



Prof. Bruce Patton negotiates a feud between fellow members of the Committee For Sexual Harassment in the Drama Society's spring parody, "My Fair J.D."

RECORD Photo / Gene Rhough

HLS Takes Steps to Bring in Female Profs

By Greg Stohr

A woman and a man have been offered tenured faculty positions, and another woman is virtually assured of receiving a tenure-track offer soon, as the Law School continues its efforts to increase the number of women in its teaching ranks.

Anne-Marie Slaughter-Burley and Douglas Baird, both currently professors at the University of Chicago Law School, have not yet decided whether to accept, but Dean Clark '72 said both were seriously considering the offers.

Another woman is virtually certain to receive an offer for a junior faculty position after a unanimous vote by the faculty last Friday. The offer need only receive the approval of the university, a process Clark expects to be a formality.

The offer to Slaughter-Burley, made last fall, has been greeted

with acclaim throughout the HLS campus. As a visiting professor at HLS last spring, Slaughter-Burley taught two courses — The European Court of Justice and Foreign Affairs and the Constitution.

"She's a very popular teacher," said Clark, who added that Slaughter-Burley would likely also teach Civil Procedure. "The students loved her."

Robin Lenhardt '95, co-chair of the Coalition for Civil Rights, also praised the offer. "Students are really excited about Anne-Marie Burley," she said.

Baird, who likely would teach Bankruptcy and Secured Transactions law, received his offer last month. He taught both those courses as a visiting professor here in the fall.

But the hope that the two Chicago professors would accept the offers seemed to suffer a setback last week. Last Friday, the New York Times reported that

both are under consideration for the post of dean at Chicago.

Clark would not release the name of the third potential appointee until after the offer had received final approval. He said that she was an HLS graduate currently working on her economics doctorate and that she had a "spectacular" undergraduate record.

"It's someone that I care a lot about," Clark said. He added that she could potentially teach any of a number of courses, including Contracts, Antitrust, Employment Law and Corporations.

Diane Ring, a Washington, D.C., tax attorney, has already agreed to join the HLS faculty as an assistant professor this summer. An additional offer to Elizabeth Warren, a commercial law professor at the University of Pennsylvania, remains pending,

please see **FACULTY**, page 10

Harassment Draft Proposes Hate Speech Ban

By April Rockstead

Although new draft sexual harassment guidelines released this week depart significantly from prior recommendations and proposals submitted to the Law School community, members of the committee that released them say the draft represents a refinement of initiatives to date as well as a "compromise" likely to win faculty acceptance.

Among other changes, the proposed guidelines — circulated for comments from faculty, staff, and students — include a "personal vilification" prohibition and adhere closer to EEOC guidelines regarding sexual harassment.

Prof. Richard Fallon, chair of the Committee on Sexual Harassment Guidelines, said the committee did not view its mission as limited to accepting or rejecting ideas suggested in a report released last academic year by a now-disbanded committee. The current committee was established this fall after the faculty voted down previously proposed guidelines last year.

"We read it, we learned, then we went forward with our own momentum," Fallon said of the earlier report.

That included submitting to the community a section including a "hate speech" provision that would specifically prohibit and provide procedures for sanctioning "harassment by personal vilification."

The provision would apply to "[s]peech or other expression by a member of the Law School community" that "is intended to insult or stigmatize another

member of the Law School community or a small group of individuals... on the basis of their race, color, religion, gender, sexual orientation, disability, age, or national origin" and that "is addressed directly to or targeted directly at" the alleged victim and "makes use of words or non-verbal symbols that are commonly understood to convey direct, visceral hatred or contempt for human beings on the basis of" membership in any of the listed protected categories.

The hate speech section would extend the guidelines' reach beyond just speech and conduct of a "sexual" nature to also prohibit "sexist" speech that harasses individuals on the basis of gender, Fallon said.

"The effort to do this does raise more difficulties in various ways than the prohibition against explicitly sexual harassment," he said, "partly because when anybody crosses the line from the 'sexual' to the 'sexist,' then many people's concerns about stifling free speech and educational inquiry are triggered."

The provision would pass constitutionality hurdles imposed by recent Supreme Court cases regarding hate speech provisions that are subject to the state action requirement of the First Amendment — including those cases that have stricken such codes, Fallon said.

"In *R.A.V. v. St. Paul*, what the court seems to be worried about is the singling out of a particular viewpoint rather than a general set of prohibitions to keep discrimination out of the

please see **HARASS**, page 3

With Nesson, an A for Evidence

Prof. favors a pass/fail/honors system

By Katrina Campbell

Prof. Charles Nesson '63 recently caused an uproar among faculty and glee among students: He gave every student but one in his winter term Evidence class an A!

In an environment where B's are standard fare but A's are quite rare, Nesson's act was sure to evoke a response. "The general faculty reaction is one of alarm," said Dean Clark '72.

"I have grave misgivings about it becoming a general practice," Clark said, adding that giving out all A's is not in keeping with the spirit of HLS.

In an interview with the RECORD, Nesson — who acknowledged that he is under fire from faculty members for his decision — talked about his reasoning and philosophy behind

giving out 149 A's and one B+.

Q: What kind of exam was it?

A: It was multiple choice, 25 questions taken from questions used to prepare students for the multistate [bar exam], plus an essay that was basically a feedback memo in which students responded to three questions — what was their biggest thought, what was their biggest confusion, what they wanted to say to me.

In your opinion, was it easy?

It was definitely an exam you had to study for.

How did you determine whether these students learned anything, or did that matter?

I built it around group activity. I had a grant from Court Television, which allowed me to obtain 20 Macintosh Quadra

please see **NESSON**, page 2

Times Changing for HLS Gay/Lesbian Community

But Many Say a Sense of Uneasiness Lingers

By Victoria Kuohung

First in a two-part series.

June 28, 1969. It is 1:00 am, and the first wave of police hit the Stonewall Inn, a gay bar in Greenwich Village. This raid, however, is different: For the first time, bar patrons and others in the neighborhood join forces 400-strong to fight the police. The rioting spreads over the next three days. Reported widely in the press, the Stonewall riots are hailed by gay activists as the birth of the gay and lesbian civil rights movement.

July, 1993. A gay HLS student asks a supervising associate in the major New York firm at which he is working whether its litigation department would be

hospitable to gays and lesbians. "I don't think it would be good for them here," the associate responds. At the end of the summer, reviewers who had consistently lauded the student for being "so smart" now inexplicably complain that he "lacks analytical abilities." The student receives no job offer from the firm.

The times they are a-changin', Bob Dylan declared in 1963, and perhaps no other phrase now rings as true for lesbian and gay students at the Law School. A nearly invisible community before 1978, when the first gay student group (the Committee on Gay and Lesbian Legal Issues) was founded, students and alumni have since joined together to create a more supportive environment for gays who come to HLS. But

despite significant improvements, gay students still at times face an uneasy reception from the straight community, a discomfort that often translates into discrimination.

1993 witnessed several events that helped establish a more tolerant atmosphere for gay and lesbian concerns at the Law School: In April, the Committee on Gay, Bisexual and Lesbian Legal Issues (COGBLLI) was both renamed HLS Lambda and given a structural makeover to promote homosexual concerns more effectively on campus. Last year, too, a group of recent graduates lobbied the Harvard Law School Association to form the Gay, Lesbian & Bisexual Alumni Committee. This spring, Lambda will mark the

please see **GAY**, page 11

Peek Show: Inside the Holmes Field Building

By April Rockstead

It may not be 1600 Pennsylvania Ave., but an exclusive RECORD tour confirms that 1575 Massachusetts Ave. — a.k.a. the Holmes Field building — is shaping up to be about as palatial as the site of HLS faculty offices, including Dean Clark's chambers, ought to be.

Or if it isn't, the soon-to-be occupants have few to blame but themselves.

Walking past a row of high-back chairs of varying colors — all carefully selected by faculty members — project superintendent and RECORD tour guide Jim O'Connell alluded to the quality of the furnishings and building materials.

"Look at these chairs, huh?" he said, pointing to a wheeled black desk chair bearing a tag that read, "Fisher 410." Running a finger along its sleek frame, he added appreciatively, "All leather."

Indeed, nestled in a spacious office with a spectacular fifth-floor view overlooking the Hark is Dean Clark's office-to-be. Since O'Connell and his crew are putting the finishing touches on the building in preparation for a March 28 move-in, there was still a little sawdust sprinkled on the carpet. But even with sawdust and an office empty except for the desk — imported from Italy, to the best of O'Connell's recollection — only the absence of Clark's chair to kick back in marred the otherwise heady experience of usurping Clark's new view.

The building itself sports granite tile in the ground floor lobby, rich cherry woodwork, and a showy spiral staircase that connects the building's five floors.

"That's for looks," O'Connell said of the stairway, known as a "monumental stairway." Since the weight of the sections of stairs connecting the floors are supported entirely by beams in the floors above each segment, erecting the staircase was "really a monumental task," he added.

The faculty offices and lobby areas aren't the only attractive features in the new building.

Even the classrooms on the ground floor — including two mid-sized lecture halls and three seminar rooms — boast the latest in modern gadgetry. What appears to the ignorant observer an ordinary chalkboard in the main lecture hall swings open to reveal, in its secret compartment, a full-size audio-visual screen.

But that's not all: Behind the screen lurks an entire room of state-of-the-art projection and audio-visual technology, according to O'Connell, who could not include a peek into the AV room's mysterious depths in the tour because a low, gravelly voice emanating from the walls warns all but the keymaster to stay away. Just kidding, of course — it's the Law School that keeps those valuables under the proverbial lock and key. (Or is it?)

O'Connell demonstrated how, at the flick of a switch, electric chalkboards — or more accurately, "motorized vertical sliding chalkboards" — glide up and down smoothly, almost magically, to save professors unnecessary menial labor. Also among modern conveniences are electric window shades, a long-awaited improvement over the 50-foot string-and-pulley method that has baffled many a student in the glare of the morning light o'er Austin East.

Limestone from Germany that, combined with red granite and brick masonry, adorns the building's exterior was delayed in transport by storms at sea, O'Connell said, and the masonry work was made more difficult by the half-circle design of the building's north side.

In addition, the construction crews had to carefully avoid putting in peril the trees in the Holmes Field courtyard while putting in place an overhang designed to complement the aesthetics on the south side, O'Connell said. Damaging the "priceless" birch tree between the building and the Hark also would have invited the wrath of the Law School, he said.

"That was a no-no, going near that tree," O'Connell said of the birch. "If we would have damaged that, we would have all gone home."

Now with only a little finishing site work left for after move-in and a few touch-ups left on the inside, O'Connell may soon be able to relax. And while the hustle and bustle of furniture being moved and workers wrestling with finishing touches showed there are still plenty of last-minute tasks to accomplish, the crew seems in good spirits.

"Remember, the painter doesn't come with the building," joked a painter as the tour passed him while he added a coat of white paint to what will soon be a faculty lounge.

Retorted O'Connell, "Ah, the painter doesn't do anything."



Even longer-awaited than the ATM machine, the Holmes Field building will open after Spring Break.

Nesson Gives Many A's

continued from NESSON, page 1

machines for the period. Plus I was working with Learning Technologies [a company working on using interactive media to teach legal subjects].

The objective of the course was to try to establish meaningful group student work, which is one of the things I think has declined almost to the point of nonexistence.

What do you think has been the effect of this decline?

It contributes enormously to the alienation of students from each other and from the school. Group work when I was a student was a major way that I learned. I was taught as much by the students as I was by the teachers. Students [today] are surprised by how much the others students contribute [in group exercises].

The class self-organized remarkably efficiently, and the groups got started and were well under way with good spirit up until about the middle of the course — at which point I started to be overwhelmed with students demanding to be taught doctrine because they feared the examination, and their objective was individual performance. And it became clear through feedback memos that unless I somehow dealt with the oppressive pressure of the exam that these groups were going to fall apart, that the whole enterprise of getting technology into the classrooms would fail and my major objective of the course would be lost.

How did this lead to you giving out all A's?

I told them I would tell them what was on the exam, and I proceeded to do so. I obtained from the SMH bar review enough disks to give everyone in the class one. It has a set of 270 questions of black-letter evidence. I told them half of the exam would be multiple choice questions, and if they learned the answers to the questions, they would get an A. The rules of the school had it so I could not give a full multiple choice exam. So I gave them a feedback memo. This presented me with a dilemma. I mean, how will I grade your biggest thought?

