



Harvard Law RECORD

America's Oldest
Law School
Newspaper

35 CENTS

Volume 100, No. 1

Cambridge 02138

Friday, January 20, 1995

Lewis Had a Billion- Dollar Dream

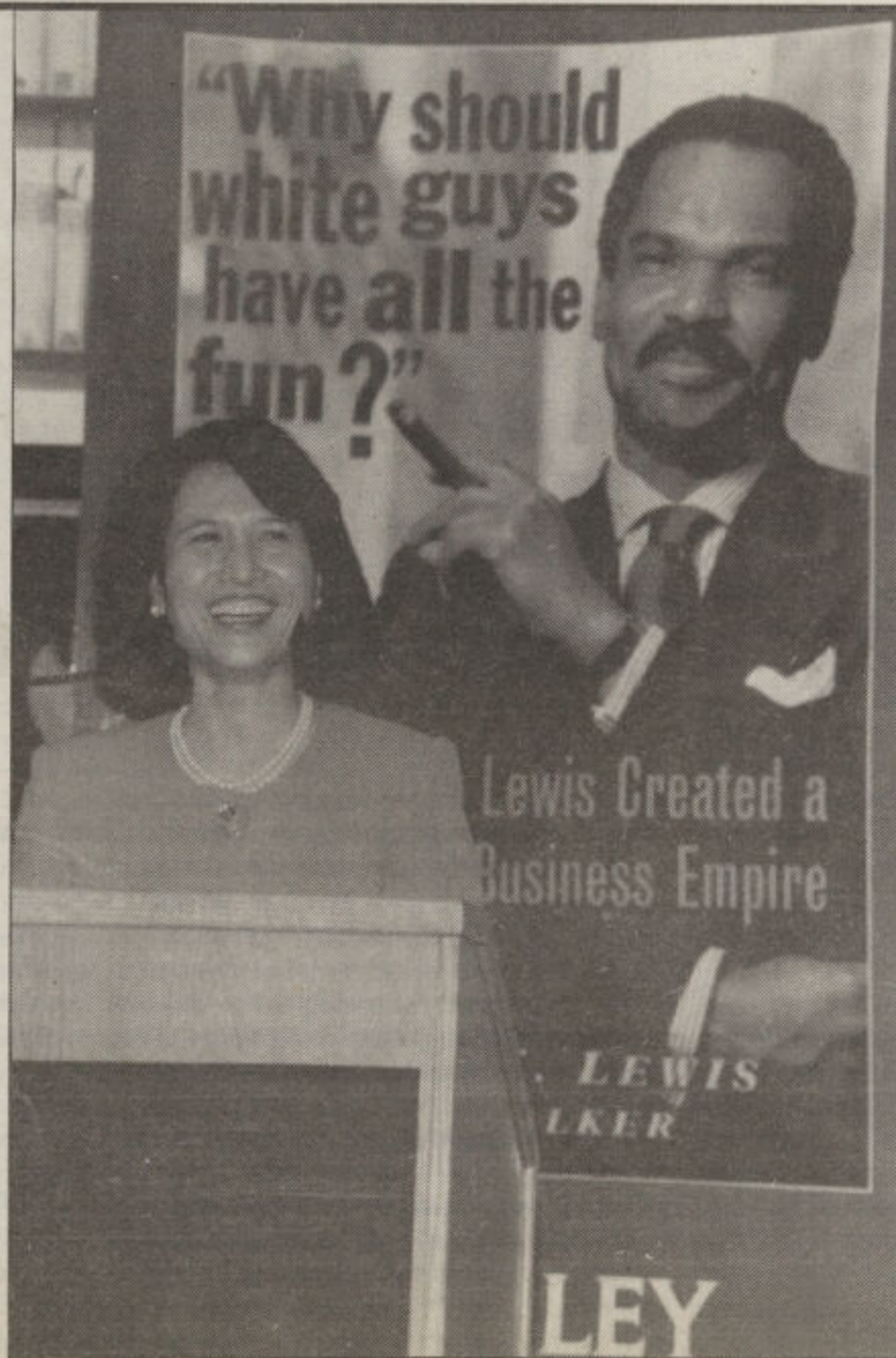
By Victoria Kuohung

Climbing out of a bathtub, a six-year-old Reginald Lewis '68 asked his grandparents, "Why should white guys have all the fun?"

True to his word, less than 40 years later — after moving from the neighborhoods of East Baltimore to graduate from HLS and eventually own one of the world's largest food distributors — Lewis became one of Forbes Magazine's 400 richest people in the United States.

His career, cut short at the age of 50 by inoperable brain cancer, is chronicled through compiled autobiographical notes and almost 120 interviews in "Why Should White Guys Have All the Fun?: How Reginald Lewis Created a Billion Dollar Business Empire," written by former USA Today correspondent Blair S. Walker. Last month, in honor of Lewis' birthday, his widow Loida Lewis — now chair and CEO of TLC Beatrice International, which Lewis acquired in a \$1 billion leveraged buyout in 1987, the largest offshore LBO at that time — signed copies of his biography at the Harvard Coop and spoke at a BLSA-sponsored reception in the Treasure Room of Langdell Library.

"Reginald Lewis had a code of conduct and a set of beliefs," said Loida Lewis at the reception. "It was not something that depended on what other people would say. Nor was it something



Loida Lewis, widow of Reginald Lewis, speaks at an HLS reception commemorating her late husband's birthday and the publication of his biography.

that he would do as long as nobody caught him. It was not a standard that was based on outside factors but one that was based on something within him."

