

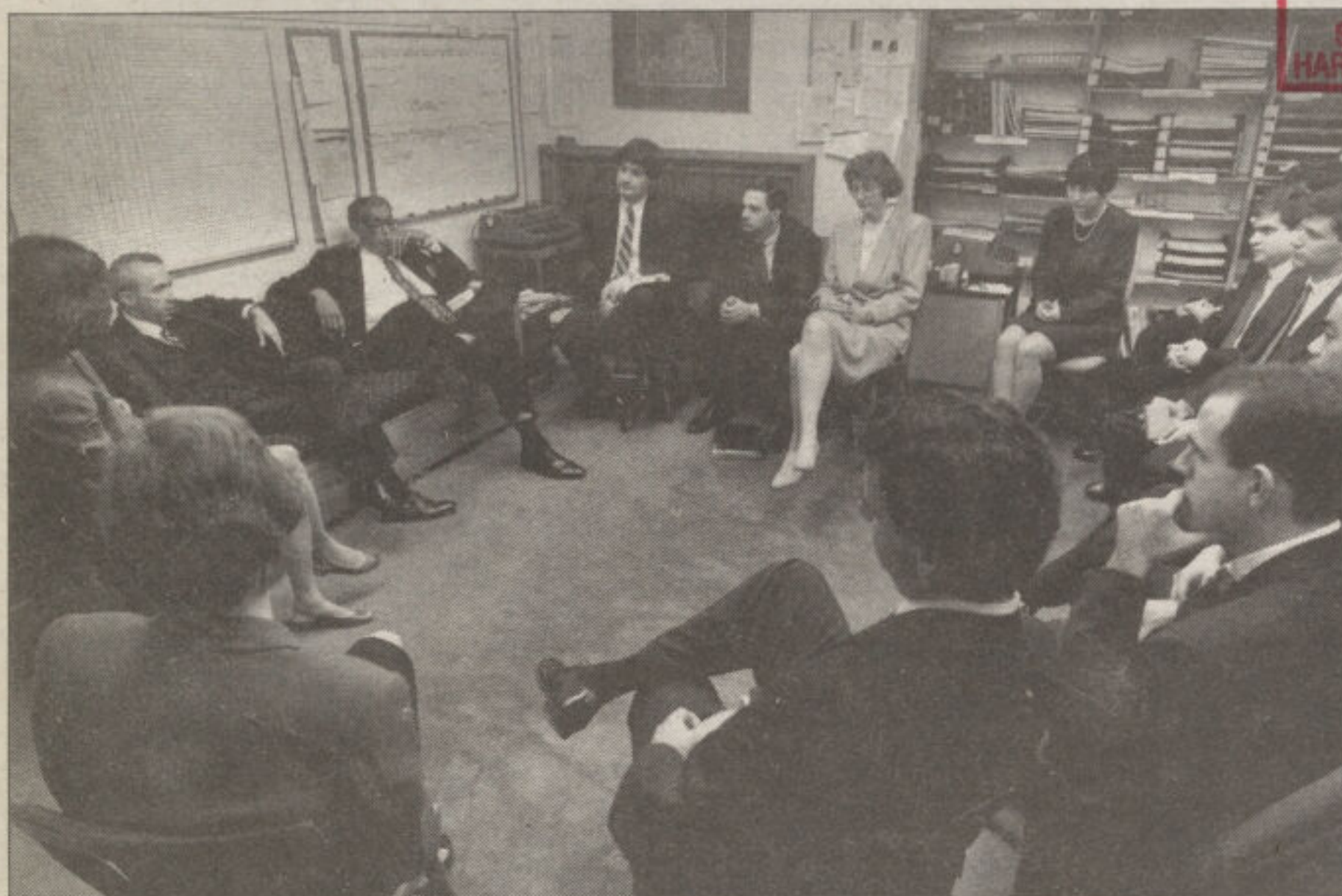
Harvard Law RECORD

Volume 97, No. 9

Cambridge 02138

DEC 02 1993

Friday, December 3, 1993



Members of the Ames Moot Court Competition final round teams chat with judges.

Galileo Gets His Revenge in Moot Court Final Round *Hoskins Named Best Oralist*

By David Weiss

"Mr. Justice Souter, and may it please the Court." These were the formulaic words used to open each of the finalists' arguments in the 1993 Ames Moot Court Competition, held on November 18 in the Ames Courtroom. And while all the finalists did please the court, according to presiding Chief Justice David A. Souter '66, the efforts of Anne Hoskins '94 and the Galileo's Revenge Team pleased the judges the most, earning them best oralist and best team honors, respectively.

The judges declared a draw on the award for best brief. Souter said that the briefs were strong in different respects: "when we were all done, we did not think that we had, in fact, a sufficiently strong reason to prefer one set of briefs to the other."

Souter, an associate justice on the US Supreme Court, praised the quality of the arguments. "We've recently decried the direction this practice was taking. And yet we come back to this law school . . . and listen to competitive arguments and we get to be optimists again," he said. "We get to learn . . . just

how good the profession and the profession in the courtroom can be. . . . And the fact that you have done what you did . . . is the reason for our optimism."

Joining Souter on the bench were Hon. A. Leon Higginbotham, Jr., senior judge on the Third Circuit Court of Appeals and Hon. Kimba M. Wood '69, district judge in the Southern District of New York.



Anne Hoskins '94

The case was *Timbo v. United States*, written by Prof. Alan Dershowitz and Michael Gianaris '93, with Beth Kissinger '95. On appeal from a sexual assault con-

viction arising out of an alleged date rape, the issues were whether the trial judge erred in permitting expert testimony on rape trauma syndrome (RTS) and whether the judge was correct in refusing to instruct the jury that the defendant's reasonable but mistaken belief that the alleged victim consented to sexual intercourse is a defense to the charge of sexual assault.

"The issues were cool, and sparked interest in the case, and made people want to go see it," said oralist Keith S. Rabois '94. He added that his friends and family told him afterward that

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Record Numbers Seek Public Interest Summer Job Funding

By Ray Kahler

Record numbers of students are interested in taking summer public interest jobs, according to Stacy DeBroff, director of the Office of Public Interest Advising (OPIA). Over 100 2Ls and nearly 200 1Ls applied for summer funding for public interest jobs this fall, far surpassing the number of applications in previous years.

DeBroff said that the record number of applicants for summer funding was even more remarkable because the deadline for applying was moved up this year to October 15. DeBroff said the deadline was changed to avoid getting applicants who applied only because they couldn't find a job at a firm.



Stacy DeBroff

In the summers of 1993 and 1992, 210 and 235 students, respectively, took summer public interest jobs in government, legal services, non-profit foundations, and private public interest law firms. DeBroff said that about 20 percent of the first and second year classes work in public interest jobs for the summer. About 70 students come to the OPIA office every day to ask questions or obtain OPIA publications, DeBroff said.

DeBroff said that members of the class of 1996 seem more interested in public interest jobs than any previous class she has seen. Attendance at OPIA functions for 1Ls has been extremely high, and OPIA's waiting list for individual counseling sessions is just now beginning to clear. Almost

half of the first-year class attended the OPIA job fair this fall, and a new OPIA program of 1L section representatives has been highly successful. DeBroff estimated that OPIA advisors have seen at least one-third of the first-year class in individual counseling appointments since November 1, an unofficial record.

DeBroff said that the high level of interest among 1Ls is indicative of a general trend, an increasing level of careful thought given to career choices by newer students. Despite peer pressure and the burden of education debt, DeBroff said, stu-

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Winter Term at HLS: New Year's Bane or Blessing?

By Greg Stohr

For some, it's an opportunity to learn about the law in a new way. For others, it's a scheduling anachronism that gets in the way of everything from summer jobs to the holiday break.

The source of these differing perspectives is Winter Term, a phenomenon that, while not quite unique to HLS, is a rarity in the traditional world of law schools.

"Some people love it. Some people hate it," HLS Registrar Sue Robinson said.

Supporters say Winter Term gives students and faculty alike a needed change of pace, provides opportunities for non-traditional learning, and brings in practitioners and visiting professors who otherwise would not be able to teach at the Law School.

"It gives us a lot of flexibility," said Associate Dean Frank Sander '52, who instructs a Negotiation Workshop section

in the winter. "I'm generally a great fan of it."

Although the numbers are likely to change in the next couple of weeks, as of now about 250 students will participate either in the Negotiation Workshop or the similarly intensive Trial Advocacy Workshop this winter. Another 100 or so will use Winter Term to focus on their third-year papers. About 50 students are hoping to do independent fieldwork under the supervision of a faculty advisor. About 250 students are registered for a course being taught by a professor visiting HLS only for the winter session.

The remaining 450 upper-class students, however, find themselves in a class that could just as easily have appeared on their fall or spring schedules. For many students, Winter Term is more a burden than an opportunity.

"I hate Winter Term," Allison Silverman '94 said. "I think it's a waste of time. There are no good courses

offered. The only good thing to do is leave [to do independent fieldwork]."

Like students, professors tend to be split over the merits of Winter Term. For those who teach January courses, the three weeks can be their most grueling period of the year. For those who do not teach, the term is essentially a month-long sabbatical.

Robinson said HLS is one of only a handful of law schools with winter programs. Stanford is beginning an two-week January term this school year, but that program is optional and is more of an extension of the spring semester.

The original purpose of Winter Term at HLS was to allow second- and third-year students to take exams before the holiday break. Until the 1978-79 academic year upper-class students took fall exams in January, just as 1Ls do now. Moving exams to December,

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Dersh's Way: Professor Denies Threat to Sue Universal Studios

By David S. Clancy

Professor Alan Dershowitz is yet again in the media spotlight — this time trying to dispel rumors that he threatened to file a lawsuit against Universal Studios.