This particular way of solving my group problem was required as far as I was concerned because I can't grade groups under the anonymous grading requirements.

The groups were going to fail unless I took the pressure off the exams. I missed

something from this course, because there was no final individual project that required students to integrate what they'd learned in a legal form — and when I do this course again, I will definitely have as a part of it some way of dealing with the problem of bagging the final exam.

I want to add that all the students were required to hand in personal journals. I haven't graded those, but I have read almost all of them, and they make me not at all defensive about having given out A's. I got remarkable performances from the groups and remarkable responses from the students in these journals. This class deserved an A. And they got it. **As a professor and summa cum laude graduate of this school, you may be especially qualified to answer this. How important are grades?**

Grades here have become a crippling, distorting measure that holds this place in a vice grip. And if we are going to recapture our place as the outstanding law school in the country we are going to have to deal with that problem. Our grades are based to a very high extent on a one-dimensional response which grades the ability to analyze a cartoon problem under pressure. Our grades take no account of character, abilities in self-presentation, of judgment, or of creativity — except as one could express those things in a blue book.

If the dean and faculty board today said, "Okay Charles Nesson, change it and make it better," what would you do?

The pass/fail honors proposal from the student body makes a lot of sense to me, and second I would encourage faculty to get to know students well enough in an intellectual context so that recommendations had real substance to them.

Would you study the proposal, or institute it immediately?

I'd institute it. Looking into things when it comes to grades is like holding it off until students graduate and it passes on to other students.

Can this be applied in other courses?

Absolutely. Will it be? Yes. But not everywhere, and I don't think it should be applied everywhere. Do I think there are ways of approaching the law that go beyond Gilbert's or Emanuel's? Yes. Do I think there are ways of teaching the law that go beyond standing before a blackboard and lecturing? Yeah, you bet.

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Speaker Calls for More Prison Cells

By Ray Kahler

"If we could double the prison capacity, from about 750,000 to 1.5 million, we could . . . prevent literally millions of crimes from being committed," Richard Willard '75 argued March 9, speaking at a Federalist Society program in Pound Hall.

Willard is a partner at Steptoe & Johnson in Washington, D.C. and formerly served in the U.S. Department of Justice.

"If you compare America with other civilized countries, with respect to crime, we're vastly worse," Willard said. To narrow this gap, he proposed that closed military bases be converted into minimum-security prisons to approximately double the prison population of the country.

Willard said most violent crimes are committed by a fairly small group of chronic offenders, starting in their teens and continuing into their 20s and early 30s. By middle age, Willard said, such offenders pose less of a threat. He noted, however, that these chronic offenders usually do not get caught and convicted until after the peak of their criminal careers, largely because of lenient treatment of first-time offenders and failures in the juvenile criminal system.

Willard argued that violent offenders should be locked up for a long period of time early on in their criminal careers, not for rehabilitative or deterrence purposes, but simply to incarcerate them. "While they're in prison, they're not committing those crimes, at least against the law-abiding public," he said.

The prison population nearly doubled

during the 1980s, Willard said, adding that this was a major factor behind the decline in victimization rates during that decade.

"If we don't build more prison cells, all we do is speed up the revolving door," Willard said. Therefore, President Clinton's proposals to reduce crime won't do much good, he said. Putting 100,000 more police on the streets, Willard said, won't reduce crime unless there are prison cells in which to put criminals after they have been arrested and convicted. Willard also criticized the "three strikes and you're out" proposal because as a practical matter, it waits until criminals' careers are over before putting them in prison.

Willard discussed a list of other proposals — including the Brady Bill and proposals to legalize drugs, increase the number of crimes subject to the death penalty, or implement "boot camps" — and argued that none of these initiatives would have any impact on crime rates.

He said that incarcerating chronic violent offenders is highly cost-effective because the cost of imprisoning criminals who have not yet reached middle age is less than the cost of the crimes they would otherwise commit during their lifetimes. Using closed military bases as prison sites would reduce the initial capital costs, and Willard said he favors making states pay for state prisoners incarcerated in new federal prisons.

"A certain amount of crime is endemic," Willard said. "As long as human nature is what it is, you'll never be able to prevent crime." He added, however, that crime rates could at least be reduced.

Guidelines Proposed

continued from HARASS, page 1

workplace or out of educational institutions — and that's what we've got: a general set of prohibitions," he said.

It is not inconsistent with the committee's purpose to include categories besides gender and sexual orientation, said Prof. Joseph Singer '81, a member of the committee.

"It would be odd to have a specific thing that we had drafted about gender without including these other things," he said.

However, as the memorandum introducing the proposed guidelines indicated, some members of the committee were not entirely comfortable with that provision.

Prof. Alan Dershowitz, a member of the committee and a strong First Amendment advocate, would not say whether he supported the provision, preferring to emphasize that the guidelines are just proposals.

"Our job was to come up with a proposal and to have the proposal debated within the community," he said. "I'm waiting to hear from people in the community," he added.

If adopted as is, the provisions that specifically address sexual harassment would include a requirement that so-called "hostile environment" harassment — as opposed to "quid pro quo" harassment — would only be formally sanctioned where the alleged harasser's conduct is "unwelcome," a requirement that was eschewed in a prior committee's recommendation as placing too much scrutiny on alleged victims' behavior.

As a whole, the present committee "thought it would not constitute a barrier to sexual harassment claims" to include the "unwelcomeness" requirement, Singer said.

However, Fallon conceded, "At the margin, [there would] be some people who would bring otherwise valid sexual harassment claims" who might be discouraged by the requirement.

"This is a compromise," Singer said,

"both among us and as something we think we will get through the faculty and will protect people [against harassment]."

Another area that consumed the committee's time in debate was the decision to refer to the objective standard defining "reasonable" as used throughout the proposed guidelines in terms of a reasonable person rather than a reasonable man or woman.

"The reasonable man or woman, looking at the reasonableness of what he or she does to other people or what other people do to him or her, has to look at how people would react from the perspective of a gender different than his or her own," Fallon said.

The guidelines' use of terms such as "abusive" and "unreasonably invasive" to describe speech or conduct that could constitute harassment when other required prongs were satisfied provides sufficiently definite standards to guide a decision maker in "90 percent" of individual cases and to create a "structure of analysis" for the rest, Fallon said.

The guidelines specifically state in several places that speech otherwise protected by the First Amendment would not be prohibited. This is so that the guidelines are not construed to conflict with any such rights, Fallon said, even though "99 percent of anything that might be protected by the First Amendment would have been protected without the specific reference to the First Amendment."

Distinguishing between speech and conduct that is intended to be protected and that which constitutes harassment — and therefore can be prohibited — should not be too difficult under the proposed guidelines, Fallon said.

"I think what the First Amendment is really about is protecting the exchange of ideas, and I think that most forms of harassment aren't about that," he said.

If the committee submitted the guidelines to the faculty, a majority vote would be required to formally adopt them.

NY Times Reporter Says Court Delays Cause Mischief

By Frank Morrow

If Linda Greenhouse had her way, the Supreme Court would go about its business more quickly.

Speaking to a group of about 35 faculty and students in Pound Hall Saturday morning, Greenhouse, Supreme Court correspondent for the New York Times, delivered an address entitled "A Journalist's Perspective on the Current Supreme Court."

Greenhouse focused her comments on recent voting rights, capital punishment, and First Amendment cases.

"The longer these cases go undecided, the more potential for mischief and trouble," she remarked, referring

penalty-enhancing statute that applies to offenders who select their victims on the basis of race, religion, gender, disability, or sexual orientation.

In a case soon to be heard by the court, Greenhouse said the justices must grapple with the "no man's land" in between *R.A.V.* and *Mitchell*. That case, *Hayward v. U.S.*, concerns a challenge to a conviction under the Fair Housing Act for a cross burning at the home of a white family entertaining a black guest.

Greenhouse said it is rumored that Judith Kaye, chief justice of the New York Court of Appeals, or George Mitchell, retiring senator from Maine and Senate majority leader, may be

Describing her work as an "odd type of journalism," Greenhouse said that most Supreme Court reporters have only "superficial contact" with the justices.

to the perplexing quality of some decisions that linger in the court.

Greenhouse outlined what she perceived as a shift in priorities on the court. The "incremental moderate" approach in *Planned Parenthood v. Casey*, in which the Court reaffirmed the validity of *Roe v. Wade* and the constitutionality of abortion rights, was a move toward closure of the long-contested abortion issue, she said.

In contrast, the "runaway rhetoric" of *Shaw v. Reno*, in which the Court questioned the constitutionality of a strangely shaped majority-minority congressional district, suggested to Greenhouse the willingness of some justices "to rip apart a political compromise."

Turning to the recent dissent by Justice Harry Blackmun '32 in *Collins v. Collins*, Greenhouse called it a "significant statement" on the "increasingly intolerable contradictions of the death penalty." Although Blackmun has but one vote on the court, she noted that his opinion may influence Justice Ruth Bader Ginsburg '56-'58, who has yet to be heard on this issue.

Greenhouse also discussed the conflicting messages of two recent hate speech cases. In *R.A.V. v. St. Paul*, the Court invalidated a municipal ordinance forbidding speech that provokes violence on the basis of race, creed, or gender. In *Wisconsin v. Mitchell*, however, the Court upheld a

considered by President Clinton to fill the next opening on the court. She also remarked that Clinton may elevate Jose Cabranes, U.S. district court judge, to the D.C. Circuit Court of Appeals in anticipation of an eventual Supreme Court nomination.

However, she doesn't look forward to the nomination process. "The fewer Supreme Court nominations I live through, the longer I'll live," she said.

Greenhouse did not limit her comments to the Supreme Court. She questioned "a strange kind of silence from the administration" on major voting rights and civil rights cases pending before the court, attributing this inaction in part to the lack of leadership in the Civil Rights Division of the Justice Department.

Describing her work as an "odd type of journalism," Greenhouse said that most Supreme Court reporters have only "superficial contact" with the justices. Unlike political reporters, who receive constant input from their subjects, court reporters "lose that sense of connection," explained Greenhouse.

After graduating from Radcliffe in 1968, Greenhouse covered politics for the New York Times. In 1978, she completed a one-year fellowship at Yale Law School and moved to Washington, where she has covered the Congress, legal affairs, and the Supreme Court.



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BRIEFS



Students Spend Break in SE Asia, Netherlands

Eight HLS student delegates depart today for a two-week trip to Southeast Asia. Organized by the Harvard International Law Society, the extended spring break sojourn takes delegates to both Thailand and Vietnam.

The trip is designed to broaden the legal education of the delegates and to strengthen ties between HLS and the two host countries. However, in light of the United States' recently lifted 30-year economic embargo against Vietnam, the trip has additional significance. "This is an especially exciting time to be in Southeast Asia because of the dynamic economic growth and legal reforms taking place in the region," delegate Carol Rose '96 said. In addition to meeting with government officials, visiting law firms, and touring parliamentary buildings, delegates hope to attend a law class at one of Vietnam's law colleges.

Also under the auspices of the International Law Society, six other lucky students depart Thursday for a ten-day stay in the Netherlands. Their journey includes stays in Amsterdam, Rotterdam, and The Hague. In addition to stops at law firms, government offices, and the like, a visit with judges from the International Court of Justice highlights the trip.

Police Hotline Established

In an effort to encourage students to report crime, the Harvard Police Department recently established a 24-hour anonymous "Crime Line." Dubbed "Drop-a-Dime" and "Stop-a-Crime," anyone can dial 496-2700 to report crimes or other suspicious activities without leaving a name. Since the automated voice mail system is only reviewed daily, the new hotline is not intended to replace the 495-1212 emergency number. Police hope and speculate that the program will be especially helpful for date-rape and domestic violence victims who often fear reporting such crimes.

— From The Harvard Crimson

JLSA Mid-East Peace Conference Sunday

The Harvard Jewish Law Students Association hosts its annual spring conference this Sunday commencing at 10:30 a.m. in Austin Hall. Inspired by the momentous events of last autumn, the conference is titled "Israel and the Future of the Peace Process."

The day-long conference includes three moderated panel discussions and a buffet lunch. Panel one, "The Players: A Survey of the Principals," introduces participants to the main parties involved in the peace process. As its name reveals, panel two focuses on "Points of Contention and Cooperation." Panel three addresses the impact of the peace process on Israeli Society. Speakers include Alan Platt, author of "Arms Control and Confidence Building in the Middle East," as well as professors and writers from eleven universities and think tanks. Registration is \$7 for students and \$10 for non-students. For additional information contact David Goldstone at 491-7075.