That standard was exacting, one that Lewis demanded not only from himself but from others with whom he associated. Growing up in East Baltimore, Lewis worked at the age of 10 as a paperboy delivering newspapers, and then in high school worked as a drugstore clerk and later as a staffperson in a country club. As he also played basketball, baseball, and football, his schedule was hectic and allowed only four hours of sleep per night.

Lewis won a football scholarship to Virginia State but

because of a shoulder injury left the team after one year to focus on both academics and paying his way through school. First as a night manager in a bowling alley and then as a salesman for a photo studio, Lewis worked throughout college, managing his time with a strict schedule that required him to wake up at 6:30 a.m. and spend the day either studying or practicing sports, with no more than one hour and 15 minutes for recreation. It was in college that Lewis decided to become a lawyer: Underneath his daily schedule, written out on piece of cardboard, Lewis had scrawled the words, "To be a good

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Worker Confesses To Thefts at HLS

By Greg Stohr

An HLS cleaning worker has confessed to stealing some \$10,000 in electronic equipment from campus buildings in the last four months, according to Law School and Harvard University Police officials.

Police arrested Luis Rivera, 33, on December 29, one day after they caught him removing a portable stereo from a school building. Harvard Police Chief Paul Johnson said Rivera confessed to the thefts and then led police to Carlos Avellanede, the man Johnson described as the "fence" to whom Rivera passed the stolen goods.

Avellanede, 35, was arrested the next day and charged with receiving stolen property. Police found more than 20 pieces of electronic equipment, including television sets, VCRs, and computers in Avellanede's studio apartment in Everett, officials said.

At least ten of the items have been identified as Law School property, including a TV stolen from Prof. Alan Dershowitz' office, according to Johnson. Many of the items have already been returned to the Law School, he said.

The thefts began in September, officials said. Items

were reported missing from offices around campus even though police discovered no signs of forced entry.

"Obviously, someone had a key," Johnson said. "Early on, it was suspected that it was somebody from the inside."

Police quickly identified Rivera as the main suspect, according to Detective Paul Westlund, one of three officers who spearheaded the investigation.

"He was someone we started looking at basically from the beginning," Westlund said. He said police focused on Rivera after looking at the "time frame of the thefts and the areas of the thefts."

Police watched Rivera for several months before Officer Patrick Griffin discovered Rivera removing the stereo from Lewis Hall in the early morning of Dec. 28, Westlund said. At the time, Rivera claimed the stereo belonged to him, officials said, but the next day, after the stereo was reported stolen, police arrested the suspect at Consolidated Service.

Westlund said Rivera did not resist and submitted to a "lengthy" interview at police headquarters. "He was very cooperative at that time,"

please see THEFTS, page 4

Dershowitz Case Tests Limits of Workplace Speech

By Greg Stohr

Alan Dershowitz says he is no stranger to being the target of lewd political satire.

The HLS professor eagerly displays the page in Hustler magazine where his face is superimposed on the backside of a donkey under the headline, "Asshole of the Month."

That page, Dershowitz says, is and should be constitutionally protected. And he says that same constitutional principle protects one of his clients, David Heller, whose case against a charge of sexual harassment Dershowitz argued before the Massachusetts Supreme Judicial Court last week.

But attorney Nancy Shilepsky, who represented plaintiff Sylvia Smith Bowman on appeal, says the First Amendment does not protect someone who subjects a fellow worker to gender-based humiliation on the job.

Heller is accused of sexually harassing Bowman, a supervi-

sor at the Worcester state welfare office who was running for president of the local union in 1987. Heller, a supporter of Bowman's opponent, superimposed a photo of the Bowman's face on photos of nude and partially nude female bodies and distributed photocopies of them in their office. The photos

included one in which a partially nude woman with her legs spread apart held a banana.

The trial judge found that Heller sexually harassed Bowman, who is currently in her sixties, and awarded her \$35,000 in damages for violation of the Massachusetts Civil Rights Act and for infliction of emotional distress.

Dershowitz said in an interview this week that the photographs were protected as speech by the First Amendment.

"Under the First Amendment, we don't ask how funny it was. We ask, 'Was it expressive?'" Dershowitz said.

Dershowitz said the altered

please see DERSH, page 3

Prof. Fried Successful in Remand of Daubert

Plaintiffs' Experts Fail New Admissibility Standard

By David Weiss

Put another notch in the victory belt of HLS professors. On January 4 the Ninth Circuit affirmed the dismissal of a case on remand from the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, a suit for which Prof. Charles Fried argued the appeal on behalf of the defendant.

"It's terrific. It's just what we asked for," said Fried in a RECORD interview.

The case is based on a claim that Bendectin, a drug taken by the plaintiffs' mothers to relieve morning sickness, caused limb reduction defects in the plain-

tiffs. The trial court granted the defendant's motion for summary judgment after determining that the plaintiff's expert testimony was inadmissible under the then-standard *Frye* test.

That test required that scientific evidence be based on a technique generally accepted as reliable in the scientific community. The ruling was appealed to the Supreme Court, where Fried orally argued the defendant's case and where Prof. Charles Nesson '63 was also among the defendant's counsel.

In an opinion written by Justice Blackmun, the court overruled *Frye* and established a two-part test for admissibility of scientific testimony based on the

reliability of the scientific methodology and the "fit" between the testimony and an issue in the case. The court then remanded the case to the Ninth Circuit, where Fried presented arguments on March 22, 1994, on whether the plaintiff's expert testimony was admissible under the new standard.

