



Harvard Law RECORD

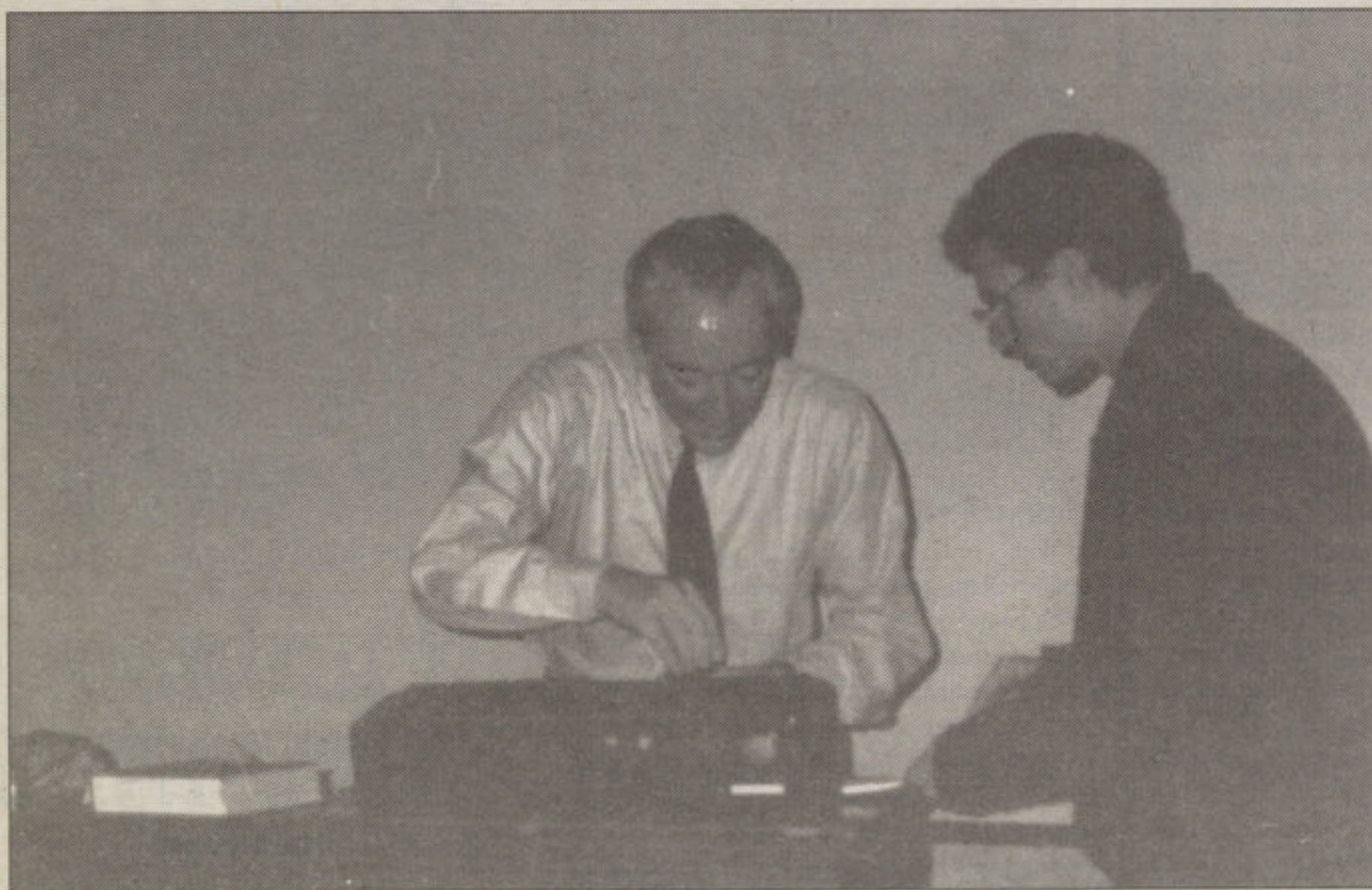
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Professor Charles Nesson '63 prepares to dazzle his 8:30AM Evidence class with his dancing prowess. See photo feature, page 15.

Nesson Stretches to Get Students to Class on Time

By Matthew Huggins

It's 8:15 AM. Do you know where your law professor is? If he's Prof. Charles Nesson '63, he's in Austin North each Monday and Tuesday, leading his Evidence class in a 15-minute calisthenics program to loud music projecting from the portable stereo he brings with him to class.

According to Nesson, the benefits of this morning prelude are two-fold: First, he said, the class starts on time and, second, it starts up to speed. "I hate wasting 15 minutes at the beginning of each class with everyone half asleep," said Nesson. Since his own morning routine normally includes stretching, he thought "why not do it in class?"

But morning exercise has not been the only manifestation of Nesson's unconventional

approach to classroom instruction this fall. Vexed by the annoyance of having students come late to class, Nesson also considered imposing a sanction that would end the class an hour and a half after the last student arrived. The class debated the idea Monday, but Nesson decided that rather than a punishment, he needed an inducement.

"What could I do that could get you to come to class on time?" Nesson asked his students. "I could try to do something absolutely outrageous every morning that would get you to come and see me," he said.

This past Tuesday that meant that the relaxing classical or new age music some students were expecting was replaced by pounding techno club music, to which Nesson performed a series of pulsating, jerking dance steps.

Student reaction to the "8:00 Stretching," as it is billed, seems

to be mixed. Some students seemed unaware of the early morning musical offering: "This is the first time I've been here early enough to hear the music," said Yasmeen Hassan '94.

"The only disadvantage is having to arrive so early," said

please see **NESSON**, page 15

Law School Council Passes Beer Bill on Second Attempt

By Maria Politis

Beer.

The subject of intense debate at the Law School Council's last meeting, beer seems to have become the LSC's four-letter word. Controversy "brewed" Monday night when the Monster

HLS Report Finds Immigrants Face Increased Backlog

By April Rockstead

According to a report prepared at HLS and released to the RECORD this week, new asylum officers hired and trained under revamped US immigration and naturalization procedures adopted in 1990 tend to be kinder and gentler than their predecessors. However, administrative inefficiencies are still worsening a staggering backlog of cases.

The report is the result of a research project undertaken by the National Asylum Study Project at the Law School and funded by a Ford Foundation grant. Researchers, led by HLS Lecturer on Law Deborah Anker '84, analyzed questionnaires submitted to attorneys and non-governmental organizations representing asylum applicants and INS dispositional records in individual asylum cases between November 1991 and July 1993.

The researchers' conclusions

include:

— The backlog of cases pending with the asylum officer corps grew from about 219,000 cases pending the end of fiscal year 1992 to more than 318,000 pending cases as of August 1993. Of these, more than 114,000 cases were carried over from the previous system's backlog.

— Inadequate staffing and administrative and managerial problems result in an inability to remain current with new cases filed or deal with the backlog. The report also cited "failure to enter over 170,000 asylum cases into the computer data base for one and a half years, lost files, and wrongful termination of active cases without explanation."

— In 70 percent of the interviews analyzed, asylum officers "appeared sensitive, compassionate, professional, friendly, business-like, or polite." However, 22 percent of the officers conducted

please see **REPORT**, page 12

New Review Editors Get Going

Low Percentage of Women Receives Attention

By Jeff Bucholtz

The Harvard Law Review welcomed 36 2Ls and six 3Ls into the hallowed halls of Gannett House this summer. The student-run *Review*, one of the most prestigious journals in the world, selected the incoming editors from over 200 applicants in an intensive process that continues to draw attention to the ethnic and gender constitution of its ranks.

Women make up one-quarter of the entering class of editors, which David Inniss '94, the *Review*'s editorial assistant, describes as "a slightly lower percentage than we've had in the last few classes." Women constitute 38 percent of the *Review* class of '95.

Review Treasurer Mike Labson '94 described the *Review*'s disproportionately low number of women as "a problem we're trying to address." He estimated that women pick up the competition in numbers "a bit lower than their representation in the Law School population."

Last spring, the membership of the *Review* voted down a proposal to include women in the journal's affirmative action policy. Labson said that "after the transition to new officers in February, the issue could be reexamined."

In the meantime, according to Labson, the *Review* has been gathering data on the percentage of women "picking up the competition, finishing it, getting on based on grades — everything — to pinpoint where the dispari-

ty is coming from."

"It's an important question," said Cathie Struve '95, a new editor. "We should be asking why there's such a dramatic underrepresentation." But Struve emphasized that "the people are great, so even though it would be nice to have more women around, there haven't been any problems."

The *Review* employs an affirmative action policy for African-Americans, Asian-Americans, Latino-Americans, disabled persons, and Native Americans. Inniss noted that eligible applicants may be considered under this policy at their option.

The new 2L members include five African-Americans, four Asian-Americans and two

please see **REVIEW**, page 13

Truck Coalition, by a narrow 10-8 margin, pushed through a resolution to serve beer at every LSC meeting.

Opponents of the resolution are quick to point out that the student body will be picking up the tab for the representatives' alcohol.

The resolution allocates a beer budget of \$25 per week for LSC members and any students who wish to attend their meetings. In a compromise measure, LSC members who want to drink can chip in to conserve the budget.

The resolution, which failed two weeks ago, was sponsored by the Monster Truck Coalition, a small group of students who centered their successful campaign in last spring's election on two promises: to get beer served at every LSC function and to have a monster truck pull on Mass. Ave.

"This is a joke," said Spencer Levy '95, LSC representative, who voted against the resolution. "We're going to spend the students' money on ourselves. This reflects badly on the whole Council."

Although as LSC president and chair of meetings Enu Mainigi '94 does not vote, she too opposes the resolution. "I question our right as the Law School Council to spend LSC money so

irresponsibly on ourselves, and not on student services," she said. Mainigi listed the used book sale, Hemenway improvements, and the ATM machine (expected to arrive early next year) as significant LSC accomplishments, and expressed

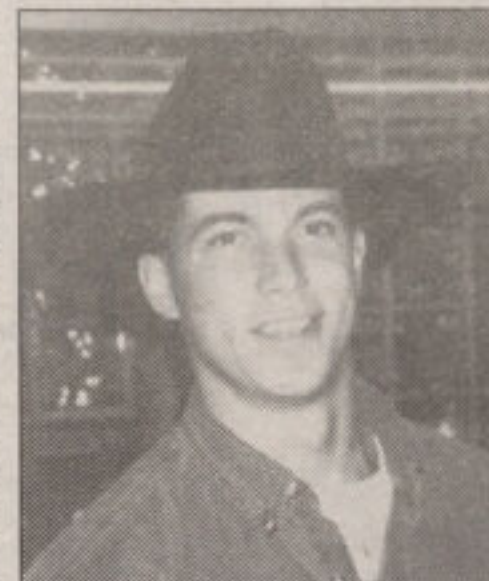
concern that the beer resolution would obscure them. She also said that in its campaign last year, the Monster Truck Coalition never specified that student funds would be used to buy the beer.

LSC Representative and Monster Truck leader Bill Growney '95 thinks the opposition should stop complaining. "This is the reason why we need beer," he said. Growney argued that beer is served by practically all other student organizations and that the beer may increase student attendance at meetings.

please see **BEER**, page 14



Deborah Anker '84



Bill Growney '95

BSA Expands Staff, Changes Methods

By David S. Clancy

In an effort to improve its classroom effectiveness, the Board of Student Advisors this fall adopted a larger staff and a new team-teaching approach to its Introduction to Lawyering (ITL) program. The experimental changes indicate one consequence of the Law School's recent focus on the quality of the first-year curriculum.

In past years, ITL, a mandatory pass/fail course for first-year students, has been taught by a single teacher for each 1L section. This year, however, six of the 42 1L sections are being taught by "teams" of two BSA members — each team composed of one 2L and one 3L.

BSA President Jim McNasby '94 expects the quality of ITL teaching to improve as a result. Second-year instructors, new to BSA, will benefit from the guidance of more experienced 3Ls, McNasby said. In the past, 2Ls have taught sections without any in-class support from 3Ls.

"This also establishes consistency from year to year," said McNasby. "Each team-taught section will always be headed by a 3L who taught the year before."

If team-teaching is received favorably by 1Ls, it may be dramatically extended in the future to all ITL and 1L moot court sections, McNasby reported. Such a change would require doubling the traditional size of the BSA staff, from 42 to 84 members.

A modest increase in staff size took place this year, from 42 to 48, in order to run the team teaching experiment.

More Changes in the Works

The potential shift to universal team-teaching is only one facet of a larger picture; numerous initiatives that would revamp or expand BSA's offerings are currently under consideration. The main focus of these innovations is to foster a filtering down of experience and knowledge from 3Ls to 2Ls.

According to McNasby, Prof. Charles Nesson '63, faculty advisor to the BSA, has in mind the establishment of a "mentorship program" within the BSA.

Another possibility being considered is the development of a pass/fail course for 2L BSA members in writing, research, and pedagogical skills. Such a course would "help prepare 2Ls for mentorship" in their third year, McNasby said.

Significant alterations in the way the 1L moot court program is run are also in the works, but details are not yet available.

The changes come in the wake of faculty pressure to improve the way 1Ls are taught "legal skills." The Legal Education Committee, whose job it is to evaluate the scope and quality of the current legal skills curriculum, devoted much of its attention to the first year program in the comprehensive report it issued last year.

The committee is appointed by Dean Clark '72 and chaired by Prof. Todd Rakoff '75.

The general goal of the committee is to "beef up" the legal skills component of the first year by "broadening the scope of skills covered," said Rakoff. Faculty members have said the first-year program is too focused on litigation and should attempt to expose students to non-litigative skills like negotiation and mediation.

Quality is also an issue for the committee. While no sense exists that "the BSA is a problem," said Rakoff, steps to ensure quality of teaching will be investigated. Among the steps proposed are more involvement of faculty members in the teaching of skills, and a greater mix of faculty/student teaching.

The BSA Steering Committee is already responding to the committee's evaluation by considering ways to include negotiation and mediation in the course of study, McNasby said.

But both McNasby and Nesson denied that quality-improvement measures respond to poor student or faculty perceptions of BSA teaching. Instead, McNasby said, "evaluations were higher last year than they have ever been."

"It was my judgment that the program would prosper" if these changes were made, Nesson added.

While no sense exists that "the BSA is a problem," said Rakoff, steps to ensure quality of teaching will be investigated.