Film critics and entertainment writers nationwide are furiously peddling the story that Dershowitz was the model for a curly-haired lawyer played by Sean Penn in Universal's new release, "Carlito's Way," and that Dershowitz may have threat-



Prof. Alan Dershowitz

ened to sue Universal.

Dershowitz said he made no such threat, but he said did call Universal to express his concern that the studio is using the Penn-Dershowitz similarity to generate publicity for the movie. "I got several calls from friends, and read several reviews, which made it clear that Universal's PR Department was pushing the similarity," he said.

Dershowitz noted that one of the movie's stars, Penelope Ann Miller, even mentioned the sim-

please see DERSH, page 10

Loan Changes Complicated, But Save Money

By Maria Politis
and Lisa Zornberg

The bad news is that the financial aid office is only now disentangling itself from the web of the complications and delays produced by recent reform of federal loan procedures. The good news is that the government's increase of federal loans ceilings allowed law students this year to borrow more money at the lower federal interest rates.

The main change came in July, 1992, when Congress reformed the Higher Education Act to require the federal government to provide graduate students with free application forms for federal funding. For law students, the reform means that eligibility determinations for Stafford Loans and Supplemental Loans for Students (SLS) are now processed by the federal government for free, rather than by non-governmental loan agencies that formerly performed the analysis for a fee.

But the changes came at a cost of simplicity, said Sally Donahue, director of HLS financial aid.

"It seems like a great idea," she said, "but actually it's more complicated." The biggest problem, Donahue explained, is that the new federal application forms do not contain key data elements required by financial aid officers to make overall lending determinations. Furthermore, under the new system, graduate schools are barred from getting the extra information from outside loan processors and instead must obtain this information directly from students.

"[The government] took a decentral-

ized process and concentrated it and totally changed procedures," Donahue said. "For the first time we must go through students to get funding information."

As most Law School administrators will attest, trying to get students to return information requests in a timely fashion is no easy task, and the process contributed to a

two-month setback in loan processing this fall. Adding to complications, glitches in the federal government's computer database system and a mix-up of school codes by the Department of Education delayed the process even more.

"In my mind these problems were

the result of a very hastily regulated system," Donahue reflected. "They could have been avoided if everyone had had a year to think about the changes before implementing them. A nationwide system was tested live."

On the brighter side, Donahue said HLS is now "in pretty good shape." She reported that loan processing for nearly all the 1200 J.D. candidates who borrowed this year has been completed. Donahue also emphasized that HLS students are very lucky to attend a university as lucrative as Harvard, noting that the Law School was able to provide its students with cash advances on credit while their loans were still pending. Graduate students at other institutions were not so fortunate, she said, so loan processing delays created real hardships.

Also on the bright side, many HLS

students benefited this year from the government's increase of the maximum annual borrowing amount under SLS from \$4000 to \$10,000. The expansion means that students will borrow less from private lenders, who charge signifi-

cantly higher interest rates and processing fees. Donahue said called increase of federal loan limits "great" for students, adding that "HLS must jump through 10 new hoops to comply with regulations behind the scenes."

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More Change May Be On The Way

Unlike students at 105 schools nationwide, HLS students will not take part next year in a federal "direct lending" program designed to reduce the paperwork and costs involved in getting federal loans.

Students participating in "direct lending," which starts next year, will begin receiving loans directly from the federal government, bypassing banks and loan guarantor companies. The switch will lower interest rates for many stu-

dents, saving them money in the long run. Students eligible to take part are enrolled at 105 schools that applied for the program and were chosen by the Department of Education to participate.

But because key details have not yet been ironed out, the Law School decided not to apply for the program. "I'm just waiting to see the details of loan repayment," said Donahue. She said the repayment regulations are set to be finalized in March, 1994. At that time schools will apply or reapply to participate, and Donahue will consider including HLS as an applicant.

Donahue's hesitation stems from the unusual position of Harvard University as an institutional lender for most students. Since graduating HLS students have the comfort of repaying the University rather than a bank, the appeal of borrowing from the federal government has less appeal here. "What is important to Harvard Law students is how they are treated in repayment, which can go on 10 years after graduation," Donahue said.

Federal loans procured through direct lending in 1994-95 will comprise 5 percent of federal loan volume in the United States. That percentage is expected to rise to 40 percent in 1995-96, and 60 percent in 1997-98.

Summer Public Interest Money

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dents are trying "to find professional work that incorporates and embraces their personal values." DeBroff believes that students are serious about public interest work because they knowingly accept summer earnings of \$2,000 to \$4,000, compared to potential law firm earnings of \$10,000 to \$12,000.

HLS reserves its allocation of federal work study funds to support students who take summer public interest jobs, providing funding for about 35 students. About 60 Andres and Wasserstein grants for summer public interest work are available this year. In addition, about 10 miscellaneous grants and seven new alumni fellowships are available. About 15 students are funded through human rights fellowships, and several others receive Lewis fellowships.

Starting in January, applications for Student Funded Fellowships (SFF) will be available. According to Kathy Flaherty '94, coordinator for SFF, 48 students received a total of \$60,000 for summer public interest jobs through SFF last year. To raise funds, SFF representatives

will call students in February, requesting that they pledge a day's worth of summer earnings to the program.

DeBroff said that a growing number of students have been exposed to public service experiences as undergraduates. Although some 1Ls who met with counselors were exploring a variety of job alternatives, DeBroff said that students see public interest employment as a way to match their personal values and their work, rather than as a second-rate alternative to working at a firm.

In previous years, some students have turned to public interest jobs after being rejected by firms. In increasing numbers, some students are now turning to firms because they can't get funding for public interest jobs, DeBroff said.

DeBroff also reported a growing number of 3Ls who tell her that they only want to work at a firm for a few years and then go into public interest work. One hundred members of the class of 1992 took public interest jobs upon graduation or after a judicial clerkship, DeBroff said. Last year, 45 graduates went directly into public interest jobs, and DeBroff expects that their ranks will expand after gradu-

ates finish judicial clerkships. DeBroff said that Harvard has the highest percentage of graduates entering public interest careers of all the top law schools in the country.

Many 2Ls are already starting to hear from public interest employers about jobs for the coming summer, although the public interest job cycle does not peak for 1Ls until February to March. DeBroff said that public interest job announcements continue to come in through late May.

Finding a public interest job is not difficult, although finding a job that pays and is close to one's career interests can be challenging. US attorneys and public defenders do not pay for summer work, for example, and outside funding sources are almost nonexistent.

DeBroff said that her goal is not to get all students working in public interest jobs, but rather to get students thinking about what kinds of careers will give them the most personal satisfaction and happiness. One barrier is the perception that almost everyone takes a job at a firm. Students are risk-averse and reluctant to make choices that seem out of the mainstream, DeBroff said.



Sally Donahue



Prof. Laurence Tribe '66

By RECORD Staff

The Agent Orange case studied by 1Ls may be of more than simply historical interest. A Vietnam veterans group represented by Professor Laurence H. Tribe '66 has requested the Supreme Court to allow them to pursue their claims against the manufacturers of the defoliant despite a 1984 settlement. Since their illnesses appeared after the \$180 million settlement, the plaintiffs believe the prior resolution of the class action was unfair to them.

If the Supreme Court lets the veterans reopen litigation, Agent Orange makers stand to battle enormous liabil-

ity claims for a second time. Big defendants could include Dow Chemical, Monsanto, Hercules Inc., the TH Agriculture and Nutrition Company, Uniroyal Chemical, and Thompson-Hayward Chemical.

Tribe's involvement in the matter, and his promise to represent the veterans should the Court agree to hear their case, has brought heightened visibility. Tribe is considered a heavy-hitter with the Court, having won 15 of the 21 cases he has argued before it.

Tribe is currently teaming up with Robert M. Hager, a public interest lawyer in Washington, to argue that the Federal Courts wrongly removed the case from the Texas state court where it

was first filed. Further, they assert, it is unfair to hold veterans to a settlement adopted at a time when they could not have known they were ill, since the life-threatening illnesses and disabilities caused by Agent Orange often have long incubation periods.

It is estimated that as many as several hundred thousand former service personnel may have been exposed to Agent Orange while stationed in Vietnam. Even if only 10,000 veterans turn out to have strong cases against the chemical companies, Hager told the *New York Times*, total liability could stretch into the billions of dollars.

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Tribe Asks Court to Reopen Agent Orange Case

Scenes from Pippin

Harvard Law School Drama Society dazzled three audiences with its fall production of *Pippin*. Directed by Susan Brooks '94 and produced by Mara Yoelson '94, *Pippin* featured sensational performances by Gerald Halfhide '96, Marc Channick '94, and the rest of HLS's own star-studded cast (none of whom had been seen in class since mid-October). For those of you who checked out early for Thanksgiving, here are some memorable scenes:



Photos by Kevin Werbach

BRIEFS



Energy Secretary Speaks to Students

Several students from the Environmental Law Society were among a group of approximately 75 people who met with US Secretary of Energy Hazel O'Leary at the Kennedy School on Monday. About half of those invited to attend the meeting were students, while the rest were industry representatives or professors.

O'Leary, the first woman appointed to the post, is a lawyer by training and a former prosecutor. She discussed her career and the current challenges facing the Department, then roamed the room taking questions with a flair reminiscent of a talk show host. Addressing the students in the audience, she emphasized that the "analytics" taught at Harvard are the best possible training for a career in government.

A surprise attendee at the meeting was Prof. Charles Nesson '63, who queried O'Leary about conflicts between local governments and federal agencies at Superfund cleanup sites. Nesson raised the possibility of bringing in the Harvard Negotiation Project to mediate these tensions; O'Leary answered that, "the model you're reaching for is excellent," and promised to send Nesson a copy of a report one of her aides is producing on the issue.