The circuit court's decision, written by Judge Alex Kozinski for a unanimous three-judge panel, held that although further hearings might help to determine if the expert testimony would satisfy the first prong of the test, they would not enable the plaintiffs to satisfy

please see FRIED, page 4



Alan Dershowitz



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HLS Students Place Third in World Debating Championships

By Maria Politis

While many of us spent the first few days of January recovering from hangovers and beginning our daily trudge to classes, a couple of us debated the pros and cons of genetic engineering, the relative importance of the letter and spirit of the law, and even whether the world should just scrap the entire United Nations. By the end of the week-long Fifteenth Annual World Universities Debating Championship, held in Princeton, New Jersey, Ted Cruz '95 and David Panton '97, walked away with third place.

Competing against 242 other two-person teams from nations including Canada, England, Ireland, Australia, India, Singapore, Germany, Ethiopia, Jamaica and Jordan, Cruz, and Panton, representing HLS, survived 12 40-minute rounds of parliamentary-style debate, which is modeled after the proceedings of the British House of Parliament. They alternately represented Her Majesty's Government, arguing in favor of a resolution, and Her Majesty's Loyal Opposition, for the purpose of defeating a proposed measure.

As might be expected, winning is based on persuasion. "The ultimate criterion is persuasiveness," said Cruz. "The judges also consider the content of what [debaters] say, as well as speaking style, oratory, and wit." Cruz and Panton proved quite persuasive, becoming one of four teams to reach the semifinals, finally losing to the New South Wales team from Australia, which advanced to the finals and captured first place.

Although it was "a little disappoint-



Ted Cruz '95 and David Panton '97 accumulated a number of debating awards before placing third in the World Universities Debating Championships.

ing not to go the whole way," said Cruz, he and Panton had a "tremendous time." It was especially nice to see old friends on the debating circuit, he said. While in college at Princeton, Panton and Cruz captured national best team honors in 1992. They also competed in the Twelfth Annual World Championships in 1992, where they were eliminated in the quarterfinals.

It is common for college and graduate students to enter the World Championships several times, said Cruz, and this was one reason he and Panton decided to put on their debating hats once again.

"Since the vast majority of people go three, four, five times, and we only went

once, we decided it'd be fun to give it another shot," said Cruz.

Cruz noticed his debating skills had improved as a result of law school. "The process of becoming more educated helps in terms of your knowledge base and your analytical rigor," he said. He added, "There's a lot to be said about law pushing you and teaching you to think." But, he said, "while we hadn't [debated] for a couple of years, it's like riding a bicycle—you never really forget [how to do it]."

Panton could not be reached for comment as he is currently on a two-year Rhodes Scholarship, pursuing a D.Phil. in Management. He finished his 1L year in 1993 and will return as a 2L this September.

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HLS
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Due to finals, break
(if you can call it that)
and the need for sanity,
the RECORD will not be
publishing for the next two
weeks. But we will be back
on February 10 with:

- the sexual harassment policy: where is it now?
- Justice Breyer still teaching at HLS
- and much more

See you in February!

From the Color of Skin to the Color of Money

What's Happening at Law Schools Across the Country

UVA School of Law

Want Your Honor Code Violation Expunged? Students Say All You Have to Do is Sue

The University of Virginia School of Law's student-run Honor Committee, which administers the university honor code, faces accusations of bowing to administrative pressure following its summer acquittal of undergraduate Christopher Leggett from 1992 charges of cheating on an exam. Leggett, who was suspended after the committee originally found him guilty of violating the honor code, had retained the Washington, D.C. firm of Williams & Connolly and threatened to sue UVA for \$750,000 if the school did not reopen his case.

Although the committee had rejected Leggett's proposed settlement, which called for a new trial, university officials overrode its decision and ultimately found him not guilty based on new evidence. In exchange for avoiding a damages claim, the school agreed to fully reinstate Leggett and pay his legal fees of \$39,000.

Jackson Boggs, one of the two law school representatives to the committee, resigned in protest over the action. "[People] would have a hard time believing that fairness could be attained only by trampling the constitution and by-laws of the Honor Committee in secret negotiations," wrote Boggs in an editorial.

— from *Virginia Law Weekly*

Columbia and Cornell Law Schools Keeping the News Coming

Despite a New York Journal pronouncement that the Columbia University Law School News was dead, its editors announced this academic year that the newspaper continues to go to press — and published an issue to prove it.

Similarly, students revived Cornell Law School's Dicta after a two-year hiatus. Established in 1980, the paper's September issue covers Cornell Law School alumnus Richard Rosenbaum's bid for New York governor, a profile on the entering class, and evaluations of

summer jobs.

Dicta's Editor-in-Chief Jessica Gadsden writes, "Currently, word-of-mouth plays too large a role in the dissemination of information. Dicta wants to help us learn more about each other and allow us to be more productive in our individual and collective efforts."

— from *Dicta and The Columbia University Law School News*

NYU School of Law

Sale on Tuition: Get Two-Thirds Off with Ten Years Public Interest Service

And you may have thought that LIPP was something special: As many as 20 incoming New York University 1Ls this fall will have their tuition bill cut by two-thirds in exchange for a promise to pursue public interest careers for ten years following graduation.

NYU Law School is touting the effort as a "study" that will be funded by a \$5 million anonymous gift, to be matched by another \$5 million by NYU Law.

Despite the generosity of the "study," the fact that it is limited to incoming students has angered some students currently at the law school. Particularly insensitive, they said, was how they learned about the "study" from a New York Times article which was anonymously stuffed into their mailboxes. "I think it's great that they raised all this money," said one 3L quoted in *The Commentator*, "but it really flies in the face of those of us already here at NYU. You don't want to begrudge the new students or anything, but putting these copies in our mailboxes was insensitive, to say the least."