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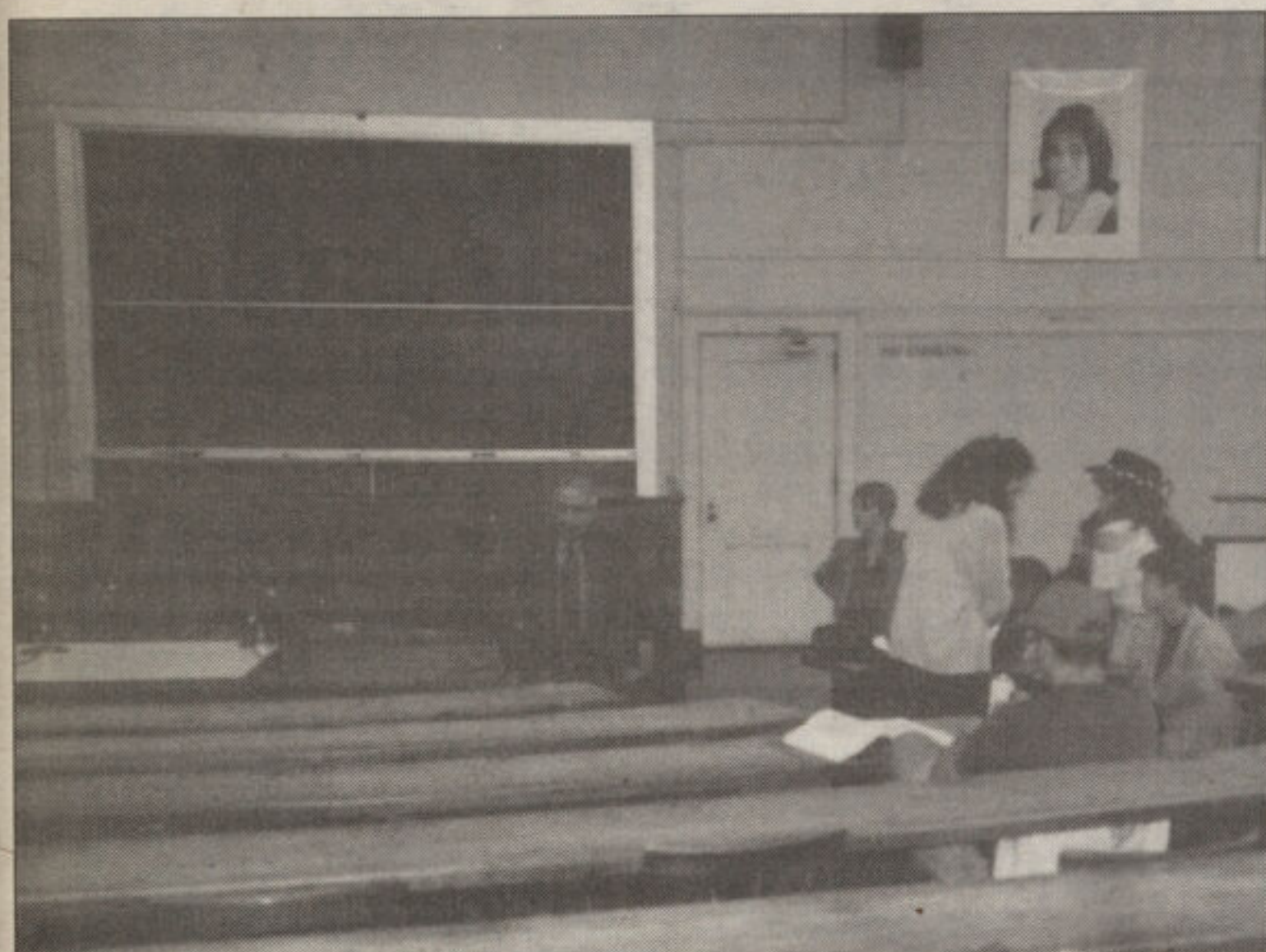
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Professor Fried and student panelists await the audience that never came.

Speaking Up in Our Indifferent Community

Panel Canceled Due to Lack of Turnout

By Louie Lopez

The One-L orientation forum, "Speaking Up In Our Community of Differences," went unheard for a second time Tuesday night when its five student panelists nearly outnumbered those who attended. The forum, which was to be moderated by Prof. Charles Fried, would have addressed the issues of free speech, student-labeling, and differing viewpoints at HLS. But due to lack of any audience, the panelists canceled the event, and instead spoke informally to students who had specific questions or concerns.

Panelists pointed to bad publicity, competing campus events, and lateness in the forum's scheduling as possible explanations for the poor turnout. In recent years, when held during the first weeks of school, the forum met with large audiences of both students and faculty.

Fried indicated that the event, already postponed once from the week before, would be scheduled for a third time.

Students Discuss Labeling

The panelists who stayed on to talk informally with students mostly agreed that student-labeling is one of the biggest problems at HLS. "People are afraid of being labeled as the sum of the things they say in class," said panelist Bill Waller '94, "so instead they choose not to say anything." This categorization

becomes detrimental in that students are made uncomfortable to speak out for fear of being labeled as a conservative, liberal, or even as a racist, Waller explained.

Panelist Robin Lenhardt '94, however, called student-labeling merely "a symptom of a greater problem of learning

to recognize differences as a community."

Panelist Jessica Herrera '95 observed that "there seems to be a genuine disregard and lack of respect for other people's points of view." She said that some people are unfairly labeled not only for expressing an opinion in class, but also for mere association with a particular group or organization.

And said panelist Todd Hammer '94: "People in general are too concerned with their position rather than open discourse. People do not want to hear the other side of an issue; they would rather have their own viewpoint reconfirmed."

The five student panelists were selected to represent only themselves and not any affiliated organizations. They encouraged all first year students as well as second and third year students to attend the rescheduled forum, which they view as a vehicle for improving community life at the Law School.

The forum, an annual event begun in 1991, is sponsored by the Office of the Dean of Students in consultation with various student organizations. No rescheduling date was announced as of Wednesday, when the RECORD went to press.

Fried indicated that the event, already postponed once, would be scheduled for a third time.

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Ropes-Gray Room, 2nd Floor of Pound Hall

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BRIEFS



COGBLLI Changes Name to LAMBDA

At the end of last semester, COGBLLI (Committee on Gay Bisexual Lesbian Legal Issues) changed its name to HLS Lambda. The name change was precipitated by several years of dissatisfaction with the acronym, according to Carlos Vasquez '94, who chairs the organization. "Many members felt that any acronym which used the letters L, B, and G would sound awkward, so a decision was made to find a name which reflected the purposes of the group and did not sound like a machine part."

The new name adopted by the organization is shared by many national and international legal gay, lesbian, and bisexual organizations. Lambda, a letter of the Greek alphabet, has symbolized both the Scales of Justice and the concept of balance. Used by the Spartans on their shields and later adopted by the Romans, the first use of the symbol to represent gay and lesbian rights was by the Gay Activists Alliance in 1970. In 1974, the International Gay Rights Congress adopted Lambda as the International symbol of lesbian, gay, and bisexual rights.

Student Awarded Minority Scholarship

Anjelica Mooney '95 will receive up to \$5,000 in tuition this year, as recipient of the fourth Fredrikson & Byron Foundation Minority Scholarship. Mooney was chosen from over 45 applicants nation-wide for the scholarship, which is awarded annually to an ethnic minority student. The purpose of the scholarship is to promote legal training of minority lawyers and to encourage them to join and excel in the private practice of law with major firms, stated the firm sponsor in a press release.

Mooney went through several rounds of selection, including a telephone interview and interviews at the firm's office in Minneapolis, before being named the winner. The scholarship provides tuition support on a "need-blind" basis, and applications can be obtained from the candidates' law school.

Shuttle in Danger of Discontinuation

The Somerville Shuttle may soon be canceled, according to John Bates '95, chair of the LSC committee on facilities and services. Currently, the shuttle picks up students and staff in front of the Lewis International Law Center, Monday through Friday, hourly from 6:00 PM to midnight, and takes them to their homes in Somerville. However, ridership has been lower than anticipated, and absent increase, it has become uneconomical for Harvard to provide the service.

Last spring, the cost of providing the shuttle service came to an average of \$18 per student. Tickets, however, can be purchased for as little as \$.75 per ride, much cheaper than a taxi. The shuttle offers students the added convenience of a bike rack.

Tickets for the Somerville Shuttle can be purchased at the Building Operations Office, L194, 9:00 AM to 4:00 PM, Monday through Friday.

Alums Pen Law Firm Guide

Which law firm is rumored to hold champagne parties when an associate bills more than 100 hours in a week? Students can find the answer in the newly published *The Insider's Guide to Law Firms*, written by Sheila Malkani '93 and Michael Walsh '93. The two recent HLS alums spent an entire year organizing a team of law students to investigate firms nationwide and compiling the information they obtained. The book profiles more than 200 firms located in twelve cities, providing anecdotes and tips on how to get hired, as well as more conventional statistical information.

"We both went through the daunting process of trying to distinguish law firms and found it nearly impossible to tell these places apart with the information provided by the law firms," Malkani said of what inspired she and Walsh to take on the project.

Harvard Ranked Top University

U.S. News and World Report ranked Harvard number one out of 204 National Universities. Amherst was named the top national liberal arts school, knocking Williams out of the top spot for the first time in two years.

The complete rankings for national universities were: Harvard University (MA) #1, Princeton University (NJ) #2, Yale University (CT) #3, Massachusetts Institute of Technology #4, California Institute of Technology #5, Stanford University (CA) #6, Duke University (NC) #7, Dartmouth College (NH) #8, University of Chicago #9, Cornell University (NY) #10, Columbia University (NY) #11, Brown University (RI) #12, Northwestern University (IL) #13, Rice University (TX) #14, Johns Hopkins University (MD) #15, University of Pennsylvania #16, Georgetown University (DC) #17, Washington University (MO) #18, University of California at Berkeley #19, Vanderbilt University (TN) #20, University of Virginia #21, University of California at Los Angeles #22, University of Michigan #23, Carnegie Mellon University (PA) #24, Emory University (GA) #25, and University of Notre Dame (IN) #25.

Judge Kozinski Speaks at HLS

The Honorable Alex Kozinski of the US Court of Appeals for the Ninth Circuit spoke yesterday at 7:30 PM in Pound Hall. His speech, entitled "The MTV Constitution," was sponsored by the Federalist Society.

Judge Kozinski is one of the most outspoken, controversial jurists in the nation today. Appointed to the US Court of Appeals in 1985, he quickly gained prominence for his witty writing style. His recent publications and articles include *Confessions of a Bad Apple*, on the judicial clerkship selection process, *Trouble in Super Marioland* on Nintendo video games, and *Through the Open Door: What is it Like to be an Immigrant in America?*

At No Loss For Words

Professor Co-Authors 11-Volume Treatise

By Lisa Zornberg

How many law professors can say their life's works have been featured in the *New York Times*? Or that the Oxford English Dictionary (Second Edition) credits them with creating words now commonplace on Wall Street? Then again, how many professors can say their works have been cited more than 50 times by the Supreme Court and more than 1,000 times by state and Federal judges? Probably only Louis Loss, the emeritus Harvard Law professor who, at age 79, has just co-authored an 11-volume treatise on securities law, updating the single-volume treatise he wrote 42 years ago.

In last Sunday's *Times*, a full-page feature story celebrated Loss' "encyclopedic" treatise, entitled "Securities Regulation," as well as the career of a man who has played a defining role in developing the law as we know it.

"He has taught more people about securities law than any other person alive today," the article proclaimed.

Back in the early 1950's Loss was the first academic to synthesize and evaluate all the laws, regulations, and judicial decisions involving modern finance. He is credited with coining the term "securities regulation," as well as the word "tippee," which refers to the individual who illegally trades on inside information about stock.

Moreover, many of Loss' ideas about market regulation — at one time novel and controversial — are now the accepted rules of law. For instance, his "shingle theory," which caused a huge stir when first proposed in 1939, is now the governing standard. Overcoming opponents' claims that Government has no business interfering in the marketplace, the theory holds that lawyers who "hang out their shingles" imply that they will deal fairly with customers.

But Loss' professional life has extended well beyond the ivory tower. In more than 50 years of practice, he has advised legislatures throughout the country and the world, including the US Congress, on securities law. In the 1970's he even attempted to rewrite into one coherent statute all of the existing national securities laws, regulations, and court decisions. The 700-page effort eventually failed in Congress but, significantly, it is regularly cited by courts interpreting securities law, and fueled the passage of numerous SEC regulations.

The *Times* called the measure "the most successful bill ever to fail in Congress."

Loss also played a pivotal role in

developing the initial theories that allowed the Securities and Exchange Commission to prosecute illegal insider trading under the anti-fraud provision of the Federal securities law. During the Kennedy Administration, Loss turned down an offer to head the SEC.

Throughout his career, Loss has strongly advocated that market integrity can best be ensured, and fraud and self-dealing reduced, by mandatory and complete disclosure. Yet, he has resisted identification with any one theory of the law, which may have increased his credibility in the eyes of courts and other academics.

Joel Seligman, the University of Michigan professor with whom Loss co-authored his latest work, told the *Times*:

"When I began work with him on the treatise I asked him, 'What is your philosophy?' He [Loss] said, 'I don't have a good philosophy other than use good judgment.'"

The son of immigrants from Minsk, Russia, Loss grew up in Lancaster, PA, and knew at a young age that he wanted to become a lawyer. In 1934, he completed a pre-law major at the University of Pennsylvania and entered directly into Yale Law School.

Upon his graduation in 1937, Loss headed for Washington, DC, where he worked for the fledgling SEC, established only three years prior. It was any exciting time to be in Washington, Loss told the *Times*, and moreover, big Wall Street firms were not hiring Jews.

Loss served as an attorney for the SEC until 1948, and as SEC associate general counsel from 1948 to 1952.

His academic career took flight in the early 1950's, when he taught part-time at Yale and at the George Washington University School of Law. Loss arrived at Harvard in 1952, where he remained a faculty member for the last 41 years.

While his new treatise in many ways represents the culmination of a spectacular career, it is not the finale. Loss continues to be involved in pending cases concerning securities laws, and is

already planning his new book, tentatively called *Anecdotes of a Securities Lawyer*.

By his own account, however, Loss' true love has always been writing treatises. He told the *Times*: "There are people at this faculty who scorn treatise writing and liken legal treatises to battleships — prime, prestigious stuff in their time, but not really worth their keep in the contemporary world. They prefer to write about the sex lives of caterpillars. But what they don't realize is that these books have shaped the law. They have made a field of law that didn't exist before."