Many environmental groups criticized O'Leary's appointment when it was announced in January. Although she had coordinated conservation efforts in the Department of Energy during the Carter Administration, O'Leary spent the intervening years working for a utility company, Northern States Power.

According to Environmental Law Society President Amy Royden '94, "she's more environmentally conscious than previous Energy Secretaries have been, but not as much as I would have liked her to be." Members of the Environmental Law Society expressed concern that O'Leary focused too heavily on natural gas as an alternative to gasoline, instead of emphasizing "cleaner" alternatives such as electric batteries.

Even students who took issue with some of O'Leary's views were favorably impressed by her knowledge of energy issues and her responsiveness to questions.

"She handled questions well, and explained things well, and didn't seem to be hiding things," said Royden. "All in all, I was pretty impressed."

Criminal Justice Institute and PLAP sponsor "Women in Prison" Conference

The HLS Criminal Justice Institute and the Prison Legal Assistance Project will hold a conference entitled "Locked Up and Locked Out: Women in Prison" on campus today and tomorrow. Panels consisting of judges, scholars, students, former prisoners and others will address issues such as "Battering and the Cycle of Violence" and "Locking Up Moms: Who Are We Punishing?" Jean Harris will deliver the keynote address tonight.

HRE Hires Security To Protect Shops

Harvard Real Estate has hired an independent security agency to guard the recently-opened Shops by Harvard Yard, even though Harvard University maintains its own security and police force. According to one Harvard police officer, this is the first time an outside agency has been brought in to guard Holyoke Center.

Pinkerton Security Services, the agency hired, has already begun to secure the shopping area. As reported in the *Crimson*, at least one senior police official has linked Pinkerton's hiring with the recent crackdown on homeless persons sleeping near the shops. The official said the company is aggressively encouraging the Harvard police to arrest "transients." A representative from Pinkerton could not be reached for comment.

— from the *Harvard Crimson*

Weight Discrimination Ruling Upheld

Classifying the morbidly obese as disabled persons whose rights are protected under federal law, a three-judge panel of the First U.S. Circuit Court of Appeals in Boston upheld a \$100,000 jury award to a 320-pound woman who sued Rhode Island for employment discrimination. In reaching its decision, the appeals court found that the medical director at a state-run home for the mentally ill in Rhode Island illegally made "an employment decision based on stereotyping" when he told the plaintiff, Bonnie Cook, that she would have to lose weight before she could return to work at the center. The court held that morbid obesity is a handicap under federal law, since it is a permanent product of a dysfunctional metabolism rather than a mutable condition or a lifestyle choice.

Cook, who is 5 feet 2 inches tall, had been diagnosed previously as being morbidly obese, which means that she is at least 100 pounds overweight or twice her ideal weight. As a result of the ruling, Cook will receive back pay, pension contributions, interest, and compensation for pain and suffering and will be reinstated with seniority calculated retroactively.

— from the *Harvard Crimson*

Dinh in New York Times

Sure, Harvard Law professors are always in the media. But how many students make it into nationally-read columns in the *New York Times*? Viet Dinh '93 and his family were the subject of an op-ed piece by Anthony Lewis the day after Thanksgiving. Dinh, who is currently clerking for Judge Laurence H. Silberman of the U.S. Court of Appeals in Washington, will clerk next year for U.S. Supreme Court Justice Sandra Day O'Connor. Last year the *RECORD* published a feature on Dinh's odyssey, which Lewis relates as "An American Story." Dinh escaped Vietnam in 1978 with his mother, sisters, and brother, and immigrated via Malaysia, and his family was reunited last year when his older sister finally was allowed to leave a Hong Kong refugee camp.

The Best Gift There Is

By Mike Fischer '95

Book Review Editor



It's become one of my favorite rituals, one enacted every December since my first year in college: As soon as I finish my last exam or class, I light out for the bookstores. Not just one or two. But ten or twenty. And not just for an hour or two, but far into the night. All of them, from discount heaven to the most expensive rare book shop, are packed with holiday shoppers, privy to the world's worst kept secret: There simply is no better gift than a book.

A book collapses time and space, allowing us to hold inaccessible epochs and mysterious continents, precious masterpieces and long forgotten love songs in the palm of our hand. A book provides more chills and thrills than any cinematic remake, as John Grisham or Tom Clancy fans can tell you after yet another disappointing trip to the theater. And in a magical paradox, a book provides a unique way for us to talk to each other: It offers a medium that translates one of the most insistently private experiences of all — reading — into a common language.

A book, in other words, allows us to share our private selves with each other. As I share with you, obliquely, every week. As I'd like to share with you now by suggesting a few books that would make great presents. And start great conversations. Between you and whomever. Between you and me. Until we meet again, come January.

I'll begin with one of my favorite new love stories, the beautiful and haunting *Griffin and Sabine* trilogy. The brainchild of illustrator Nick Bantock, it is the surreal epistolary romance of Griffin Moss, London artist, and Sabine Strohem, an ethereal woman from a tropical island on the other side of the world who, in a postcard, casually informs Griffin that she can see everything he draws, *through*

I'd like to share with you now by suggesting a few books that would make great presents.

his eyes. And so begins a correspondence that more than lives up to its billing in the first volume's subtitle: It is, indeed, "extraordinary."

But as extraordinary as this correspondence is, it isn't nearly as wonderful as the way that it is packaged. Not only are all of the postcards and letters gorgeously and provocatively illustrated, but the letters themselves are tucked into real envelopes, from which you must remove them if you want to read them. As you anxiously unfold their secret contents, you can't help feeling the illicit thrill of the voyeur that you have indeed become. You are, after all, opening somebody's mail — peering, uninvited, into other lives and their most jealously guarded secrets. As, of course, you always are when you read. Bantock just drives the point home with especial clarity.

And with maddening suspense. Part of what gives eavesdropping its appeal is that you can never quite make out what is being said: It retains its attraction because of the aura of secrecy that surrounds it. Griffin and Sabine's burgeoning love affair is surrounded with more than enough secrecy: Why can't or don't the two lovers meet? Why won't Sabine send Griffin the picture of herself that he had requested? Does she even exist except as a figment of Griffin's imagination?

What, for that matter, of our own flights of fancy? Bantock gives us plenty of room to make them, not only because these lovers are so weird but because they both execute such wonderfully weird drawings. Bantock's art work doesn't illuminate so much as complicate the mysteries to which it seems to relate. Or does it? Even if I knew, do you think I'd tell you?

If your prospective recipient is less patient with such fancies but up for an equally bracing intellectual challenge, I suggest *The First Anthology: 30 Years of The New York Review of Books, 1963-1993*. Born, modestly, as an *ad hoc* response to the *New York Times* strike in the winter of 1962, *The Review* has become, quite simply, the best journal of arts and letters in America. Yes, it has lost some of its political intensity. Yes, it frequently reads like "the review of each others' books." Nevertheless, I simply cannot imagine *not* subscribing to *The Review*. And now, with the publication of this splendid anthology of 23 pieces — *The Review's* first full-length anthology — I cannot imagine going without it, either. I can remember reading and being mesmerized by some of the included pieces when they were first published: Joan Didion's sobering account of events in El Salvador, written during the height of the terror there in the early 1980s; Primo Levi's memoir of his last Christmas in Auschwitz; Gore Vidal's memories of Amelia Earhart, a close friend of his father.

But now they are joined by other legendary pieces from before my time: Elizabeth Hardwick's all too familiar account of the Watts uprising; Andrei Sakharov's landmark essay "How I Came to Dissent"; the germ of Susan Sontag's magnificent book, *On Photography*. You get the idea. Pick it up, sneak a peek before you wrap it, and see for yourself. Or take advantage of *The Review's* current sub-offer — \$22.95 for one year — and get a free copy of the anthology thrown in for good measure.

Speaking of anthologies, the Library of America has just published the eagerly anticipated two-volume anthology *American Poetry: The Nineteenth Century*. Sprawling across more than two thousand pages, it is even better than I — a twelve-year subscriber to and firm believer in *The Library of America* — had hoped. All of the first edition of Walt Whitman's *Leaves of Grass* is here. Over 150 Dickinson poems. Generous selections of Whittier and Longfellow and Emerson and Poe. In short, all that you'd expect.

But what makes this anthology so special is the inclusion of what you might not expect: Hundreds of pages of Native American songs, as well as American folk songs and spirituals. You can revisit parts of American popular culture which all of you raised here will know: "Suzanna," "John Henry," and "Michael, Row the Boat Ashore." Or read, as I did for the first time, the Sioux ghost dance songs. Revel in the power of "Swing Low, Sweet Chariot" or the shame of "Many Thousand Gone."

Experience, that is, all the many words and worlds which make up America. Which send packing — as all three of my selections do — the idea that the New World has no culture. You're not compelled, after all, to read the latest tripe masking as literature from Robert James Waller.

The Great Debate

By Bill O' Dowd

Sports Editor

NOT since the big brew-haha over beer in the Law Student Council have I witnessed so many people at HLS debating the merits of a single issue. Who should play for the national championship in college football on New Year's Day? Nebraska? Florida State? West Virginia?

My feeling is that it boils down to a simple question: Do we want the two best teams in the nation to play each other, or do we want the two undefeated teams to battle it out? This year, most "experts" agree that these two groups are mutually exclusive.

Florida State, on paper, is the best team in the country, period. Anybody who says they would bet against Charlie Ward and the Seminoles on a neutral field is a flat liar.

Sure, they lost to Notre Dame. But, they were on the road, they had a chance to win on the last play of the game, and they haven't been challenged by anyone else all year. And boosters of the 'Noles are quick to point out that Coach Bobby Bowden scheduled Notre Dame (and Miami, and Florida).