Business School to Vote on Honor Code

After years of study, debate, and committee meetings, Harvard Business School students vote next month on the school's first-ever honor code. Responding to what some perceive as an ethical abyss, the school's Honor Committee completed a draft code which focuses on increasing the school's emphasis on "principled conduct," said Charles Lelon, second-year business student and chair of the Honor Committee.

The draft code consists of three components: Credo, Code, and Procedure. The Credo is a statement of general principles, the Code outlines proper behavior, and the Procedure establishes a mechanism for investigating and resolving Code violations.

— From The Harvard Crimson

HLS Students Retreat to New Hampshire

More than 150 practitioners, professors, and law students from around the country, including 14 HLS students and Clinical Programs Director Danny Greenberg, participated in the seventh annual Cover Public Interest Law Retreat March 4-6 in Peterborough, New Hampshire.

Participants discussed a variety of issues related to the retreat's theme, "Progressive Lawyering for Social Change: Lawyers in the Community." The program included presentations on environmental justice and domestic violence.

The retreat was named in memory of Robert M. Cover, a former civil rights leader who was a co-founder of the retreat.

Panelists Discuss Community Obligations

About 75 people attended a panel discussion in the Ames Courtroom Saturday afternoon titled "The Role of Korean-American Lawyers in the U.S. Legal Profession" as part of the inauguration of the Korean Legal Studies Program last weekend. The discussion featured panelists Angela Oh, a criminal defense attorney with Beck, Delorso, Werksman, Barera & Oh Lee; Prof. Harold Koh '80, a Yale Law School professor; In-Young Lee '80, an attorney with Marks & Murase; and Prof. David Wilkins '80.

Oh told students to remember that lawyers have a certain level of responsibility to their community.

"I don't care if you're a transactional lawyer. I don't care if you decide to clerk in a research position," she said. "You are Korean-American. You have a certain amount of insight into the struggles of your community. You have a certain amount of resource access because of where you've been. You've got to use that."

The fact that one is not fluent in the Korean language should not be a deterrent to providing service to the Korean-American community, Koh said.

"You have to remember that your advantage is that you are an American lawyer, trained at Harvard Law School, and you have an understanding of Korean culture," he said.

Thirty and Up

"The Palace Thief"

By Ethan Canin

New York: Random House

205 pp. / \$21.00 hardcover



By Mike Fischer '95

Book Review Editor

GIVEN that the average age of a first-year HLS class has plummeted precipitously during the past two years, you'd never guess how many of us who are law students here are also refugees from other careers and other lives. People who spent their twenties trying to discover what they wanted to do with themselves. People who entered their twenties thinking they already knew the road and somewhere, somehow, lost their way. People who came to HLS after summoning the courage to try something new. And people who came to HLS because they had lost the courage to persist in something different — had lost, that is, the courage of their lack of conviction.

Ethan Canin's new collection of four short stories, "The Palace Thief," is about trying to summon that courage back in an age of dwindling expectations and diminishing returns. Its heroes are all 30 and up — people who have lived long enough to harbor secret regrets and remembered dreams, obscure hurts and broken promises. They spend much of their time staring through the rear-view mirror, even as they try valiantly to keep their lives on the road, pointed forward.

The narrator in the first story, "Accountant," looks back on a life lived tabulating prospects for the future and, as a consequence, continually failing to comprehend the magic of the present. At the same time, a childhood friend with an almost insouciant disregard for the future winds up achieving the kind of success that is the stuff of the wildest dreams.

Acknowledging the futility of all his careful planning, the accountant recalls some youthful dreams of his own when, still a student grinding away "late at night with my books of tax law and economics ... I indulged the small daydream that I might one day leave my studies and instead become a professor of music history at a small college."

"Sitting at the window in the library," he continues, "I would look up from Samuelson and allow my mind to wander ... to the second movement of Beethoven's Seventh Symphony, where the strings, though barely moving, weep for mankind."

Here and throughout his collection, Canin's prose flirts with the sententious — or at the very least with the pretentious. What saves him — most of the time — is his refusal to be sentimental as well. His stories usually reject the clichéd ending; dilemmas remain unresolved and perhaps irresolvable.

The accountant knows that he has within him "the impulse for uproar and disorder," but he knows as well that it is an impulse he will never exercise. Even as the story leaves room for the accountant to mount a pathetically small rebellion or two,

Canin refuses to rescue him from his self-imposed consignment to a life of quiet desperation. The result is a penetrating and deeply poignant account of a kind of person we have all known. And could all become.

"Batorsag and Szerelam," the second story in the collection, replaces regret with nostalgia, offering us a portrait of life in 1973, when fathers wore bell bottoms and purple ties while mothers not only helped their kids tie-dye, but were even willing to sport the results. But the narrator is less concerned with capturing an era for its own sake than he is in remembering what it meant in the life of his older brother Clive, dead 15 years later of AIDS but only beginning, as the story opens, to come into his own as a gifted but troubled genius.

Nobody in 1973, including the narrator, could figure out why Clive was troubled — why he spoke to his best friend in what sounds like gibberish, "strange words that rose up suddenly out of their English conversation like jagged, prehistoric rocks," or why he continually retreated into "the secret area of his being where none of us could ever go." The "problem," one eventually learns, is that Clive was gay — in an era which, for all its liberality and its proximity to our own, still required inventing a private language to voice what was unspeakable about experiences cloaked in shame and smothered in silence.

Canin ought to have considered smothering his third story, "City of Broken Hearts," in silence as well; I was not surprised to learn that it was the only one of the four that had not previously been published in magazine form. Everything that is occasionally wrong with the collection as a whole — generally weak plot lines, poorly sketched secondary characters, and inexplicable emotional shifts — is wrong here, through and through.

The story revolves around a middle-aged man going through a divorce who finds true love with a 50-year-old woman who, in turn, meets his son in a hot dog line at a Red Sox game, where the two of them discuss her father's terminal cancer. A cross, in other words, between bad Updike and "Sleepless in Seattle." Do Canin a favor and skip it, or you won't be sleepless for long.

Besides, the magnificent title story, which closes the collection, beckons. Easily the best of the four and the one true classic among them, it alone is worth the price of the book. "The Palace Thief" tells the story of a classics teacher at a prep school in northern Virginia who, almost imperceptibly, becomes caught in a web of deceit and corruption that he does not choose but which he also does not stop.

Once again, here, Canin underscores just why the unexamined life is not worth living: For all his moral scruples and devotion to history, the teacher jettisons his scruples and becomes a dupe of history because he has not engaged in the introspection necessary to steel himself against the unexpected and the ambiguous. Both, Canin eloquently reminds us, lurk constantly in the shadows, waiting to pounce upon the unreflective and the unwary who — despite a lifetime of careful living — find themselves tragically unprepared for that inevitable day, somewhere past 30, when they come to doubt.

March Madness: A Magical Mission

By Bill O'Dowd '94

Sports Editor



WELL, sports fans, it's that time of year again. Sixty-four teams of young men striving to survive in the greatest athletic competition outside the Olympics. No, we're not talking about the back-up singers at a Madonna concert. It's March Madness, baby. The NCAA Tournament. It's time to catch the fever!

Across the country, offices are buzzing and photocopiers are working overtime to handle the slew of betting pools. Of course, there are fewer people willing to admit their lack of expertise concerning college basketball than there are hairs on Dick Vitale's head. Hmmm, let's see. A multitude of inflated egos blowing a lot of hot air. Remind you of any place in particular?

Unfortunately, there are lots of sharks out there, folks. People willing to take advantage of the naiveté of others. BEWARE: Read this column before accepting any purported statements of fact. Just another public service provided by the RECORD. After all, this column delivers all the truth and nothing but the truth on a weekly basis.

Now, listen closely as I share the three rules to selecting "winners" in the NCAA tourney. First, always choose teams that are peaking, except for teams that historically raise their game to a new level come the NAAs or for teams that "look" ready this year. This is the most important rule, with the possible exception of rules #2 and #3. Secondly, always favor teams from historically stronger conferences, unless a conference is "down" on talent this year or from an "up-and-coming" conference. This is very important. The third rule is a secret.

OK, with these simple guidelines in mind, we are ready to pick this year's Final Four and eventual champion. The East Regional could be the most intriguing. North Carolina, coached by legend Dean "Dome" Smith, is the favorite to repeat as national champion. Most people will select them to return to the Final Four on this basis alone. But not us, oh educated reader. Their crime: Stumbling through a "down" ACC. Their penalty: Returning to "scenic" Chapel Hill a week early.

Who looks good? UConn should walk to the Final Eight. Will it be enough? No, because the General will march his army through Miami into the Final Four. You heard it here first. The Indiana Hoosiers are primed to beat Temple, North Carolina, and Connecticut back-to-back-to-back. Why? Because the Big Ten is the best conference in the country. And Bobby "The Black" Knight is the best coach. (Sorry, Duke and Kentucky fans!). Surprise entry into the Sweet Sixteen: Nebraska (downing upstart Florida in the Round of 32).

The Southeast is the strongest regional. Look for Duke to return to North

Carolina for the Final Four. Durham, that is, not Charlotte where the Final Four will be played. (Hey, maybe Coach K can buy his players game tickets from his million-dollar shoe contract!). The Blue Devils could be the first conference champion in history to have been swept by both the second and third place finishers (North Carolina and Wake Forest, respectively). Ouch. It hurts when you fall on your horns! Kentucky should dispatch the School Named After A Dog in the Sweet Sixteen, assuming that the Dukies can get by either Seton Hall or Michigan State in the previous round.

To predict the winner here, you only need know two words: Glen "God Bless You, Please, Mrs." Robinson. The consensus first-team All-American will lead Purdue to its first Final Four appearance since ... well, since a long time ago. He's the Hemenway equivalent of Matt Henshon, Lang Wiseman, and Rich Marquess all wrapped in one. In short, Mr. MVP. Surprise entry into the Sweet Sixteen: Wake Forest (should beat a weak Kansas team).

The Midwest will be Upset Central. Top-seeded Arkansas has a history of folding under pressure. Their run-and-gun style lacks discipline and they often keep less-talented teams in the game. Such tendencies will come back to haunt you in the Big Show. So, it looks like the local boys from UMass stand a good chance of making the Final Four if they can stay hot.

It's the early rounds of this regional that could prove the most interesting. Look for 12th-seed Tulsa and 11th-seed New Mexico State to give fits to UCLA and Oklahoma State, respectively. The Texas-Western Kentucky winner may beat Michigan in the second round. Surprise entry into the Sweet Sixteen: Texas.

Finally, the West. The results here should be predictable in their unpredictability. That is, the teams are so bad for their seedings that everyone expects upsets to occur. Thus, if the favorites don't lose, it will be an upset. Got it? Good. The bottom line: Bet on a winner from this group at your own peril. The biggest question may be who will choke first, top-seeded Missouri or second-seeded Arizona.

Early favorite to win it all: Purdue. If Robinson doesn't strike enough fear into the hearts of his opponents, the ugly mud brown and tarnished gold color combination of the Boilermakers' uniforms will!

"Can't Miss" First Round Bets Against The Spread: (Theme: Institutions vs. Upstarts when the spread is under 6) Nebraska giving 5 1/2 against Penn; Indiana giving 4 1/2 against Ohio; and UCLA giving 4 1/2 against Tulsa. Plan on winning at least two of the three as the more established programs win on "experience."

FOOD - O - RAMA

Of Blarney, Beer & Bowling



By Ted Cohen '95 & Jonathan Goldstein '95

All sensations appeared swallowed up in a mad rushing descent as of the soul into Hades. Then silence, and stillness, and night were the universe.

— E. A. Poe

It began innocently enough: a 110-year-old Irish pub in Jamaica Plain, called Doyle's (3484 Washington Street, 524-2345. T-Stop: Forest Hills, Orange Line). The perfect subject for this column: fine pub food, a vast array of draught beers — even a single-malt scotch menu. All served in a room that has not changed much since the first massive waves of Irish immigration to Boston. The same gas-light fixtures, hanging from the same pressed tin ceiling over the same astounding mahogany bar. The same din of conversation among souls who have wandered in off the cold, dark streets to savor a hearty brew.