"He has taught more people about securities law than any other person alive today," the article proclaimed.



Professor Louis Loss

Hey Professors!

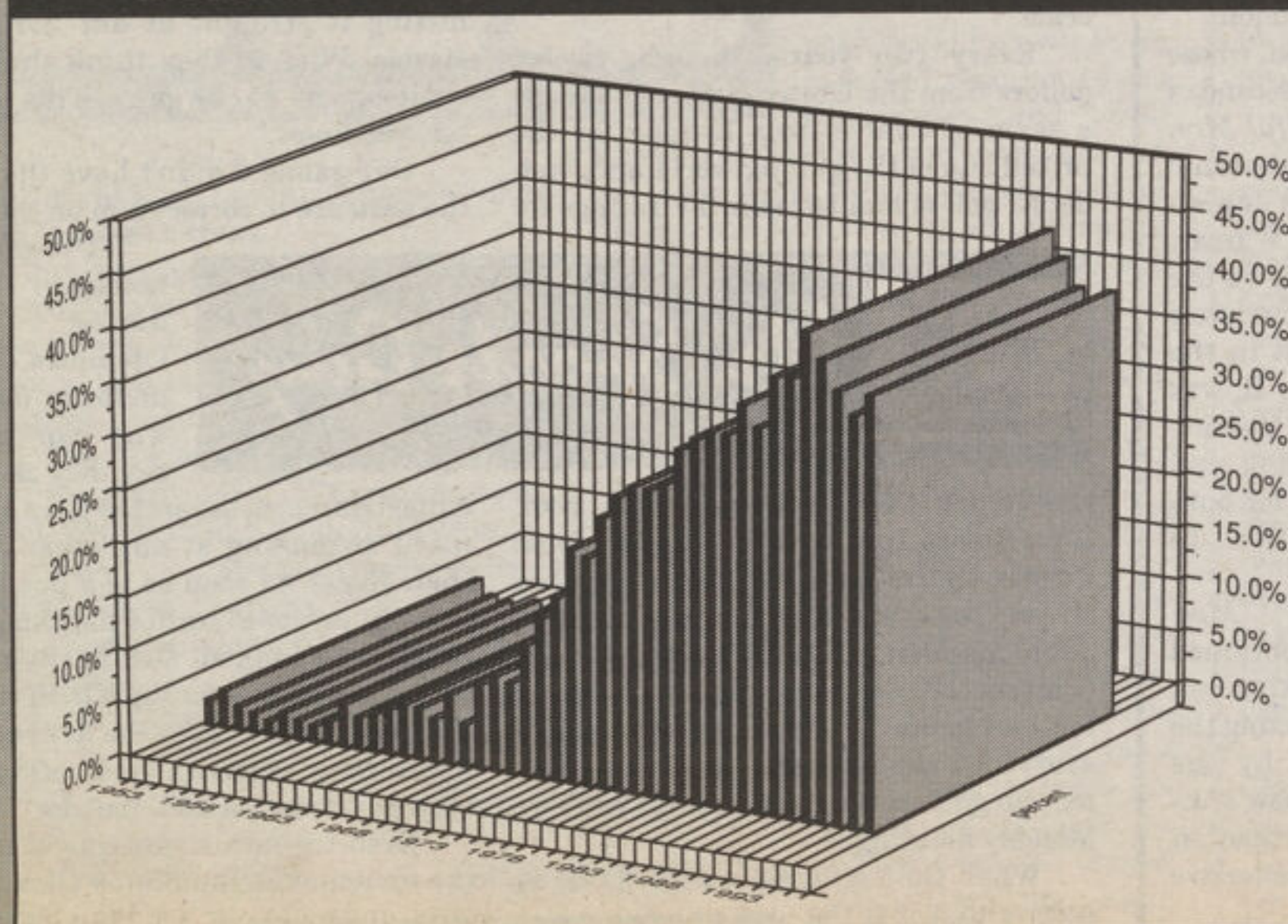
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Women at HLS

Celebration 40, commemorating the 40th anniversary of the first women graduates of Harvard Law School, will take place this weekend. In the years since 1953, HLS women have assumed leadership roles in all areas of the law. This feature commemorates some of their exploits.

WOMEN AT HLS BY GRADUATING CLASS YEAR



Then: A Little History — Now: A Lot to Celebrate

HLS Women on the Bench

(as of November, 1992)

Federal:	
Appeals court judges	2
District court judges	4
Administrative appeals judges	1
Local and state judges (all levels):	19
Judges in foreign countries:	8
(Canada 4, Sweden, Austria, South Korea, Belgium)	

•The school was nearly a century old in 1910 when Dean James Barr Ames' proposal to admit women was debated by the faculty. Professor Joseph "Bull" Warren protested, "But my teaching technique will have to change." Dean Ames, L.L.B. 1872, is said to have replied, "Is that an argument for or against?"

•In 1948 a young man, following the customary practice of bringing friends to classes, invited his fiancée to Professor Roscoe Pound's lecture. Detecting a broad-brimmed hat in the last row, Pound 1889-'90 asked, "Is that a woman back there?" When the student said "yes, sir," Pound ordered the woman to leave.

•A year later, Dean Griswold '28, S.J.D. '29, announced that women would be admitted to the School in 1950. "Opportunities for women in the law are still limited," he stipulated, "and the faculty is well aware that many able men are turned away from our doors every year. It is our expectation that we will admit only a small number of unusually qualified women students, for the present, at least."

•In the fall of 1950, thirteen "unusually qualified women" — four from Radcliffe College — joined a class of 520 men. One ladies' room was added in the basement of Austin Hall. The women were permitted to eat at the graduate cafeteria, but no dormitory accommodations were provided for them until Wyeth Hall opened in 1958.

•From 1950 until student protest put an end to the tradition in 1968, Professor Barton Leach held "Ladies' Day" — a single class each month when women students were invited to speak. Charlotte Armstrong '53 recalls, "Leach sat in the audience and asked questions in a 'humorous' tone of women, who were exhibited on the podium rather like performing bears."

Alum Counsels Working Mothers in the Law

By April Rockstead

The celebration of the 40th anniversary of the first women graduates at Harvard Law School shows women have come a long way in the legal profession, but many of the events planned for the Alumni Committee's "Celebration 40" are geared toward helping women deal with the reality that there is still a long way to go.

Anne Cicero Weisberg '85, chair of Celebration 40, will be providing a case in point with a panel simulating a maternity leave negotiation between an associate and "big firm" partners. The "partners" will be played by women who are partners at big firms.

As co-author with another HLS alum — Carol Buckner '82 — of a book due for release by Doubleday in February entitled, *Everything a Working Mother Needs to Know*, Weisberg is something of an expert on the subject. She described the book as a "practical and anecdotal guide for working mothers."

Some students may find her advice surprising. "You have your greatest leverage when you're interviewing, believe it or not, and you should try to find out as much as you can about how working mothers are treated at the firm," Weisberg said.

"I know there is a fear that if you ask these questions, your [potential] employer is going to say, 'She's going to get pregnant, and I don't want to hire her.' But is that a place you would want to work?"

Weisberg and Buckner interviewed working mothers across a wide variety of professions while researching the book, and although they found a great deal of commonality in the problems working women face, each profession may have its own special hurdles.

"Becoming a mother may affect a business manager by changing which meetings she is invited to and how fast she advances along the corporate ladder," Weisberg said.

"But a lawyer is obviously going to feel it in the dimension of time, because the whole profession is based on billable hours."

Weisberg and Buckner decided to write the book while both were employed by the New York firm Berle, Kass & Case. Although both decided to leave private firm practice — Weisberg to work on the book full-time and Buckner to accept a position as a clinical professor at New York Law School — combining work and motherhood can be immensely satisfying if the environment is right, Weisberg said.

"If this book can help one working woman have a better experience, then I feel I will have really accomplished something — more than I would have accomplished practicing law the way I was practicing it," said Weisberg, who will spend the next year publicizing the book.

"That's not to say it can't work. The question is, do you enjoy private practice enough to put the effort into making it work? I think Carol and I both decided the answer to that question was no."

But even with their firm accommodating them in ways such as permitting part-time work, Weisberg said, part of the reason she opted out has to do with the difficulties women face in attempting to combine motherhood and professional work.

"If it had been really easy to be a working mother [at a private firm], I would probably have stayed even if it was not as satisfying a job as I wanted," she said.

Making it easier to be a working mother requires changing societal conceptions about gender roles in parenting, Weisberg said.

"Until we are all working parents, as opposed to working mothers," she said, "the responsibility of child care and household responsibilities are always going to fall on the mother — and that's a problem."

The above information is excerpted from "A Cause to Celebrate" written by Nancy Waring.

In the Name of the Father

Mass for Arras
By Andrzej Szczypiorski
New York: Grove, 1993
188 pp. \$18.95/hardcover

By Mike Fischer '95

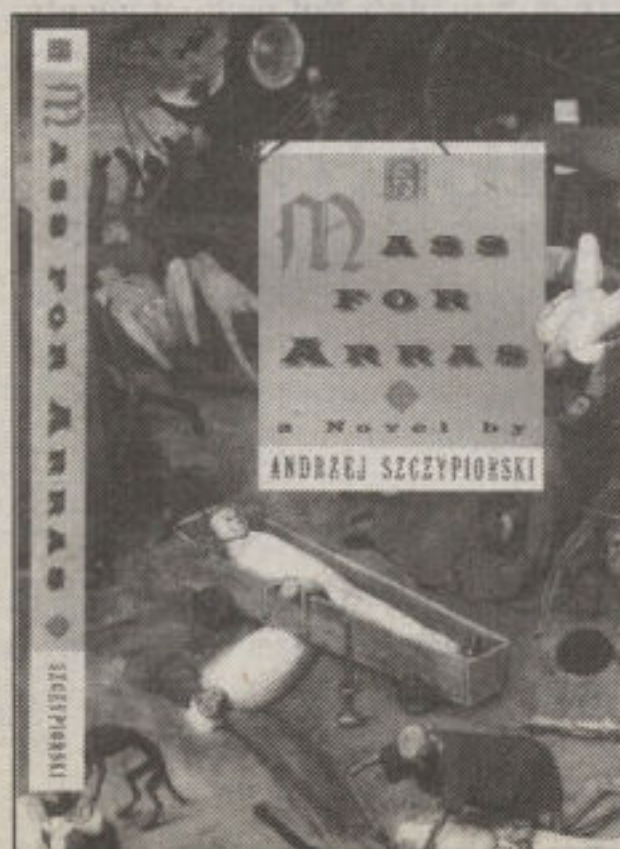
Book Review Editor



In the spring of 1458, plague and famine descended upon Arras, a thriving city in Burgundy renowned throughout Europe for its tapestries. By summer's close, one of every three inhabitants was dead. Many of the survivors had hastened the end of spouses, offspring, and friends so that they might more quickly feast on the remains; others repaired to the graveyard, retrieving freshly-buried corpses for the same purpose.

But that was just the beginning. Three uneasy years later, in the autumn of 1461, Arras conducted its infamous Vauderie d'Arras. For reasons that remain unclear to this day, Jews, women accused of witchcraft, and nobles accused of atheism were burned at the stake. Accusations of disloyalty to the town were followed by show trials for bizarre heresies. Crime and looting became common.

Welcome to the unsettling fiction of Polish author Andrzej Szczypiorski, whose *Mass for Arras*, initially written in Warsaw during the late 1960s, is the second of his many novels to be translated into English; the first, *The Beautiful Mrs. Seidenman*, revolves around the relationship between a German officer and his Jewish mistress in the hellish world of the Warsaw ghetto. Szczypiorski is no stranger to the historical nightmares from which his novels refuse to let us awake: He fought in the Polish resistance during World War II, was sent to a concentration camp after participating in the Warsaw ghetto uprising, and was jailed by the Stalinist regime for both his fiction and his participation in Solidarnosc.



Unlike *The Beautiful Mrs. Seidenman*, *Mass for Arras* is less concerned with exploring civilization's shocking collapse in times of crisis than in dissecting the even greater cruelties spawned by the shame that ensues. It is a story of how ordinary people, ashamed of their participation in or quiescence in a horrific past, wreak even greater cruelties in their collective effort to repress it.

The novel revolves around Jan, the young, rich, intelligent, and arrogantly-pious pupil of Father Albert, the demagogue who whips Arras into its frenzy of accusations and executions. Raised in the shadow of the cosmopolitan court at Utrecht and Ghent, Jan is sickened by its members' facile cynicism and their contempt for religion, their studied urbanity and their mindless revelries. Beneath their endless days of hunting and nights of womanizing, they repress "all temptation to seek dreams outside yourself." Convinced that it would be better to never love at all than to love in vain, they steadfastly avoid situations that might force them to step into the vulnerability box.

Hungry for faith and even hungrier for a community with which to share it, Jan moves to Arras and finds both. In the process, however, he gives up much more. As Arras descends into religious frenzy, Jan sits on the council which condemns an increasing number of the town's citizens to death. Though he knows they are innocent – the Jew accused of stealing a horse, the Jewish elder accused of disrespect, the noble burned for the crime of speaking out against the carnage, and the town's "witches" burned for the crime of being women – Jan condemns them as well.

As he struggles later to explain why, he not only indicts himself, but all of us who, at some time in our lives, have remained silent when faced with injustice and therefore contributed to its consequences: "The desire for unanimity seems stronger than the desire for truth, because we do not derive our sense of security from the truth, but from the community." Only when he himself is subsequently arrested does Jan see that he has escaped his solitude at the price of his freedom and that in embracing the facade of community he has forsaken his humanity.

Saved from certain death by the town's timely liberation, Jan struggles to understand what he has done and whether he could have chosen differently. Is solitude the price of freedom, as the nobles from Ghent and Utrecht insist? Is building a community synonymous with totalitarianism, as his experience in Arras suggests? Or is there a third way – a world in which a community can both enrich and be enriched by conflict and difference?

Mass for Arras is far too intelligent – and its author far too experienced – to conclusively answer this question. But it is also much too courageous to give up hope for an answer. In the interim, the novel's disturbed and disturbing protagonist learns enough to remind us what such a community must exclude: xenophobia which denies difference and calls itself patriotism; religion which sacrifices love and calls itself obedience; memory which erases what is shameful and calls itself history.

