet the opportunities are limited due to money."

Indeed, HLS refused funding for this competition until notified that the CJI team had won the championship. "With that CJI funding will be cut back next year," admitted Bensinger, "the opportunity for further honors is slim."

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Their support made this year's events possible. These events included author Robert Fulghum, former Senator Eugene McCarthy, attorney Arthur Liman, former Attorney General Edwin Meese, attorney F. Lee Bailey, ACLU President Nadine Strossen, author Richard Kahlenberg,

Harvard Law RECORD

Founded in 1946

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Editor-In-Chief

"America faces economic peril and social disharmony. That is not what America is all about."

Paul Tsongas

No Limits to Appropriate Behavior

I have been following the Presidential campaign with some interest because I am curious to learn how to best make my vote mean something. I am still naively intrigued by the concept of Democracy. Funny thing, 'democracy.' It sounds very appealing, I wish there were more of it. To paraphrase one of my favorite authors, "It is with Democracy as it is with the supernatural: Everybody speaks of it but no one has actually seen it."

Unless Texas billionaire H. Ross Perot somehow manages to get on the ballot, or unless something unforeseen happens, Bill Clinton and George Bush will vie for the Presidency in this November's election. Although many people don't give Clinton a chance, the campaign will be interesting viewing nonetheless.

Both nominees will have to curb the vocal radical elements in their parties in order to galvanize enough moderate support to win. Bush will have to deal with the far-right, neo-Nazi types, and Clinton will have to deal with the far-left, neo-Marxists. The key to winning, however, will surely be in getting the apathetic American people to do something they have recently been reluctant to do: vote. Voting, having a voice, being heard, all novel concepts. But they are truly the only ways to prevent special interests from dominating policy.

The political landscape in America is analogous to the struggle for faculty diversity at HLS. In it we have two opposing visions of what the Harvard Law School ought to be. The major difference, of course, is that as students we won't be able to vote on our leadership in November. Instead, many of us have chosen to "vote" in the only way we have available and that is to become activists.

I salute the "Griswold Nine." I do, admittedly, agree with their aspirations, but I salute them not only for their politics but simply because of their activism. They believed in something strongly enough to let everyone know about it. They took a risk that most others dismissed without consideration. In a place where student apathy registers in epic proportions, I admire their motivation. They shouldn't be suspended, expelled or arrested, they should be commended, lauded and celebrated. Their lock-out shows that they actually care about this community.

There are a lot of non-partisan students here who have chosen to remain uninvolved in the activity that routinely succumbs the campus. It's easy to walk by a rally on your way to the gym or on your way home. It's easy to go home at night and forget that there is a Harvard Law School.

However, before we judge too harshly those among us who do things which seem to test the limits of "appropriate behavior," I encourage everyone to follow the example set by the Griswold Nine. We must scream once in a while or lose our voices forever.

Ra

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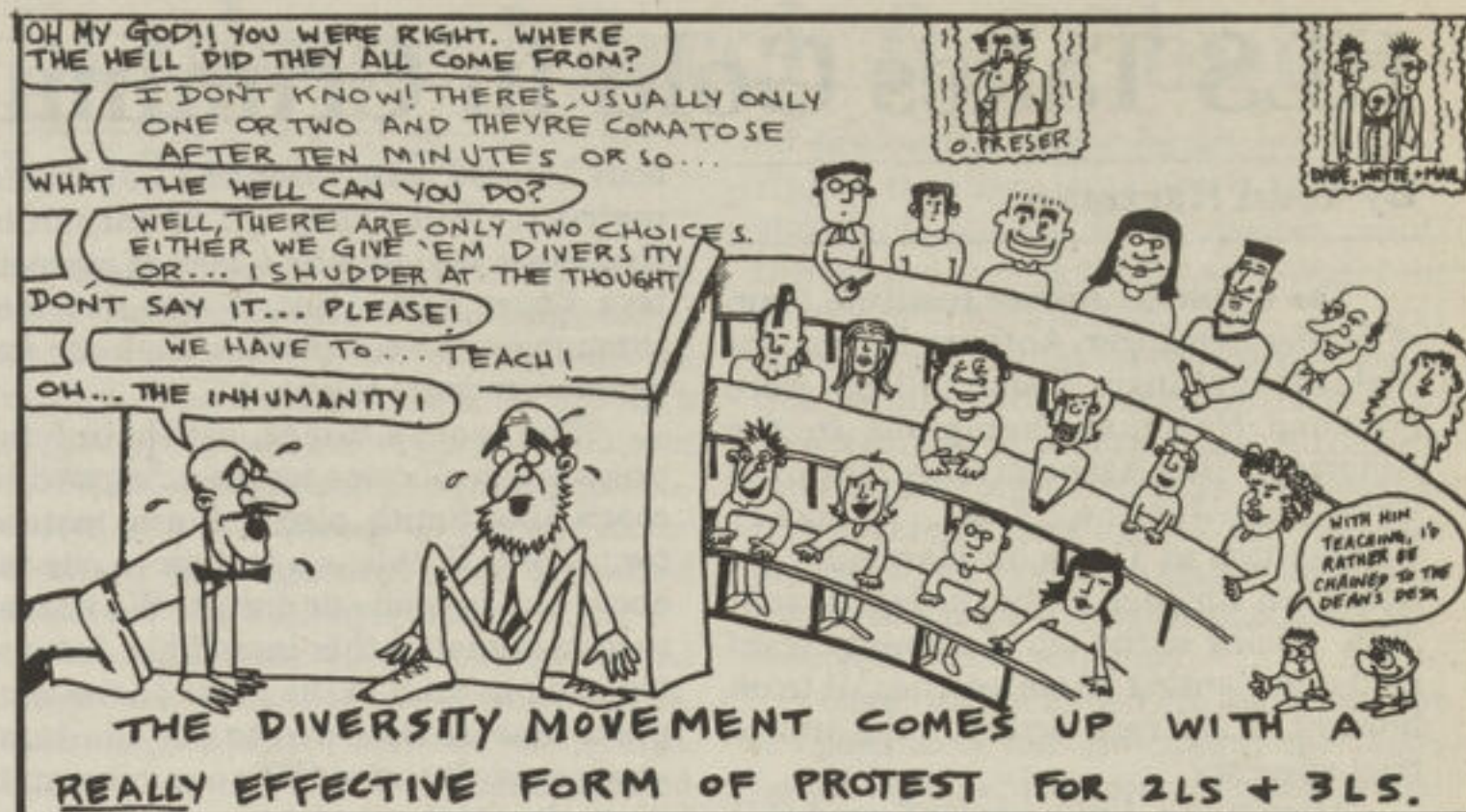
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—First Amendment, U.S. Constitution



• Letters •

PC Stormtroopers: Armed and Dangerous

To the Editor:

If there is any doubt that Alysse MacIntyre has fans out there, let it be known that they include even long-time-ago graduates such as myself. Wonder of wonder, she shows signs

of having a sense of humor. Wit is a quality that's all too often been missing from the RECORD's pages, and I was delighted to see it reappear.

I was sad, however, to read that Alysse MacIntyre was a pseudonym. If that's

true, it suggests something I hadn't known before: the humorless PC Stormtroopers are armed as well as dangerous.

J. Speed Carroll '62
March 17, 1992

Diversity Lawsuit Omits Several Categories

To the Editor:

I write this letter as an alumnus of Harvard College ('44) and as a retired business executive who required the services of counsel from time to time. I have always tried to have the services of the best attorney I could find for my representation. In that context I am most interested in the diversity lawsuit filed against the Law School.