Yes, Nebraska and West Virginia are undefeated. But, as the argument goes, they haven't played anybody. Indeed, Nebraska's one tough out-of-conference game was UCLA (a one-point victory) while West Virginia can only point to Louisville for "tough" out-of-conference foes (also a narrow escape). Indeed, on paper, the second-best team in the country is probably either Notre Dame (10-1), Tennessee (9-1-1), or Texas A&M (10-1). Why? Because oddsmakers would favor any of them over Nebraska or West Virginia on a neutral field.

With that said, I am now going to open myself up to an enormous amount of public criticism. I think (gulp!) that Nebraska and West Virginia should play each other in the Orange Bowl for the national championship on New Year's Day. Am I out of my mind? Probably, but here's why:

They're *undefeated*.

That's it. That's my reason. Yeah, I know that if they could, the Cornhuskers would schedule Division III schools every year (remember, I hate those guys from my Creighton days!). Yeah, I know that both teams would probably have lost two to three times each with Florida State's schedule (never mind that the Seminoles would be two touchdown favorites over either team). The fact remains, though, that neither the Nebraska Cornhuskers nor the West Virginia Mountaineers lost this year. Every other Division I football program lost at least once. That's all I

need to hear. Both the Mountaineers and the Cornhuskers did all they could. They beat every opponent they played. They could do nothing else. And to me, that's enough.

If you don't like the result, tough. If you want the *best* team in the country to win the national championship, create a play-off system. Or have Florida State play whomever some computer somewhere says is the second-best team in the country (maybe it is Nebraska). But this is *college* football. There's no guarantee that the *best* team comes out on top. Anybody else remember Brigham Young winning the national title in 1984?

If two teams are undefeated at the end of the year, they should play for all the marbles. It's a bright line rule. Listen carefully, now. *It's the only way the players can decide the national championship.* And that's the belief that players all across the country hold.

Before every season, each and every player on each and every Division I team dreams of winning all their games and winning the nation-

al championship. Granted, it's an unrealistic dream for most. But there's an unwritten rule that if you are the only team left undefeated at the end of the year, you should be crowned national champions. Unfortunately, the popular media shattered that dream for the hundred or so players from West Virginia by selecting Florida State as Nebraska's opponent in the Orange Bowl.

Why should I blame the media, you ask? Because it's the media who demands that the "best" team win the national championship. Somehow, they believe that it's their divine right to choose which teams are worthy of competing for the grand prize. Never mind that many members of the media often never played the game and, thus, never carried the dream close to their hearts. They don't understand what it means to be undefeated and *not* playing for the national championship.

The media poll placed West Virginia a distant third behind Florida State and Nebraska. The coach's poll (people who hold the same dream as the players) voted Nebraska #1 and West Virginia #2. Isn't that funny? If the coach's were to decide, the Cornhuskers and Mountaineers would be playing on New Year's. And I'm sure that very few of the coaches would say that either Nebraska or West Virginia is the "best" team in the country. They're just the two teams who deserve the chance to fulfill "the dream."



Somehow, they believe that it's their divine right to choose which teams are worthy of competing for the grand prize.

FOOD - O - RAMA

Dick's: Not Even as a Last Resort



By Ted Cohen '95 and Jonathan Goldstein '95

DICK'S Last Resort (50 Huntington Avenue) is a roadhouse in the Prudential Center, but the space, once you get past the neon beer signs, the Elvis memorabilia, and the other white-trash kitsch, might have been a supermarket, or a Gap, or an indoor mini-golf course.

It's exactly this fact – the fact that Dick's, for all the careful calculations of its marketing team, leaves you with the feeling that you could be anywhere else, doing anything else – that sums up what's increasingly wrong with Boston's eating scene. Theme restaurants have sprung up like pre-fab housing over the past several years. And while they might be swell anchors for suburban malls, places like Dick's shouldn't make sense in cities, where things are supposed to happen over time, where restaurants should grow out of kitchens and reflect the diversity of influences around them. The success of the theme restaurant demonstrates that even on the level of consumption, America's cities can't quite cut it anymore. They're feeding on themselves.

As themes go, Dick's is predictably obnoxious. Diners sit in mismatched chairs at long tables. The "Rules of the House" are painted on the corrugated tin that lines one wall. The kitchen is loud, open, hissing, and steaming. But besides its name – which the staff repeats, at every opportunity, with Buttheaded glee – Dick's takes most pride in its service. You see, the waiters and waitresses here are *rude*. They tell you that you don't want what you ordered. That everyone had better have another beer. That if you didn't come to have a good time, then *maybe* you should go somewhere else.

To be honest, we were afraid. What if someone should notice that, despite the eight beers we had been coerced to drink, we still weren't having a good time? And at Dick's there are about fifty people paid to notice you not having a good time. It's

To be honest, we were afraid. What if someone should notice that, despite the eight beers we had been coerced to drink, we still weren't having a good time?

enough to kill your hunger. (If you care, the barbecued chicken and shrimp, served obviously enough in industrial metal buckets, were undistinguished.)

Let us make one thing clear: We're not the kind of restaurant critics who will disdain any eating experience that's not, by some obscure and shifting code, "authentic." We're not utopians, and we're not above realizing that sometimes eating out is about more than just eating. But if a restaurant built entirely on a foundation of illusion is going to be good, well, the illusion has to *work*. And at Dick's, not even eight beers can dispel the cold fact that you're on Huntington Avenue, not Route 66, that the "toughs" and "broad" at your table are sweatshirted college students about to vomit, and that the goofy decor has more to do with frat parties than with any sort of traditional American food culture.

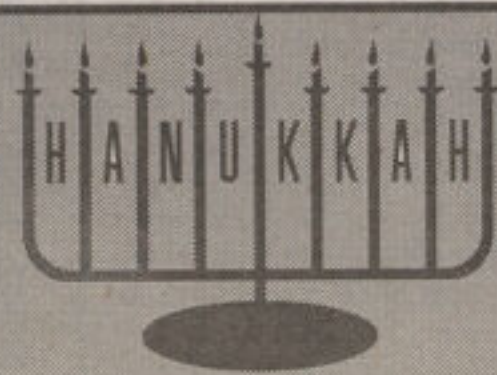
So, in the gaping absence of any true spirit, what is it that Dick's and its ilk offer the hapless guest? Homophobia and banality. The notion that it is somehow a talisman of masculinity to be able to tolerate spicy food finds a home here. Spicy is manly; mild is wimpy. Should any male have the audacity to actually order the Mae West Chicken Breast, he invariably comes in for ridicule. Something along the lines of "What's a matter? Can't handle the hot stuff?" At Dick's there's no room for sensitive types.

Moreover, the place revels in the absurdly obvious double entendres which its name allows. Above the entrance is inscribed "There's a little Dick in all of us." Waiters roam the crowded aisles placing huge condom-like hats on women. (None seemed to mind.) A balloon sporting an unmistakable anatomical shape floats around the dining hall, coming to rest gently on a bucket of fries before being swatted to the next table. You fully expect someone to call for a panty raid or to pour their Bud down your back.

In short, Dick's is what happens when neither the food, the atmosphere, nor the soul of a restaurant can carry it. Pack 'em in. Get 'em drunk. Titillate 'em with cheesy phallic references. And send 'em on their way.

If this city, and others like it, hope to stave off this blight of soul-less and silly restaurants, they will have to do what they can to encourage diversity rather than synthesize it – to create an atmosphere in which different cultures and sub-cultures thrive (and cook) rather than fall into the lock step of a white-bread world in which Dick's is the capital. In the final analysis, there may *not* be a little Dick in all of us.

No Rating.



The RECORD wishes its readers a **Happy Hanukkah!**

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The Gotta Eat! Guide

NO MSG!

Harvard Law RECORD

Founded in 1946

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A Truce in Beirut

When *GQ* profiled HLS last spring with an article entitled "Beirut on the Charles," few here were surprised by its angle. Although he erred a bit on the side of sensationalism, author Jeff Sedgwick had little trouble finding material to support the Lebanon analogy. Sedgwick visited the Law School last fall, just as allegations of racism by then-*Law Review* president Emily Schulman '93 were surfacing. He wrote of sit-ins at the dean's office, controversial and tasteless parodies, and student lawsuits against the school — all of which had affected life at HLS in the previous 12 months.

If Sedgwick were to visit HLS one year later, he might be tempted to write a sequel entitled "Geneva by the Bay" or at least "The Calm After the Storm." The rancor that gained national attention has been eerily absent this fall; the most heated dispute has centered around a \$25 weekly beer tab. The issues that dominated campus for the past several years remain, but their divisiveness seems to have disappeared.

The hope here is that the new tranquility represents a healthy reaction to the excesses of previous years. To the classes of '95 and '96 in particular, the stand-offs of yesteryear are, for the most part, only stories tinged with people taking themselves a little too seriously. The increasing focus on public interest jobs this year (see related story, Page One) may be a sign that newer students are concerning themselves more with off-campus accomplishments and less with intra-school battles. Perhaps even the 3Ls, whose first year was among the most divisive in HLS history, look back with a bit of chagrin. Every movement spawns countermovements by successive generations, and the Law School's countermovement may be a propensity to take on-campus politics with a grain of salt.

It is easy to exaggerate the importance of what occurs on the east side of Massachusetts Avenue. The constant exposure to brilliance tends to make one feel as though he is at the center of the universe. But we must keep reminding ourselves that the Law School world is far less important than the legal world as a whole. A battle over Law School Council procedures is of almost negligible importance compared to, say, the future of the Voting Rights Act. Even the emotional and important issues we so often debate here — diversity, affirmative action, racism, sexism, homosexual rights — are relevant at HLS primarily for their symbolism. The issues we students will face as lawyers — which side we will take, which causes we will press, and which values we will select to guide us — will do far more to shape society than any wars we wage at the Law School.