The list is familiar, but as Szczypiorski's own biography reminds us, its lessons are still painful and often rejected. That is why his writings were formerly banned in Poland. That is why neo-Nazis can march today in Germany. And that is why fundamentalism everywhere can preach hate in the name of love.

What makes *Mass for Arras* such a moving book is its quest to grapple with such intolerance by explaining rather than condemning and by forgiving without forgetting. Even as one of its characters insists that "nothing was more wicked than the belief that man is not free," Szczypiorski's novel pays homage to the yearning for community, with its message that it is equally wicked for men and women to be alone.

Refusing to see these great truths as mutually exclusive, *Mass for Arras* dares to dream a world in which sham totality in the name of the Father might yield to genuine community in the name of humanity.

US Crushes Europe in Ryder Cup: Rejoice!

By Bill O'Dowd '94

Sports Editor



The sport of golf reaches its height in popularity in this country every couple of years with the playing of the Ryder Cup. Sure, most people could tell you that the Masters tournament is held in Augusta, Georgia. Maybe even a majority of "sports" fans could correctly identify Lee Janzen as this year's US Open champion. But, for the most part, the average American ranks the golf on television right below a snail race on "Wide World of Sports" on the excitement scale.

Every two years, though, twelve golfers from the United States challenge a team of twelve from Europe for the prized cup of the golfing world and, suddenly, golf is mainstream. TV ratings for

guys. But, hey, it's us against them, baby. Gotta root on Old Glory!

This point was driven home to me while I was on the phone with a friend in San Francisco last Sunday night. Dave has never played golf in his life. As far as I know, he has never watched golf on television before, either. Yet, he warned me not to tell me who won while we were on the phone. He had been watching the Ryder Cup all afternoon.

Every so often he would stop in the middle of a sentence and proclaim: "What's wrong with our guys? They're not hitting it straight at all!" Or, "Those sissies. Who do they think they are to challenge us at our game. This isn't soccer, you know."

Our game? I didn't have the time or the patience to correct him on that one.

The same phenomenon happens during the Olympics. Is there anybody out there who can honestly say they care about



Mr. Sports Guy

the Ryder Cup go through the roof. Advertisers line up around the block. Corner sports bars put golf on the big screen. The event is even talked about by John Madden, Mike Ditka, and other domestic, beer-drinking celebrities during football games. For one weekend out of every 104, the "average" American looks for the golf scores in the sports page on Monday morning.

Why? Golf officials would have us believe that it is the quality of competition that draws audiences. Nope, I don't think so. I don't believe the non-golf enthusiast tunes in once every couple of years because it is Nick Faldo, rather than Rocco Mediate, trying to get up and down from 200 yards, with a 6-iron.

Old-timers say that the appeal of the Ryder Cup lies in its match-play format. While it is certainly true that match play is more exciting than conventional stroke play, I would bet that most newcomers aren't even aware that this format exists.

No, I would argue that the Ryder Cup's popularity stems from the most basic of sporting instincts, pride. It's the US versus the rest of the world.

Americans don't want to concede that this country is second to anybody in anything. Sure, the only golfing term we may know is "fore" (at least, for most of us, it's the most important!). Sure, we may think a slice is a new-age soft drink. Sure, we may never have heard of half the guys on our team, let alone anybody for the other

equestrian sports, archery, or synchronized swimming at any other point in their lives? As soon as you put the athletes in national uniforms, though, the interest is peaked. Ordinarily-rational people are paying for the NBC Triplecast. Wouldn't want to miss the live reports on quarterfinal women's field-hockey action between Romania and Ecuador!

Even the media gets caught up in all the excitement. *The Boston Globe* reported: "As a gut-wrenching three days of golfing brilliance were winding down . . . the many who made the trip across the pond to see the competition started chanting, 'USA . . . USA . . . USA' and waving the Stars and Stripes."

It's a rare occasion when the conclusion of a golf tournament is described as "gut-wrenching" by the popular

media. Rumor even has it that several small towns in the Midwest witnessed "Putter Parades" – spontaneous gatherings of old men in plaid pants assembling in the streets, marching to the sounds of Souza, and thrusting putters high above their heads in jubilation.

Oh yeah, in case you're one of the few still in the dark, despite the fact that neither Fred Couples nor Paul Azinger won a single match, the United States triumphed in dramatic fashion during singles play on Sunday.

Just goes to show we've got the best golfers in the world! What were those quiche-eating, commie-loving non-Americans thinking anyway?

It's a rare occasion when the conclusion of a golf tournament is described as "gut-wrenching" by the popular media.

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The Age of Innocence

Scott Kolbrenner '95

RECORD Columnist

Because he is the acknowledged master of movies about gritty living in late 20th century New York, it would have been very easy for Martin Scorsese (director of *Raging Bull*, *Mean Streets*, and *Goodfellas*) to make another movie in the same vein. After all, a number of recent films (*Night and the City*, *A Bronx Tale*, and *Amongst Friends*) are direct descendants of Scorsese's style and subject matter. In addition, although it fared well at the box office, the critical failure of *Cape*

an attempt to atone for his sins against his family, allows weaker opponents to pulverize him. In *The Age of Innocence*, however, Scorsese portrays emotions with few words or actions. Quick glances between guests at dinner parties foreshadow the rumors that will later rise to haunt the characters. Also, instead of a self-destruction in physical terms, the audience witnesses Newland's frustration, as he winces at the sight of Ellen or turns away from May.

Newland's hunt for Ellen, who is a family member and whom Newland describes as unreachable, underscores his desire to escape from New York society.

When he discusses his dreams, he plans to get away to some "new land" where outsiders would not impose their views upon him. On one level, that wish could be seen as an expected reaction to the shallowness and back-

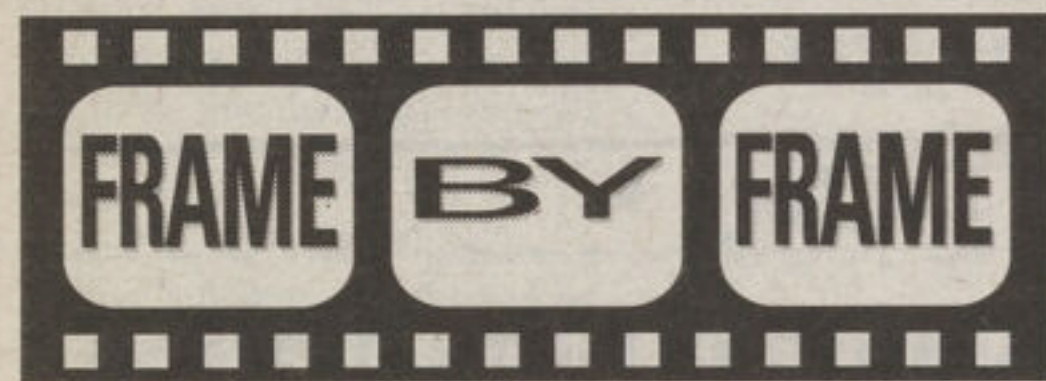
stabbing which Newland witnesses. On the other hand, Newland's fondness for Ellen could be viewed as an unrequited Oedipal love, which may have arisen at this time due to Newland's pending marriage. On the eve of his marriage, the boy shows his unhappiness with his Intended, and seeks someone else because he realizes that he will be unsatisfied with any woman but the perfect one, his mother.

Scorsese's presentation of Newland

and Ellen when they first declare their love for one another supports a Freudian interpretation. Scorsese shows Newland in a fetal position (with his knees to his chest) in Ellen's lap for almost the entire scene, calling to mind a child in a mother's care. They do not kiss while they discuss their love, and when they begin to show physical affection, an older father-figure rushes in to the cabin to

disturb them. Newland's sadness throughout the film reflects an Oedipal sorrow at failing to achieve perfection, both with his actual mother and his symbolic one.

The movie is a successful romantic period piece. While he may have been tempted to dwell on the details of the glamorous era (the costumes and design are terrific), Scorsese remains focused on the plight of the characters. In addition, because the violence necessary to keep the *Goodfellas* audience interested is lacking, Scorsese is forced to rely on innuendo and subtleties. In *The Age of Innocence*, the great filmmaker has challenged himself and succeeded.



Fear could have tempted Scorsese back onto familiar terrain.

But, showing the guts of a truly great filmmaker who would rather experiment (*Last Temptation of Christ*), even when it leads to failure (*New York, New York*), Scorsese has directed another terrific film, *The Age of Innocence*.

Based on Edith Wharton's novel about New York in the late 19th century, the story centers around three characters: Newland (Daniel Day-Lewis), May (Wynona Rider), and Ellen (Michelle Pfeiffer). The film begins as Newland and May announce their engagement, at the same time that Ellen, May's cousin, returns from Europe, trying to escape from an unhappy marriage. Because they are old acquaintances (Ellen recalls that "Newland kissed me once, behind a barn") and will soon be related, Newland goes to great lengths to reintroduce Ellen to the stifling New York society.

Although Newland and Ellen repress it at first, the power of their emotions compels Newland and Ellen to admit their love for each other. In the meanwhile, because May (who embodies the shallowness of New York's high society) is busy preparing for the wedding, she is blind to the passion between her fiancé and her cousin.

Scorsese's stories often feature physical violence as a means of learning about the characters. For example, in "Raging Bull," Jake LaMotta (Robert DeNiro), in

In The Age of Innocence, Scorsese portrays emotions with few words or actions.

TWENTY YEARS AGO

Televised Gala Opens 'Paper Chase'

Twenty years ago, HLS was gearing up for the world premier of the 'Paper Chase.' John Houseman, who played Professor Kingsfield in the film and subsequent TV series, said that he understood the competitive nature of the Law School had changed "since the Kingsfields were in charge."

—RECORD,
October 19, 1973



FOOD - O - RAMA

Down at the Sunset Cafe



By Jonathan Goldstein '95 and Ted Cohen '95

When you first enter the **Sunset Cafe**, one of several Portuguese restaurants on Cambridge Street northeast of Inman Square, you wonder if you've come to the right place. The spacious, staid room looks more like a corporate cafeteria than what you've heard it is: an authentic haunt of the Portuguese locals of East Cambridge. All is quiet except for the occasional soaring strain of the *Jeopardy!* theme song that spills over from the bar next door (more on the bar below).

But the truth, of course, is in the details, which begin to emerge from the woodwork as soon as you have been seated.

To your right a large group of biker-types in white satin jackets bellow at one another in Portuguese. One of them is talking on a cellular phone. Another has turned his chair around and is sitting at the table, Vinnie Barbarino style. An imposing portrait of Mr. Castaneda, the owner of the 28-year-old restaurant, glares down at you, daring you not to like his place.

Ah, you realize, this must be the place.

Your impressions are confirmed by the tapas-like plates of pickled vegetables and black olives (and, sometimes, cubes of good feta cheese) that the waiter brings while you are perusing the gigantic menu. Ignore the Wonder-esque "French" bread that comes with the starters, and head straight for the delicious Portuguese stuff: very dense, slightly sweet, and thoroughly delicious.

When you order appetizers, your waiter insists on bringing what the menu calls "Hot Portuguese Sausage in Flames" (\$6.95), causing you some concern. For there is a lady at your table, and you wonder if there aren't enough authentic and shocking experiences on your TV everyday that you have to leave your home to find some. What arrives at the table, though, are several linguica – the Portuguese pork sausage that appears in pretty much every dish – that have been pan-fried, leaving the skin brittle and parchment-like over the rich and garlicky flesh.

Another simple pleasure is the little necks "Pato Style" (\$6.95), a plateful of juicy bi-valves in a broth of lemon, garlic, white wine, and a tad too much salt.

You can select from a veritable laundry list of \$10 Portuguese Vinho Verdes – the fizzy Gallo's of the Iberian Peninsula. Recommended is the Casal Garcia Vinho Verde, a light, refreshing, slightly bubbly wine reminiscent of everything that's great about Bud Dry. The Sunset also offers an array of good regional wines ranging from \$12 (the Duque de Palmella is a solid choice for a cheap white) to \$90, and of course Port wines from \$17 to \$200.

After the excitement occasioned by the appetizers, the soups come as a bit of a disappointment. The Sopa Portuguesa (\$2.75), a minestrone-like kitchen sink of onions, potatoes, macaroni, kale, and more of that linguica, seems to have had the flavor cooked out of it. Slightly better is the traditional Caldo Verde (\$2.75), a mashed potato and kale soup that sounds interesting – a kind of seafarer's vichyssoise – but tastes too much like uncooked olive oil.

Seafood is the mainstay of the Portuguese diet, so you'd expect this to be the place to have paella, of which there are three different versions on the menu (from \$16 to \$19). But the copious, beautifully-presented Paella a Marinheiro – packed with scallops, tiny shrimp, half a lobster, mussels, clams, and that tell-tale rice – is woefully overcooked and too heavily salted.

The grilled squid (\$11.95), on the other hand, is eminently tender, even if it does taste more like chicken than squid. And though the Jumbo Shrimp Sunset House Style (\$12.95) – five shrimp in a thick, curry sauce – is not what you expect, the shrimp have a pleasingly peppery punch to them. (Hello, Mr. Alliteration!) Also recommended is the barbecued salt cod (\$12.95), not barbecued at all, but a meaty cut of fish that has been deftly broiled and drizzled with a little olive oil.

Did someone say meaty? The Sunset does not leave carnivores out in the cold, offering an array of dishes like Roast Goat (\$12.95), Fried Cubed Pork and Potatoes (\$10.95), Rabbit Cacciatore (\$8.95), and the Sirloin Steak House Style (\$11.95), a decent, if unexciting, hunk of flesh in a brown gravy with (alarming!) a fried egg on top. Something to store in your arteries for those cold winter months.

Vegetarians, on the other hand, will find slim pickings here. The so-called Vegetarian Plate consists of ruthlessly overboiled potatoes, carrots, and broccoli devoid of any seasoning. Just like mom used to make. Like the other non-meat offerings, nothing Portuguese about it.

After dessert, a super-sweet, Portuguese version of a Grand Marnier soufflé known as a Molotoff Aveirence (\$2.50), which, despite the ache in your gums, you cannot stop eating. You might decide to drop by the bar next door for a digestif.

The Sunset's bar, however, is the kind of place where the chairs and tables would probably be flying if they weren't firmly bolted to the ground. You might want to wait until the weekend, when the bar energy, in slightly sublimated form, makes its way into the dining room, where long tables of Portuguese families sing seafaring chantes to the accompaniment of a strolling guitarist.