In order to achieve the

students desired goal of diversity, I wish to note several categories that have been omitted: Oriental men and women from China and Korea; Japanese men and women; Native American Indians; People from Russia who may be indispensable for the future; English Professors upon which our common law rests; Transvestites; Former felons who mastered jail house law; Third world lawyers from India

and Pakistan; Arab Fundamentalists lawyers.

Above all else, I would hope that diversity would include professors chosen simply for excellence. It is excellence that people want when they turn to a lawyer in times of stress in the same way that people want the best doctor available when medical needs arise.

Harold C. Tint
March 20, 1992

Bell Should Say Goodnight and Never Return

To the Editor:

Your front page story that Professor Derrick Bell is undecided about returning to Harvard because of the "absence of a woman of color" on the faculty prompts me to hope that Bell never returns.

Bell's demand is unworthy of the law school that many of us still respect. Had Bell demanded that a person of color not be hired, he'd be seen as a racist. To demand a hire on that basis is no less a rabble-rousing racist stance.

Bell is simply appealing to a different rabble.

When I was in school, I thought I snuck in but my fellow HLS students were there because they were the best applicants in the bunch. I thought our teachers were the best scholars in the legal firmament and that hundreds of other good teachers, white, red or pink, just couldn't make the elite at Langdell Hall.

Who needs a faculty of racially or ethnically balanced second raters? Perhaps only a

student body of second raters, admitted because of race, religion, nationality, or Daddy's influence as in the Good Olde Days.

Even Bell's quaint phrase "woman of color" is as bogus as his politics. "Black" is the absence of color; white is all color. What he really wants is a "woman of no color."

Say goodnight, Derrick.

Daniel M. Sklar '52
March 24, 1992

'Celebrity Lawyer' Disregards Service of Process

To the Editor:

Perhaps this letter combined with a March 20, 1992 cover story in the *New York Law Journal* may put an end to the recent exchange of letters to the RECORD concerning whether Professor Dershowitz achieves his startling results with genius, P.R., or Chutzpah. The simple explanation of sick, 70-year old Mrs. Helmsley landing in the

federal clink (after appeals) is that she was represented by a "celebrity lawyer."

According to the *NYLJ* article, a "celebrity lawyer" apparently dispenses with proper service of process. He also furnishes the federal court with statements about cases containing discrepancies between affidavits and his "best selling" *Chutzpah*.

Regarding his ability to

try a jury case, Mr. Dershowitz seems to have an alter ego, Harvey A. Silverglate, who is suspiciously well-informed concerning Dershowitz's legal career — "In fact, he did try one appointed jury case some years ago" [Letter, March 6]. Bravo! Did he win, lose or settle?

Stanley L. Kaufman '35
March 26, 1992

Basing Constitutional Rights on Gender?

To the Editor:

Hopefully this letter, which was submitted to the RECORD over three weeks ago, though not printed at that time, will help to clarify the types of understandable misconceptions expressed in Rosanna Cavallaro's Letter to the Editor "Basing Constitutional Rights on Race?" [March 20]

A month ago we began a small-scale effort to enlist law students to work for the prosecution in the Tyson case. Unfortunately the *Crimson* and the RECORD have consistently mischaracterized our effort as "anti-Dershowitz." We wish to clear up some misconceptions that have resulted from this distorted

media coverage.

While we repeatedly stressed to reporters from both the *Crimson* and the RECORD that our focus was on the rights of women, both articles emphasized the apparently more newsworthy element of Professor Dershowitz's involvement in the Tyson case. Thus, our efforts were mischaracterized to fit the theme of the articles. We made a conscious choice not to approach the issue negatively, as anti-anything, which is why we instead chose to SUPPORT the prosecution. We are trying to make a positive statement showing support for the rights of rape victims and for the veracity of

women's words in the public sphere in general, particularly in light of attitudes exemplified in the Thomas hearings and the Kennedy Smith trial. Our goal is to provide a productive, alternative voice within the HLS community on this issue.

We have explicitly and repeatedly stated that Dershowitz has every right to take the case and that we are not attempting to interfere with that right. Contrary to the press's characterization of our efforts, we do not share a carefully constructed agenda of disdain for Dershowitz. We "oppose" (a word

Please see LETTERS, page 9

The Americans with Disabilities Act Examined

By Bryan J. Smith

In 1994 the Americans with Disabilities Act (ADA) will come into full effect. This is the result of several factors: the years of work by advocates for the disabled; the acceptance, even though somewhat grudgingly, by the business community; and the support of both Democrats and Republicans. Its purpose is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

This Act is the first major legislation regarding disabilities by any country. A model for new legislation in this field, the Act will protect 43 million Americans.

There is a growing awareness in America that disabled persons are confronted with barriers every day. The Act prohibits discrimination against individuals in employment, in public service, transportation, public accommodations and telecommunications. As former United States Attorney General Richard Thornburgh has said, "Employment offers the possibility of dramatically improving an individual's lifestyle, while at the same time resulting in tremendous financial saving for the government."

According to the Attorney General's Office, 58% of all disabled men of working age and 80% of disabled working-age women were not employed at the beginning of 1990. The Act states clearly that:

"The Americans with Disabilities Act of 1990 makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications."

Failure to comply with this Act can result in civil penalties of \$50,000 for the first violation and \$100,000 for subsequent infractions.

The Act is not without its critics who call it the "Lawyers' Employment Law", or "A Nightmare for Employers and a Dream for Lawyers." They believe that there will be a flood of litigation that will impose financial burdens which will destroy small businesses. Business associations are advising businesses to examine closely the Act and its proposed implementing regulations. Without such scrutiny and follow-up action, many entities may find themselves faced not only with mandates for adjustment but expensive litigation.

When litigation starts it will most likely involve: (1) an employer's failure to provide reasonable accommodations when such accommodations do not impose any undue hardship on the operation of the business and (2) the employer's denial of

job opportunities to an individual with disabilities where the employer bases the denial on the need to accommodate the individual.

The scope of the employer's duty and the undue hardship on the business will be decided in court with the Government being represented by the Civil Rights Division, of the Department of Justice (DOJ) and the United States Equal Employment Opportunity Commission (EEOC).

According to a recent Harris poll, 78 percent of the public see the disabled as having an unused potential to contribute, and only 11 percent see them as a burden to taxpayers.

According to a recent poll, 78 percent of the public see the disabled as having an unused potential to contribute, and only 11 percent see them as a burden to taxpayers.

Also, 81 percent of the public favor affirmative action programs similar to these for women and minorities. Eighty-nine percent favor making schools, transportation, work places and others public facilities more accessible.

To put this matter into a historical perspective, it might be useful to mention the names of

Franklin D. Roosevelt, Goya, Mozart, Albert Einstein, William James, Helen Keller and so many other people who, in addition to their achievements, have bequeathed us the living testimony that even those who had to cope with pain, adversity or particular physical or mental disabilities were able to move humanity through their art, science and genius. But the mere mention of historical figures

is not enough to understand fully the immense problems facing millions of persons who, either permanently or for a prolonged period, suffer from some type of disability.

At the time that Benjamin Franklin was chosen to represent Pennsylvania in the Constitutional Convention of 1787, he was almost immobilized by gouty arthritis, and Philadelphia officials arranged to have him carried into the sessions in a sedan chair. His physically defective body thus did not impede his ability to function as a statesman; although the impairment that prevented his walking remained, he was not disabled. Franklin's experience illustrates the distinction between handicap imposed by nature and a handicap imposed by society.