Of course, the spring protest season is approaching, and the current peace may prove to be just a period of dormancy before the eruption. The recent flap over student appointments to the committee charged with drafting a sexual harassment policy (an important campus issue if ever there were one) may be a foreshadowing of future controversy. A new round of faculty appointments could re-ignite the diversity movement. An insensitive comment might spark a backlash.

If so, the battle for Beirut may have only just begun.

— Stohr

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

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

Submissions may be sent to The RECORD at the above noted address, dropped in the RECORD box located in Harkness Commons, or left in the 3L Hark box of Lisa Zornberg. All copy must be typed, double-spaced, and submitted on paper and on a computer disk (Macintosh or IBM). The RECORD reads and appreciates every letter we receive; we reserve the right to edit letters for space as necessary. We will return your disks. Off-campus subscriptions are available. Subscription price: \$30.00 year mailed; \$35.00 year mailed outside U.S. Individual copies: 35 cents at newsstands, 50 cents at the Law School, \$1.00 mailed, \$2.50 for back issues and reprints. Second-class postage paid at Boston, MA and additional mailing offices.

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

—First Amendment, US Constitution



• Letters •

Fenno: Disgusting, Shameful, Obscene?

Re: "Fenno's" reference (RECORD, 11/12) to Dershowitz's next book title: Not funny. Is ethnic pride OK for disadvantaged minorities, but not for so-called privileged ones, such as the Jews? For your information, Alan Dershowitz counsels Jewish pride, which fosters true love and respect for all of God's children. That's

why there is no humor in "everyone else sucks" — it is a complete lie, complicity for which is no doubt shared by a Jewish author, or editor, or two so steeped in their self-loathing that they have somehow subconsciously bought into the classic antisemitic canard that Jews care only for themselves and/or are superior.

We live in the century of the Holocaust, in which such canards, while perhaps funny to you, resulted in the slaughter of millions of very unprivileged Jews.

Disgusting, shameful, obscene.

Fred M. Stone '67
November 23, 1993

Kennedy's Book Reveals Sex Fixation

In the October 29 edition, you quote Professor Duncan Kennedy, a pseudo-intellectual, as saying in his collection of essays, "Skirts mean vulnerability, and pants mean protection. . . . Skirts mean: my sex is hidden from you, but it is not protected by clothing, like pants, which can be removed only by a com-

plex series of unzipping, pulling down, and pulling off."

How odd! First, most of the women of the Asiatic and Arab world, and elsewhere in the Third World, wear pant-like garments, not skirts.

Second, such abnormal sex fixations are not particularly becoming in a

Harvard Law School professor.

Third, Professor Kennedy displays himself in these revelations as suffering from what some might think is a terminal case of arrested psychological development.

Carl Shipley '48
November 18, 1993

LSC Member Calls for Free E-Mail

I am a 1L representative to the Law School Council. I and other LSC members are hoping to make E-mail freely available at HLS. At Harvard, only students at the Divinity School and Law School do not receive free E-mail. Undergrads do, as do Business School students.

While Dean Clark in

the last RECORD declared that the Law School had no worries of mediocrity, maybe the lack of computer facilities and access at the Law School is indicative of another story.

Students could send notices to student groups, other campus groups, study groups, professors, peers, and journals at other law schools. Students

could E-mail firms, confer for moot court, and share class notes. The possibilities are vast, yet remain prohibitively unavailable to HLS students; meanwhile, law students at Stanford, Yale, Chicago, etc. receive these advantages free!

John Kissane-Gaisford '96
November 18, 1993

Do something productive
with your Winter Break!

Spend your time writing a
letter to the RECORD!

Don't just waste your TIME having
fun.... tell us what you THINK!

An Emerging Foreign Policy: Benign Intervention

By Charles O. Porter '47

Special to the RECORD

A MONTH HADN'T PASSED in 1957 since I was sworn in as a first-term US Representative from Oregon, when a three-star Marine general in uniform came to see me at my office in the Old House Office Building. The general informed me that he was in charge of the Inter-American Defense Command. I never did find out exactly what that meant. Having spent most of my four-plus years on active duty in World War II as a second lieutenant, I was impressed by his personal visit to persuade me, who was not exactly a veteran on the Hill.

The general tried to convince me to lay off my highly publicized criticisms of five-star (self-awarded) Generalissimo Raphael Leonidas Trujillo, dictator since 1930 of the Dominican Republic. Relying on my country's constitutionally mandated tradition of civilian supremacy over the military, I felt secure in rejecting the general's earnest arguments that my constituent, Jerry Murphy, who had "disappeared" in the Dominican Republic, was an "adventurer," not worthy of my concern, and that Trujillo was a staunch friend of the United States because he voted with us in the United Nations, was our loyal ally in the fight against world communism, and cooperated with our military forces. What more could we ask?

The general did not seek to refute my public statements, describing in detail why Trujillo was aptly characterized as "the butcher of the Caribbean," and citing evidence that he had caused Jerry Murphy to be murdered a few months earlier. Evidence showed Jerry found out that the plane he had piloted for Dominican Airlines, from New York to the Dominican Republic, carried the drugged body of Jesus Galindez, a Basque activist and Columbia University scholar who had written a disparaging account of Trujillo, based in part on his service as a tutor in the Trujillo household.

I soon discovered that the Marine general had accurately expressed our foreign policy at that time as to governments led by tyrants. The first commandment of our foreign policy was: "Never interfere in the internal affairs of other governments, even if their leaders tortured, murdered, and robbed their subjects and others." Our actual foreign policy, to my dismay, was designed to further our alleged "national interests," primarily military and financial. Moral considerations were irrelevant, wimpish.

Charles O. Porter, in addition to his other exploits, was the first Editor-in-Chief of the RECORD.

US armed intervention in the internal affairs of Latin American countries began in northern Mexico before the Civil War, an area that is now the southwestern United States, and continued more recently in Cuba, Guatemala, Grenada, Panama, and Haiti, to name only a few.

The good news is that the goals of our interventions in the last 30 years are changing for the better.

We used our mighty forces in Grenada to purge the pipsqueak communists there. In Panama we dispatched a fantastically expensive and overpoweringly large military posse to punish Noriega for disrespect. In Haiti we are not sending a military force to overthrow a duly elected president as we did under LBJ in the adjacent Dominican Republic. President Clinton is using negotiation, economic sanctions, and the threat of force to reinstate a duly elected president, in cooperation

with the United Nations and the Organization of American States. This is the rule of law and hopefully "the new order."

Our nation is at last following the advice of Luis Munoz Marin, the great poet governor of Puerto Rico, who years ago counseled: "The warm *abrazo* for democratic leaders and the formal handshake for the tyrants." Munoz didn't advise breaking off communications with governments ruled by tyrants, as we did for many years with China, and are still, to an ever lesser extent, doing with Cuba.

Representative Wayne Hayes of Ohio told me how President Truman dealt with Trujillo when Trujillo, having appointed himself as the Dominican Republic's UN representative, arrived at the Oval Office for a protocol call on Truman one day while Wayne was waiting in the outer office.

"Trujillo had no sooner closed the door behind him," Wayne said, "when the door opened, Trujillo emerged, the President close at his heels, dismissing him curtly with a 'thanks for coming.' As soon as Trujillo left the room, Truman turned to me and said, 'I hate all these dictator sons of bitches but I hate that one most of all.'"

At my first speech in the House chamber, February 27, 1957, the sergeant-at-arms, "Fishbait" Miller, told me that there hadn't been so many police on hand since the day three years earlier when the Puerto Ricans shot up the House of Representatives. The FBI, knowing Trujillo's record, recommended that I carry a gun when I drove to and from Capitol Hill. "If the first shot misses you," an agent told me, "you'll have a chance to spoil the second shot."

In my remarks about the Jerry Murphy case I said, "As I got deeper into the details surrounding the disappearance of the boy, it became apparent that we were dealing with the logical result of the present United States policy towards the Dominican Republic." The warm *abrazo* encouraged dictators like Trujillo to feel free to commit crimes at home and abroad.

President Clinton works with the United Nations to ensure that the election in Haiti is honored. He does not try to use US troops to do what the Soviets tried to do in Afghanistan, and what the United States tried to do in Vietnam. Financial gain and military advantage are not the stars guiding this president through the turbulent and foggy seas of foreign policy.

President Jack Kennedy, Clinton's role-model, appointed me in 1961 as a consultant in the White House. Just before I resigned to go back later that year to Oregon, he talked with me in the Oval Office. He was rueful about the tragic Bay of Pigs fiasco. His instincts were as profoundly moral as Harry Truman's had been and as Bill Clinton's are.

Kennedy knew that the B-26 medium bombers which he refused to send to help the invaders could have blasted the way to Havana and victory. Kennedy didn't give that order because he knew it would lead to the death and injury of thousands of men, women, and children, inciting outrage here at home, in the hemisphere, and in the entire world.

Under President Clinton's leadership we have hope of repudiating and repairing, so far as possible, the Bay of Pigs, the blockade of Cuba, the long-continued US trespass on Guantanamo, the mock macho assaults on Grenada and Panama, the insidious corruption of the Chilean armed forces leadership, and so on and on, a disgraceful list of

malignant and immoral interventions.

Democracy consists of the right of the majority of the adult population to choose their leaders and, of no less importance, the right of minorities to continue to try legally to win control by becoming the majority. Democracy, like civility and all decent behavior cannot be imposed, but it can be — and is once more being — encouraged by our leaders.

Our nation is at last following the advice of Luis Munoz Marin, the great poet governor of Puerto Rico, who years ago counseled: "The warm *abrazo* for democratic leaders and the formal handshake for the tyrants."