If you're willing to forgive the kitchen's foibles, the Sunset Cafe offers a unique experience.

Sunset Cafe, 851 Cambridge Street, 547-2938, serves lunch and dinner seven days a week and takes all major credit cards (except American Express).

Food: 6
Service: 7
Atmosphere: 7
TOTAL: 20

The Rating System is divided into three categories, each based on a ten point scale, with ten being the best. Because restaurant staff is aware of our identities as reviewers, the service we receive may very well not be the service you receive. Moreover, our own state of inebriation will not be discounted from the atmosphere rating. On food, however, we are uncompromising.

Harvard Law RECORD

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Teaching Should be Top Priority

Through no fault of his own, Prof. Charles Ogletree '78 encountered a rocky road in his bid to earn tenure at HLS. He finally gained it last spring when the faculty voted to extend him an offer. But although the respect of Ogletree's peers was never in doubt, the tenure offer did not become a sure thing until Ogletree published an article in the *Harvard Law Review* earlier this year about being a public defender. Along the way, Ogletree survived an internecine battle at the *Law Review* over which students would edit his piece and suffered through a *New Republic* article that detailed admittedly baseless allegations of improprieties in the writing and editing of Ogletree's article.

That Ogletree had to jump through so many hoops to gain tenure is an insult to his teaching skills and to the mission of HLS. He had already published several articles, including one on coerced confessions in the *Harvard Law Review* in 1991. Much more importantly, Charles Ogletree is one of the most effective, dedicated teachers at the Law School. His work in the classroom should have been enough to merit a tenured position regardless of what he had published.

The passing of Prof. Donald Trautman '51 should remind us that the HLS faculty is entering an important period of transition. Many members of the old guard — people like Abram Chayes '49, Detlev Vagts '51, and Arthur von Mehren '45 — will soon be retiring. New professors will be taking their places. If HLS is to remain one of the pre-eminent law schools in the nation, those new professors, above all else, will have to be great teachers. The legal market is becoming more competitive, and an increasing number of excellent law schools are producing graduates who have received instruction that is as good as or better than what HLS students get. New HLS professors will have to be eminently able to prepare students to become lawyers, judges, and law professors.

The call for faculty diversity has centered around the appointment of more women and minorities. At least as important as a person's skin color or gender, however, are the skills, experiences, and insight the person brings to the school. One way the "old-boy network" operates is by excluding qualified individuals who have not met all the tests the current tenured professors had to meet — tests that often focus more on publications than preparing people for practicing law. That system has the effect of excluding a great number of excellent teachers — many of them women and minorities.

Scholarship is important, but it should not take priority over teaching skill. A professor who can excite students about subject-matter jurisdiction is at least as valuable as one who writes an insightful law review article about it. The possibility that excellent instructors like Charles Ogletree, Carol Steiker '86, and Chris Desan could be sent packing to another law school merely because they failed to meet Harvard's publication requirements is a chance too great to take. As Harvard approaches the 20th century, excellence in the classroom must be its top priority.

— Stohr

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—First Amendment, US Constitution



REMEMBER THE GOOD OLD DAYS WHEN STUDENTS WANTED NORMAL THINGS LIKE FACULTY DIVERSITY?...

• Letters •

Law School Council Not Divided

Despite the fact that we feel the issue of beer at Law School Council meetings has already been blown out of proportion, we would like to make these points:

First, we have no problem with beer at Law School Council meetings. However, we do question the propriety of Council members buying themselves beer with Law School Council funds. This is

especially true given our limited budget and the wide range of student concerns we hope to address. Most importantly, we want to counter the perception that the Law School Council is a divided organization. This is just one issue that has gained some notoriety. This year's Council has so far worked cohesively to address outstanding student concerns (such as Hemenway Gym, the

Book Exchange, the 1L Mentor program, and faculty diversity). We fully intend to continue in that spirit.

Enu Mainigi '94
Law School Council
President

Chantal Thomas '95
Law School Council Vice-
President
September 27, 1993

Council Meetings Should Be Dry

By a vote of 10-8 in the last Law School Council meeting, members approved the use of student money to provide alcohol at Council meetings for members and other students who might attend. While we agree that the LSC should try to improve the social lives of students at this law school, providing alcohol to its own members is not the way to do it. We believe the Council's decision to pass this legislation is a mistake which deserves comment from some of those who voted against it.

We are most concerned with this legislation because it is a waste of the student body's money, a waste of the LSC's deliberative time, and damages the legitimacy of an organization which has recently done many things which benefit the entire law

school community. The LSC has nearly secured a cash machine in the Hark, has improved facilities at Hemenway gym, and has offered a book sale as an alternative to purchasing texts at the Coop. Spending money on beer for ourselves takes scarce resources from these important causes. Debate at legislative meetings should focus on upcoming issues like changes in course registration, an HLS movie night, and attempts to secure new bike racks for students; it should not focus on such frivolous internal matters as beer at legislative sessions. We lament that this newly enacted proposal reflects unfairly on many of the Law School Council members who have worked hard to improve the lives of the student body. We hope that the

actions of these members have not made it more difficult for us to attain the support of the student body in our future efforts.

The undersigned members of the Law School Council take responsibility for the actions of the entire Council, but we want the student body to know that we argued strongly and voted against this proposal, and will continue to do so as long as alcohol is being provided to LSC members at your expense.

Catherine Caporusso '95
Robert James '95
Spencer Levy '95
Erik Lindseth '95
Lisa Stephenson '94
LSC Members
September 27, 1993

Do Labels Determine "Justice"?

This letter is in response to a column by Alan Dershowitz entitled "Justice After Peace" in the September 24 issue of the RECORD. Prof. Dershowitz very correctly pointed out that the Israeli-PLO Peace Accord opens the questions of justice and accountability for the numerous human rights violations committed by both Israelis and Palestinians over the decades of struggle. However, I cannot ignore the bias throughout this article which cloaks itself in lofty notions of justice. It is only through "willful ignorance" (as characterized by a fellow law student) that Prof. Dershowitz can address such an issue and leave one side with relatively clean hands. If the question of accountability is to be "resolved" in a similar fashion, then the Palestinians truly have gained nothing in the accords.

Prof. Dershowitz covertly contends that Palestinians killed by Israelis were "PLO terrorists." "PLO terrorists," on the other hand, killed a "baby," "21 children," "[s]everal United States citizens, including . . . an old man in a wheelchair." He condemns all killings but says, "there is no moral comparison between the deliberate random killing of innocent children, and the retaliatory killing of guilty terrorists." One more profundity that can't be argued against.

This must surely be applied to the Israeli soldiers who earlier this year shot and killed 18-month-old Faris-al-Kurdi at the Jabalya refugee camp, or who killed Mohammed al-Ghol, 11, while he was playing in the street in Shati.

Dersh suggests that there is less moral culpability for killing "guilty terrorists." Such retaliatory killing is not an argument for self-defense but rather a justification for a death penalty of the type that Dersh always rails against. Does merely labeling Palestinians "guilty terrorists" overcome the presumption of innocence without a trial, much less a conviction? Maybe Dersh can distinguish this case from the capital appeals that get him air time, because this involves "guilty terrorists."

Dersh talks about punishing "Israeli soldiers whose bombs were directed against military targets but accidentally killed civilians." Do the mass bombings of refugee camps, where the families as well as the militiamen and those whose houses have been demolished live, fit this category of military targets? How about the bombing runs into Beirut, known as the "Paris of the Middle East" before the Israeli invasion? Or the mass clearing of peoples from Southern Lebanon to create an Israeli Security Zone? Is

this where it becomes an accident that civilians are killed?

Dersh suggests that the Israelis have begun to address the issue of accountability, since they have "already punished many of the settlers and soldiers for their criminal conduct, but the PLO has not punished its terrorists." (How are those accused as "terrorists" lumped with convicted criminals?) He must be referring to cases like that of Colonel Yehuda Meir, who was convicted of inappropriate behavior for ordering his troops to break arms and legs of Palestinian demonstrators in the West Bank. For these atrocities, he was demoted to private but not sentenced to jail, because the judges said he had suffered too much. Maybe Israel should continue the policy espoused by Prime Minister (then Defense Minister) Rabin in 1988 to crush the Palestinian revolt with "might, force and beatings." Is this the type of justice that Prof. Dershowitz looks to as a model for preserving peace?

Prof. Dershowitz writes, "I worry that by too easily forgiving the past we are endangering the future." We should all be worried if such a selective forgiveness were carried out by those empowered.

James H. Freis, Jr. '95
September 27, 1993

Deconstructing the Demjanjuk Verdict

The following is an excerpt from "Sanhedrin II," which appeared in the September 13, 1993 issue of The New Republic.

By Alex Kozinski

IT is a brilliant opinion: powerful in its understatement, painfully thorough yet written in words a lay reader can easily understand. As it is reviewed and analyzed, the Israeli Supreme Court's decision in the Demjanjuk case will surely become a model of judicial craftsmanship, a luminous example of how a court confronting a difficult and painful subject ought to comport itself. Jews can take pride that Judaism's age-old commitment to the rule of law did not waver.

But is it right? That's a tougher question. Evaluated by American legal principles, the opinion is hard to defend; our own Supreme court – even in the heyday of Warren, Brennan and Marshall – likely would have reached a different result. The Israeli Supreme Court, however, is not just another common law court. It stands heir to a much older tradition, that of the Sanhedrin, the body of sages who served as the supreme tribunal of the Jews in ancient times. In deciding cases, the Sanhedrin had to reconcile two cross-currents in Jewish law: on the one hand, a surpassing reverence for human life; on the other, the ferocious cruelty of the biblical codes that prescribed the death penalty for a host of offenses – including being a "rebellious son." In resolving this tension, the Sanhedrin developed rules and practices

that were remarkably favorable to the accused. . . . It is to this tradition that Ivan Demjanjuk owes his life and freedom.

The Israeli Supreme Court's decision to free Demjanjuk rests on two key rulings. The first concerns the sufficiency of the evidence that Demjanjuk was Ivan the Terrible – the operator of the Treblinka gas chamber where thousands, perhaps hundreds of thousands, of Jewish men, women and children perished. This, the court held, was not proved beyond a reasonable doubt. Second, the court decided not to pursue the lesser charges that Demjanjuk served as a guard at the extermination camp at Sobibor and the concentration camps at Flossenbürg and Regensburg – charges the court found were proved beyond a reasonable doubt, indeed beyond all doubt. . . . An American court would probably have ruled otherwise on both issues. . . .

In reaching [its] conclusion [that statements from Treblinka guards found in KGB files established a reasonable doubt about whether Demjanjuk was Ivan the Terrible], the court adopted a standard much more rigorous than that normally employed in the United States. An appellate court here would look at the evidence in the light most favorable to the prosecution and ask itself whether a rational jury could have convicted; it would reverse only if the evidence absolutely required acquittal. This standard recognizes that not all the evidence presented in a criminal trial will fit into a neat, consistent pattern. In figuring out what happened, juries often discard pieces of the puzzle that don't match up, such as testimony from the defendant's mother that they were home together watching T.V. on the night of the

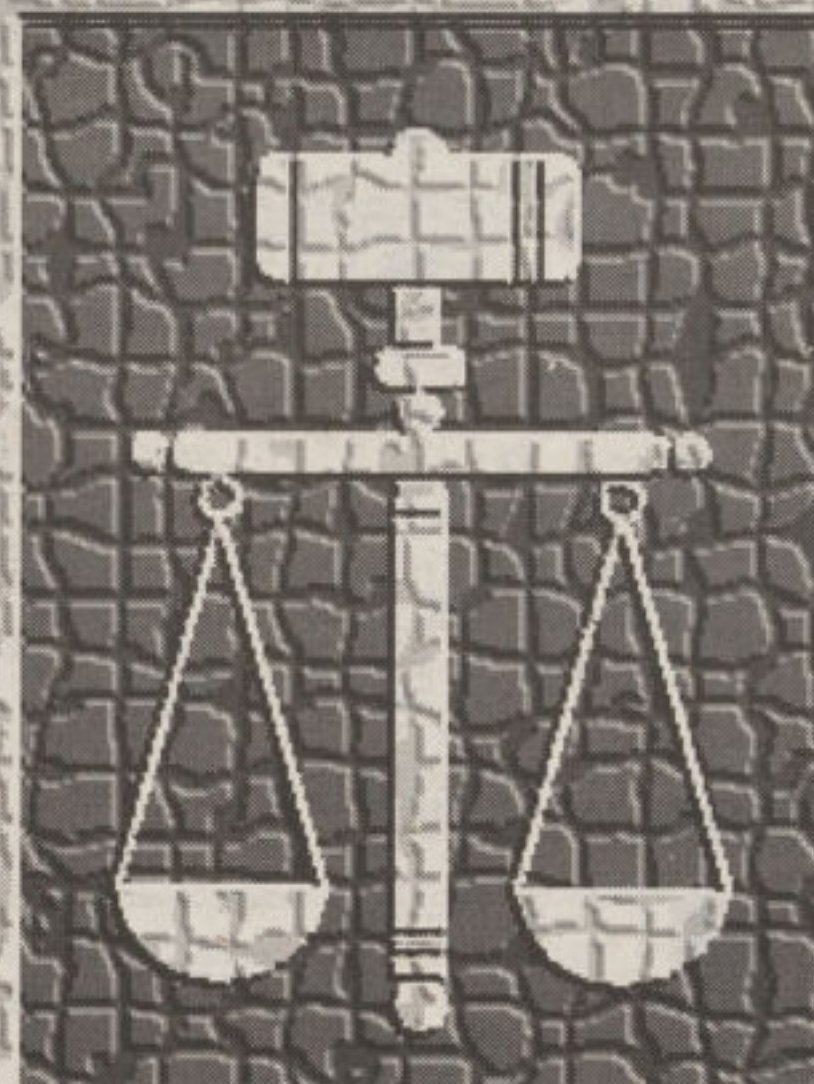
crime. Such evidence certainly can create a reasonable doubt, but it can also be rejected as too improbable.

What the Israeli Supreme Court looked for here – and did not find – was "an additional layer of evidence," something to explain away or refute the statement from the KGB files. Because the statements came into the record with none of the tethers that normally tie proof to the real world – no opportunity to cross-examine, no proof of authenticity, nothing at all that would make them reliable enough to be admitted under ordinary circumstances – it became virtually impossible for the prosecution to deal with them. Their very unreliability made them immune to attack.