Law is an effective tool for making change. What this Act offers is something nonexistent even in progressive countries — it unifies all laws regarding the disabled into one set of laws to be administered from one department, the Civil Rights Division of the Justice Department.

Examining the laws that deal with physically handicapped people is a useful way to understand disability as a social creation, for the formal response of legislation reflects not only a history of what society defines as problems, but also a history of how laws have affected and shaped these problems.

The ADA has solved some of the problems discussed above by incorporating disabilities into the provisions of an Act and by establishing coordination between various agencies and the Justice Department, together with a time limit for businesses to comply with the Act. The ADA will serve as an important law, a critical initial movement towards greater social justice for a population traditionally ignored by our legal system.



Fenno was desperate. He had already gotten 43 extensions on his third year paper, but it still wasn't done. Hell, he hadn't even started it when he got word that the Governor had denied his clemency request, the Supreme Court had rejected his petition for certiorari, and the Pope had refused to grant a Bull giving him another extension.

"What to do, what to do?" he wondered as he headed to see his advisor, Professor Winthrop Anderson Stevens Pierce III. "He'll know how to handle this," Fenno said confidently, "or at least he'll know who on the Board of Fellows to call for a favor." Things only got worse, however, when he arrived at his advisor's office. "I'm sorry, Professor Pierce will be out of town this month," said his secretary, "he's currently in the South of France at a conference on Law and Tourism. Now please leave or I will be forced to call security."

"Great," said Fenno as he walked back to the Library to start his research. "I'll probably flunk and end up having to take Civil Procedure over again." Plopping his bag down on his corral in Sub-Basement 43A North, he thought again about the price of failure, "well, at least I'll finally learn the Erie doctrine."

Going over to Hollis, he punched in every key word he could think of. After five hours, only three entries came up. "Ha," said Fenno, "I knew 'Schecter Poultry: Sick Chicken or Pioneer in the Law of Poultry' would be a great topic!" After an exhaustive search of WestLaw, which turned up exactly two cases, Fenno went out and collected his materials. "This isn't going to be so bad," he thought "I may even be done by dinner."

Even though Fenno didn't finish by dinner, he did turn out 40 pages in an all-

night marathon. He would have been completely done by lunch if the Harvard Police hadn't caught him in Sub 43A North using a laptop in a no computer zone. "Damn doughnut-eaters," Fenno mumbled as he went over to the Lincoln's Inn for a couple of stiff drinks, "couldn't they keep themselves busy by arresting some diversity protesters or something?"

A frenzied afternoon of typing got him through his first and only draft by 3:59 P.M. "One minute to spare," he cried as he ran to the registrar's office. Unfortunately, he arrived at the registrar's office 1 minute late. "That will cost you \$1,000, mister," said Gretchen Von Pain, Assistant Associate Registrar, with a rather sadistic smile on her face. Luckily for Fenno, about 500 hours of free research for Deputy Dean Schmuckhead's latest article and a rather large donation last year by his grandfather came in rather handy in getting around Von Pain's rather painfully strict standards.

"Pfew," said Fenno walking back to Langdell, "What good would connections and privileges be if you couldn't use them?" As he went back to his car in Sub 43A North he thought, "now, what's all this business about a Professional Responsibility Exam tomorrow?"

Quote of the Week

"Talk is cheap, and if talk got any cheaper, they'd be selling Nike tongues instead of sneakers."

—Queen Latifah

Harvard Law School
cordially invites you to attend

THE FRANCIS BIDDLE MEMORIAL LECTURE

THE UNBEARABLE AUTONOMY OF BEING

to be given by

PATRICIA J. WILLIAMS

Associate Professor of Law
University of Wisconsin School of Law
and Department of Women's Studies
Madison, Wisconsin

Thursday

April 16, 1992, 7:30 P.M.

James Barr Ames Courtroom
Austin Hall, Harvard Law School

The lecture will be followed by
a reception in Pound Hall, 2nd Floor

Liabilities

By Paul Taylor



GROMM: Barbarian at Law

By Chris Spagnoli



CALENDAR

Tuesday, April 14

Francisco Jose Aguilar Urbina, vice chairman, Human Rights Committee under International Covenant on Civil and Political Rights and HLS LL.M. '87 (Costa Rica) will speak on "Human Rights Committee: New Directions in Light of Global Change," at 4pm in P334.

Saturday, April 25

The Harvard Environmental Network is sponsoring a unique symposium, *Our Global Ecological Crisis — The Human Factor*. It will be held in Austin North from 1:00 to 3:00pm. An informal reception will follow. Admission is free and open to the public. The symposium will feature three renowned environmental scholars, and will include opportunities for questions from the audience. For more information, contact Joe Simonetta at 576-5065.

Congratulations to the 1992
Williston Contracts
Competition Winners:

First Prize

Andrew Genser, Jason Hammerman,
David Brafman, David Polster



Second Prize

Andrew McLaughlin, Jonathan Littrair,
Seana Shiffin, Robin Lehnhardt

HLS Intramural Basketball Standings
as of April 7, 1992

Team Number and Name		Wins-Losses
"A" LEAGUE		
1	The One-der Years	11-2
4	HLS Posse	9-3
8	Assault & Battery	7-4
2	All That Jazz	7-5
6	Gimme The Rock, Baby!	5-7
5	Black Panthers	4-8
3	Whoopie Cushions	3-8
7	D'Bulls	2-11
"B" LEAGUE		
23	Mo Knows	8-0
21	Black Panthers II	7-1
22	Story Too Legit	7-1
11	Well-Hung Jury	6-1
26	The C.B.A.	6-2
13	Dream Team	5-2
20	Rodwin's Rebels	5-2
19	Bildad & the shoe-hites	4-4
24	The Hammer	4-4
25	Lincoln Park Rules	4-4
28	The Grizzers	3-4
14	Ames Aardvarks	3-5
17	A to Z	3-5
10	Hezekiah	2-5
27	Skywalkers	2-5
29	Thao's Team	2-5
16	John 3:16	2-6
12	Los Homies	1-6
15	(nameless)	1-7
18	HLAB-The Team	1-7

Compiled by Frank Yokoyama & Jeff Wing



The One-der Years continue to hold the top spot in the "A" League with last year's league champs, HLS Posse, right behind them. With the playoffs starting this week, the 1L upstarts will try to stop the Posse from repeating. Elsewhere in the league, the Whoopie Cushions are enjoying their 3-8 record. Team member Bob Daut said, "Thank God for forfeits!" In both leagues, underdogs had their day as none of the teams will end the season without a win. The C.B.A., forfeiting to Well-Hung Jury and dealt a surprise loss by Bildad & the shoe-hites, fell at least three seeds in the "B" League. The team to beat continues to be Mo Knows, with the Jury, Black Panthers II and Story Too Legit on their heels. Last year's champs Story will have a very tough time coming out on top in this competitive league. Expect to see upsets in the playoffs.

The Life and Times of Ed

ED, continued from page 1

of his research.

When the RECORD spoke to Terry Martin, he explained that HLS libraries have an access policy which allows those other than HLS faculty and students to use the HLS libraries. Martin explained that about one thousand people each year use this policy, some for short time periods and others for more extensive work. Martin did emphasize however that the libraries main obligation is to provide the resources and a good research environment for the HLS students and faculty.