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Squid Pro Quo

A Periodic Question and Answer Column

If you have questions for the Squid, place them in the RECORD box in the Hark, by the Story exit.

Dear Squid:

What ever happened to those lame Horoscopes that used to appear in this space in the RECORD?

Seeking Guidance

Dear Seeking:

Glad you asked.

Aries: You botch the toast as guest of honor at an Osmonds' reunion dinner, forgetting that Mormons don't drink. When you ask politely, Dave Hornik '94 agrees to let you use the remains of his goatee for your new toupee.

Taurus: A botched nose job leaves you with two noses, but only one ear. You call this a job? Leafing through your Con Law notes, you discover that what you said about Jason Levine '94 last week really wasn't protected speech after all.

Gemini: After being notified that you must retake your yearbook picture for a fourth time, you become suspicious because they keep putting you behind one way glass with a bunch of guys wearing stripes before snapping the picture. Finances improve when you construct a small trash-to-steam plant in your bathroom.

Cancer: You realize that annoying whirring sound you sometimes hear at night is your parakeets shagging. You will be caught in a web of intrigue and danger. That darned Spider man.

Leo: Winning isn't everything, but at least it's not nothing — like you, you miserable excuse for a human. While cavorting about in a Barney costume on an Italian hillside in Tuscany, you are mistaken for a giant grape, and trampled by overeager and thoroughly parched peasants.

Virgo: While windsurfing in the Bay of Figs, you are accosted by an angry Bisleian-wielding mob, demanding real bacon. Medical problems make the holiday season stressful; maybe it's time to get that vasectomy you've lied about 19 times.

Libra: You will find romance where you least expect it: in the junior high lacrosse team you've been coaching. After your 53rd whippet, you realize that Steve Shavell had it all wrong: Corporations don't want to profit-maximize, they just wanna have fun!

Scorpio: After seeing "Carlito's Way," you realize that you bear an uncanny resemblance to the stiff in the second scene. Sue Universal studios for \$4 million. Sure, programming the VCR can be frustrating, but it's no use shooting your roommate over it.

Sagittarius: A close relative will visit you unexpectedly — better bury those rotting corpses that have been cluttering the guest room. The morning after the Lincoln's Inn Formal, you awake to find your date's serving of Lobster Thermidor in your shorts. Eat it.

Capricorn: You will find peace in this holiday season by making treaties with Armenia and Madagascar. A bird in the hand is worth two in the bush, but I wouldn't try feeling around under the table for them. Your date is probably wearing panties.

Aquarius: You are knighted by the Queen Mother for finding the word "amygdaloid" in a Boggle tournament. While shopping for Christmas presents, you are forced into a dressing room by Santa's little helpers and asked to share your goodies. Remember, consistency is the hemoglobin of little minds.

Pisces: Cheer up a friend who's down on her luck by performing, "All That She Wants is Another Baby," in drag. While studying for finals, you get locked in Langdell, and amuse yourself by changing all the F. Supp.'s to "F. What Supp?"

Creative Neurosis

By Debra Dickerson '95

RECORD Columnist

FUN as y'all were to watch back in September, even a stark-raving feminist such as *moi* is hard put to watch the ritual suffering of you 1Ls now. Like clockwork, you guys have accepted the time-honored Harvard tradition of self-inflicted bleeding ulcers and hemorrhoids over exams. *And they're still two months away.*

Now, I know you're wondering if the B free-for-all is really true. Remember the old saw about looking to the left and the right on the first day of class because one of you would be gone by semester's end? Well, from now on, do that — You'll get a feel for how many of you are going to get Bs. Look into a mirror while you're at it.

Face it, write a whiny column about it, and move on. OK, so a lifetime of straight As and all your parents' love and approval will go right down the tubes, but at least you won't get the boot. (Anyway, not until the Financial "Aid" Office figures out a way to give you the bumrush and make you keep paying.)

On the bright side, researchers at Harvard Medical School have documented a direct relationship between getting As and congenital geekosity. Apparently, it's physiologically impossible to get an A here if you (or anyone who looks like you):

- still have a full head of hair,
- have never made a citizen's arrest of nibblers in the produce aisle at Star Market,
- have ever "known" a non-inflatable *homo sapien*,
- have a chance of ever "knowing" a non-inflatable *homo sapien*, or
- have never walked away in mid-sentence from someone upon learning of their liberal arts major.

Lest you doubt the docs, just stroll past ~~de Big~~ House Gannett House and peep in. (Don't look too long though. It's like staring at the sun.) As further proof of the study's validity, *Law Review* ~~needs~~ volunteers QC'd

the results. Their thorough fact-checking revealed the correlation to be even higher than previously thought. It seems the original computations had been made by B recipients at the Med School — they forgot to carry a five.

Even without all the damn Bs, 1L exams are a real pain. They hang over your head, ruining Christmas and New Year's. (Thanksgiving, too, given how early y'all started stressing out.) Your dread and desperation take all the fun out of lording it over the gang back home. When you should be thinking about when to drop the H-bomb ("You're at Possum State? Cool. Me? Harvard Law School. Hey, come back!"), you're seeing your life pass before your eyes.

You think of all the Tums you could have bought with that airfare. Searching for a tiny little three-piece suit and miniature camera crew for that voodoo doll of Arthur Miller consumes time you should have spent relaxing. Then you trudge back to moist, frigid Cambridge to feel your lips chap, your feet freeze, and your butt go numb as you study til *Good Morning America* snaps you back to what passes for reality here.

Then, there's that actual first test. You spend two hours trying to find the obscure, Brigadoon buildings where they've hidden the exams. But you're too smart for them — you're still two hours early. You and your friends scare each other with last minute, home-made hypos involving the Skipper, Gilligan and *respondeat superior*, then take turns going outside to throw up in the bushes.

The actual exam begins and from somewhere in the room comes the sound of whimpering. You realize that

sound came from you, so you stuff one of your neighbor's seven outlines in your mouth to stifle the screams you fear will come next. Your neighbor drop-kicks you to get his outline back (seven is his lucky number) and, by the time the proctor finally breaks it up, you've lost 15 precious minutes of breathing into a paper bag. Just when you thought it couldn't get any worse, you hit absolute, rock bottom. You read through the exam book and start laughing hysterically.

If you're like me, you will have just realized two things. First, that you haven't the vaguest idea how to

answer the question because you spent 18 hours a day memorizing things and only 2 analyzing them. Second, and by far the most distressing, that the people in the fact patterns have much more interesting lives than you do. Battered Betty may have problems, but at least she got that exciting cocaine-buying road trip before Dastardly Dave pushed her out into traffic. Oblivious Olivia ran her over, and Cooper the Copper fined her for obstructing traffic. At least she hadn't spent the holidays dressed as a fake Santa collecting money for Spring tuition.

I won't waste my time telling you to relax — I didn't, you won't. I'll just tell you to try to have some fun with it. Since you're going to be neurotic, at least be creative

about it. For instance, put your new found knowledge of Crim to work. Take a study break to watch cop shows, then count the Constitutional violations. For extra points, see if you can work your findings into an exam question. Profs love that.

Just remember, grades are totally random. Unless, of course, you get As. Then they're perfectly objective and scientific.

Battered Betty may have problems, but at least she got that exciting cocaine trip before Dastardly Dave pushed her out into traffic, Oblivious Olivia ran her over, and Cooper the Copper fined her for obstructing traffic.



In his spare time, Fenno decided to help his fellow students by compiling a study guide for 1Ls:

Study Aids

Because you're absolutely clueless, it might be a good idea to pick up some study aids and hornbooks. They can provide you with even more material which you won't have time to read. Some of the more helpful titles include:

"But I Bought Her Dinner: The Death of Contract;"

"Beavis and Butthead: A Torts Primer;"

"The Life and Times of Ben Rozwood: An Illustrated Hornbook of Criminal Law Cases and Materials;"

"I got Dibs' v. 'Jinx you owe me a beer': Property Explored Through Contrasting Notions of Entitlement;" and

"Injunction, Junction, What's Your Function?: Civil Procedure for the Wee Ones."

Study Groups

Although I was never asked to join one myself, I understand they are quite useful, especially for circle jerks. So choose your partners carefully.

The social benefits of study groups are obvious and manifest. Consider the old maxim: "The study group that lays together, gets As together." But, remember its corollary: "Whatever you do, don't sleep with those people. They're too god-damn ugly for words."

The academic benefits of study groups are less certain. It's a risky business to let Larry, Curley, or Mo do your thinking for you. Somebody's bound to have a bucket of paint fall on their head or an eye poked with an elbow. But, for those of you who can't read, a study group is a clever way of finding out what material appeared on past exams.

Outlining

Much has been made about the benefits of outlining. Then again, much has been made about the benefits of mineral-oil enemas, but you don't see a lot of people administering them in the library.

If you're going to go through all the trouble of outlining, at least photocopy a good one. You might think about organizing a Delta "Dawn" Force invasion of the *Law Review* to storm Gannett House, burn their bagels, and pillage their file cabinets. They don't keep their outlines in there, but, hell, it's the principle that matters.

Tips for Exam Taking

Superstitions, although irrational, can often make you feel more confident and comfortable. So you should wear that lucky underwear — you know the pair, the ones that Greg Louganis wore for his record-breaking triple half-gainer in the 1984 Olympics.

Sitting in a familiar place can also help trigger memories. So it's a good idea to stake out your seat in the Bow early.

Be sure to relieve your sexual frustration before the exam, not during it. This is referred to as the "clean hands doctrine."

Some phrases really impress the professor and suggest that you've mastered the material. Sprinkle them liberally in your essay. They include:

"It's a double edged sword, and it cuts both ways."

"And then you do a BPL calculation: Bologna = Pork + Lard."

"Last week, I was in bed with Dershowitz, and he was saying . . ."