Subtly woven into the common law woof of the Israeli Court's opinion are the warp threads of talmudic law. The willingness to admit any evidence – even that of highly doubtful reliability – so long as it helps the accused, while demanding that the prosecution come up with a concrete, rational explanation to dissipate the doubt so created, is far more consistent with the processes of the Sanhedrin than those of the common law. . . .

Why the emphasis on innocence from a judicial system that serves the severe God of the Old Testament? It is because guilt, the Torah teaches, is God's prerogative. "The underlying assumption is that ultimately god will deal appropriately with all who are guilty." A human court therefore should "stick to its business of finding merit in the defendant's cause." That the Demjanjuk court saw itself as the steward of this venerable tradition is revealed most clearly in the last line of its opinion: "The matter is closed – but not complete," the court said. "The complete truth is not the prerogative of the human judge."

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Subtly woven into the common law woof of the Israeli Court's opinion are the warp threads of talmudic law.

Alex Kozinski is a Judge on the US Court of Appeals for the Ninth Circuit, and the son of Holocaust survivors. He recently spoke at HLS on "The MTV Constitution"

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HOROSCOPES

By Popular Demand

ARIES: March 21 - April 22: A long-overdue letter informs you that you've been drafted for the Korean War. Hollywood Express terminates your credit line after renting *Howard the Duck* for the 723rd consecutive night. A fender-bender leaves you shaken, not stirred.

TAURUS: April 23 - May 22: When Scales of Justice performs an a cappella version of *The Theme from Shaft*, love is in the air. You become the poster child for the Hark Box Cafe, and must dress up as a hot-turkey-roll-and-stuffing-sandwich during the press conference.

GEMINI: May 22 - June 21: You lose your suit against Woody Allen and get custody of Alan Dershowitz. You will suffer a substantial penalty for early withdrawal. Too much starch in your shirt? Maybe you shouldn't have cooked your pasta in the washer.

CANCER: June 21 - July 22: A trip to the veterinarian reveals what you thought was a really small dog is actually an iguana. Eager to change the texture of your life, you cover all the surfaces in your home with a thin layer of Vaseline.

LEO: July 23 - August 21: A dinner party goes sour when you discover Lisa Bonet's nose ring in your Shepherd's Pie. Make a trip to the Middlesex County DA's office to take out a restraining order on granny. While sharing a tender moment with Kenny G, he reveals his full last name to you. It's GGGGGGH (the 'H' is silent).

VIRGO: August 22 - September 22: A quick check of your raincoat pockets provides an unexpected windfall: nineteen cents and Clare Dalton's missing tenure offer. You finally stop pirating software when you realize that patch over your eye is impeding your peripheral vision.

LIBRA: September 23 - October 22: You are accidentally brickfaced while loitering on the Holmes Field Building construction site. Sew all the Swiss cheese left over from your break-fast into a huge quilt. Avoid that discount acupuncture place mom has been telling you so much about.

SCORPIO: October 23 - November 22: You are dragged out of Judge Kozinski's address for shouting "Whoot, there it is!" at inappropriate moments. When your garbage disposal malfunctions, get a really good-looking guy to stick a broom into it. A shamrock shake looms in your future.

SAGITTARIUS: November 23 - December 23: Caught unprepared by dinner guests, you cover yourself with Ragu and pose as a brisket. Bet heavily on the pay-per-view cage match of the century: Jimmy Superfly Snooka v. Rocco Forgione.

CAPRICORN: December 23 - January 21: You purchase every tomato at Bread and Circus, only to have them decay in a stinking morass of Cheap Chinese food, bad lox, and bathroom odors. You make a guest appearance on the Chevy Chase show: He's Chevy Chase, and you're not.

AQUARIUS: January 22 - February 22: An embarrassing moment ensues when you discover your Garanimals are mismatched. You thoroughly massage your interviewer's hair with mousaka. You get an offer, but it's not to work there.

PISCES: February 23 - March 21: You are crushed when you find out the Psychic Friends Network will not accept term bill payment. Then you are simply crushed. Like a grape, crushed for the very first time.

Friday Night with the Village People

By Debra Dickerson '95

RECORD Columnist

ON my first weekend in the Village, my roommate and I (Susan Healey '94) walked to a Mexican restaurant on W. 3rd. We had one of those snotty Euro-heifer waitresses who was très annoyed when we asked for stuff like food.

She (individually and of course I do not hereby include every European man, woman, and child on the planet, but only this here particular and discrete human person, to wit, the single person referred to herein) hated us more than mere newsprint can convey. She must have sensed that I didn't wear mini-skirts to interviews or smile often enough on campus.

Just so she could continue to feel smug, superior, and twice the woman I am, I made sure she heard me mention the billion-dollar sexual harassment suit I filed against my brother for sending me flowers on my birthday. She almost swallowed her accent.

Sister-girl threw our food at us, never brought my second margarita, never checked on us once. That was fine by us 'cause the chill from her 'tude was making our cheese nachos harden.

When we finally hired a bounty hunter to serve her with a subpoena and force her to come back so we could pay and leave, *mais oui*, the missing margarita was added in. I pointed this out and home-mademoiselle actually went off. "Why you no tell me? I got a lot oo tables here!"

What else could I say? "Sounds like a personal problem to me. Just take it off." She flounced off in a snit. Came back and slapped the reprinted check down without a word and flounced off again like France pulling out of NATO. She was fuming in some strange language and I just know she called me a 'ho. The check was \$24.46. We left her \$25. But we held it 'til she was in the kitchen and raced each other out.

Next, to the Blue Note to consider paying \$50 apiece to sit crowded-half-onto-the-laps of the suckers



next to us. A local loser came up waving a tattered album cover. "Y'all heard of this?" He kept circling us, a ragged black man unsteady on his feet and reeking. We ignored him while keeping an eye on his hands and our purses.

He kept trying to interest us like a pesky child trying to show you his fingerpainting while you're balancing the checkbook. Finally I said, "Thank you, but we're not interested." Polite, right? But it angered him.

Stepping around Susan (who is white), he moved in close to me and whispered evilly, "Nigger bitch." Quietly, with deep satisfaction. Then he walked backwards watching me, confident he'd get to see me actually melt away at the awful magic of those words. The ridiculousness of it would have made me laugh. But when I looked back at the pathetic victory he felt he'd won clearly etched on his face, I couldn't.

Susan and I next went to Mondo Perso. There was a retro-funk band, which I'm down with, but I was leery cause only one of the five bandmembers was wearing shades. How funky could they really be? But they made me a believer.

They were excellent and really took me back to the '70s, my teenage years. "How Sweet It Is," "My Girl," "Superstition," "Ain't No Sunshine," "Brick House," every song the Average White Band ever did. Music to bump to. They did a full James Brown ensemble too — "Good Foot," "Sex Machine," the works.

(What went on at James Brown's writing sessions? "Get up. Get on up. Get up. Get on up. Get on the scene. Like a sex machine. Take me to the bridge.")

"I don't know, guys. Should I snarl incoherently before 'Get' or after 'up'? It changes the whole meaning, you know."

I've always thought a major difference between black and white songs is field of view. For instance: "Throw your hands in the air. Wave 'em like you just don't care." Or "The roof, the roof, the roof is on fire! We don't need no water, let the mother—— burn!" Not the words of people with a broad view of the future.

But check this out: "Ooooooooooklahoma, where we forced the Injuns from the plains!" See the difference?

My favorite bandmember was the drummer — Phil. All the other guys had that typical bandmember demeanor — hip, funky, way cool. But not Phil. It was like Bob Newhart joined a band; he seemed so laconic.

I kept expecting Phil to hand the waitress a note reading "Excuse me, but I'm in the wrong place. Where's the sale on power tools?" His little cymbal thingee fell off once (God knows why, it was so little used.) The lead player went to replace it but Phil waved him away. "Leave it," his face seemed to say. "Just more work for me. Like I don't got enough. Tap, tap, tap all day. I don't have enough problems?"

Leave it."

The other guys were constantly sucking up for gratuitous applause, doing flashy, energetic solos. The keyboard player, in particular, could barely keep his bony little butt in his chair. He played joyfully, exuberantly, as if he had only days to live.

But not that Phil. When his solo came, he went "tippity tappity tap tap" and seemed to forget where he was. You just knew he was thinking, "Such a fish I had for lunch. Bee-yoo-tee-ful."

But he got the most applause. We were all calling supportively, "That's OK, Philly boy." "It's gonna be all right Phil." "All you can do is try, am I right?"

It's always the problem child who gets the attention.



While leafing through the National Law Journal, Fenno noticed a Help Wanted Ad announcing Judge Wapner's retirement directly beneath the ad for a 1987 White Acura. He faxed his resume with a cover letter.

"Dear Ms. Bush: You have an opening I'd like to fill! Thanks very much. Sincerely, Fenno."

Fenno rubbed his hands eagerly, anticipating his biggest break since playing "plaque" in his 4th grade musical, "Jesus Christ, Cavity Killer."

Three weeks later, Fenno was goosing Rusty the bailiff and chatting amiably with Doug Llwelyn, the court reporter. "Did you know my grandfather was one of the greatest legal realists?" asked Doug.

"Pipe it," said Fenno, accidentally slamming the gavel into his own groin.

The next case was the case of the widow's window. "Your honor, I have to fart. Excuse me. Now, as I was saying, before I was so rudely interrupted by my own anus, this boy, this boy tied my cat to a ball and threw it through my window with a note attached that said, 'Before you bury me, please pull the glass shards out of my fur. And one other thing, you smell.'"

"Sounds like a classic case of feline suicide. I'm sorry but what can I do? We can't resurrect the little hairball. Suck it up, lady."

Fenno banged his gavel again. "My judgment is for the boy, in the amount of \$4,890.38 for cab fare and a 1987 Acura." Before the woman could object, Rusty pistol-whipped her into submission and sent her to Doug for the exit interview.

Doug belched and mumbled something about legal realism. "So, you lost big. How do you feel?"

"Almost as bad as you look," she

replied, doubling him over with a Chavezesque one-two to the sternum.

Fenno glanced at the docket, and decided to skip the next nine cases, including *The Arboretum Council v. Edward Scissorhands*, *Hong Kong Fooey v. McGruff the Crime Dog*, and *Moammar Khadaffi v. Moamar Quadafi v. Moomar Kadafffffee*. He finally selected *Richard Simmons v. Charles Nesson*, or the case of the Evidence Exerciser.

The litigants filed into the courtroom, wearing leotards and elevator shoes. Charlie wriggled over to his blaster and pushed the button. The courtroom filled with 150 beats per minute as he bucked spasmodically and beckoned the horrified jury to join him in his bizarre ritual dance.

Fenno ruled immediately, slamming his gavel on the bailiff's balding pate. "This is not *Sweating to the Oldies*. Ruling for Defendant in the amount of \$19.95."

Doug escorted the still-gyrating professor out of the courtroom, while Fenno announced the next case with disbelief. "*Seahawk Seafoods v. Exxon Shipping*?"

Some suit from the back of the room piped up. "Well, your honor, we did some forum-shopping, and we decided the People's Court was the way to go."

"OK, plaintiff, do your stuff."

"Your honor, I'd like to introduce exhibit A. The Exxon Valdez." As the huge mothballed ship crashed through the press gallery, Fenno dove into the Judge's Chambers, and resigned himself to watching reruns in syndication.

Quote of the Week

"They prefer to write about the sex lives of caterpillars."

—Prof. Louis Loss, on the HLS Faculty

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The Baghdad Dilemma

By Andrew Tulumello '95
RECORD Columnist



MAYBE Alex and Sarah were in the throes of a mid-life crisis. Maybe they were more daring and alive than I had initially thought. But something was up. Something made them decide, on that warm afternoon in Barcelona, to go to the Baghdad, the live-sex club which I had visited a few months before.

Usually I'm a middle-of-the-road kind of guy, but life was easy for me in those days. The HLS acceptance letter was coming. I had spent the last year drinking warm Tuskers on the Kenyan plains. A sex show would be another punctuation mark in a good year. Sometimes I do things just so I can look back later and imagine that I was quite an adventurous guy.

So the Baghdad seemed like a natural choice. It began with what I surmised

Now, I wouldn't write a column that gratuitously focuses on sex. And I'm a little hesitant to write about my patronage of an institution like the Baghdad.

to be the usual fare. However, after "Rueben" came out to demonstrate his novel weight-lifting talents, the audience got a chance to participate. A woman in pearls stepped onto the rotating stage and asked for "volunteers." She tried to entice an audience member to come down and perform. She tried to entrap me, but I would have none of it. When no one accepted her charms, she exited behind the curtains and "Rueben" came out for round two.

But four months later, Alex said "yes" to the woman in pearls and, it seems, performed quite admirably.

Now, I wouldn't write a column that gratuitously focuses on sex. And I'm a little hesitant to write about my patronage of an institution like the Baghdad. I tell this story only because it raises for me a fascinating question: How could Alex and Sarah, after twenty years of marriage and a kid, go through with something like this?

The answer may lay in the triumph of cynicism over idealism. *Cynicism*: plainly realizing that the gods did not choose your current love or spouse and that, instead, you could be with a lot of people, with varying degrees of happiness. For the cynic, sex is a physical act, separate from love, driven by physiology. Marriage rings don't stop hormones.

Idealism: the belief that, in spite of the world's random death and misery, "something more" brought two people together. Boyfriends and girlfriends were somehow put in the same law-school section for a reason. Idealists view sex as sacred and as a gift only for that special someone.

I favor the idealists, but they often lose. They begin as inspired Don Quixotes, but it's not long before the body tells them that it craves more than Dulcinea. Some will betray their most solemn beliefs and vows. Others, unable to surrender before the windmills of lust, fall into marriages in which both physical and intellectual passion are exhausted. Former lovers sleep at opposite ends of the bed, struggle for sheet superiority in the early morning hours, and merely tolerate each other during the day.

So, at first I felt bad for Sarah. But I know that, as a couple, she and Alex are solid and alive. (Of course I am looking at them from the outside, but I just *know* it.)

As I write this article, I ask Sarah about what she was thinking when her husband was on stage. She doesn't feel betrayed; she doesn't even feel sad. Instead, I watch her face glow with amusement and even pride as she recounts this story. "It was novel, interesting, and I even got a kick out of it. We have so much water under the bridge, so much security, that we don't have to worry whether something like that has implications. Young people don't have enough of a history for it."