And there sure are enough to choose from. Doyle's boasts "the largest selection of draught beer in New England," ranging from subdued (Bass Ale or Post Road Real Ale) to hearty (Olde Fog Horn or Guinness Stout) to bland (Miller Lite). This is one of the few places around which carries the entire line of Samuel Smith's export ales (try the Oatmeal Stout for a whole new world of beery pleasure.)

For those who have gone through life believing that scotch is that harsh liquid that floats behind the Johnny Walker Red label, Doyle's can be an eye-opening experience as well. With some thirty single-malts to choose from, a visitor will come to believe in Bernard Shaw's encomium that "scotch is liquid sunshine." For a straight-ahead, smooth-as-silk distillation to warm the cockles of your cockles, try Glenmorangie or Knockando, two Isley malts. If, on the other hand, smokiness is your bag, go for the Eastern Highlands' Lagavulin. And for a major thrill, stumble over to the Western Highlands for some Obun. (A word to the wise: Drink slow and savor. These are potent libations.)

As for the food: Well, it's probably not what you came here for in the first place, so you have no reason to be disappointed. Stick to the burgers, which are fine, or the less ambitious sandwiches. (Entrees run between \$4 and \$8.) "Doyle's

Why not cross the Charles for a taste of what St. Paddy's Day used to be like?

Famous Pizza," on the other hand, is but a small step up the ladder of refinement from Domino's, and the bland fish and chips should definitely be better in these surroundings. But the grape nut custard (at \$1.75) is the real New England thing: dense and eggy, sort of like a Calvinist zabaglione. This may be the place to honor the maxim, "Beer is good food."

So Doyle's had inspired us. As the flush of those last scotches faded on our cheeks, we thought of ways to keep the spirit of the night alive. "Bowling!" we cried in unison. "Candlepin bowling!" And with baffling directions to West Roxbury's premier alley scrawled on the back of a paper placemat by our waitress, we jumped into our trusty vehicle and tore off into the night.

About 45 minutes later, Jon had whittled down our ambition to finding a Dunkin' Donuts. "But no!" the rest of us cried, "we must bowl!" And so, a triumphant hour-and-a-half later — with Ted awakened from his drooling reverie by hands pulling him from the car — we alighted at our West Roxbury destination.

The sizzle of red neon pierced the cold night air: "OWL NG," read the sign. We strutted confidently inside, past the cacophony of unused video games, and up to the counter where a man with a mustache and a lobotomy scar handed us some nasty shoes. (Good thing we had worn socks.) There was something vaguely depressing about the Big League Bowling Alley. Where was that bright Laverne and Shirley charm? That 1950's pastel-tinted quality we'd come to expect from our bowling alleys? What was with that oversize "POW-MIA" banner hanging over the pins? And where the hell was everybody? It was Saturday night after all. It took us several minutes to drill holes in the little balls so we could get our fingers into them. Before long we were well on our way to perfect games. We found that by hurling numerous balls simultaneously we could greatly improve our scores.

Imagine our surprise, then — just as we were beginning to really appreciate this odd form of bowling — when we were unceremoniously relieved of our shoes and escorted off the premises. Hmmm. Now what? Hadn't that waiter at Doyle's told us that if we were looking for some "action" we should seek out a bar called "Buck Mulligan's"? What could he have meant, we wondered? Was the fact that the bar was named for a character in Joyce's "Ulysses" indicative of some sort of local literary club? That would certainly be "action."

And our resolve was steeled when we remembered that we had packed our copies of "Ulysses" in the trunk especially for this purpose! In we walked, the lads and lassies waving "Hullo!" and slapping us on the back. What a warm, convivial place! The pints flowing, the red faces open wide in laughter! We played a couple of rounds of darts, discussed Molly Bloom's soliloquy intently with the bartender, and then were on our way. Our new-found friends ushered us off with more back-slaps and cheery cries of "Fuckin' homos!" So this March 17 — since there's no parade anyway — why not cross the Charles for a taste of what St. Paddy's Day used to be like.



Intramural Basketball Standings as of Sunday, March 13

TEAM NAME	WON-LOST	
"A" LEAGUE		
9. Emite Romeno	8-1	2. Well Hung Jury II 4-5
5. Black Plague	6-2	8. The Fun Bunch 3-5
3. House of Style	6-3	4. Lawless 2-7
6. Funky Bandits	4-4	5. The Seventh Seal 0-8
1. Two-L	4-4	
"B" LEAGUE		
17. The Runs	6-0	21. The Sleestaks 2-3
23. AALSA's Year of the Dragon	5-0	19. No Swiss Cheese... 2-3
11. Mo Knows	5-0	14. Full Tort Press 1-4
26. We're Not Role Models	5-0	31. Giant Steps 1-4
12. Black Panthers II	6-1	22. The Grizzers 1-4
27. Death Squad	4-1	13. Joker and the J's 1-4
20. Rare Air	4-1	28. Team Gooch 1-4
25. Chicano Bulls	4-2	18. Two Wright... 1-4
15. Break Like the Wind	3-2	16. Below the Rim 0-4
10. The J-Men	3-2	24. Black Flag 0-5
30. Ballbusters II	2-3	29. The Rest of the World 0-6

Compiled by Bill O'Dowd

Harvard Law RECORD

Founded in 1946

Greg Stohr
Editor-In-Chief

HLS Doesn't Need Hate Speech Rules

One is hard-pressed to imagine a person addressing another in the HLS community with a discriminatory slur and not being swiftly and universally condemned. Consider the case of Neil Glazer '93, who a year ago wrote in the RECORD that homosexual activity is "aberrant, unnatural, and immoral." Glazer's column caused a firestorm; the letters of rebuke occupied almost an entire page in the following week's paper. No doubt those letters represented only a fraction of the outrage Glazer heard around campus.

Misguided though his comments were, Glazer wrote in an attempt to contribute to the public debate. One can imagine the reaction had he gone one step farther and described members of the HLS community as "fags" or with some other hateful insult. He would have been reviled, and rightfully so. The HLS community should not and would not have stood for such blatant bigotry.

The draft hate speech guidelines circulated this week suggest that the Law School's collective sensitivity is inadequate to stem the existence of racist, sexist, homophobic, and other hateful speech at HLS. In one sense, of course, it is insufficient; the person who uses words or symbols that convey "direct, visceral hatred or contempt" for another on the basis of something the latter person cannot control deserves little leniency.

But when the First Amendment is part of the cost of further punishing the hateful speaker, the price is too high. Countless times in our history the First Amendment has protected the courageous voices of change and dissent. To undercut it simply because a person feels insulted — no matter how real and understandable that feeling is — is to run the risk of silencing future advocates for progress.

The entire hate speech section might even be unconstitutional, in spite of the boilerplate suggestion that it only applies to the extent that it does not infringe on First Amendment freedoms. If HLS were a public institution, the Supreme Court's decision in *R.A.V. v. City of St. Paul* probably would invalidate the rules for content and viewpoint discrimination. As a private school, HLS might have an argument that it is exempt from some First Amendment restrictions. But, as the examples of single-sex military academies illustrate, the Supreme Court is not adverse to enforcing constitutional liberties even with respect to private institutions of higher education. Nor should HLS take any solace in the fact that its private status might allow it to overcome the right to free speech.

Supporters of the hate speech rules may say that they only proscribe a narrow band of truly egregious speech. But it is for precisely that reason that the rules are unnecessary. Where speech is hateful and offensive, the Law School community will be united in its outrage and denunciation. HLS is strong enough to fight hate speech without weakening the First Amendment.

- Stohr

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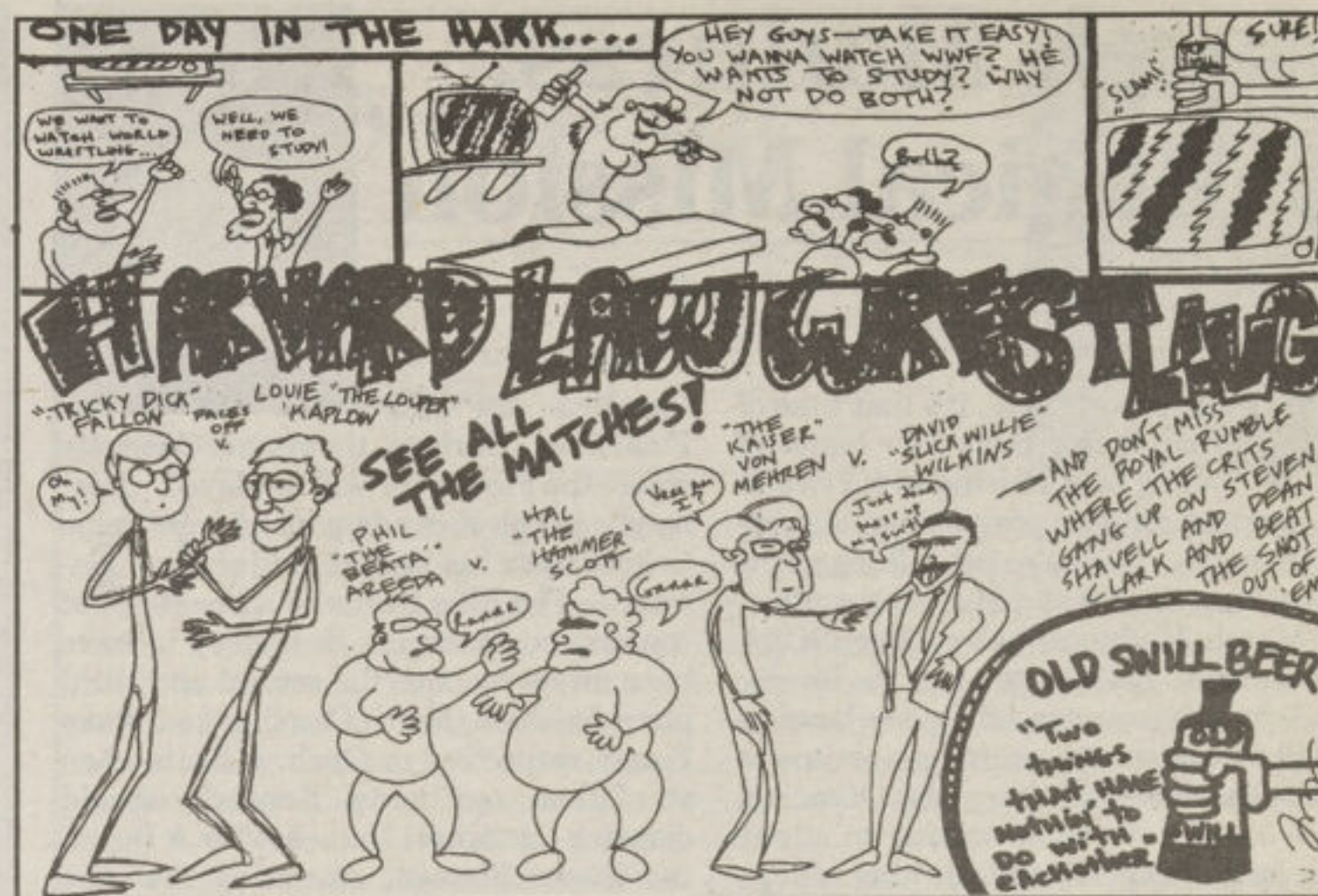
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"Congress shall make no law...abridging the freedom of speech, or of the press;..."

—First Amendment, US Constitution



• Letters •

Macedonia Is Not a Threat to Greece

Maria Politis's editorial "A Dangerous Misnomer" [RECORD, March 11] presents a seriously distorted view of the controversy between Greece and Macedonia.

In 1991, the European Community asked the distinguished jurist Robert Badinter, president of France's Constitutional Court, to examine which former Yugoslav states deserved recognition by the Community. His answer was clear: Macedonia deserved recognition both on traditional grounds of international law (such as control over territory) and on treatment of ethnic minorities within the country. Greece, however, blocked recognition of Macedonia.

Greece closed its frontier in February — a very serious act on the scale of retorsion — despite a UN resolution calling on the parties to resolve their dispute through negotiation and without even notifying its European partners or NATO allies in advance. Some European countries believe Greece's act was illegal and have considered legal action against Greece. Yet what is the illegal act on Macedonia's part which supposedly justified Greece's act? Its flag? Then the U.S. should impose sanctions on Liberia and Malaysia for supposedly misappropriating a national symbol. Its name? Then Luxembourg should challenge Belgium over the Belgian province of Luxembourg. Its constitution and the concern of one party in a coalition government for protection of co-ethnics in other countries? Then Korea should not protest when Japan discriminates against ethnic Koreans.