The dispute between Ed, who is represented on this matter by counsel, and HLS is ongoing. The Office of General Counsel would only comment that there is a dispute between Mr. Cumings and the University about access to the library but added that he has not sued the school.

Despite his disagreement with the Law School, Ed still likes to eat his meals at the Hark. Ed explained that he used to eat at the Faculty Club but the prices there are much higher, and he likes the food and the students at the Hark.

But what about the week-ends and summer? Ed often eats at home on week-ends and in the summer hangs out at the Biology buildings.

Although Ed is retired, he keeps busy auditing several classes at Harvard. He said that he has audited over 85 classes, mainly in history and languages. Ed enjoys speaking to students at the Hark and emphasized that he would be very willing to talk with anyone.

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• Letters (Continued) •

Students not Anti-Dersh

Continued from page 6

chosen by others and definitely not by us) Dershowitz only insofar as his perceived insensitivity towards rape is indicative of the prevalent societal attitude towards rape victims.

While over 150 students pledged their support to our effort, some students have reacted negatively. In appreciation of their constructive comments, we would like to clear up a second misconception and offer an apology for creating it. Students have pointed out to us that we have failed to account for the pressing racial issues central to this case. Specifically, we have been asked why we took no action while William Kennedy Smith was on trial, but have become activists "against" Tyson. The simple response is that there was no appeal in the Kennedy Smith trial and therefore no opportunity to become involved.

The more substantive response is that we did not intend for our support of the victim in this appeal to downplay the realities that White men of Kennedy Smith's stature are often treated deferentially by the judicial system, and Black men of any stature are often considered guilty by presumption. Rather, we wish to raise the question of the treatment of women (of any color) within this same system.

We apologize for failing to articulate clearly from the beginning that we share these concerns. We affirm that Mike Tyson, as a defendant, has a right to the best possible representation. Our goal was not to argue that he should be denied that right, or to contribute to Tyson's symbolic vilification. Instead, the difference between the two cases for our immediate purposes is that Professor Dershowitz has made Tyson's trial a local issue by associating the name of Harvard Law School with his defense. We represent an alternative voice within this community with an equally poignant concern for the (Black) rape victim.

We wish to thank those students who helped us to understand their concerns and took the time to attempt to understand ours. Some students will no doubt remain unsatisfied or angry with our position, but some work cannot be done with all interested parties reaching a mythically harmonious unity. While we will continue to vehemently support the rights of Desiree Washington and all victims of rape and sexual assault, we hope that HLS students will continue to educate each other about the variety of difficult issues involved.

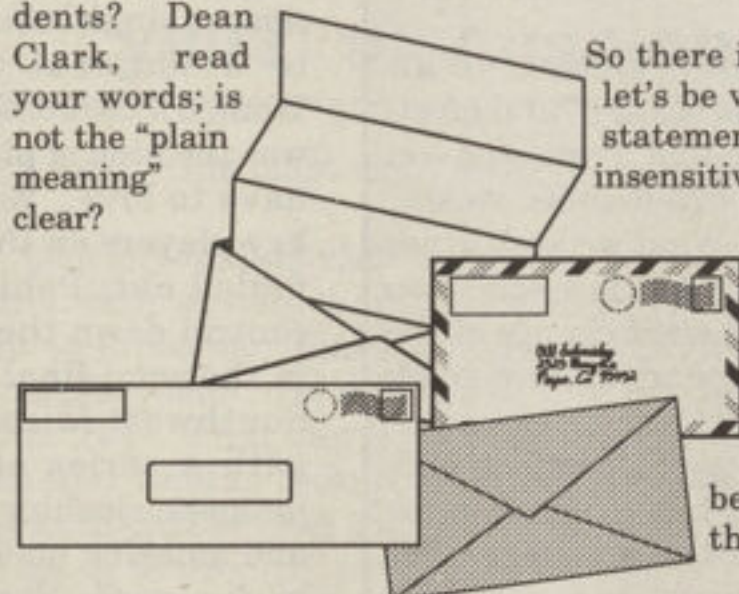
Ashley Barr, Michelle Greene, Jim McNasby, '94
April 2, 1992

CCR Asks For a Public Apology From Dean Clark

An Open Letter to Dean Clark:

Dean Clark, where should we begin in responding to your statements in the *Wall Street Journal*? After reading the *Journal* article, many of us fear the gulf is so wide in our conceptions of fairness and justice, that we have no grounds on which to meaningfully communicate. And yet we try, like we have so many times before, to explain what is so clear to our generation and what you seem incapable of understanding.

Is it possible, Dean Clark, that you do not understand the profound insensitivity of attributing the fight for an integrated and diverse faculty to an imagined crisis of self-confidence on the part of minority students? Dean Clark, read your words; is not the "plain meaning" clear?



We have the highest percentage and absolute number of minority students of any of the top twenty law schools. At some level, they're worrying about what role affirmative action played in getting them here... The minority students need a sense of validation and encouragement, with the fundamental problem being a need for self-confidence that plays itself out as, 'Why doesn't Harvard Law School have more teachers who look like me.' In a sense, we're dealing here with one of the symptoms of affirmative action.

Dean Clark in *The Wall Street Journal*, March 25, 1992.

stigma that flows from exclusion. This strategy has frightening roots. In the infamous case of *Plessy v. Ferguson* (1896), the United States Supreme Court used strikingly similar logic to justify the forced separation of the races:

We consider the underlying fallacy of the plaintiff's argument to consist of the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

Whatever your thoughts on the merits of our struggle today, can you not see how your logic of belittling the stigma of exclusion feeds into the racism and prejudice of cases like *Plessy v. Ferguson*? An inclusionary vision of justice should be a goal of all of us, including White men in positions of entrenched power and respect.

More than anything else, your statements indicate that you do not care to listen to us

and hence do not respect us as human beings. It is for this reason that your statements are insulting. LISTEN TO US NOW. The struggle for diversity at HLS is not about an imagined crisis of self-confidence but about the empowerment of traditionally-disempowered communities to help share in the development of the law, the countering of pervasive institutional biases, the expansion of perspectives and backgrounds represented on the HLS faculty, and the resulting increase in excellence of HLS as a leading educational institution. As always, we stand willing to discuss these important ideas with you. But we will not stand for your insulting dismissal of our thoughts and feelings as "symptoms of affirmative action."

Dean Clark, we demand a public apology for the insensitivity and insult of your statements. It is the least you owe us as human beings.

HOW LONG MUST WE WAIT?

Camille Holmes '93 and Jeffrey Lubell '93
On behalf of the Coalition for Civil Rights
April 7, 1992

Editorial Perpetuates Damaging Stereotypes about Alcoholism

To the Editor:

In your March 6, 1992 editorial, "A Day in the Life at JP," you like so many others are guilty of helping to perpetuate a damaging stereotype. I refer to the sentence, "My first

interview was with a trembling, anxious man who reeked of alcohol, an obvious alcoholic." Up to the point of "obvious" there is no problem. The adjectives you employ to describe the man are factual and objective. The problem arises with the next word. How is it "obvious" that the man is an alcoholic? Is it that he fits the image you have of how an alcoholic looks, or the socio-economic status you believe most alcoholics fall into?

Is it possible the man was trembling because of a low blood sugar from lack of eating? Or that his anxious expression had to do with the thought of his family's immi-

nent homelessness? Perhaps the man was a diabetic on the edge of diabetic acidosis and his breath was laden with the smell of acetone, not alcohol. My point is that you have used the diagnostic term of alcoholism in a pejorative way that reinforces readers' images of an alcoholic as a down and out failure who exists on the perimeter of mainstream society.