I heard this philosophy all the time when I was growing up. My Dad, in an effort to prepare me for what he sees as the torture of life, would counsel that men are animals, that most men cheat, and that they can preserve a deep love for one woman while sleeping with many. The true test, he said, is whether the woman can accept it.

I always resisted this view of the world. (Once you see how your parents cope with love, you don't want them as role models.) Why accept a model of human beings in which hormones overrule principles? In my Dad's view, the cynical view, there isn't much meaning at the end of the day.

Formerly, I would have equated what happened at the Baghdad with cheating. I suppose that the Baghdad is a shared experience. (Perhaps Alex would not even have done it had Sarah not been there.) But this experience makes me rethink a lot of things, and I'll just throw it out there for your consideration.

I wonder if lasting love isn't just a struggle — the struggle to give up the romantic, fairy-tale hopes of what we dreamed love would be, and to accept the cynical honesty of who we are and what often drives us. Perhaps it is only the triumph of cynicism over idealism which allows love to last.

Immigration Report

continued from REPORT, page 1

interviews "in a hostile, aggressive, accusatory, adversarial, or rude manner" in violation of the new regulations and training materials.

— In 50 percent of the decisions studied, asylum officers were found to have made "fundamental errors of law or legal analysis," which often entailed requiring a greater certainty of harm than the law requires before granting asylum.

— Although almost 70 percent of asylum applicants come from ten countries in which monitors have documented widespread human rights abuses or targeted persecution, applicants fleeing communist or former communist countries are approved at two to three times the rate of others suffering persecution.

— 84 percent of asylum applicants appeared for office interviews as scheduled, despite computer problems that often resulted in inadequate notice of the interviews, contradicting allegations that asylum applicants have high "no show" rates.

The report, authored by attorney Sarah Ignatius, recommends the INS

take steps to remedy the problems, including doubling the size of its asylum officer corps, revising its hiring criteria to require that asylum officers possess a law degree or other advanced degree, and granting permanent residence to asylum applicants whose cases have long been pending in the backlog by revising regulations on suspension of deportation.

"They're living in a legal limbo," Anker said of the applicants whose cases are lost in the backlog. "Imagine living in a state where your legal status in this country was ambiguous for years and years and years."

In addition, the INS needs to remove enforcement tasks, such as instigating deportation proceedings, from the ambit of the asylum officers, leaving them free to adjudicate cases more fairly and efficiently, Anker said.

"The INS is a peculiar agency — it both has enforcement functions and administers benefits, such as asylum and resi-

dency," she said. "It's been a repeated criticism of the agency that it's been very difficult for it to wear both hats, and the enforcement hat has tended to outweigh the benefit hat."

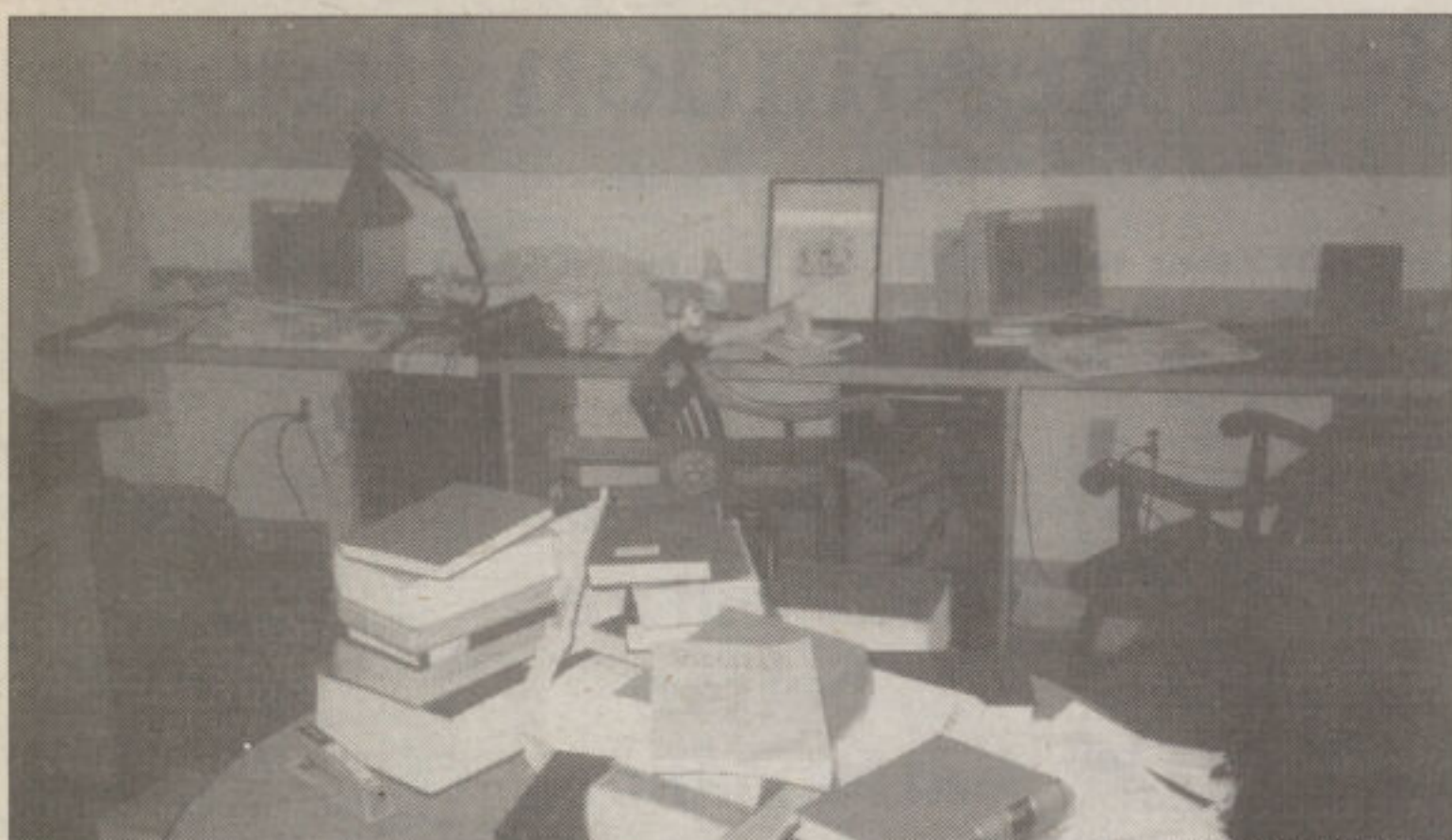
"They're living in a legal limbo," Anker said of the applicants whose cases are lost in the backlog. "Imagine living in a state where your legal status in this country was ambiguous for years and years and years."

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Cluttered offices await this year's crop of new Law Review editors.

New Law Review Editors

continued from REVIEW, page 1

Latino-Americans. Inniss said that the journal's minority representation this year is "similar" to recent years.

Process Gueling for Applicants and Graders

The Review is infamous among students for its tough eight-day writing competition conducted immediately following first-year exams, which each spring discourages some students from even trying out, and prevents others from completing the test once picked up.

But a significant portion of the 1L class continues to buckle down for the week-long exercise.

Last June 272 students picked up the competition, and 204 completed the assignments. In previous years, "a few more people picked up and finished the competition," said Labson, "but the yield of 204 out of 272 was higher this year."

The writing competition, consisting of case comment and a subcite, is mandatory for all applicants, but those who so desire may request the Review to consider their grades in addition to their competition score. Labson reported that "We select roughly half entirely on the basis of the writing competition, and half based 70% on grades and 30% on the competition."

Each case comment is graded by four different editors on a double-blind system and counts for 60 percent of the student's score. The subcite, which involves substantive editing as well as source checking, forms the remaining 40 percent of the competition. This June's comment focused on a recent Supreme Court case dealing with the deduction of expenses for home offices and a subcite of an article.

The Review's practice of offering

membership to the 3L non-members with the highest grades each year allows a select few to painlessly bypass the application process and gain entry to the journal. This year, the journal filled out its ranks by inviting the four 3Ls with the highest second-year grades and the four 3Ls with the highest cumulative grades to become editors.

These students were contacted by the organization in July. Six of the eight, five men and one woman, accepted the offer.

The prestige, enhanced employment prospects, and experience associated with being on the *Harvard Law Review* combine to make being an editor a difficult offer to pass up, especially for those students who braved the June competition.

"None of the 2Ls we accepted turned us down," Labson said.

In their tenure at the Review, in addition to their editing and cite-checking duties, most 2Ls will get to write a short piece, either a book review or a short comment. Five 2Ls, selected at random, will write longer articles, known as recent developments, for the Review's May issue.

The Review continues to keep a tight lid on its internal affairs, lest indications of dissension should escape the confines of Gannett House. After the Revue scandal of 1992 and last year's

turmoil surrounding former Review President Emily Schulman '93, which culminated in the appointment of an outside investigator and the Review's censure of Schulman, heightened concern for its image is high on the journal's agenda.

But for the Review's new members, concentrating on their work seems to be the top priority. "I can't really say what it might have been like last year," said Steve Planchard '95, "but it doesn't seem any more or any less political than anything else at Harvard Law."

"I can't really say what it might have been like last year," said Steve Planchard '95, "but it doesn't seem any more or any less political than anything else at Harvard Law."

The Wrath of the Law (Library)

By Christopher T. Cuniffe '95

RECORD Columnist



"Libraries are important to lawyers; it is the rare lawyer who has memorized the entire Code of Federal Regulations."

— Librarian Harry S. Martin III, in a summer letter to 1Ls

HUMOR can be found in the strangest places, but I must admit that I never expected to discover column material in the reams of correspondence the law school sent to its incoming students.

In fact, I didn't bother to glance at most of it except where it looked important, like the ten boldfaced **WARNINGS ABOUT THE IMMUNIZATION REQUIREMENT**. My favorite line was, "YOU WILL GET THIS DONE PRIOR TO YOUR ARRIVAL."

Never in my life have I been so afraid of contracting measles, mumps, rubella, or diphtheria as I was this summer. So, Health Services gets the award for emphasis. But not for volume: I have already collected enough correspondence from Financial Aid to use these materials as a base for my third-year research paper.

Housing, of course, wins the prize for general befuddlement, chaos, and perplexity. Early in the summer I received a room assignment (Story 401, type 1) and mailing address. Within a month, not only had they changed my mailing address, which I had already distributed to friends, but they had *changed the size of my room* to a Gropius type 2 (but still, Story 401). I was grateful to learn that modern

"For him that stealeth a Book from this Library, let it change to a Serpent in his hand and rend him."

technology allows for such reconfiguration.

By far the most amusing material, however, was produced by the Langdell library staff. I suspect that this material was the least perused by incoming 1Ls. This is unfortunate, for the language was at once eloquent, comforting, poetic, and ludicrous.

The quotation that opens this column was, of course, a source of great relief as was this sentence in the paragraph that followed: "The good news is, you will not be expected to read but a fraction of our 1.5 million books." As for the bad news, we are left to speculate.

Even better news from my own perspective was the fact that I was not myself a reference librarian. "Reference librarians in particular welcome your questions: *it's their mission in life*." Whatever happened to the pursuit of happiness? Talk about a mission of misery! Where I went to school the librarian's busiest task was preventing students from consuming food and lovely beverages in the reading room.

Most of the eloquence was left to the *Guide to the Harvard Law School Library*, a forty-page document which closed with a poetic essay of some sort portraying the library as "the most luxuriant, extensive, and carefully selected garden of the law in existence." The opening paragraph closed, "The library selects nutritious plants from around the world and *varietals* from all the disciplines related to the law."

What the hell is a varietal? Some kind of foliage? Maybe a vegetable? I checked my super computer thesaurus and found no entry. Webster's dictionary . . . nada. I even checked *Black's Law Dictionary*, but the closest thing I found was "varrantizatio," a warranty in Scottish law.

I think the garden analogy got out of hand at one point when the *Guide* tried to incorporate Westlaw: "new electronic hybrids and miniaturized strains are being rapidly developed and deployed in remarkable terraces."

My favorite quotation from the *Guide* appeared much earlier in a caption; it is taken from the *Old Librarians Almanack*, 1773. "For him that stealeth a Book from this Library, let it change to a Serpent in his hand and rend him." Some more good news. I did find "rend" in my thesaurus; it means gnaw, chew or, my own preference, munch.

Also, note the lack of gender inclusive language. "Let him be struck with Palsy, and all his Members be blasted." (You are safe, however, if you have met the immunization requirements.) "Let him languish in Pain, crying aloud for Mercy and let there be no sucrease to his Agony till he sink to Dissolution. Let Book-worms gnaw his Entrails in token of the Worm that dieth not, and when at last he goeth to his final Punishment let the Flames of Hell Consume him for ever and aye."

You know, in another context, being associated with "the Worm that dieth not" could be construed as a compliment. Taken as a whole, however, this remark was not as comforting as the others.

I also don't know why it was juxtaposed with the description of the Library of Congress classification system. I was always of the opinion that my undergrad librarians took the crime of book theft seriously. They even installed one of those electronic hybrids: a barcode buzzer system. There was nothing more mortifying than getting buzzed and being forced to reveal the misappropriated material.

On reflection, however, I prefer this embarrassment to purgatory.

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NAFTA or Not?

By Stephen Weinstein '94

Guest Columnist



RECENTLY, George Herbert Walker Bush put aside his golf clubs, put the speed boat in drydock, and headed to Washington, DC for an event of some personal and international significance.

No doubt Poppy found the festivities enlivened by the presence of ex-rivals Jimmy Carter and Gerald Ford. Even more galling must have been the sight of Chief Rival Bill Clinton signing side agreements designed to modify some of the most glaring deficiencies of the North American Free Trade Agreement (NAFTA) negotiated by the Bush Administration. To his credit, Mr. Bush put on his best game face for the pro-NAFTA push, declaring through his golden-retriever grin that if NAFTA were to fail, "the biggest loser will be the good-old USA."

Is that true? Will Americans be the biggest losers if NAFTA doesn't go through? Well, probably not. It seems clear that Mexico has the most to gain if NAFTA passes and the most to lose if NAFTA is defeated. Indeed, whether Americans will benefit at all from NAFTA has been a subject of much debate. Most prominently, Ross Perot and his shell organization, United We Stand America, have spelled out the credible, if overstated, argument that NAFTA will encourage a massive shift in manufacturing jobs to Mexico and lead to a net increase in environmental damage.