Politis notes that many people in northern Greece call themselves both Greek and Macedonian. However, when the U.S. State Department made that point in its 1992 annual human rights report, the Greek government reacted angrily and denied even the existence of a Slavomacedonian minority within Greece. No wonder some Macedonians are concerned.

Just as Secretary Christopher has protested to China about the treatment of Chinese nationals in China, so Macedonia should have the right to address a diplomatic protest to any country which is, contrary to international law, inflicting racial, ethnic, or religious discrimination. Indeed, the obligation of nondiscrimination forms part of Article 14 of the European Convention on Human Rights (213 U.N.T.S. 221) and also the Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Treaty) (4 I.L.M. 1292 (1975)). Macedonia has applied to join CSCE and thereby agree to respect the frontiers of all participating states, to use the conflict prevention mechanisms of CSCE, and to respect the human rights of all minority groups. Greece, however, is blocking Macedonia's application.

Macedonia sits at a strategic point in the southern Balkans. A war there would surely draw in Greece, Turkey, Albania, Bulgaria, and perhaps outside nations like Russia. Recognizing this danger, the United States has 700 troops in Macedonia. These troops not only serve as a trip-

wire against a Serbian invasion but also deter Macedonia against an invasion of Greece or any other country. Beyond this, in the extremely remote possibility of an invasion of Greek territory, Greece would invoke the North Atlantic Treaty (63 Stat. 2451 (1949)) — including the provisions for collective defense in Article 5. Surely even the most rash regime, much less an impoverished country of the former Yugoslavia, would hesitate before effectively launching an attack against all 16 NATO States.

President Gligorov has been a moderating force both within Macedonia and in the region as a whole, pursuing a policy of multi-ethnic and multi-religious (Christian and Muslim) harmony within the country. The best way to ensure Macedonia does not become another Bosnia is to support Macedonia's independence, security, and economic reform. The best way to provoke a destructive civil war and outside intervention is to isolate Macedonia and weaken internal support for moderates like Gligorov. Many friends of Greece (myself included) believe this policy is shortsighted.

Politis is right; this issue is a big deal, but Greece has it wrong. The U.S. and European Union waited long enough, if not too long, before acting. Other Western nations, while mindful of Greece's security concerns, have rightly decided to pursue the policy best able to ensure peace in the southern Balkans.

John S. Gardner '95
March 14, 1994

Asian-Americans a "Real" Minority

The Asian American Law Students Association (AALSA) is writing this open letter to the Saturday School Program regarding the dinner with Justice Blackmun that Saturday School sponsored for minority law students last week. Saturday School sent invitations to the chairs of BLSA, La Alianza, and WLA, inviting two members from each organization to attend the dinner. No members of AALSA were invited to participate. After the dinner, Prof. Ogletree '78 explained that AALSA's omission was unintentional, although his assistant told a member of WLA that AALSA was not included because "not everyone can be invited" and certain line-drawing had to be done.

This was a minority dinner meant to introduce Justice Blackmun to groups that do not often have access to powerful mainstream figures. AALSA's omission from this opportunity underscores the misperception that Asian-Americans do not face racial

hurdles and are not a "real" minority. Although AALSA understands that "not everyone can be invited" to every minority event, Asian-Americans now comprise over three percent of the U.S. population and are a significant minority group whose growing role in America cannot be ignored. Precisely because Asian-Americans have become the fastest-growing minority in the United States during a time of diminishing resources, hate crimes and discrimination against Asian-Americans are in fact on the rise. The common belief that most Asian-Americans are comfortable, middle class suburbanites is belied by census statistics. Over 70 percent of all Asian-Americans live in urban Chinatowns, Koreatowns, or Little Saigons and are living near the poverty level. Meanwhile, in the world of the upwardly mobile, Asian-Americans are often stereotyped as passive, unassertive outsiders who are unfit to serve in managerial roles —

regardless of their true qualifications.

Asian-Americans have been struggling to find their political voice and are only now gathering the strength to organize and educate themselves the way that African-Americans, Latinos, and women have for the past thirty years. We speak out today to remind Saturday School, and the Law School community that Asian-Americans are still confronted with many racial barriers and stereotypes, and need assistance from their own and other communities to overcome the very real racism that they face. They do not need the additional barrier of being considered a politically dispensable, non-minority by a program devoted to increasing awareness and opportunities among minorities.

Darryl D. Chian '94
Political Action Chair
Asian American Law
Students Association
March 15, 1994

Patrick the Right Man for the Rights Job

By Prof. James Vorenberg '51

PRESIDENT Clinton chose wisely in nominating Deval Patrick '82 to the nation's top civil rights position. More than one year after President Clinton took office, it looks as though the position of assistant attorney general for civil rights will finally be filled. Even the inflammatory and misleading rhetoric of a few opponents of effective civil rights enforcement have, so far, left Patrick unscathed. Clint Bolick used the phrase "Quota Queen" to describe the previous nominee, Professor Lani Guinier, and enough people were prepared to believe — mistakenly in my view — that she favored quotas as a remedy for past racial discrimination. As a result, the label stuck and the distorted message it carried brought Guinier down.

Bolick and his allies went at it again — taking shots at Patrick. He accused Patrick of sharing the same "radical views" as Professor Guinier, and dubbed Patrick a "stealth Guinier," clearly implying that he favors quotas, without offering a shred of evidence in support. There is no such evidence because Patrick does not believe in quotas and has never said he does. As one who has known Deval Patrick for 20 years — since he was a sophomore living in Dunster House at Harvard, where I was the house master — I found the suggestion that he is a radical to be ludicrous. Patrick grew up in poverty, in a segregated neighborhood of Chicago. He was fortunate to have a wise and loving mother and grandparents. His seventh-grade teacher recognized the special qualities now apparent to all



Patrick's opponents apparently regard his work for the Legal Defense Fund as evidence of his assumed

radical views. Bolick has described the LDF as "outside the American mainstream on civil rights." But as a long-time member of the LDF board of directors, I can reassure him that the organization does not favor a quota system. Its board includes Wall Street lawyers, business executives, and bar association officials — hardly a radical fringe group unless, as Bolick may believe, protecting the civil rights of all Americans is not an essential part of this country's agenda. I believe the Legal Defense Fund's long record of effective work for the rights of minorities in this country is what worries Patrick's opponents.

Clint Bolick has dubbed Deval Patrick a "stealth Guinier," clearly implying that he favors quotas, without offering a shred of evidence in support.

In fact, Deval Patrick is someone civil rights opponents should worry about because wherever he has gone he has been a leader. The 300 students in Dunster House elected him as their representative. His fellow students in the Harvard Law School Legal Aid Bureau elected him president. The students on his team in the Ames Competition picked him as an oral advocate and the judges selected him as the best oralist. His law firm made him a partner four years after he came to work as a litigator for the firm. In one of his early cases he negotiated a large settlement on behalf of minority tenants who had suffered discrimination in seeking real estate loans from Boston banks.

President Clinton is right that Patrick is so well qualified to lead the Civil Rights Division that efforts to defeat his appointment come only from those who "never lifted a finger to give anybody of a minority race a chance in this country." One of Patrick's strengths is that he has never lost sight of what this country could be. In his words at his confirmation hearing last week: "In a land of hope and good will, legal and moral

efforts to end discrimination derive from a sense shared by most Americans that to do less would be a national failing." I believe he will be a strong and compassionate advocate for fairness, justice and opportunity.

Professor James Vorenberg '51 is former dean of Harvard Law School

• Letters (continued) •

Column on Hanson Disrespectful

As former students of Professor Jon Hanson, we were appalled by Debra Dickerson's March 4 column, "No Honor Among Kids." Professor Hanson is an intelligent, caring individual, dedicated to making his classroom a place of learning.

But that is beside the point. Even if Hanson was our most loathed professor, we would still find Ms. Dickerson's piece offensive. In the guise of attempted comedy, the column crossed the boundary of taste and respect of which everyone at this Law School is worthy. If we are to understand Dickerson's article, Hanson's

age is grounds for ridicule. This is an assumption we don't share, and we wonder whether the RECORD would have printed a piece mocking a professor's old age. In any case, denigrating an individual's age and intelligence is crass character assassination, and it has no place at Harvard Law School.

If the column was trying to be funny, it failed. There was nothing light-hearted or even well-done about the parody of Hanson's class. If it was trying to serve as a serious critique of Hanson's teaching, we hardly see its point. Whatever Ms. Dickerson's intent, the result was merely malicious.

While we consider Professor Hanson an asset to Harvard Law School, what most concerns us about Ms. Dickerson's article is that it tears away at the code of decency we should have towards one another at this school and throughout our lives. Professors need not be revered, but, like students, they deserve respect.

Sarah Walter '96
March 10, 1994

Ms. Walter's letter was co-signed by 29 other students from the small Torts section taught by Prof. Hanson last fall.

Finally, a True Patriot Among Us

Kudos to Billy Choslovsky for his "we need a new flag" piece. For the first time, I detected a modicum of patriotism and gratitude amidst the miasma of editorial reporting and self-indulgent columns that pervade the RECORD.

Perhaps a bright, new flag atop Harvard Law School might afford students here the opportunity to admit — on occasions other than Thanksgiving dinner — that we all have countless fortunes and blessings to be grateful for each day. Even Ms. Dickerson might be well advised to acknowledge that her travels among the several states and her weekly article itself were made possible

by the sacrifices of innumerable individuals ranging from Alexander Hamilton to Martin Luther King, Jr. — all of which are embodied in those stars and stripes that ironically serve as both an inspiration for much of the world and a doormat for American law students. Instead of fixating on our nation's past or present shortcomings, it would be far more productive to concert our efforts on continuing to progress forward and raise a new standard for future generations of Americans to revere.

I wholeheartedly join the columnist in imploring the administration to pay proper tribute to the nation

which not only protects and subsidizes this fine institution, but also supplies it with five hundred exemplars of its citizenry each September. And by the way Billy, there are places in the United States where you still can hum "The Star-Spangled Banner" and attend tractor pulls without fear of derogation; in fact, in some parts of this country it is also acceptable to proclaim that you are a red-blooded American without reservation — even if you were just naturalized yesterday. They mark those places with Old Glory.

Sean Kanuck '96
March 13, 1994

No Due Process in U.N. Proceeding

I am writing to clarify some of the points made in an article in the RECORD on Friday, March 11, 1994, regarding the sexual harassment case in the United Nations. The article suggests that Professor Dershowitz personally "appeared" and "argued" the case in the United Nations. In fact, except for Professor Dershowitz's cross-examination of one witness, I personally represented Mr. Gomez throughout the month-long hearing, examining the witnesses and arguing the case. Professor Dershowitz did not miss a minute of class time on account of this case.

The article suggests that the respondent "lost" the case and that this "cost" him his job. The fact is that Mr. Gomez had been working in the United Nations for over 28 years and had been planning his resignation for over a year.

While we are prohibited by the Secretary-General's orders from commenting on the substance of the judge's findings, I can say that strong evidence was presented at the hearing suggesting that the complainant Catherine Claxton was simply not telling the truth. Ms. Claxton did not make any accusations against Mr.

Gomez for over 3 1/2 years. When she did, it was only at the eleventh hour in order to make sure that her administrative case seeking a promotion was not dismissed "on technicalities." She twice offered to settle the case in return for a promotion she had been seeking. Although Ms. Claxton, in numerous official documents, claimed that the "incident" had occurred on May 5, 1988 and that she sought to avoid contact with Mr. Gomez after that, we learned for the first time on the morning of the hearing that she had switched the date to March 2, 1988, and was now claiming that she continued to meet with Mr. Gomez throughout 1988.

Your article quotes Ms. Claxton's attorney as saying that the judge conducted "a balanced proceeding" and employed "a very high standard of proof." In my ten years of practice as a public defender, I have witnessed quite a few procedural abuses in those law-free zones we call our district courts. Never before, however, have I witnessed anything like the total deprivation of the most minimal requirements of due process experienced by Mr. Gomez in these proceedings. Because of the absence of

reporting procedures, adequate notice requirements, and a statute of limitations, Mr. Gomez was placed in the position of having to explain what he was doing on a Tuesday morning 5 1/2 years ago. The standards and burdens of proof were not decided by the judge until the morning of the hearing. There were no ground rules or criteria for the admission and exclusion of evidence. Under the rules that the judge herself promulgated, all of her discretionary evidentiary and procedural rulings were final and unreviewable.