Although they will not get the opportunities incoming students will receive, current NYU students will also enjoy NYU's improved Loan Repayment Assistance Program. The enhanced pro-

gram will increase the eligible salary cap and will allow for a broader definition of the maximum debt eligible for assistance.

— from *The Commentator*

NYU School of Law

The Incredible Shrinking Budget

NYU Law School's 1995 budget faces six percent reductions in every area except for financial aid and faculty salaries, in accordance with a Board of Trustees directive.

Students will most likely feel the squeeze in library operations, where weekend reference staff will be eliminated in order to protect the book budget. NYU's Public Interest Law Center and the Office of Career Counseling and Placement expect no significant reduction in services, while the Journals Office — which oversees law school publications — will take cuts in its food and beverage allowance.

Despite these cuts, incoming public interest-minded NYU Law Students will benefit from a new public interest funding effort. (See story, above)

— from *The Commentator*

SUNY at Buffalo School of Law

They're In the Money: Religious Law School Society Receives Student Funds

Somewhat reminiscent of the recent HLS debate regarding student funding for religious campus organizations, the Student Bar Association of SUNY Buffalo School of Law, a state-funded school, granted recognition and funding to its campus' chapter of the Christian Legal Society.

The debate over whether to fund the organization centered around First Amendment issues. While the group's supporters argued that denying funds

infringed on the organization's free speech rights, opponents countered that granting funds violated the Establishment Clause. Unlike Harvard, the law school at SUNY Buffalo, being a state-funded institution, is clearly a state actor for constitutional purposes.

Also at issue was whether the Christian Legal Society's requirement that members sign a "statement of faith" declaring their belief in Christian principles violated an SBA requirement that all organizations be open to all students.

— from *The Opinion*

Northwestern University Law School Not Black? Or Just Not Liberal?

Next thing you know, they'll be hiring four white men. Students and faculty at NU Law School have found themselves in the thick of a debate on diversity of faculty members? While it sounds familiar, this debate centers around an interesting twist: NU Law offered tenure to a half-black Cuban, half-Irish woman, but one faculty member opposed her appointment on the grounds that she was not black.

"Maria Hylton should not be considered a black candidate," Professor Joyce Hughes said in a memo to the faculty. "Not all with dark skins are black... it is misleading to label as black any person whose skin color is dark."

Hylton and her husband, currently a black professor at NU Law, say the real reason Hylton was opposed by Hughes was not that she isn't black enough, but that she isn't liberal enough. Hylton and her husband subscribe to an economics-based approach to the law, though Hylton describes herself not as a conservative, but as a "thoughtful middle-of-the-roader."

No one seems to doubt Hylton's credentials: She graduated from Harvard College, Yale Law School, and clerked with a federal judge. Nonetheless, anonymous faculty members said committee members would probably vote Hylton down, due to feminist opposition, liberal opposition, and by those who thought that the only reason she was considered in the first place was to keep her husband.



Appeal Tackles Speech, Harassment Issues

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photos were directed not at Bowman as an employee but solely at Bowman as a candidate. At the time, Dershowitz said, "there was a heated political campaign was going on."

Artwork that satirizes public figures, including political candidates, must be protected as part of the marketplace of ideas, Dershowitz said. In the appendix to his brief to the court, Dershowitz included a number of examples of superimposed photographs of political figures. Among the displays were a *Spy* magazine composite of Hillary Clinton's face atop a body wearing a skimpy black-leather-and-chains outfit; a *Playgirl* composite that makes Bill Clinton and Al Gore appear as though they are naked, their genitalia covered by American flags; and the "Asshole of the Month" page from *Hustler*.

"This is a very common genre of satire," Dershowitz said. He argued that the case was controlled by *Hustler Magazine v. Falwell*, in which the Supreme reversed an award to religious leader Jerry Falwell, who had sued *Hustler* for publishing a parody advertisement entitled "Jerry Falwell talks about his first time."

The trial court had rejected Heller's contention that the photocopies were protected as political speech and distinguished *Hustler*. Trial judge J. Harold Flannery wrote that Heller's actions expressed no articulable political statement.

"[T]he photocopies were nothing more

than a reduction of Bowman to a sexual object and an attack on her as a woman, rather than a political candidate," he wrote.

Flannery also held that the workplace context permits additional restrictions on speech, a holding with which Shilepsky agreed.

Shilepsky, who practices at the Boston law firm Dwyer & Collora, said workplace expression may be regulated or

"[T]he photocopies were nothing more than a reduction of Bowman to a sexual object," the trial judge wrote.

even prohibited in collective bargaining settings. She said a 1969 Supreme Court case *NLRB v. Bissel Packing Co.* allows the government to regulate speech when it constitutes an interference with employee rights.

"The gravamen of this case is whether you look at it as a labor case, which it is, or whether you take it out of the workplace context," she said.

Dershowitz said no special speech rules should govern elections in the workplace. In his brief to the court, he argued that "speech uttered in the course of, and as part of, a union election is entitled to

lessened restrictions and greater protection." (emphasis in original).

Dershowitz also said Heller distributed the pictures only after Bowman began her own mudslinging. According to Dershowitz' brief to the SJC, Heller testified that Bowman had called him a "communist" and a "totalitarian." Heller, who is Jewish, also testified that Bowman had made an anti-Semitic remark.