Probably this is the case. More "sinisterly," however, Perot, joined by fellow demagogue Pat ("our culture is superior because our culture is Christian") Buchanan, has suggested that the increase of human migration, travel, and cultural mixing will be bad for the United States. This is both false and offensive.

Not that Buchanan and Perot stand alone in opposing NAFTA, as wacky cow-

Will Americans be the biggest losers if NAFTA doesn't go through? Well, probably not.

boys at the economic Alamo - itchy fingers twitching about the mass-media trigger: Credible leaders like HLS alumnus and public-interest legend Ralph Nader '58 and Congressional leader David Bonior, also oppose the treaty. (Somehow, NAFTA has paired Clinton with Bush and Buchanan with Nader. Dorothy, we're not in the cold war any more.) Both these men have valid axes to grind.

Nader points out that US corporations openly plan to take advantage of Mexico's more lenient (read: less costly) environmental and labor practices. Bonior rightly seeks to protect manufacturing and other jobs that will be lost from his home district in Michigan.

NAFTA's foes have thus laid out the case against the treaty in terms both logical and hyperbolic. With the exception of the *Economist* and the house organ of the Clinton Administration, the *New York Times*, NAFTA's supporters have had far less success spelling out their positions and have seemed quietly hesitant to do so.

The problem for NAFTA's supporters is that NAFTA will inflict pains on specific, quantifiable segments of our population. Workers in the automobile, auto parts, chemical, and electronics assembly industries should get their resumes ready if NAFTA passes. Conversely, the benefits of NAFTA are prospective and cannot now be easily articulated to the majority of our population, who get their information from "New News" sources like "Oprah" and MTV. (However, a not-so-sheltered Wall Street has been betting up the stocks of some oil exploration, financial, and consumer-product companies with head starts in Mexico.)

Even worse for the pro-NAFTA cadres has been the lack of public support from the Clinton White House. But Clinton heartily began his pro-NAFTA offensive at the signing of the side agreements, finally articulating a compelling case for NAFTA. He argued NAFTA will create a net job gain as Mexico steps up its importation of US products like consumer goods. Further, by boosting Mexico's economy, NAFTA may help with the problem of illegal immigration: at least NAFTA is a better bet than the "bigger fence, more dogs, deeper ditch" strategy offered by Buchanan.

Finally, setting forth what I consider the best argument in favor of NAFTA, Clinton argued that the treaty should encourage democracy and the free market in Mexico, and thus should facilitate prosperous stability there.

If the family of capitalist democracies produces new offspring, the size of the Thanksgiving feast should grow as well. Impressed by the campaign-like onslaught from the Comeback Kid, Bush was reported to have remarked, "Now I understand why he's inside looking out and I'm outside looking in." Yes, indeed.

Is Clinton right? Crossing my fingers, I would say yes. Nevertheless, NAFTA should not be passed without parallel, well-funded legislation to aid the US citizens whose jobs will be "dislocated." Fundamental fairness requires that the increased affluence of lawyers, bankers, and oil-company executives not be predicated on the economic destruction of automobile workers and their families.

And if ethical arguments don't hold water for you, I submit that, in the long term, the economic pie will be most crusty if we retrain dislocated workers for productive roles in the post-NAFTA economy. Furthermore, the side agreements, particularly the environmental accord, must be policed vigorously. Even more important, the as-yet-insufficient funding for cleanup and protection of the border region must be appropriated, and then increased.

My endorsement of NAFTA is tepid at best. We could all benefit from open, well-reasoned debate, which has not characterized the process so far: rather, we have been treated to secret negotiations by the Bush administration and "trial-balloon," leakage tactics from the Clinton administration. We deserve better.

Nor should NAFTA become a political litmus test for Clinton supporters, many of whom have heartfelt, ethically-valid reasons to oppose NAFTA. On the other hand, the Republicans now have a peachy opportunity to put their free-market votes where their mouths have always been. In that vein, Ross Perot should do the country he professes to serve the courtesy of checking his flimsy figures. I stand ready, nay, eager, to be convinced, but Perot's shoddy tactics have only hardened my opposition.

As for Buchanan, I presume he is sharpening his shovel.

Beer Resolution Passes

continued from BEER, page 1

Even if it's their money at stake, some students agree with Growney. "We have beer at all sorts of student organizations.

There's pizza and beer everywhere," said Bill Waller '94. "Maybe [the LSC] will get better attendance and lighten up."

But some opponents say it's unrealistic to think the beer will attract students. They also say that the LSC is not comparable to others on campus, since its responsibility is to all students, not only its own members. LSC Representative Erik Lindseth '95 said that

the Council is a representative, deliberative body whose purpose of serving students is not enhanced by serving themselves booze with student funds.

Speaking to that, resolution supporters once again say the LSC should stop taking itself so seriously. Representative Hank Fincher '94, who voted for the resolution but is not a Monster Truck

Coalition member, offered his theory on how the resolution passed: "[The Monster Truck Coalition] was a sideshow candidacy that arose and succeeded as a reaction to the vitriolic nature of the campaign, and the self-importance and misplaced solemnity with which the Council often presents itself."

Mainigi revealed that some LSC representatives have already moved to rescind the beer resolution, which

may be overturned by a simple majority. The LSC will vote on the motion at its October 11 meeting.

"Maybe [the LSC] will get better attendance and lighten up," said Bill Waller '94.

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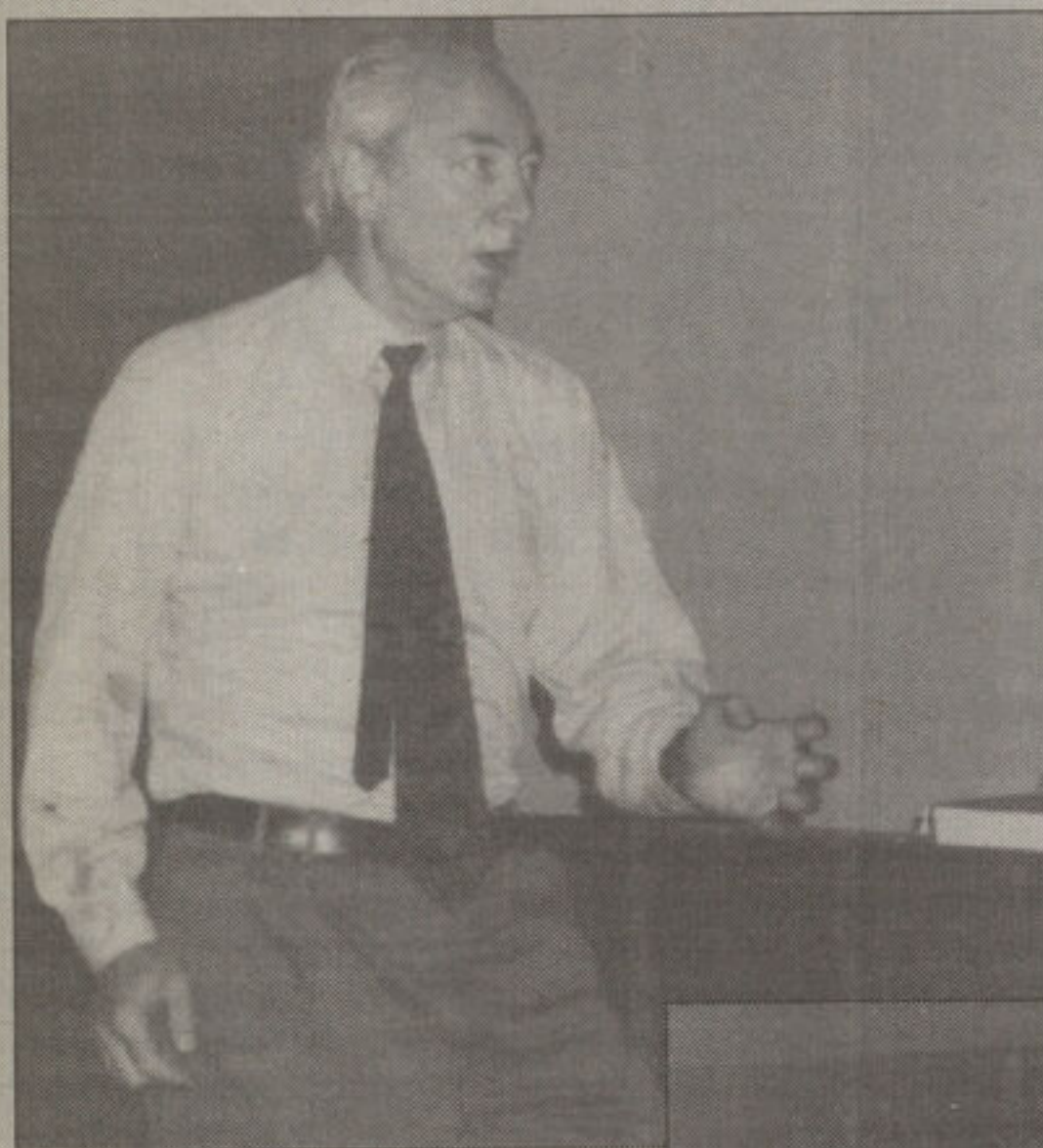
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Nesson Gets Into It



Professor Charles Nesson '63 boogies at the beginning of his Evidence Class, in an effort to jostle somnolent student minds into attentiveness.

continued from NESSON, page 1

Melissa Manwaring '94, "but it's relaxing, it makes things less formal."

Nesson encourages students to dance and stretch with him, soliciting student musical submissions as well, which have included the Grateful Dead, and the soundtrack to *Mission*. "We got some Elvis Costello last week," said Andrew Ruffino '95.

According to Ruffino, turnout to the early morning session is usually small, but there is "a core of early risers" who come regularly. Do students dance too? "Oh yea," said Catherine Brown '95. "It's kind of a social hangout."

Still others students expressed indif-

ference. "It's an OK idea, I just don't have much time to enjoy it," said Robert Beeman '94, who usually spends time before class reviewing his notes. "It's usually not the kind of music that would disturb you if you were trying to read."

Beeman obviously made that statement before Tuesday morning, when the musical selection featured "What's in the Basket?" by the group "Eon" from its album *Void Dweller*. As the pulsating music stuttered "joven, joven, joven" and Nesson ended his apocalyptic dance interpretation, he cried out, "This is the Eon Dance! Tomorrow at 8:25 we'll do it again!"

That should give students incentive to get to class on time.

Intellectual Hypocrisy

By Billy Choslovsky '94
RECORD Columnist



"COWARDICE: *ignoble timidity; fainthearted lack of courage; also: lack of resolution in the face of hostile sentiments of others.*" (Webster's Third International Dictionary, 1981).

THIS week's fodder is provided by our equally pristine ivy league sister, the University of Pennsylvania. Even good old Webster's definition of *coward* is overly generous in Penn's case. You see, last week the charitably-titled "leadership" of Penn proved that often an ivory tower provides nothing more than a good place to hide — a place to seek refuge. Too bad, considering a perch such as theirs could potentially offer quite a panoramic perspective. Well, forced symbolism aside, let's cut to the chase.

"On April 15, about 60 students pulled nearly all 14,200 copies of the Daily Pennsylvanian from campus distribution boxes and dumped them into trashbins. The early-morning raid was organized and approved by the Black Student League . . . to protest what [it] viewed as the paper's perpetuation of 'institutional racism.' Raid participants said at the time they were incensed by the biweekly columns of Gregory Pavlik, a junior who had complained that Penn had a double standard on racial matters. Earlier, 31 students had filed a complaint with the university alleging that Pavlik's columns violated Penn's prohibition against 'hate speech.' After a judicial officer dismissed the complaint, students seized the editions containing Pavlik's final column of the term." *Philadelphia Inquirer*, September 15, 1993, p.B1.

Well, for those of us who like to show-off our privileged educations, we've invented a word for this: CENSORSHIP. Though not as fancy, the rest of us lay-

True belief in a principle is about conviction, not convenience.

men and women also have a word for this practice: it's called THEFT.

Semantics aside, what's important is what university officials did in response. You guessed it, nothing. I repeat, they consciously chose to do nothing. Even more insulting, they rationalized their inaction on the fact that the student handbook did not include any reference to the university policy banning seizure of campus publications. *Ergo*, I assume the handbook's silence on rape and murder is a *de facto* endorsement of such activity. I am not sure what's more cowardly, Penn's inaction or its rationalization of its inaction.

For starters, let's put all the politically difficult and sensitive issues on the table. The students in question are black, and the columnist is a white kiddie conservative. However, this is, or at least should be, wholly irrelevant. The students violated university policy and broke the law. Prosecute them accordingly.

I sincerely respect the students' outrage and conscious disobedience. They're smart kids. Don't insult them by implying that they didn't understand their actions. On the contrary, I assume they simply felt that trite clichés such as "counter speech with more speech" are well reasoned in theory but in practice provide little help for groups with no voice or a voice that is often ignored. Accordingly, they chose a different response.

However, actions have consequences. Though I am sure many will forcefully remind me that I am overly naïve, this is not about whether one is liberal or conservative; it's about consistency. I sure would like to think that if a bunch of white students confiscated newspapers because a black columnist wrote an "alarmingly liberal" article, they would be prosecuted.

More important, Penn's inaction should not be justified on "noble intention" grounds. As the words themselves ironically reveal, only a fine line separates actions that deserve commendation from those that warrant condemnation.

You see, as Paul Harvey anecdotally demonstrates, there's more to this story. In January, Penn's administration was all too eager to throw the book at Eden Jacobowitz, a student who, from his high-rise dormitory window, shouted, "Shut up, you water buffalo" at a group of noisy celebrating black sorority sisters. Jacobowitz insisted that he meant nothing racist by his inappropriate selection of words. The telling issue there, however, was not whether "water buffalo" is or is not racist but Penn's knee-jerk politically expedient reaction in seeking to expel the student.

At least Penn is consistent in one respect: its disrespect of the First Amendment. Unfortunately, I can't say as much for the ACLU, People for the American Way, and other esteemed defenders of the First Amendment. These entities and individuals are the real cowards. Where were they last week when Penn officials quietly announced their decision not to discipline the students? Again, to review, we're talking about conscious censorship here. Unlike other times, these venerable groups and individuals remained silent when a principled, albeit admittedly difficult stand was mandated.

When are we going to learn, or more importantly practice, that true belief in a principle is about conviction, not convenience?

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