You may accuse me of nit-picking, but it is a truism that the language we endorse reflects the values and beliefs we embrace. Had you said about your client that you suspected or feared that he might be suffering from alcoholism, there would be no problem

with that neutral description not laden with perpetuating bias.

I suggest that the next time you have a client you think is an obvious alcoholic, you encourage the person to obtain help, either through the mental health system or simply by writing down the number of Alcoholics Anonymous on a piece of paper and giving it to him/her. That your supervisor, a person supposedly committed to trying to help disempowered people, made a joke of this client who might have a life-threatening disease, is reprehensible.

Nancy Wooley '92
March 20, 1992

Peninsula Insults Homosexuals and Southpaws

To the Editor:

As the designer of the poster campaign pointing out the similarities between *Peninsula's* anti-homosexuality edition and other efforts to undercut the moral claims of despised groups (by genocide, intimidation, or patronizing pity), I want to respond to the remarks of Max Torres, Sean Brady, and Mike Quigley that have appeared in recent issues.

First, the poster campaign was part of an honest, measured response, fully consistent with principles of free expression, to what many consider an hateful publication. Apparently the defenders of *Peninsula* object to their opponents' use of the term "bigotry." I am tempted to say, "If you can't stand the heat, get out of the kitchen."

Furthermore, our efforts can be defended on the same grounds as those of *Peninsula*. Its editors justify their views by drawing a line between hating the sin and loving the sinner: they claim to abhor homosexuality but respect the dignity of gay people. Just as one can hate bigotry but have sympathy for its misguided mouthpieces. Apparently, *Peninsula's* editors, now on the receiving end of their own logic, find it less persuasive.

But more importantly, my point here - and the point of

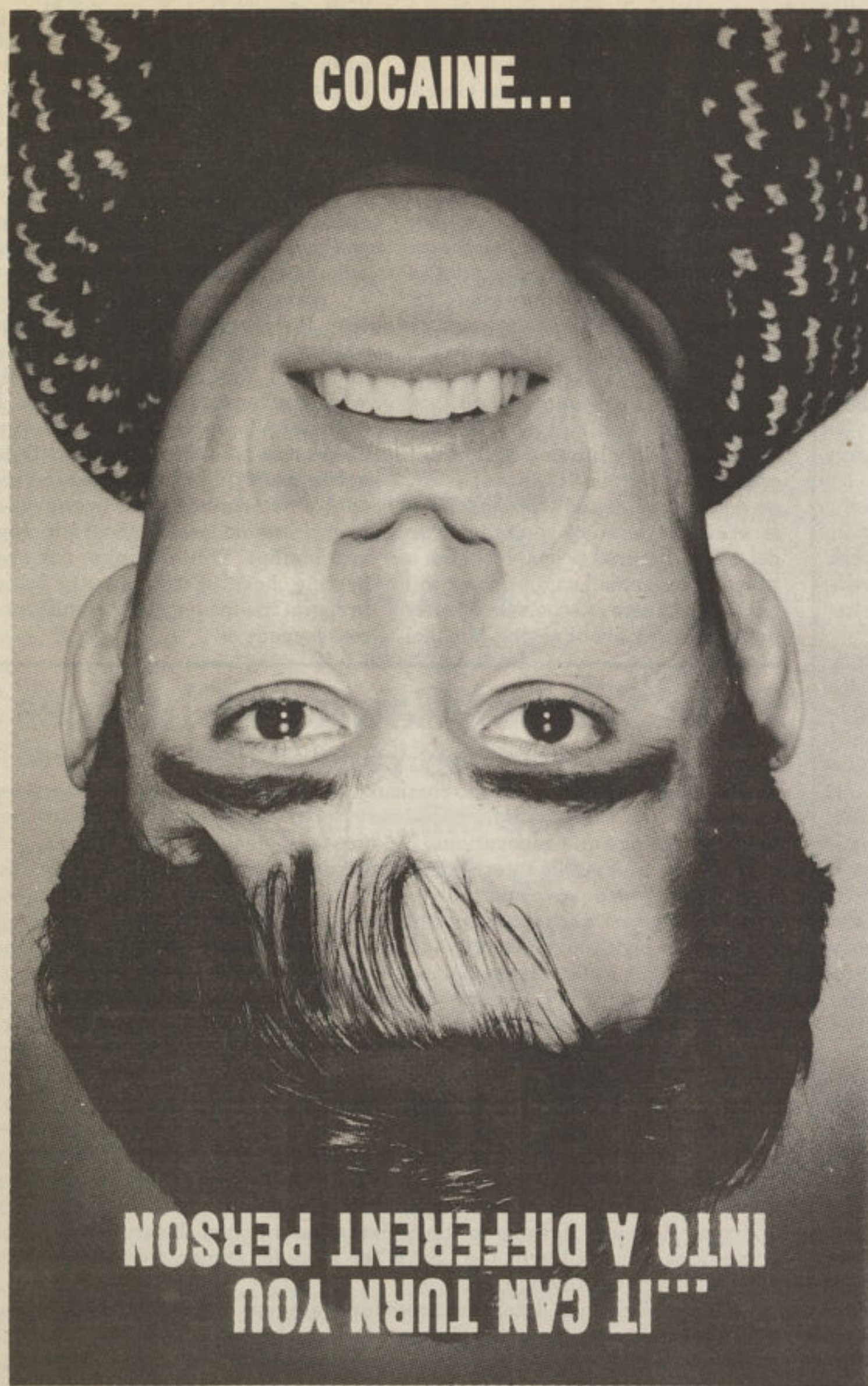
the poster campaign - is that sexual orientation is no more a moral issue than is race, ethnicity, or sex; the real moral issue is bigotry in its many forms. There is simply no correlation between sexual orientation and anything remotely destructive to society. And if there is, lesbians and gay men are responsible for a fraction of the human suffering attributable to practicing heterosexuals like Genghis Khan, Adolf Hitler, and Saddam Hussein.

Unlike race and sex, sexual orientation is a trait that is apparent to others solely in behavior and not in appearance, and homophobes have seized on this distinction in calls for "cures" and celibacy. But left-handedness, among other traits, is similarly expressed solely in behavior, and - ironically enough - it

was condemned by Plato, Aristotle, the ancient Romans, the Bible, and the Koran. Despite well-intentioned campaigns by parents, teachers, and religious leaders to "cure" lefties of their affliction, some ten percent of the population persists in favoring their left hands, and most of us think nothing of it. The point is not that the trait is immutable, but that it is not morally significant.

Anti-gay ideas are medieval ideas for medieval people. Perhaps those who admire *Peninsula's* editors for their "courage to publicly defend sincerely held but unpopular beliefs" are eagerly awaiting the forthcoming anti-lefty edition.

Trent Norris '92
March 20, 1992



Partnership for a Drug-Free America

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.
ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the RECORD as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.
Each alumnus/a receiving a RECORD subscription through the Harvard Law School Association should be on notice that \$5.00 of H.L.S.A. annual dues are used to purchase the RECORD subscription that he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began on July 1, 1991 and ends on June 30, 1992 purchase a subscription that begins in January 1992 and expires in December 1992.

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Our Protest Confronts Injustice

By William Anspach, Member of the "Griswold 9"

Guest Columnist

(I wrote the following letter a few days before deciding to help shut Dean Clark out of his office for 24 hours. I don't purport to speak for any other members of "The Griswold 9," but I believe that many of my thoughts are shared by them.)