In response to these and other remarks, Dershowitz said, Heller distributed the photocopies in the office. Although Dershowitz conceded that Heller's actions were "childish," he said Heller merely "responded in kind."

"If you can't stand the heat, get out of the kitchen," Dershowitz said. "This woman went into the kitchen and lit the fire, and now she's complaining about the heat." But Shilepsky said that Bowman had denied Heller's allegations at trial and that Flannery apparently had believed Bowman's version.

Flannery made no finding that Bowman had provoked Heller's actions.

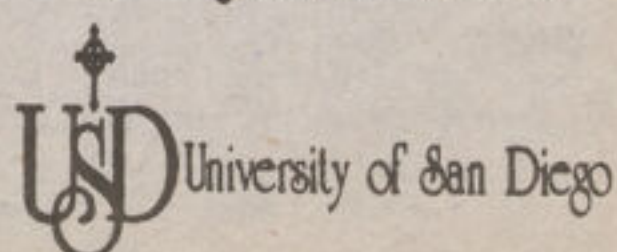
Shilepsky criticized Dershowitz for invoking evidence that the trial judge had rejected.

"In this case the trier of fact believed Sylvia Bowman and her witnesses and did not believe David Heller and his," Shilepsky said. "This case should no longer be a debate about the facts. That was for the trial."

"The judge's findings of fact are the facts of the case. When a judge makes a series of findings, that is it. We are all bound by the judge's findings."

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BRIEFS



Surprise Visitor Sends Ripple Through Langdell Library

The casually dressed visitor to Langdell Library wrote his name in the library's sign-in book like any other guest. Only this visitor was no ordinary outsider. As he strolled into the reading room to peruse the display honoring Justice Louis Brandeis, library officials and patrons noticed something oddly familiar about the man. A librarian behind the reference desk was among the first to make the connection.

It was Supreme Court Justice David Souter '61, who paid an unexpected visit to Langdell on Dec. 16.

"You could feel the buzz starting up in the reading room," one observer said.

Souter studied the exhibit for about half an hour, during which time several people engaged him in short conversations, including Brady Martin, a senior at the College who works in the library part-time. Martin said he introduced himself to Souter after one of his co-workers pointed out the justice.

"He was very nice," said Martin, who said he spoke with Souter for about three or four minutes.

Bates Resigns From Council Committee

In the wake of a dispute with two Law School Council officers over their use of LSC stationery, John Bates '95 has resigned from his position as chairman of the council's Academic Affairs Committee.

Bates clashed with LSC President Willie Epps '95 and Vice President Clarke Camper '95 last fall after Bates criticized the two officers for circulating a memo to the student body on Law School Council letterhead without council approval. In the memo, Epps and Camper had criticized the anonymous circulation of a flyer that levied allegations of cheating against one team in last November's Ames Moot Court final round. The three clashed during and after a heated council meeting Dec. 6.

In a Dec. 8 memo to the council, Bates, who remains a council representative, wrote, "I feel that I would be unable to chair this committee effectively." Bates also said Epps and Camper had threatened to "do everything in their power to have me removed from the [council] if Bates were to 'express my opinion similar to my response to their 'free speech' memo.'" Bates also wrote that "I was informed by Willie and Clarke that they intend to make every effort to defeat any (non-academic) motion I bring before the [council]."

Epps called the assertions in Bates' memo "inaccurate and unworthy of any substantive response." Camper said Bates' statements were "inaccurate, unnecessarily divisive, and regrettable."

HLS Dropout Rubin Nominated for Treasury Post

Robert Rubin, President Clinton's nominee to replace Lloyd Bentsen as Secretary of the Treasury, brings yet another Yale law degree to the administration's inner circle. Formerly co-chairman of Goldman Sachs, Rubin has served for the past two years as chief of the National Economic Council, and is viewed as a moderate.

After graduating from Harvard College, the Chicago Sun-Times reports, Rubin matriculated at Harvard Law School, only to leave "after three days to see the world."

The RECORD was unable to determine the identity of Rubin's first-year professors or what impact they may have had on his decision to leave the Law School.

Edelman Seen as Losing Chance at D.C. Circuit Seat

In the wake of the Republican sweep in the November elections, President Clinton is now perceived as backing away from nominating Peter Edelman '61 to fill the D.C. Circuit seat vacated last year by Abner Mikva. Currently counselor to Health and Human Services Secretary Donna Shalala and a friend of both Bill and Hillary Rodham Clinton, Edelman's name had been floated as the likely nominee.

Edelman has achieved prominence as an attorney, aide to Sen. Robert Kennedy, and law professor at Georgetown, and he is well-known as a liberal. Conservative interest groups and commentators have criticized Edelman's writings, including a law review article positing a constitutional right to a guaranteed minimum income. According to a report in the Washington Post, the Clinton administration may attempt to avoid a contentious confirmation battle that would require the president to defend publicly Edelman's progressive views.

Prof. Miller Goes Off Broadway

Arthur Miller '58 will add to his ever-growing list of theatrical performances with a role as a defense attorney in the 15th anniversary performance of *Shear Madness* on Tuesday, January 31, at the Charles Playhouse in downtown Boston.

Instantly recognizable not only as the host of the weekly television show "Miller's Court" but also for his appearances on "Good Morning America" and "Court TV," Miller will be defending one of four murder suspects in the local production.

Shear Madness opened in Boston on January 29, 1980, and in 1987 became the longest running play ever in the history of American theater. Proceeds from the anniversary performance will be donated to Greater Boston Legal Services in honor of the four participating attorneys.

Worker Caught Stealing

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Westlund said.