Quote of the Week

"Hope is much more the consequence, than the cause, of action."

—Roberto Unger

HAPPY NEW YEAR!

(well, the celebration may be a bit premature, but we have to say it now because this is the last issue of the RECORD this semester)

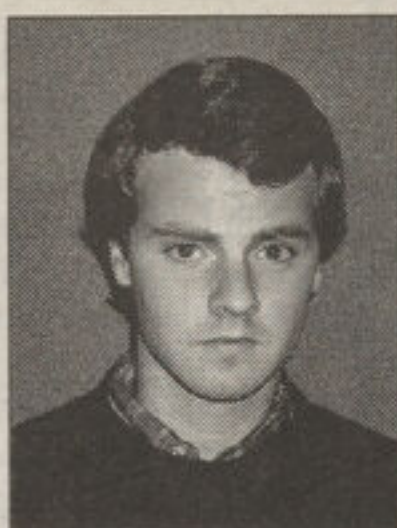
This year, make a New Year's resolution to join the Harvard Law RECORD!

NEXT RECORD:
JANUARY 21

BSA Botches Moot Court Competition

By Dave Clancy '95

RECORD Columnist



HAVING suffered this fall through the arduous and arbitrary "Q-Round" of the Ames Moot Court Competition, I implore Professor Nesson and the leadership of the Board of Student Advisors to place "Moot Court Reform" at the top of their list of priorities.

The Ames program, as it stands now, is plagued with problems. Administrative flaws cause a general sense of confusion: Are scores and judgments announced at the end of oral argument, or later? Do the appellees write two briefs, or one? Ethical failings sour the atmosphere: Shouldn't student judges recuse themselves when assigned to judge their friends? Shouldn't a team whose fourth member's father suffered a heart attack be allowed to withdraw without facing the threat of "sanctions"?

But it is the most fundamental aspect of the program, the system of judging, which is the most fundamentally flawed. After weeks of preparing briefs and oral arguments — investing as much time on moot court as on a class — participants are run through a gauntlet of evaluation which seems designed to ensure, with no exceptions whatsoever, complete and total randomness. BSA's moot court competition is the ultimate in equal opportunity — it doesn't discriminate even on the basis of such criteria as the quality of briefs or oral arguments.

The program's system of judging suffers from three serious defects. The first is that judges — both students and practitioners — tend not to know the case law. What they do know they learn through perfunctory readings of the crude and sketchy bench memos provided by BSA. One result is that judges can't tell a bad argument from a good one, and ultimately that briefs are scored more on style than on substance. Another result is that the quality of oral argument is terrible. How can judges ask good questions if they know nothing about the issue? How, in such a situation, can teams profit from their knowledge of the law? It's like asking a Kalahari Desert tribesman to moderate a presidential debate, and expecting an informative and productive exchange.

The second failing is that the guidelines for evaluating briefs and arguments are ambiguous, or simply deficient. Judges know that the scoring range is 0-100, but are left wondering how to distribute scores within that range. Should the average score really be a 75, as BSA now suggests, or a more reasonable-sounding 85, as BSA says it was in previous years? And what kind of brief, what kind of argument, deserves an average score, whatever that is? This kind of confusion leads to widely varying scoring practices among judges, and aberrant scores become the norm. My first oral argument, for example, got an 89, a 92, and, incomprehensibly, a 77.

Guidelines in other important areas are simply nonexistent. One judge decided, by fiat, that a brief's use of facts and figures from newspaper and journal articles was impermissible. The abysmal score he slapped the offending brief's authors with (because of something BSA never said they *couldn't* do, and which they certainly *were* allowed to do in first-year Ames) remained a permanent blot on their record because BSA had no set policy regarding admissibility of such data, and no set policy regarding resolution of such problems.

Neither judicial ignorance nor poor guidelines would matter much, of course, if everyone faced the same set of judges. No matter how arbitrary, uninformed, or mean the panel of judges, every team would suffer equally. But the Ames competition's third and by far greatest flaw is that teams are *not* evaluated by the same set of judges. The roster of judges faced by one team may in fact differ quite dramatically from that faced by a rival team. The practical effect of this strange system is that if Teams 28A and 14B go up against a tough panel, and teams 15C and 26B go up against an easy one, then teams 28A and 14B have been permanently screwed.

This is an amazing departure — at a school of law, no less — from an obvious principle of fairness. We would all be outraged watching Olympic figure skating if Kristi Yamaguchi and Katarina Witt were judged by different panels of judges. We would be tempted to say — and rightly so — that a comparison of the scores received by the two skaters is meaningless. And yet an equally meaningless comparison of scores was just used by BSA to decide which four teams won Q-Round. BSA would lose little in equity, and gain greatly in efficiency, if it just transferred the task of choosing winners to the people who run the parking lottery.

All of these problems are easily resolved, of course. Why BSA has not already done so is mystifying. First, write good bench memos and ensure that the judges read them before scoring briefs and before presiding over oral arguments. Second, strengthen and clarify the guidelines — in particular, design a method by which there is some consistency in scoring among judges. Third, and by far most importantly, ensure that all of the teams are rotated through the same panel of judges. Without this third reform, neither of the first two changes will be meaningful. But with this third reform, the system would move so dramatically towards fairness that the first two changes might even be done without.

As it stands now, the much celebrated upper-round moot court competition deserves its celebrity only to the extent that it bears an uncanny and unfortunate resemblance to the Courts of Chancery in Charles Dickens' novel *Bleak House*. It is so arbitrary, so inefficient, so mired in petty detail, but ignorant of large and important issues, that — like the Courts of Chancery — it "so exhausts patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honorable man among its practitioners who would not give — who does not often give — the warning, 'Suffer any wrong that may be done you, rather than come here!'"

I give a similar warning now to 1Ls. Whether you fear the lack of respect of your peers and parents, the disfavor of litigation partners at your favorite law firm, or, more likely, a struggle with your own competitive drive urging you to compete, suffer any and all of these wrongs before signing up for moot court next fall — unless major reforms are announced before the school year is out.



Members of the winning Ames Moot Court Competition team.

Ames Competition

continued from AMES, page 1

the case was "more fun than 'LA Law.'"

The case for the appellant was made by the Schoolhouse Rock Team, which was comprised of Marc D. Ashley '94, Theodore D. Chuang '94, Brian S. Kaplan '94, Michael A. Newman '94 (oralist), Craig S. Primis '94, and Rabois (oralist). The Galileo's Revenge Team, which argued the case for the respondent, consisted of Christine Chi '94, Emily Duke '94 (oralist), Mark Gordon '94, Hoskins (oralist), Stephen Rabiowitz '94, and Alan Rutenberg '94.

Newman and Duke argued the respective sides of the mistake of fact defense issue, while Rabois and Hoskins presented the arguments for and against the admission of the RTS expert testimony. All four faced pointed questions and hypotheticals from the judges, who regularly interrupted the oralists mid-sentence to query them. Yet, as Wood commented in her analysis of the proceedings, "I think that all four . . . were simply remarkable and showed skills way beyond [their] years in being able to keep [their] line of argument despite our sometimes back-to-back questioning. . . . It's probably one of the hardest things a litigator does, and [they] did it beautifully."

Going up to make the arguments was not as easy as it appeared, however. "Before I got up there, I was just trying to get psyched up for it, trying not to lose my dinner," said Duke. "Everyone else got to relax beforehand except the oralists." Newman had a similar experience. "When we walked into the room, it was quite a spectacle, with all the people, the light. . . . It was completely different walking into Austin [Hall] seeing the packed rooms. It made me very nervous," he said.

The judges helped make the experience as enjoyable as possible for the par-

ticipants, however, cutting the tension with occasional humorous remarks. In commenting on a case cited by the appellants, Souter remarked, "The circuit court also felt it was appropriate to devote a lot of space and puffery about a defunct delicatessen, so let's not make the circuit court's view necessarily determinative of what we do."

The oralists took the opportunity to argue with, rather than argue at, the judges and not only successfully parried the judges' attacks, but appeared to even convince them with their arguments. At one point, as Hoskins was arguing that the RTS testimony was necessary to justify to the jury the alleged victim's behavior after the fact, Souter stopped her, saying, "Yeah. I think you're right. I think you're right."

Observers cited this moment as the point when it became clear that Hutchins would win best oralist, but Hoskins herself did not recognize the success of her argument at the time. "It did not even phase me when it was going on," she said. "I was just focusing on their questions."

Thinking about the award after the fact, however, she said, "Everyone did a good job. . . . It was an honor. . . . It made me feel really good about my experience here."

Ana Salas '94, co-chair of the committee that organized the competition, said, "Students liked the judges on the bench and the way they reacted to the students." Newman agreed, adding, "They all asked excellent questions. It was quite apparent that they had read the cases in the briefs."

Overall, the oralists felt that the experience was a positive one. "It was an honor to be there," said Newman. "It is definitely something I'll be able to talk about in the future."

The Ames Competition is now in its 82nd year.

Dershowitz Denies Threat

continued from DERSH, page 1

ilarity in an interview — evidence that the studio itself is fueling the story. "Movies use exploitative gimmicks like this all the time," said Dershowitz. "These things don't just happen."

While he did not threaten legal action, said Dershowitz, he did suggest that Universal add a disclaimer to the movie. "I don't want to be associated with that coke-snorting, gun-toting lawyer," he said. "It's a lousy movie, it portrays lawyers terribly, and I don't want to help them sell tickets."

According to Dershowitz, Universal's only response to the phone call was to leak the false rumor that he had threatened to sue. But Dershowitz added that he has no intention to do so. "I'm done with the issue," he said, "I'm satisfied

that nobody would mistake me for Penn."