In his 3/31/92 letter to The Law School Community, Dean Clark expresses his dismay at protests that have taken place the last few years over the issue of discrimination in faculty hiring. Referring to sit-ins and other demonstrations, Clark states, "I am sorry that some students have chosen to test the limits of appropriate behavior." The purpose of the letter is to hold over protesters' heads the threat of disciplinary action and to make such a threat seem just.

What is striking about the letter is its assumption that disruptive behavior is inherently wrong. This assumption is false. Those of us who have protested and who intend to continue to protest will not concede moral high ground to the likes of Dean Clark and Professor Fried. It must be understood that our protest deserves to be rewarded by positive movement on the part of the faculty and not by belligerent stubbornness and disciplinary reprisals.

Why is our protest right? Protest is justified when it confronts injustice and does so in an appropriate form. That Harvard Law School is awash in injustice is impossible to dispute. The details are not worth reviewing again. Suffice to say that the lack of women and minorities on the faculty is scandalous. Even the professors recognize that the faculty is a men's club. And so over the past few years there has been a flurry of meetings and resolutions and debates, all of which has produced a few tiny, halting steps.

What is at issue, then, is the manner in which students have chosen to protest. In his 3/31/92 letter, Dean Clark speaks approvingly of "opportunities of communication" and meetings and forums and so on. He argues, "Open discussion—even very heated discussion—is far more likely to lead to mutual understanding and effective advocacy of well-founded views." Clark's concession to heat notwithstanding, he misses the point entirely. What we seek is not patronizing understanding and sterile, amoral debate of the kind which the law school so eagerly trains its students to engage in. What we seek is change. And we want change at the rapid pace the school showed itself capable of a few weeks ago when it made tenure-track offers to four white men.

Talk is cheap. The school would like nothing better than for students to enter into an endless dialogue with the faculty and administration. Dialogue in the past hasn't borne much fruit; for the most part, it has generated only hot air and a string of broken promises. The administration hopes to wait each generation of students out. But too much is at stake for us to wait any longer.

It is precisely because so much is at stake that Dean Clark's letter rings so false. When he says that "students have chosen to test the limits of appropriate behavior," he has it all backwards. It is Harvard Law School which has chosen to test the limits of appropriate behavior, no, which has chosen to go beyond the limits of appropriate behavior by perpetuating naked discrimination. Similarly, Clark can take no comfort in the University Statement of Rights and Responsibilities, which asserts that "interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University." Let us clarify this matter: there is nothing "normal" about discrimination; the "essential processes" of the law school cannot be served by the exclusion of women and minorities from the community. In his complaint with the Administrative Board, Professor Fried says that the sit-in in his office was "a direct offense to academic freedom." But how much respect does Harvard Law School have for the value of free expression when it systematically excludes the voices of women and minorities? Dean Clark and his friends must not be allowed to turn the world upside-down.

Still, some skepticism remains to be addressed. Aren't we all a bit self-important? Is faculty discrimination at Harvard Law School really worth making such a big deal about? As Dean Clark said of a protest by Derrick Bell, "This is a university, not a lunch counter in the Deep South." It may be that discrimination thirty years ago against blacks who wished to enter white restaurants was uglier and more significant than discrimination today against blacks who wish to teach at Harvard Law School. It may be or it may not be. There are different struggles in different times. Any insidious discrimination is evil. It is certainly true that teaching positions at Harvard Law School are plums—they pay a lot of money and guarantee a lot of prestige.

Anyway, it is clear that in some sense, Harvard Law School matters. It matters to Dean Clark, or he wouldn't get so angry when we are disruptive. And there is no denying that for three years, Harvard Law School is a big part of the community in which we live, and it only human nature to want to make the place where one lives a liveable place.

Let us not kid ourselves. We can be modest about our own abilities and yet recognize the high reputation Harvard Law School justly or unjustly enjoys. Because of this reputation, the law school produces a lot of prominent justices and scholars and professors and lawyers. If these pillars of society lack the perspectives and depth they would have gained from an education provided by a diverse faculty, then Harvard Law School is doing society a grave injustice.

It is also the case that in a deep sense Harvard Law School is failing as an institution. That it takes undeniably intelligent people and molds the vast majority of them into parasitic corporate lawyers is a disgrace, an unconscionable waste of human resources in a world in which so much injustice needs to be combatted. Of course, ending discrimination in faculty hiring may not make the difference. But things can't get worse. For all of Dean Clark's pious concerns about the "multiple criteria and desiderata" (he uses this expression in his 3/11/92 letter to The Law School Community) governing faculty appointments, he must realize that if corpses were propped up in front of the classes, the school would not send fewer idealistic lawyers into the world than it does today. Things can't get any worse, but the injection of diversity into the teaching process could very well make things better.

Nothing's certain, but we have to fight for what we think is right. Perhaps it all comes down to taking sides. Do we take the side of Charles Fried and Robert Clark? Or do we take the side of Derrick Bell and Jesse Jackson? Bell got tired of talking and took a courageous stand. Jackson came to Harvard and told us that our battle is part of a nationwide struggle against racism and that if we escalated things he would be with us. Fried and Clark...or Bell and Jackson? For many of us, this is not a difficult decision.

A final word to students: We have to be aware that when we protest, we take a risk that the administration will come down on us. If there were no risk, it would mean that the school were not being challenged. If the school were not being challenged, it would mean that the protest lacked power. Perhaps if we remember that civil rights protesters in the past faced dogs and mobs and guns, the prospect of an Administrative Board hearing will not seem so daunting.

And a final word to the Administration. You should do the right thing because it is the right to do. But if you need another reason, think back to your decision a few weeks ago to make tenure-track offers to four white men. You have conceded that these appointments were designed to bring peace to a divided faculty. Well, there may be peace among the faculty now, but you're still going to have a war on your hands with the students unless you cease your discriminatory hiring practices. And take heed: making examples of a few students will not gain you any peace—it will only harden the resolve of the rest of us.

You Can Just Forget the Y Chromosome

By Rich Wareing '93

RECORD Columnist

O.K., I'm a sports junkie. I admit it, I live for the days on Jeopardy when they have the Sports Trivia category. I confess, I've even watched Candlepins for Cash and Australian Rules Football. While much of this is procrastination, once and a while there's a story out there in sports that really catches my eye because it rises above outright greed, drugs, and lousy, whining, attitudes and re-affirms my faith in people and in the world. That once and a while last weekend was a 5'7" sensation named Kim Pehlke.

Kim Pehlke played guard for Western Kentucky University, and almost singlehandedly carried them

to a national title in Women's basketball. She was the kind of player you have to love. With four key players on the bench fouled out, Pehlke took control down the stretch in the semi-final against Southwest Missouri St. with a series of clutch jumpers, slashing drives to the hoop, and amazing no-look and behind the back passes. She ended up with 30 points and a bushel of great passes. In a losing effort the next day in the finals against Stanford, Pehlke still had 16 points, including 4 three-pointers and a runner in the lane that any big-time player would have been proud to call his own.

What really set her apart, though, was her hustle and her leadership. She was the smallest player on the court, but she was the heart and soul of the Lady Hilltoppers. Her poise and hustle reflected the kind of maturity and true grit which is all too rare among big-time stars. Even at the end, when the game was long over, she was still shouting directions and offering encouragement. She showed the kind of inner toughness and leadership that earns a guy like Larry Bird or Magic Johnson big-time contracts. She was truly a prime-time player, even if she never made it to prime time.