After Rivera fingered Avellanede, Westlund said, police obtained a search warrant for Avellanede's apartment. Westlund said the first thing officers saw when they entered Avellanede's apartment was Dershowitz' 26-inch TV.

"Right off the bat, that was the first thing we saw," he said.

Avellanede, who was in the apartment at the time, was arrested on the spot, Westlund said.

Johnson credited Westlund, Detective Richard DeCruz and Sgt. Kathleen Stanford for their work on the case.

Rivera has been charged with larceny of a building and is scheduled to appear in Cambridge District Court for a pretrial conference on January 30. He faces a maximum prison sentence of five years. Avellanede faces charges of receiving stolen property and will appear for a conference Monday in Cambridge District Court. He faces up to 2 1/2 years in prison.

Rivera was employed by Consolidated Service Corp., a Boston-based contractor, that provides cleaning

services for four Law School buildings. He had worked at HLS for about 1 1/2 years and was the supervisor of an 11 p.m. to 7 a.m. cleaning crew before the arrest, according to Building Operations Director Frank Lamentea.

Lamentea said he would review the Law School's custodial arrangements in the wake of the arrest. He said the Law School likely would eliminate the late night cleaning shift. Although Rivera allegedly removed most of the items on the weekends, police discovered him removing the portable stereo at around 5 a.m., officials said.

Lamentea also said HLS would review its relationship with Consolidated Services, which, Lamentea said, has the primary responsibility for screening its workforce.

"We at least thought they did some screening," he said. "I question their thoroughness."

Johnson said that larceny is one of the biggest crime problems on the Harvard campus. But he said the scale of the thefts at HLS were unusual.

"It's by no means unique," he said. "We have many things of a similar nature. But this guy seemed to think he had a license over there."

Fried Wins Daubert Appeal

continued from FRIED, page 1

the second prong. For while the plaintiffs are required to prove causation under California law, their experts only testified that Bendectin could have caused the plaintiffs' injuries, and the court reasoned that the gulf between the experts' testimony and the legal requirements could only be bridged if the experts changed their conclusions completely, which would be inappropriate on remand. Since the experts' testimony could not satisfy the *Daubert* standard even with further remand, the court concluded that the dismissal should be affirmed.

This ruling does not mark the end of the case, as Fried expects that the plaintiffs will appeal the decision. "I bet dollars to donuts that they appeal," he said. "But they have no chance.... Well, there's

always a chance. But to get certiorari, you need conflict with the Supreme Court or another court, and there is no conflict here."

Fried said the decision is consistent with other cases that have interpreted the Supreme Court's ruling in *Daubert* and with other Bendectin cases that were decided both before and after the change in the admissibility standard. Fried hopes this decision will serve as the death knell for suits alleging that Bendectin causes birth defects.

"As Judge Weinstein, an expert on evidence, said, they are an embarrassment to the legal system, and they should stop," Fried said.

Next up for Fried is an oral argument before the Supreme Court in *Freightliner v. Myrick*, a preemption case, which is scheduled for February 22.

Weiyen and Jeff Jonas
are proud to announce the birth of

Matthew Evan Hsiao Jonas

December 23, 1994

8 pounds, 12 ounces



The RECORD Editorial Staff
is proud to announce the engagement of

Seats #32 and #33

Fall 1992, Civil Procedure Section TV



The Winter of Our Discontent



By Kendra Lee and Jeff Simes '96
RECORD Columnists

WHILE this winter may be remembered as providing unseasonably warm weather, it will not be recalled as a winter for great movies. We just can't see "Dumb and Dumber" making a sweep at the Oscars next year, or "Street Fighter" wowing them at Cannes. Your best bet for a Winter Term escape: go see "Pulp Fiction" again.

Yearning for the movies of yesteryear, we had a look at two movies which we thought might rise above the rest. We were dead wrong.

The first movie, "Ready To Wear" (né "Prêt-à-Porter") is director Robert Altman's ("MASH," "The Player," "Short Cuts") swipe at the world of high fashion. The events focus on the largest fashion show of the year: the Prêt-à-Porter. Starring in this movie is, well, just about everyone: Julia Roberts, Tim Robbins, Steven Rea, Forrest Whitaker, Lauren Bacall, Danny Aiello, Sophia Loren, Marcello Mastroianni, Kim Basinger, Teri Garr, Tracey Ullman, Lyle Lovett, and a bevy of overpaid fashion models and designers. Don't be fooled by the high-powered casting. No quantity of stars could save this dreary flick.

Jeff: Boy, did that suck. Two and a half hours long and no discernible plot movement. It should have been called Ready to Sleep.

Kendra: I have to agree with you on this one. I can't believe that at this point in his career Robert Altman has to rely on dog shit jokes to get a rise out of the audience. And so many of them too.

J: I think the whole concept was flawed. I mean, how do you make fashion models

Jeff says, "I bet they had a good time making "Ready To Wear", even if we didn't have a good time watching it."

and designers look more ridiculous than they really are? It's already a caricature of itself, so why make a ridiculously long movie whose sole point appears to be "look how stupid and odd this whole fashion business is."

K: I thought the efforts at "plot" were incredibly inane: some big fashion guy is apparently "murdered," two strangers have to share a hotel room, a fashion photographer exploits the magazines that are courting him. It just didn't do it for me. You know it's a bad one when Kim Basinger (playing an MTV-style fashion reporter) appears to be carrying the program.

J: For some reason Altman's vignette style seemed really flat in this movie. I kept looking at my watch to see when it was going to end. And watching all those ridiculously-dressed, anorexic fashion models didn't amuse me; it just made me uncomfortable.