It is unclear whether the Penn-Dershowitz similarity was intentional in the first place. Bregman-Bauer Productions, the company that shot "Carlito's Way," neither denied nor confirmed that the Penn-Dershowitz similarity was purposeful. "The script was written by David Koepp, and may have been interpreted that way by Sean Penn," said Brian Stillman, an officer at Bregman-Bauer Productions. "[But] there was no big plan."

According to Dershowitz, his picture hung on the wall of Sean Penn's dressing room during production.

Universal Studios had no comment. "It is a long-term company policy not to comment on legal matters," said Iris Gelt, a spokesperson in Universal's corporate communications department.

Winter Term Blues

continued from WINTER, page 1

however, meant shortening the fall semester. To make up for the lost time — and to keep the spring semester the same length as the fall — Winter Term was created.

Since that time, the winter offerings have increased as the Law School has attempted to take better advantage of Winter Term. Visiting professors will teach courses in gender discrimination and corporate bonds this January, and a practicing Washington, DC lawyer will instruct a course on food and drug law. "It's a good time to have visitors who can only come in for a short time," Robinson said.

Likewise, the negotiation and trial workshops are designed to be short, focused programs. Both have been offered at times other than the winter, but participants say they are at their most effective when they are the only item on students' schedules.

"It's just better when it's concentrated," said Susan Soh '94, who took Negotiation Workshop last winter. "It's a course that should be taught intensively."

Prof. Charles Nesson '63, who teaches Evidence both in the winter and in the fall, says the three-week schedule has advantages even for more traditional courses.

"The fall semester is broken up very badly with interview season and flyout week" he said. "The pacing of the course is necessarily chopped up in the fall." Nesson added, however, that Winter Term has its disadvantages, including the absence of time to allow issues to "gestate a little bit."

Perhaps the greatest advantages of Winter Term accrue to those students

who pursue independent fieldwork projects outside of Cambridge. According to Danny Greenberg, clinical programs director, students have proposed projects ranging from working in a legal services office in Kenya to clerking for a judge in London to working for the NOW Legal Defense Fund. The clinical office this year has implemented a new rule requiring students to have completed one of the Law School's clinical programs before embarking on an independent fieldwork project.

Still, for some students who will be spending January in Cambridge, Winter Term serves primarily as a scheduling inconvenience. Silverman noted that Winter Term contributes to the late start and finish of the HLS school year, which can cause problems when summer job

programs are designed around earlier dates. Another student, who is finishing up his clinical at the Legal Services Center this January, complained that Winter Term will shorten his Christmas trip to warm Florida while leaving him a week of far less useful time in cold Cambridge.

"Cambridge is too dreary to have to be here all of January," agreed Silverman.

Winter Term also makes life more difficult in the Registrar's office, where it forces room shuffling and scheduling headaches, as the office must juggle the needs of the 1Ls who are taking exams and starting their spring semesters with those of the Winter Term students and instructors.

Robinson said a visiting professor once asked her who developed the idea for Winter Term. "I told him, 'You can be sure it wasn't the Registrar's office,'" she said.

"Cambridge is too dreary to have to be here all of January," agreed Silverman.

The Choice: Uruguay or the Highway

By Stephen Weinstein '94

RECORD Columnist



WANT to add \$200 billion to the global economy — annually? Feel like juicing up the US G.N.P. by \$40 billion a year? Have a hankering to help farmers and other budding capitalists in the developing world? Itching to open up new markets for the most competitive American companies? With a wink and a nudge, a few hundred signatures, and nary a tax hike to be seen, all the above and more could be coaxed into being by the successful completion of the Uruguay Round of international trade talks. Really.

Despite all the fanfare and hoopla surrounding the NAFTA debate, a lot more is riding on the even more arcane Uruguay Round, a decade-long series of negotiations conducted under the auspices of the General Agreement on Tariffs and Trade (GATT). GATT, along with the World Bank and the gold standard, was part of the international economic structure created by the United States at the Bretton Woods conference following World War II. GATT is generally considered the most enduring and successful component of these reforms. Many economists consider GATT's liberalization of international trade the primary force behind humanity's greatest economic expansion. Because of GATT, we can buy textiles from Indonesia at Wal-Mart and sell Cokes and toothpaste in Sri Lanka.

The Uruguay Round, if completed, sure would be nifty for the US. Not surprisingly, since American negotiators pushed through most of this set of proposals, the treaty targets liberalization of the economic sectors where the US is most competitive. For example, this round would open up markets for "intellectual" services like lawyering. (Yes, Virginia, there is a Santa Claus for HLS grads.) Additionally, signatories would be required to increase patent and copyright protections, which would mean billions for American powerhouses in Hollywood and Silicon Valley. And, most importantly, signatories would be required to eliminate or reduce tariffs on a wide range of agricultural products.

The chief beneficiaries of the agricultural liberalization would be (hooray!) the United States and the Third World. The chief losers would be farming businesses in Europe and Japan. Businesspeople who have received massive subsidies to grow oranges in Alsace-Lorraine and rice on mountainous islands rightly fear being caught between the hammer of high-tech US agribusiness and the iron of comparatively disadvantaged developing world farmers.

European and Japanese consumers would also win. Up to now, these folks have suffered a double whammy: subsidizing inefficient food production with higher taxes and then paying more at the supermarket counter as well. Nevertheless,

Thus, a handful of whiny French farmers have become the largest (and most malodorous) barricade to global prosperity.

public sentiment in these nations runs high against the GATT. Anti-GATT partisans, who, shockingly enough, turn out to be businessfolk subsidized by their fellow citizens, have indulged in the same kind of logical, well-reasoned, rational debate that is embodied in the US by, say, H. Ross Perot's contributions at home on NAFTA.

Kindly souls that they are, American negotiators have been making concessions left and right, watering down the original draft substantially to bring hold-outs like France and Japan on board. This process seemed to pay off when the unruly crew signed the Blair House accord, a mitigating compromise not unlike the NAFTA side agreements. However, France (despite its signature) has since recanted, intimidated by the sophisticated lobbying techniques of angered farmers, who set up blockades of manure and other refuse on the highways to Paris. Thus, a handful of whiny French farmers have become the largest (and most malodorous) barricade to global prosperity.

President Clinton's "fast-track" authority to sign a Uruguay Round treaty without Congressional amendment expires on December 15. This is generally considered a de facto deadline for the whole process. Quite possibly the French can be bought off with more concessions, such as allowing them to continue subsidizing their strange and unpopular film industry. However, one would hope that memory reaches back to earlier rounds of GATT, when the US sacrificed for the general good and opened its borders to Renaults and Bordeaux.

Some good omens fill the air. The German and British governments have begun to apply more pressure on the recalcitrant French. In its inimitable fashion, the Japanese government (while issuing formal denials) has leaked to the local press that it has dropped its opposition in return for a deal on rice imports. Meanwhile, President Clinton has begun to apply his infinite energy and gusto for back scratching, as well as his somewhat more limited political capital and staff. Best of all, Perot has announced his opposition, giving free traders an easy opponent to kick around on CNN.

NAFTA represents an important step in the right direction, but it remains small potatoes next to the Uruguay round. NAFTA was a mere bilateral agreement with an economy one-twentieth the size of ours. GATT is the real deal, a multilateral structural agreement that could kick-start the recessed world economy. A signed trade pact represents the perfect global holiday gift. Let's hope our leaders deliver.

Le Bocage
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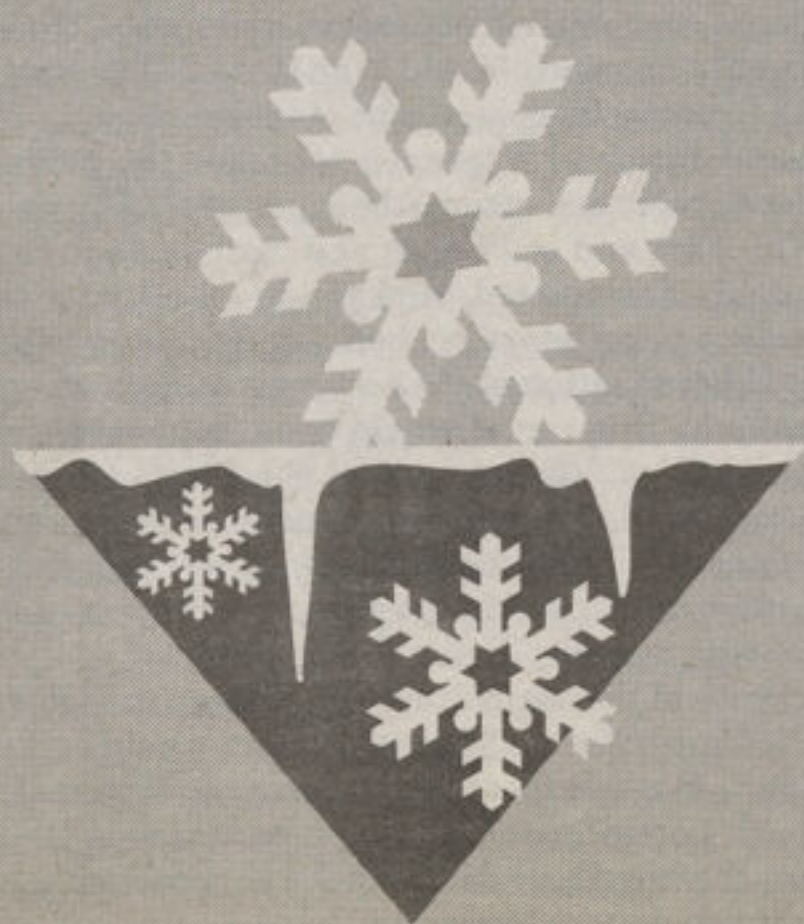
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NEXT RECORD:
JANUARY 21

All good things
must come to
an end...

...EVEN THE RECORD.



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at the
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