While the United Nations, as an organization devoted to the implementation of international human rights, must surely take steps to rid itself of sexual harassment, it must also make sure that those subject to such serious accusations have a fair and meaningful opportunity to respond. Many, if not most, women at the United Nations continue to stand by Mr. Gomez. I believe, as do they, that Mr. Gomez did not have that fair and meaningful opportunity to respond.

Michael R. Schneider
Associate to Alan Dershowitz
March 14, 1994

Teaching and Lawyering a Good Mix

John H. Downs' critique of professors who combine teaching and lawyering [RECORD, March 11] puts the blame for bad teaching in the wrong place. It is not clear that there is any relationship between failing to fulfill one's academic duties and taking on clients. Some faculty members who pay little attention to their students have not argued in front of a judge for years.

Whether or not a professor's legal practice hurts his or her students depends entirely on the professor. From a student's point of view, a bad professor is one who has nothing to say or who cannot communicate well. Faculty members who actually practice what they teach are least likely to have those problems.

Professors with extensive courtroom experience have many advantages over

those who live exclusively among books. By using their clients' cases as examples, they can paint a more vivid, practical, and up-to-date picture of the law than casebooks provide. Their lectures are more engaging and their conclusions more credible than those of their less experienced colleagues. Lawyer-professors can temper classic doctrine with a more realistic view of how courts work.

The benefit to students of learning from some of the most successful and interesting practitioners in the country outweighs any potential detriment. Law students are being trained not as academics, primarily, but as effective advocates. Professors who can teach from their own real-world experiences have much to offer in this regard. In fact, one of the greatest attractions of HLS is its faculty's success. Learning

Constitutional Law from Laurence Tribe is no less exciting because he won a \$5 million lawsuit; just the opposite is true.

Mr. Downs seems especially concerned that lawyer-professors earn too much. This condition, many would argue, applies to the legal profession as a whole. The law school salary allows some professors to take on pro-bono cases that might otherwise be refused. In any case, teaching and lawyering ability define income, rather than the other way around as Mr. Downs fears. Hopefully judges will decide cases and award "pots of gold" on the merits of the arguments before them, not because of their counsel's status as teachers.

Elizabeth Brown '96
Brooke Deratany '96
Peter Kozinets '95
March 15, 1994

Classroom Supercedes Courtroom

I have written to John Downs in the past advising him that I never miss classes because of my cases. I have also advised him that half of my cases are pro bono, and that I use my cases to help educate my students. Mr.

Downs seems more upset at the nature of my cases than at the relatively small amount of time I spend arguing them. I plan to continue arguing a limited number of pro bono and paid appeals so long as they in no way interfere with

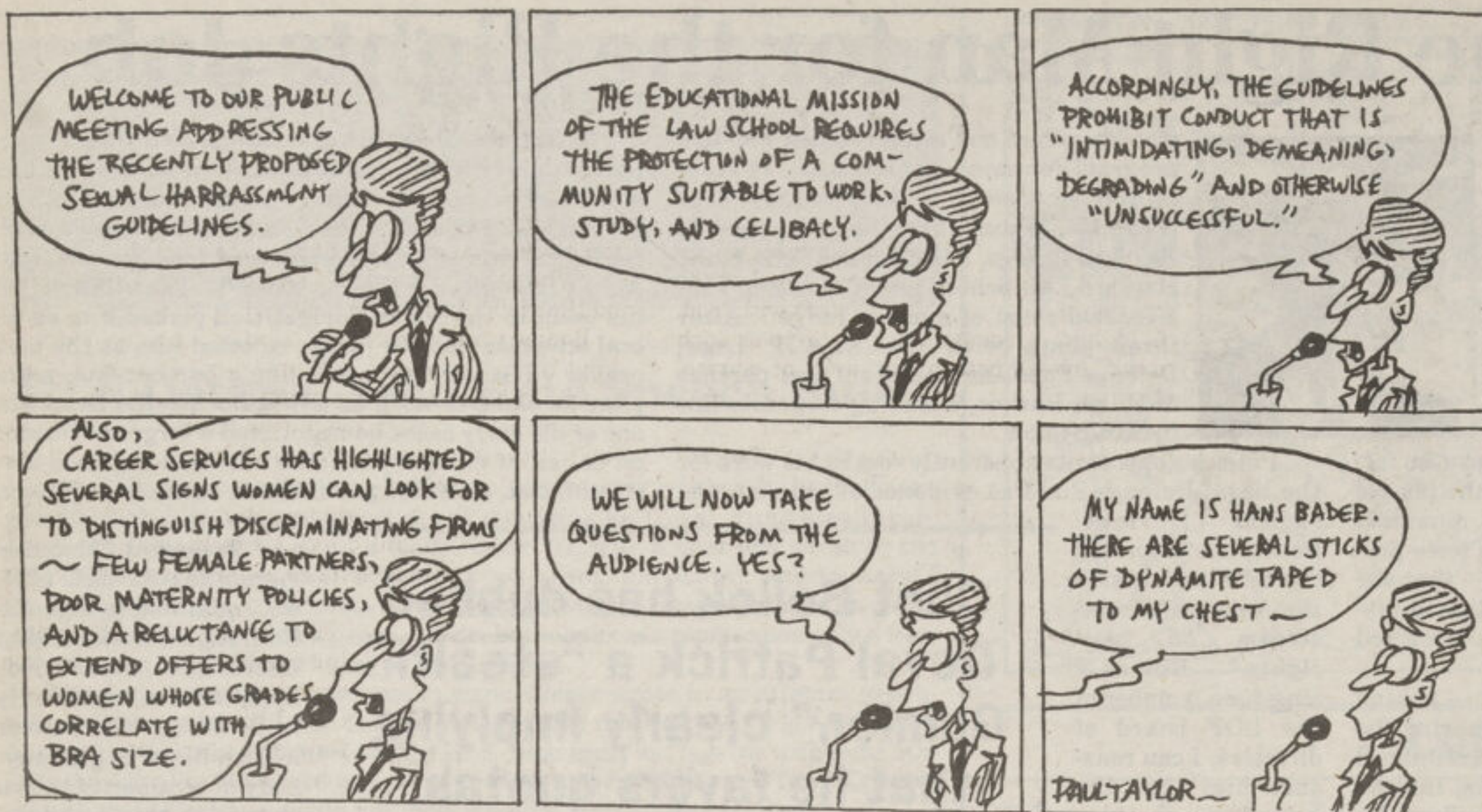
my primary obligations as a professor and a writer.

Prof. Alan M. Dershowitz
March 15, 1994

More letters on page 10

Liabilities

By Paul Taylor



GROMM: Barbarian at Law

By Chris Spagnoli



Temporary Insanity

By Sheila Tuller



Temporary Insanity

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CALENDAR

Music This Week

The Great Shining Path of the Bucholtz Clerkship Tour

At last sighting, Jeff Bucholtz '95, music critic par excellence, was seen stuck in an airport terminal trying to learn the clerkship shuffle. Though the RECORD pulled no punches trying to bring him home — even Fenno, still smarting after his debut WLA meeting, was sent on a special mission begging him to come home — Jeff held his ground, mumbling something about "becoming an adult" and "responsibility."

Still, Jeff managed to summon up enough of his old, juvenile self to admit he had been listening to some of his favorite tapes in a futile effort to calm his frayed, post-interview nerves. And after a six-pack or three, he was willing to share these treasured relics with his HLS faithful.

Bucholtz began his magical music tour with "Neil Diamond's Greatest Hits," confessing that he had psyched himself up for the especially tough interviews by playing "I Am, I Said" (a.k.a. Jeff I Am, I Said I Am, I Will Not Eat Green Eggs and Ham) at screeching decibels. For that post-interview downtime, Jeff confessed a special partiality for Neil's "Jonathan Livingston Seagull" medley, although he is also fond of "September Morn."

Another six-pack into the evening, and Jeff was into his deepest secrets. New Kids on the Block, he insisted with increasing vehemence, promised to alter the course of music history. Menudo, he continued, (which, Fenno informs me, means "Bucholtz" in Estonian) demonstrates that David Byrne's search for international talent is looking in all the wrong places. And Whitney Houston, he maintained, is the greatest blues singer since Billie Holiday.

At this point, Jeff began singing "American Pie." Fenno gathered his belongings and, on the 423rd verse, vanished into the night.

Readings. Shows. and Stuff

The Wearin' of the Green

No, this does not refer to Jeff's condition when he woke up the next morning (although it could). It is, rather, about spending one of the year's great holidays — St Patrick's Day — celebrating Ireland's greatest export: Not people. Not Beer. But poetry.

Once you've whetted your appetite at HLS' first open mike, sponsored by the Poetry and Drama Society Thursday, March 17, 7-9 p.m. in the Hark Pub, you'll be ready to head down to Waterstone's (26 Exeter Street, Boston) Friday, March 18 at 7 p.m. for a truly special poetry reading by two of Ireland's great poets, Derek Mahon and John Montague.

"The orators yap, and guns/Go off in a back street/But the faith does not die/That in our time these things/Will amaze the literate children/In their non-sectarian schools." So writes Derek Mahon, in his wrenching, hope-filled "Afterlives." It is the hope that drives Irish poetry, invoking what Montague, in "Windharp," calls "The sounds of Ireland/ that restless whispering/ you never get away/ from . . ."

— Mike Fischer

Dancing in the Graveyard

By Debra Dickerson '95

RECORD Columnist

I just finished reading Nicholas Lemann's 1991 bestseller "The Promised Land," and I can't get it out of my mind. It details the Great Migration of blacks from the Rural South to the Urban North and examines the effect of that mass movement on our nation's political, economic, and social structures. The book rotates between Clarksdale, Mississippi, Chicago, and Washington, D.C., discussing events from each perspective. Clarksdale is only 40 miles from Webb, my mother's hometown. Reading this book was like being ten years old again, trying to lose myself in the porch shadows so I could listen to the grown folks talk without being shooed away.

Its depiction of sharecroppers' lives, southern apartheid, and the economic forces which underlay the two made me see my older relatives as if through new eyes. It was as if I could hear their voices narrating the passages concerning events in Mississippi. I could see my grandfather becoming more bitter and more defiant with each harvest as he was cheated of his share. I heard my own voice mingling with theirs in the passages concerning life in northern inner cities.

Certainly I have always made it my business to know and understand my people's history in this country, but now, after having studied history, political science, economics, and law, something much deeper clicked for me. I have always been lucky in that education, for me, is not just something that happens in my brain; I have not been able to keep my thoughts in the present.

All of which is to say that I'm still writing about my connection to my family and our connection to the South. I can't seem to stop.

Many of the trips I remember taking down south as a kid were because of deaths in the family. I don't attach any sadness to these trips because I was too young to appreciate the loss. Also, I don't because, notwithstanding our grief, something wondrous would always happen after a funeral: a "Glad Ja Dead" party. To this day, Mama will slap the face of the one she catches calling it that, but that's how we always



thought of them.

Food was the first thing that would lead to a party. When someone died, those country houses would be redolent with food, food, food. Greens, black-eyed peas, corn bread, sweet potato pie, and, of course, chitlins. I remember food being everywhere; stowed in closets, stored at neighbors' houses, stacked atop the chifferobes (big, old fashioned wooden wardrobes). Simultaneous with the announcement of a

death, women would descend on the house of mourning, tongues clucking sympathy, hands full of wax-papered cakes, casseroles, and fried chicken still warm from the skillet. There were mountains of food, rivers of Kool-Aid, and none of it was ever wasted. We needed all of it to feed the hordes of relatives and friends sleeping on floors and porches and even in cars. Nobody missed a good funeral.

Sorrowful as was the death of any of our kin, it was never long before tears turned to joy as relatives who hadn't seen each other since the last funeral shouted their happiness at being reunited. Folks in my family live a long time and those infrequent funerals were just about the only way to bring everybody together at once.

A carload would pull up in the gravel driveway outside A'int Ethel Mae's (my great-grandfather's adopted sister) if one of Daddy's relatives had died or was being buried in Covington, Tennessee. Mama's side? Then it was A'int Pee Wee's (my grandfather's oldest sister) in Webb, Mississippi. We kids would go running outside to gawk and then be yelled at to help unload. Adults would drift out, women shaking flour from their hands, usually sweating and pregnant in the delta heat, men from around back drinking but

pretending to tinker with one of the ubiquitous cars atop blocks for lack of parts or funds.