K: What a shame. All that talent wasted. I have to admit, though, that it was kind of a guilty pleasure to see so many brand name actors in one place. I bet they had a good time making this movie, even if we didn't have a good time watching it.

J: Maybe, but we could have saved a lot of money and time if we had just read People magazine instead. Bottom line: skip this one.

K: Definitely.

The next movie we saw was "Higher Learning," directed by John Singleton ("Boyz In The Hood," "Poetic Justice"). It's about a bunch of kids entering college dealing with racism, rape, sexual preference, and other highly topical questions of import. The movie starred Omar Epps, Laurence Fishburne, Ice Cube, Kristy Swanson, Tyra Banks, Jennifer Connelly, Busta Rhymes and a few other random twenty-somethings to round out the cast. While the cast was young, attractive, and likable, and the soundtrack was pretty good, the movie as a whole didn't make the grade. As a pretty superficial treatment of some very weighty topics, "Higher Learning" was really neither.

K: That was pretty weak. I thought it would be a strong exposé on the state of race/gender relations. What I got was a heavy-handed, skin-deep portrayal of stereotypes with a few really forced plot twists to keep us awake.

J: It's really incredible just how one-dimensional all those characters were. There was no need for most of the actors; they could have just held up signs like "Militant Lesbian," "Sensitive White Guy" or "Racist Skinhead with Gun." There's more depth in my bathtub than in this flick.

K: Even the great Laurence Fishburne's character — the stern professor with a heart of gold — seemed kind of forced and artificial. And what made it worse is the fact that you really didn't care too much about the characters because they were so fake.

J: Also, I really dislike it when a director looks back on the edited version of the movie, realizes that it is incoherent, and prints the "message" on the screen before the credits roll.

K: Most of the audience was giggling when the single word "unlearn" appeared at the end. Of course, most of the audience was giggling at a lot of things that were probably supposed to be taken seriously.

J: I think John Singleton should unlearn how to make crap like this and relearn how to make great movies about realistic people facing realistic problems like "Boyz In The Hood."

K: This movie uses so many stereotypes that I thought it was becoming an allegory or some weird morality play. But it wasn't, it was just bad. I think this is unfortunately another movie to avoid.

Spice of Life



By Ted Cohen '95 & Jonathan Goldstein '95
RECORD Columnists

As El Niño makes its merry way back out to sea, and the Boston climate returns to its Arctic splendor, our tongues begin to long for the heat of a fiery habañero or jalapeño. Fortunately for the hardier members of the dining community, you need not even leave the confines of Cambridge to sample some fine spicy cuisine.

Magnolias (1193 Cambridge St. (576-1971) Tues.— Sat 5-10 p.m.) rose, phoenix-like, from the ashes of The Cajun Yankee. Like its predecessor, Magnolias has its feet firmly planted on Bourbon Street. This is New Orleans cuisine with a capital "N" and "O." (Well, we guess that's always the case.) Yet this establishment has improved on The Cajun Yankee by enlarging portion sizes and keeping prices well within the \$10 to \$15 range for entrees.

While the recent fascination with cajun and creole dishes has resulted in a plethora of cookie-cutter, not-spicy-enough restaurants, Magnolias manages to serve up consistently creative hot stuff. In the realm of appetizers, for example, the menu offers up standards alongside less traditional fare. Blackened chicken tenderloins come with a tangy orange dipping sauce and Georgia peanut relish (\$5.95): an excellent marriage of fruits and nuts that tartly complement the charred chicken. Likewise with a special of grilled oysters and ginger relish (\$6.50). Though lacking in full-blooded grilled flavor, the unusual relish was a nice addition to the shellfish. Fried green tomatoes with tomatilla salsa (\$4.25) are salty and richly tart.

Entrees are equal parts fish and flesh. The chicken and sausage jambalaya topped with a piquant sauce (\$9.95) was a hefty serving of two mounds of that flavorful standard. Seasoned with cayenne, it packs a decent, though not overwhelming, punch. Pan-seared jumbo shrimp (\$12.95) are prepared with a drizzle of cilantro-infused oil with an avocado salsa on the side. The dish is nearly as tasty as it reads. If pan-searing is your bag, there is plenty of it available: tuna in creole sauce (\$14.95), catfish with roasted pecans and Meunière sauce (\$10.95), and Texas T-bone steak (\$17.95).

Desserts are a welcome finish after all that capsacin. A praline parfait of homemade vanilla ice cream, crumbled praline cookies, and rich, caramel-like praline syrup (\$3.95) was delicious. Mississippi mud pie (\$4.25), dense and good with its banana graham cracker crust, should by no means be mistaken for the pile of goo usually associated with mud pie.

RATING: ☆☆

Where Magnolias' experiments with Southern cuisine stay within an area bordered on the south by the Mississippi Delta and the west by San Antonio, the **Green Street Grill** (280 Green Street, Cambridge, 876-1655) explodes all over the world map of hotness. On a given night, a short list of winning appetizers might include starchy fried green plantains with a ginger-flecked roasted peanut sauce (\$4.95), a dish pulled equally in the directions of Latin America and East Asia; an absolutely fantastic smoked codfish cake the size of a large Bruins puck (\$7.50), almost alive with the taste of the grill, served over a miraculous aioli doctored with sun-dried tomatoes and charred poblano chilis (who knows where this idea came from, though we're pretty damn glad it ended up in Cambridge); and the award-winning Beaten, Boiled, and Stewed Conch Meat (\$9.95). All that action makes the meat super tender, and the sauce — part curry, part coconut milk, and part spiced rum and Red Stripe — sends you to Thailand via Trinidad. Oh, and the Green Street Grill also has the best Caesar Salad in Cambridge (\$6.95).