I used the past-tense in all this, because Kim Pehlke's playing days are over. They'll be no big money contract for her, no N.B.A. exposure, no endorsements, no stardom. This is, of course, because you're lucky to get a few hundred people to watch a women's basketball game. Now I will admit that there is something pretty damn exciting about seeing Michael

Jordan pull-off a reverse jam that you just can't get in a women's game. I will also admit that few, if any, women players can stick the jumper like Bird, or handle the ball like Magic could. Now all this has a lot to do with why few people bother with women's basketball, but there's more to this story than that.

There seems to be a perception out there that women athletes lack more than just the size and skill that comes from the y chromosome and many years of encouragement and practice. All too often you hear that they don't have the killer instinct, or that it's just a game to them so they don't have the same burning desire to win as do the men.

This is mullarky. The women athletes I have known played with no less intensity, no less determination,

Women athletes deserve our respect.

than men. Their victories felt just as good, and their defeats hurt just as much, even if fewer people went to watch. What they did mattered, because like all true competitors, they put a piece of themselves into the game. The people who criticize women's sports as boring or silly often spend too much time looking at highlight films or the cheerleaders and not enough thinking about the intangibles like pride and the will to win which make sports great, even heroic.

Indeed, the fact that there's no money in women's sports ought to tell you something about the character of the athletes. I saw far more bodies hitting the floor in pursuit of loose balls in the three women's games last weekend than I usually do in 5 or ten N.B.A. games. In an age where complacency, selfishness, and outright greed have come to define the big-time athlete, the Kim Pehlkes of the world deserve our attention and our applause all the more for their hustle and their class, even if they can't do a tomahawk jam.

When she graduates, I imagine Kim Pehlke will have to take up whatever it is she learned in college and face the work-a-day world. Whatever hardships she might face, I know she'll be O.K. because she leaves basketball rich. Her wealth is not in money, but rather in a reservoir of determination, a treasury of memories, and lessons about winning and losing. These things, not the fleeting cheers of crowds or the fickle praise of the media, are the stuff success is made of.

Law School Council Changes

COUNCIL, continued from page 2

tion to clinical legal education to curricular assessment), facilities and services (responsible for everything from food services to placement to health services to new buildings and renovations), finance (responsible for all financial aid office issues and public interest funding), programming (responsible for the annual Halloween party and charity auction and, with greater funding, more events next year), and administrative (an internal LSC oversight committee).

Another highly significant power and responsibility of the Council involves the appointment of students to student-faculty committees and liaison positions. Although it is commonly believed that students have little voice in administration decisions, almost forty students hold such positions on approximately fifteen committees (in fact, students are excluded only from faculty committees involved in personnel matters such as hirings, salaries, insurance plans, etc.). The LSC makes all such appointments (or nominates students) and these positions include the three student representatives to the administrative board, five of eight students on the student funding board, student positions on the faculty's clinical legal education committee, curricular assessment committee, financial aid committee, placement committee, public interest funding committee and liaisons to the registrar, and to health services and the admissions office. Clearly, the LSC is the place for students willing to work for change and improving HLS.

Notices of election dates and procedures are now posted in the Hark (see the LSC display case near the Coop) and are in the Adviser. As the LSC prepares to expand its role and move beyond this year of "rebuilding," responsible and decided workers are needed more than ever.

No Glove, No Love; No Rubber, No Duckie

By Alysse MacIntyre

I'm kind of the guilty, worrying type. I worry about all sorts of things. One of my recent worries has been about my friends who I put in my columns. I imagine them dead and at the Pearly Gates arguing with some overworked & underpaid GS 7 bureaucrat.

"Look," my friend yells, "I can't possibly be dead yet, I haven't had my fifteen minutes of fame!"

Heaven's Bureaucrat will pull up my friend's file on an IBM Mainframe (Like most bureaucracies, Heaven will be far behind the state of the art in technology.) "OK," Heaven's Bureaucrat will say, "Let's see. There was your picture in the local paper when you graduated class valedictorian from your high school. You got three minutes for that. Pictures always get a minimum of three minutes, except if it's in *Vanity Fair* or the *New York Times*, both of which get you five. Oh, except for the wedding announcements in the *Times*, they're still just three but we may be changing that soon...OK, now we're showing here that you were once a guest on *Studs*, but you lost, so you get 10 minutes there. If you had won you'd be way over the limit with 20 minutes. Gee, now, that's only 13 minutes I'm showing."

"So I'm not dead!" my friend will say.

"Oh, no, wait," Heaven's Bureaucrat will say, "there's one last item I've got here. It says that you were prominently featured in an Alysse MacIntyre column. In fact, it says here that you were featured in a box quote. It's indicated here that it counts for two minutes. Sorry, you're dead."

"God damn that Alysse! How did Heaven find out about this?" my friend will respond.

"God's an HLS alum, he still gets the RECORD."

Yes, and you thought God went to Yale, didn't you?

Dating in the Nineties is just much harder than I thought it was going to be. You just have to "discuss" so much, the biggie being AIDS. I know a lot of people have trouble discussing AIDS with a romantic interest. I, however, am not one of them. I've found a lot of ways to bring it up, ranging from the subtle ("Did I tell you I invested my summer earnings in condoms? I have a very diverse portfolio, Trojans, Kimonos, Maxx, you name it..."), to the blunt ("I'm HIV negative, what are you? Ever try those Glow in the Dark Condoms?") and

to the blunter still ("No glove, no love").

On my dates, however, the AIDS and Condoms discussion is comparatively easy to the really hard topic: what I call The 'You won't put me in your column, will you?' discussion.

I can have a hard time getting a guy to have coffee with me without this coming up. For some reason men are intensely paranoid that I'll skewer them in a column. I asked a White Male Heterosexual friend about this. I said, "I don't get it? Do I come off as a vindictive ball buster?" He said, "Well..."

On my dates, the AIDS and Condoms discussion is easy compared to the really hard topic: what I call The 'You won't put me in your column, will you?' discussion.

I said, "One more word and I'll make you a soprano!"

One guy told me that the problem was that he just didn't want anyone to recognize him in my column. I said no problemo; that I would just describe him as a hopeless dweeb. He didn't like that suggestion very much. Boys. First they don't want to be in your column; then they want to be in your column but only so long so they're disguised. But then they want the disguise to be flattering so they can tell all their friends, "Look, I'm in Alysse MacIntyre's column."

he blunter still ("No glove, no love").