"Who that?" "Lord, it's Gra'ma Mag, Uncle King, and the girls! Look at 'em, so big!"

Bodies would uncramp from the long drive and be swept up in embrace after embrace. Excitement got both kids and livestock cavorting in the yard. The noise would travel and bring neighbors sauntering down the road to investigate. The "family" expanded to fill the food, space, and affection available. City cousins made fun of country cousins' bare feet and indecipherable diction. Country cousins'd lock us in the outhouse and throw in garden snakes (once, some chickens) to hear us citified ones shriek.

The latest crop of babies, husbands, and wives would be examined, evaluated, and initiated into the family. Paw Paw, the patriarch, provided each new baby with an inexplicable nickname. (He renamed me "Dub" and never called me anything else.) New wives, husbands, and step-relations were baptized with precision ribbing along any obvious lines of attack (weight, height, mannerisms, presumed ugliness of parents) to ensure they understood how this family expressed its affection and approval. "Get mad or don't," was the subtext, "we tease as a rule and tell you we love you only if you seem too stupid to figure it out for yourself."

Eventually, grown folks would start nipping smelly stuff from paper cups and the teenagers would sneak off to a neighbors' to play smuggled records and figure out who was a distant enough cousin to flirt with.

In the end, there was always a party. A "Glad Ja Dead" party to us kids because why else were they celebrating? We didn't realize then the odds against our surviving from one funeral to the next.

Sorrowful as was the death of any of our kin, it was never long before tears turned to joy as relatives who hadn't seen each other since the last funeral shouted their happiness at being reunited.



Fenno felt desolate and alone, even though surrounded by a dozen warm bodies. Less than 10 minutes ago, he had received a call from a breathy voice — she had called herself Candi — asking him to come to Pound 207 so that the two of them could practice making motions. Not being one to pass up the opportunity to hone his courtroom skills, Fenno had hurried over to campus.

Imagine his surprise when, upon bursting into the room, Fenno had found waiting for him not a flush-faced Candi but the entire leadership of the Feminist Legal Activists Bureau (FLAB), a radical break-away cell of the WLA. He had heard rumors that FLAB was conducting interrogations of non-women considered to harbor "suspect" beliefs. He had known it was only a matter of time before his number came up.

Fenno had come unprepared and unprotected. He hadn't yet had his copy of the new HLS sexual harassment policy reduced and laminated so that he could carry it in his wallet.

Twelve scowling faces glared down at him. A voice to his left announced sharply that he was to be seated. He slumped into a chair. He looked around for someone who showed even a trace of compassion — zippo. He tried to think of something to say.

"Uhh, so, that's some pretty bad weather we've been having, eh?"

Crickets.

"So, which one of you came to law school to find a husband?"

Strike two (and a half). He thought he heard a can of mace being unholstered.

"Okay. I admit it. I've objectified a few times, and maybe even engaged in some casual disempowerment. But, hey, you girls know you love that stuff, right?"

Bingo. They loved it. Fenno detected the faintest flicker of a smile flash across the face of the FLAB Scribe. Thoroughly

impressed with himself, Fenno rose to his feet to continue speaking.

"Sit down, scion of the patriarchal hegemony! Your words are the acrid flatulence of a depraved mind. You reek of oppression."

Fenno was confused. He thought Melissa had been wearing Chanel No. 5...

"You are symptomatic of this male-dominated hell in which we, the collective entity known as WOMAN, languish. We are nothing more to you than the bile that you daily cough up. You know th—"

"Now wait just a minute!"

Fenno was irked. He didn't know what bile was, but he didn't like the sound of it.

"I think you guy — uh, gals — have got it all wrong. I'm just a simple school-boy trying to figure out the difference between burglary and robbery. That's all."

The FLAB Scribe who had earlier almost lost her scowl chirped up, "Hey, did you have Dershowitz too? I still don't know anything about criminal law either."

And with that, a bridge was built. The once irreconcilable foes had found a common and greater enemy: the universal oppression of all students (except Sears Prize winners) by HLS. It was time for a new campaign...

NEXT WEEK: Fenno has a clerkship interview.

Quote of the Week

"Let women smarten up a little about men."

—Alan Dershowitz, as quoted in "Should the Law Punish Lovers Who Lie?" in the April 1994 issue of Glamour.

BAR/BRI FIRST YEAR REVIEW HELPS YOU MAKE THE GRADE

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LAW

Getting Rid of the Would-Bes

By Terri Gerstein '95

RECORD Columnist



My first time was with a co-worker in my job after college.

He was a balding 50-something-year-old with a drooping belly, a wife, and two adult daughters. I thought he was just being friendly, an impression he encouraged as he insistently paid for our first lunch: "Think of it as your father paying."

I'm pretty slow on the uptake, but he was persistent and before long, there was no mistaking. "Have you ever thought of posing for a magazine?" he asked me, adding, "You know, like Penthouse? I bet you'd look good."

Fortunately my personal Clarence Thomas was just a peer, so he couldn't fire me. Unfortunately, my boss didn't get it, asking, "What do you expect? You're young and pretty."

I bet every HLS woman has a story of her first time being sexually harassed. It's demeaning, uncomfortable, and humiliating, whether from a peer or supervisor. Clearly there is no place in Harvard Law School for sexual harassment of any kind.

Thankfully, on Monday, there they were in our Harkboxes: 25 pages of Draft Guidelines on Sexual (and other) Harassment. The committee that drafted the guidelines deserves a great deal of respect and appreciation for what is clearly the product of a lot of thought, discussion, and hard work. The committee has also gone out of its way to invite input from the HLS community on the draft guidelines. I think all of us should take them up on their offer, by writing responses to the committee, talking to members, or attending the March 21 meeting.

But in addressing sexual harassment, both in our academic and professional lives, we should be wary of an exclusively legalistic approach. Implicit in the existence of guidelines is the (accurate) assumption that such guidelines are needed to prevent people from doing something they otherwise would want to, and would do. Laws, rules, and guidelines often change people's conduct and sometimes (but definitely not always) change people's attitudes as well. As legal thinkers, sometimes we run the risk of focusing too much on legal change as the be-all and end-all for achieving social change. This tendency is understandable, since after all, the law is our craft. And, given our training, our special role in any movement or organization might be to work on legal aspects of a problem.

Along with formulating guidelines or laws comes the more amorphous yet equally important task of changing attitudes. In the ideal world, there is no harassment — not because the would-be perpetrator fears punishment, but rather because he no longer is a "would-be."

"So if I tell some classmate she looks pretty, is that harassment? That's asinine."

Yes, guys and gals, you can still (respectfully) tell someone that he or she looks nice. I get frustrated by the ridiculous misrepresentation of people concerned about sexual harassment, as though we secretly yearn for a sterile, frigid, robotlike workplace. In fact, harassment is really about power relations. Confession: I have taught college classes in several places, and I've had some Very Cute students. But with or without guidelines, I would never have dreamed of getting romantic with them, because of the inherent pressure and power imbalance involved in subjecting a student to my (most certainly unwanted) attentions. It would be unfair and wrong to use my position of authority that way. And that's what part of what the sexual harassment uproar is about — abuse of power.

Several years ago, I taught college in Mexico. One of my co-gringos, also a co-worker, was an Angry Young Man, who spent lots of time in the classroom berating his wealthy, pale-faced, aristocratic Mexican students for being wealthy, pale-faced, and aristocratic. (He spent lots of time in private berating himself for the same.) The students were less than charmed. As for me, his eternal vigilance for hints of -isms (rac, elit, Anti-Semit, et al.) initially won me over, but eventually bowled me over.

Imagine my surprise when I heard him and my other co-gringo co-worker discussing their female students. And in fact, these bright-eyed 18-year-old girl-women students knew how to make themselves gorgeous. They came to school each day looking like freshly wrapped birthday presents waiting to be...

Yes, they were beautiful, but damn! I never expected to walk into my office and hear my Angry Young Co-Gringo discussing the size, shape, and firmness of his student Marcela's breasts!!

He returned to the United States months before I did. And shortly after his departure, I began to hear rumblings from the college's gossip factory.

"He asked Marcela to go to the movies with him. She was barely passing his class."

"He tried to kiss her, and, you know...."

No, I didn't know. I didn't know what to think.

When I got back to the United States, I avoided his phone calls, since I didn't want to have to hate him. Reluctantly, I returned his 11th call.

"Yeah, I did ask her out." His explanation? "There's no concept of sexual harassment in Mexico. It's a different culture."

I didn't know where to begin. I verged on incoherence. Here's what (I think) I said:

There is such a concept in Mexico — it's called "acoso sexual." And even if there were no such phrase in the Spanish language, it would still exist. Women would still feel it, even without institutional articulation or validation of their feelings. Too, too many of my students told me in confidence how uncomfortable certain professors made them feel.

Besides, where is your core of values, my Angry Young Ex-Friend? After criticizing Mexico for a year, your sudden embrace of its "culture" seems opportunistic at best. How do you want your sister, your mother, your future daughter to be treated at school or at work? Do you genuinely care about women's rights at all? Or only when it's required by the demands of the rules or the law or radical chic? Does sexual harassment exist only when you might get punished?

Members of the HLS community, does it?

• Letters (continued) •

Proposed Harassment Code Too Vague

The harassment definition proposed by the Sexual Harassment Committee is so vague that it might be unconstitutional if it were adopted at a state university. Since the Massachusetts Civil Rights Act applies First Amendment guarantees to private colleges in Massachusetts, it may also be illegal at Harvard. Although the policy promises to respect the First Amendment, its commentary on what constitutes protected speech is meager and inaccurate. Also troubling is the committee's proposal of a hate-speech code.

The harassment definition bans sexual speech that has the side effect, or the purpose, of creating a "hostile" or "demeaning" environment for listeners. This "hostile environment" test has been held unconstitutionally vague and restrictive. In *Doe v. University of Michigan* (1989) and *UWM Post, Inc. v. Board of Regents of Univ. of Wisconsin System* (1991), courts overturned campus codes that banned speech that creates a "hostile" or "demeaning" environment.

Under such speech codes, people have been convicted of racial or sexual harassment for criticizing affirmative action, feminism or homosexuality, complimenting a student on her blazer, displaying art books, writing a love note, asking a peer out on a date, or objecting to a roommate's posting of gay erotica.

To prevent such censorship, the Harassment Committee wisely exempts from its prohibition speech that is "reasonably" designed for academic or public debate, or protected by the First Amendment. However, it provides little notice to students, who are not constitutional law experts, about what speech is protected. It will often be unclear whether speech is "reasonably" designed to contribute to scholarly debate, for example, whether the sexual analogies that a professor uses in his lectures are strictly necessary. But is "unreasonable" usage of a sexual analogy sufficient reason to discipline a professor? The University of New Hampshire thought so, and is currently facing a First Amendment lawsuit. To let

students know what their rights are, the policy's free speech protections will have to be more fully explained.

Unfortunately, the policy underestimates the First Amendment's scope, wrongly suggesting that speech whose foreseeable effect is to create a demeaning environment is shielded from prohibition only if the speech "reasonably" relates to "legal or public education, academic inquiry, or reasoned debate on matters of public concern." In reality, even intellectually valueless speech that creates a demeaning environment is generally protected. In *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University* (1993), a federal appeals court overturned a fraternity's punishment for a crude racist, sexist skit, holding that speech may never be restricted on the basis of viewpoint to prevent the creation of a "discriminatory" educational environment.

The policy needs to be modified to preserve free speech.

Hans Bader '94
March 15, 1994

WLA Benefits Women at Law School

We would like to respond to Elizabeth Brown's letter [RECORD, March 11], in which she calls for the formation of a pan-ethnic women's group in order to foster a sense of feminist community at HLS. Ms. Brown states that the Women's Law Association has done little to develop a sense of community among women at the Law School, and that she has "not heard from" WLA since September. As co-chairs of WLA, we have worked hard to implement activities that recognize the unique concerns and talents of HLS women. For example, WLA played an active role in the planning and implementation of "Celebration 40," which honored the 40th anniversary of women at the Law School. Celebration 40 involved a series of panel discussions between current and former HLS women; it featured prominent female attorneys and academics, addressing such topics as the atmosphere for women at HLS, strategies for advancing in various sectors of the legal profession, and recent developments in diverse areas of feminist scholarship. WLA has also co-spon-

sored several events with the Office of Student Life Counseling highlighting topics of concern to women, such as "Glass Ceilings in the Workplace," and "The Work-Family Conflict." We have sought to insure that the interests of women were represented by the Law School Council. WLA has vigorously opposed the termination of the Home Run Shuttle. Furthermore, when some members of the Law School Council called for the removal of the only woman from the Sexual Harassment Committee, WLA fought successfully to preserve her seat on the committee. Most recently, we have presented Ann Althouse, a University of Wisconsin law professor who delivered a gender-based critique of the Green and Nesson Evidence casebook. Similarly, by sponsoring a series of discussions between HLS students and professors on topics of concern to women, WLA has attempted to develop a feminist community encompassing both students and faculty. Finally, WLA is currently planning its annual dinner, which will be held on March 22, 1994, highlighting several

women of color who are either law professors or practicing attorneys in the Boston area. They will deliver short presentations on topics of interest to them, ranging from a critique of transracial adoption to their experiences in large law firms.

All of these functions, as well as our meetings, have occurred since September and have been publicized by notices in the Advisor, and by flyers distributed to student Harkboxes. We regret that Ms. Brown was not aware of these activities. By presenting such events, WLA has tried to make HLS more sensitive to the concerns of women and to foster a feminist community at the Law School. We realize that WLA is not perfect. Nevertheless, it is much easier to criticize an organization from the periphery than it is to participate in its ongoing activities. We strongly recommend that Ms. Brown do the latter, in order to promote unity, rather than divisiveness, among the women of HLS.

Cynthia Chandler '95
Tamara Jones '95
WLA Co-Chairs
March 12, 1994

Faculty Posts Offered

continued from FACULTY, page 1

although Clark said he is not optimistic Warren will accept.

Even without Warren, the outstanding offers could increase the corps of female professors by as much as 50 percent.

Currently six of the 65 permanent faculty members are women, a set of numbers Clark says the Law School is working hard to change.

"We're clearly trying to add more women to the faculty," he said.

Clark said HLS was engaging in "affirmative action" to the extent it was working to increase the number of women considered and interviewed. He also said the Law School would be willing to hire a qualified woman, even if her area of expertise did not fill an immediate need, but he stopped short of saying the school would lower its qualification requirements for women.

"I guess what we're not ready to do is to have a different standard," he said.

Even those organizations that previ-

ously have been sharply critical of HLS hiring practices in the past now concede school is making progress toward hiring more women. Both Lenhardt and fellow CCR Co-chair Inga Bernstein say they are pleased with the recent trends. But both also say HLS is making less progress toward hiring more minorities.

"It seems as though they're making an effort to appoint women, and that is exciting," Bernstein said. "There appears to be far less progress — maybe even no progress — toward finding more people of color."

Clark said HLS was considering a number of minority candidates for permanent faculty positions. He also pointed to outstanding visiting professorship offers to African-American women Lani Guinier and Kimberle Crenshaw '84. Three other minorities — Yasuharu Nagashima, Sang Hyun Song, and Leon Higginbotham — are among the 14 people who have accepted visiting professorship offers for next year. That group also includes four women and one openly gay man.



Slaughter-Burley

Gay Students Uneasy

continued from GAY, page 1

25th anniversary of Stonewall by hosting a symposium with the Civil Rights/Civil Liberties Law Journal, featuring prominent scholars in the field of law and sexual orientation.

These changes come amidst a ferment of gay activism in law schools across the country. At New York University Law School last year, students staged a prolonged boycott that successfully turned away 10 to 12 Colorado law firms. The students were protesting that state's Amendment 2, which prohibits local legislation granting civil rights to gays and lesbians and overturns all pro-gay municipal ordinances. And at SUNY-Buffalo Law School last October, students protested Navy and Army judge advocate general recruitment by erecting a closet through which people would have to walk to conduct interviews. Their move led the military to reschedule or cancel more than 20 on-campus interviews.

Although Lambda hasn't staged large-scale protests like those at NYU or SUNY-Buffalo, the group has initiated a variety of programs to reach out to HLS students who may feel uncomfortable either with acknowledging their own sexual orientation or coming out to heterosexual classmates.

These activities are critical for gay students to establish their own support network, said Carlos Vasquez '94, one of Lambda's three co-chairs. "In most public activities at this law school, there's a definite straight overtone," said Vasquez. "It's depressing. [The presumption that you are straight] is always there. It's the 'constant static' that [ex-Dean of Students] Sarah Wald talked about regarding gender discrimination."

This "constant static" is also broadcast by activities sponsored by other student organizations, Vasquez noted. "It's evident very obviously [in groups] such as HLS Couples, with their posters starting out with the word 'Married?' on top, followed by 'Engaged?' with 'Seeing someone?' at the bottom."

"To me, [gays] were totally excluded from the top two rungs of that hierarchy. We were relegated to the bottom category. Obviously, gays and lesbians cannot be married and they cannot be engaged because it's illegal. That poster just seemed [to say] 'This is not for you.' Although [HLS Couples] never explicitly said 'Heterosexual couples only,' it's one of the things [that presumes you are] straight in many contexts."

To combat this alienating assumption of heterosexuality, Lambda sponsored a variety of social gatherings during 1L orientation, including its first "Post-Boat Cruise Night Outing" after the traditional event organized by the Board of Student Advisers.

Dorothy Fernandez '96 and Scott Wiener '96 welcomed these alternative social events, which provided them a way to meet other gay students.

"Before the cruise I felt a little weird because I hadn't met any out gay people," said Fernandez. "I feel really lucky because when I went to the first Lambda meeting I had an instant community. We bonded right away."

During his first few days on campus, Wiener wore freedom rings, which are multicolored circlets linked together on a necklace and considered an emblem of gay pride, but he did not meet other gay students until he participated in Lambda activities.

"The support structure here is student-generated," Wiener said. Noting the absence of gay programming at HLS,

especially during orientation, he added, "The administration pays lip service to gay concerns [although] I don't think it's because of real hostility [toward gay issues]."

Since arriving at HLS, both Fernandez and Wiener also found that coming out to fellow students has not posed a problem. Fernandez wore a pink triangle button for a couple months and came out to people on her single-sex floor "pretty quickly."

"It's for both of our sakes," she said. "When they talk about their boyfriends, I can feel free talking about whether I'm seeing someone and I can feel natural."

For Wiener, coming out "wasn't an issue. I was very out in the beginning and I've never felt any overt homophobia."

But Vasquez noted that the experiences of gay students who are out compared to those who aren't may differ radically.

"Being very out may provide a little insulation [from homophobia]," said Vasquez. "When you're closeted you're worried about people talking about you; when you're out you know who those people are. When you are no longer wor-

ried about [being out], it eases the pressure on you. [My being publicly out] prevents a lot of people from coming up and saying something [homophobic] to me."

Being out also does not necessarily safeguard gay students

from homophobic comments, said Kate Arms '96, who described herself as "rather theatrical" about her bisexuality. Arms related how she and another student were perusing an orientation agenda, which listed Lambda's "Celebration of Family Values" reception. After Arms explained the group's purpose, he responded, "Isn't having a family values celebration for them an oxymoron?"

"[Homosexuality] is not an issue on which everybody silences us," Arms said. "But it's tough to try to make it more prominent. [There's only] a small number of out students, who [may not] want to spend all their lives dealing with rampant homophobia because it's exhausting work."

Homophobia is not only expressed in derogatory comments; often, gay students are met with ignorance about or avoidance of their concerns.

Brad Sears '95, another Lambda co-chair, recalls having coffee in a professor's office with two other students. After Sears said he worked with Lambda, the professor proceeded to question the other two in detail about their extracurriculars while ignoring Sears entirely.

Sears also notes that straight people at times have a reaction entirely opposite that of his professor's studious avoidance. "I'll be having a discussion with people related to something either academic or related to a student organization and if the discussion hits on a gay issue, [everything] collapses into a personal question-and-answer about my experience," said Sears.

"It's good for people to be aware of [gay] issues but I feel that it is frustrating to be in a position of educating people on gays and lesbians when you are trying to have a discussion about [a different topic]," he said. "It's important to me that my main purpose is to empower ourselves, not to serve as a topic of interest for the hetero community."

In the next issue of the RECORD: The communication gap in the classroom — and the job hunt.

Cleanliness is Next to Impossible

By Marc Channick '94

RECORD Columnist



I am not what you would call a particularly neat person. I generally operate on the theory that you should never throw anything away, since you never know when you're going to need it again. I still have book reports from fifth grade lying around, in case any of you out there want an in-depth analysis of the exploits of Paddington the Bear.

The problem with this practice is that, over time, things begin to pile up, and at some point you hit "critical mess," at which time a phenomenon occurs in which things stay visible for months but then disappear right when you actually are looking for them. They only show up again after you give up and begin looking for something else. Playing this game can lead to running your life as much as two full months behind schedule and paying a large number of \$10 fines at the Registrar's Office.

At this point, there are three things you can do. First, you can attempt to beat the mess at its own game by pretending that you are looking for something completely different, so as to fool the mess into disgorging whatever it is you really want. Second, you can admit defeat and simply bribe the mess, which usually involves feeding it one or more household pets. Or third, you can clean.

I'm not a big fan of option three, and I have the empty Habitrails to prove it. However, every once in a while something will push me over the edge. This time, it was when the remote control fell under the bed. Men can deal with war, famine, and disease without batting a testosterone gland, but take away our remotes and we're helpless. After all, remote controls allow us to communicate with the mother ship, which beams us secret male instructions through the TV set.

At first I thought this would be a simple reconnaissance mission, but one look under the bed told me that there might be some major work involved. It had been so long since I had vacuumed down there that the dust bunnies had formed a provisional government and were making tentative diplomatic overtures toward the collection of dirty socks piled in the corner.

In fact, as I looked around the room, I saw at least ten examples of filth severe enough to have gotten me grounded when I lived at home, to say nothing of several areas which, for my parents, would have gone beyond the need for conventional discipline straight into exorcism territory. Clearly, something had to be done. The most appropriate course of action would have been to simply fire-bomb the place and allow Nature to start over, but this most likely would have irritated my neighbors. Thus, I saw no choice but to roll up my sleeves and take the first step in any clean-up operation, namely spending several hours whining to anyone who would listen about how I didn't have time for this.

As far as actually cleaning, I decided to start with my closet, which I have chosen to utilize as a walk-in hamper. There is a pile of clothes in there which does not need to be washed so much as taken outside and humanely shot.

I generally operate on the theory that you should never throw anything away, since you never know when you're going to need it again.

Actually, I have to do laundry fairly often, since I tend to under-buy clothes. I mean, why have more socks than you can comfortably wear at one time? Besides, I have found that if you allow your dirty clothes to sit in a heap for too long, they begin to mutate, so that, whatever their original form, within two weeks you are left with nothing but gray sweatpants and T-shirts with Greek letters on them. Trust me, this will occur regardless of whether you actually belonged to a fraternity or sorority in college. It's just one of those things.

Cleaning out my desk usually goes pretty smoothly, since I tend to file most of my truly important papers on the floor, and thus the only things in the drawers are the 43 Discover Card applications I receive every month. However, during the process I invariably find at least 20 scraps of paper, each of which contains a phone number with no name attached. Every time this happens, I swear I will buy an address book, but I have found that the act of putting peoples' numbers in a permanent place always causes you to lose touch with them, so that you are left with a book full of reminders of what a terrible friend you are.

In my opinion, the best thing to do in this situation is to simply make a list of all the people whose phone numbers you think you *should* have, draw a grid on the floor with one name in each square, throw the pieces of paper up into the air, and match up the results. It may be arbitrary and ineffective, but at least it's quick.

One piece of advice—do *not* attempt to rearrange your music collection at any time during the cleaning process, unless you have no pressing plans for the rest of the day. I say this only because at some point in the process you will be sorely tempted to pop one of those old cassettes into the stereo. Resist this urge, since it has been clinically shown that such behavior will quickly cause you to go into "Full Reminiscence Mode," which in most cases involves listening to several hours of ELO and Air Supply while crying over every high school girlfriend who ever dumped you. Still, it is nice to find out that even if you can't remember your parents' birthdays, all the lyrics to "Mandy" are burned into your brain forever.

One last thing before I go — does anyone out there have a guinea pig that they're not particularly attached to? I can't seem to find my bar application anywhere.

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