A close friend suggested that I confront my image as someone who would hang a man out to dry in my columns head on. We had a long, drunken, heart-to-heart talk about this. I admitted that I had been inspired by Andrew Dice Clay's transformation and as a result had been working on a column with the tenta-

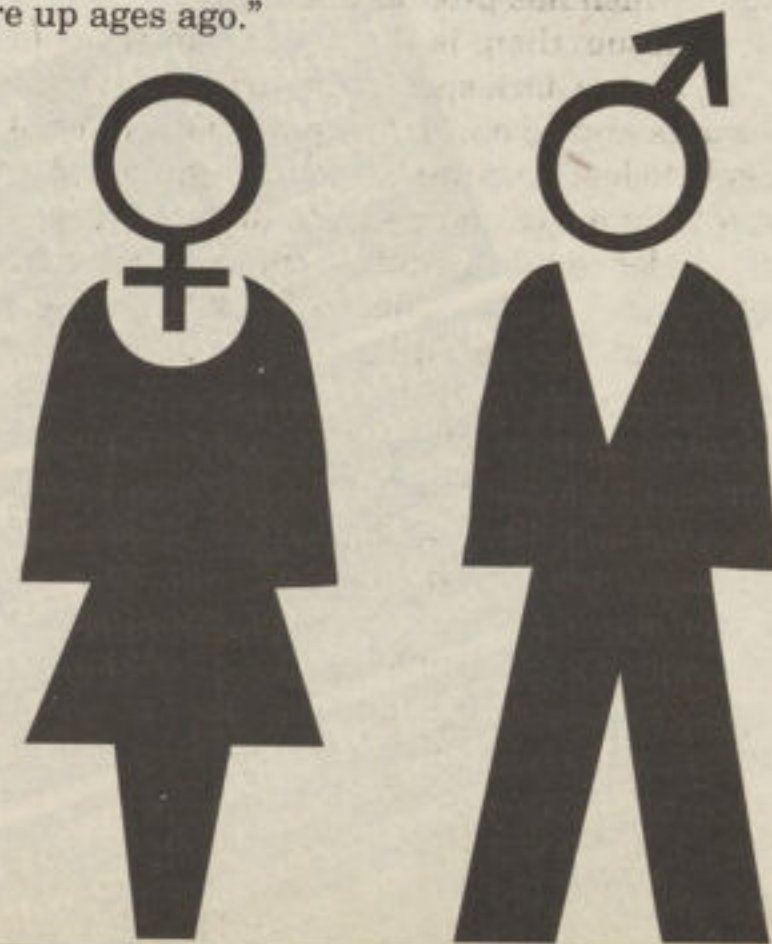
tive working title, "Ode to the White Male Heterosexual." The problem was that I had been unable to come up with enough to reach my 750 word minimum.

She suggested that I write something spiritual, maybe quote the Bible. She thought if I quoted the Bible it would reflect my more intellectual side and would reveal me as deeply contemplative and committed to goodness. I liked this idea. Besides, I've always liked Christ. As far as saviors go, you really couldn't ask for more. I mean, this guy threw parties they are still talking about. So we got out the New Testament and started looking for a little inspiration. I have to say, you really haven't read the Bible until you've read it three sheets to the wind. All that begetting and smiting really comes alive.

After a while and several more drinks (who could count exactly how many) we hit pay dirt: Luke 5:10 "Jesus said unto Simon, Fear Not; from hence forth thou shalt catch men." Listen, I am down with that. In fact, I don't you could find a Bible quote more inspirational. Give me that Old Time Religion, baby.

"You're not really going to say that in a column, are you?" asked my friend.

"Why not?" I responded, "Christ's fifteen minutes were up ages ago."



A Repair Manual for Democratic Presidential Hopes

By Brian Bendig

For most of the last quarter-century, the United States has had a "divided" government. Republicans have resided in the White House since 1969, except during Carter's Interregnum, while the Democrats have had large majorities in the House of Representatives and the Senate. Many people have tried to explain our divided government, with generally partisan frames of reference.

Now comes Barney Frank, with hopes

of trenchantly analyzing and remedying the situation. Congressman Frank (D-Mass. and HLS '77) deserves his reputation as a very smart politico. He has just written a slim and expensive volume that seeks both to explain the phenomenon and outline a program to overcome it through Democratic recapture of the presidency (*Speaking Frankly: What's Wrong With The Democrats And How To Fix It*, [164 pages, \$18.00 hardcover]). Frank's book is basi-

cally a repair manual for the Democratic Party's presidential hopes.

His argument is lucid and lively. Stripped to the basics, the first part goes like this: the Democrats — the majority party in American politics from the local level to Congress — will not win presidential elections until they learn that such elections are about values, not issues. Frank maintains that the Democrats win the lion's share of the other elected offices in this country because those elections are about issues. The Democrats, he says, are in step with

voters on issues. However, they are woefully and self-destructively out of step with many voters' values.

Frank then moves from diagnosis to cure, outlining a strategy of action for the Democrats. At the core, this strategy involves reformulating the Democrats' main, national-level party positions so as to make the party seem less leftist to mainstream voters. Democratic presidential candidates will thereby win crucial swing voters, the people who he claims vote for Democrats in local elections but are turned off by their percep-

tion of Democratic presidential candidates' left-leaning.

Such candidates have to overcome their fear of speaking out candidly on what Frank calls "notsapos" — dicey matters such as affirmative action and the handling of crime. The Democratic Party is crippled in presidential elections because it has a "notsaposta mind-set" that gives the franker Republicans a huge advantage in appealing to voters. As

evidence for the truth of Frank's claim, one could cite the recent flailing of Senator John Kerry for daring to publicly question affirmative action.

Frank deploys several specific examples of ways to overcome this mind-set and win crucial votes while remaining true to the principles of the party. Democrats can turn issues into appeals to what people seem to value highly, such as national pride and personal safety. For example, the post-Cold War redirection of defense funds into areas of genuine and pressing need should be pitched to voters

as a "victory dividend," not a "peace dividend." Also, Democratic candidates should become much tougher about crime while not abandoning accused or convicted criminals' rights. Frank identifies the 1988 campaign as the prime example of the advantage Republicans reap from monopolizing anti-crime sentiment. He adds that Democrats should advocate stiffer criminal punishment and avoid gun-control efforts, since the latter alienate citizens who own guns.

Frank's book makes very stimulating reading, whether or not one agrees with his ideas about what the Democrats need to do if they hope to recapture the White House. He nicely walks the very narrow line between advocating expediency and adhering to principle, giving the impression that he never sacrifices either. His detailed points in support of his diagnosis and proposed cure are excellent commentaries on contemporary political thinking.

Speaking Frankly does have a few flaws. First, Frank is a little too schematic about his issues-values distinction as it applies to levels of American elections. Most basically, he never clearly spells out the difference between an issue and a value. This aside, he seems to think there is a direct correlation between 1) the greater grandeur or power in an elected office and 2) the primacy of "values" over

"issues" in voter choice. The truth is probably much different. For example, voters are probably more likely to be concerned about the value of safe streets when voting for sheriff or mayor. They are probably more concerned about the constitutional issues surrounding coerced confessions when voting for a presidential candidate, if at all.

Second, Frank may be wrong about the principle cause of divided government. Each party's lock on the different branches is perhaps a result of the pessimism with which people have come to regard the ability of government to do things well. This pessimism may have been channeled into the voter's self-prophecy of creation of relative stalemate, of antagonistic control over the two elected branches of the national government. Each national party then follows the voters in building up a strong stalemate factor, with the Supreme Court as the pivot of the stalemate.

But the main weakness of Frank's argument is his characterization of the contemporary electorate as passive. Frank, a politician, views the voters as driven to a large extent by how things are presented to them; in other words, they are highly manipulable. This is a weakness for two reasons: 1) it insults voters, and 2) it is probably untrue.



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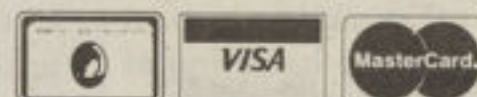
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OBJECTION! was written and programmed by Ashley Saunders Lipson Esq., J.D., LL.M., M.A., As.D., author of *Documentary Evidence*, 1986, and *Demonstrative Evidence*, 1988, both for Matthew Bender Inc., in addition to *Law Office Automation* for Prentice-Hall, 1989, and over 40 articles. He is a 20-year trial lawyer with membership in The ABA, ATLA, Mensa Lawyers, Volunteer Lawyers For The Arts, The College of Computer Lawyers, and several bar associations, including California and Michigan.