In short, this homey, dive-y room (the red vinyl banquettes and dark wood wainscoting remind us of the mess hall at camp) is the place to come for huge portions of some of the most smartly inventive food in Cambridge, served up lovingly and without an iota of pretension. Don't come here to propose; come here to kick off your honeymoon.

If you're a bones eater, the grilled pork ribs are a sure-fire bet (\$14.95). The generous, meaty rack is slathered with a nouveau barbeque sauce tweaked with orange (sweet), ancho chilis (hot) and smoked tomatoes (um, uh...smokey?). On the side you'll get a changing array of extras, which will usually include some of the following: a warm salad of beans (kidney, black, black-eyed peas), a mixture of julienned vegetables (cabbage, swiss chard or turnip greens, carrots), a delicious puree of sweet potatoes seasoned with cinnamon and nutmeg, and dirty rice. (These sides come with all the entrees.) The pan-fried mahi mahi, a special, is served "Jamaican-style": it arrives in a pungent sauce flavored with leeks, capers, thyme-infused vinegar, and fruit juices (\$16.95). The sauce has the electric density of island air after a powerful storm. For an equally bold — if slightly more tempered — array of flavors, try the Cuban-style fricasseed rabbit (\$17.25). It's a generous portion of the loin, served in a tomato-based broth whose most noticeable kick comes from oregano and meaty manzanilla olives. The garlicky grilled new potatoes soak up the broth and taste like a little bit of heaven.

We could go on and on. We could tell you about the fact that the Grill has the best jukebox in town, as well as one of the best bars, and that on Monday nights it serves an \$8.95 prix fixe dinner, which includes admission to live music starting at about 10 (mostly local rock and pop bands, many on their way to big things). We could tell you that the owner is a warm, gregarious guy. But why don't you go see for yourself. And then tell somebody else.

RATING: ☆☆☆

What the stars mean:

(no stars)
☆
☆☆
☆☆☆
☆☆☆☆
☆☆☆☆☆

poor-satisfactory
good
very good
excellent
extraordinary

Harvard Law RECORD

Founded in 1946

Greg Stohr
Editor-In-Chief

The Bell Curve

Think of your 12 closest friends. How many of them have a college degree? All of them? Ten of them? If the U.S. population were randomly distributed into groups of 12, the odds that even half of a given group would have a B.A. or B.S. would be six in a thousand. The odds that half of a group might have an advanced degree are even more astronomical: more than a million to one. Are four or more of your 12 friends graduates of an Ivy League school? The odds against that are more than a billion to one.

As Richard Herrnstein and Charles Murray write in "The Bell Curve, Intelligence and Class Structure in American Life," people who read books like theirs are in preposterously unlikely groups. That it is commonplace that most of our friends have college degrees only demonstrates the degree to which we have been sorted by education and, claim Herrnstein and Murray, intelligence, into social groups from which we rarely stray. As students at Harvard Law School, we are card-carrying members of the "cognitive elite." "The Bell Curve" is a controversial book. It makes controversial claims about the nature of intelligence, its measurability, its genetic component, and its social consequences. Such a book written on an important topic by experts in the field should be studied and considered by anyone interested in social policy - but the book's controversy has largely overshadowed its less shocking, but potentially more significant claims.

Most of the controversy has raged over claims that some minority groups score lower on average than whites, and whites lower than Asians, on IQ tests. It has long been argued that IQ tests are culturally biased against minorities, though Herrnstein and Murray deny that claim. Whether or not this is so, the invective heaped upon the authors by offended reviewers has amounted to a ritual slaying of the messenger bearing bad news.

Too many reviewers (and people who haven't even bothered to read the book) have shouted, "Racism!" instead of combating the authors with facts and figures. Whatever the truth about intelligence is, we're better off knowing it - even if it is potentially unpleasant. But we won't get to the truth by name-calling and rhetorical warfare. We have to learn to have public discourse on difficult topics like this.

Overlooked in all of the tumult are a few encouraging items: e.g. two environmental factors that can raise a child's IQ are proper nutrition and a stable family life. Also overlooked are the deeper questions: How can we construct a society where intelligence is only one of many traits we admire and try to instill in our children? Honor, compassion, honesty, and generosity are also traits of successful humans. Would we be better off worrying less about IQ and more about those?

- Lank

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Printing By The Harvard Crimson

Editorial/Letters Policy

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

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

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

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

—First Amendment, US Constitution

• Letters •

Motherhood Does Not Justify Complaint

When I read Diane J. Klein Mahaffey's column in the December 2, 1994 RECORD, I was a bit surprised at my reaction. Sure, it would be great if HLS were a bit more child-friendly, but then I thought, and what I want to say to Ms. Klein Mahaffey is: what did you expect?

I have four things to say to Ms. Klein Mahaffey. First, did she really expect HLS to be a tender, nurturing place, happy to embrace her in all her maternal individuality? It doesn't surprise me that this is a tough place to be a mother—it's a tough place to be anybody. I'm not happy that HLS is not a friendlier, more nurturing place, but maybe it's time for a little reality-checking.

Second, there are reasons most people go to law school before having a family. Law school, or most any kind of grad school, requires you to sacrifice your attention to other things to the subject you study intensively for this short intense period. It's not the kind of lifestyle that blends easily with parenthood. That is not to say it can't or shouldn't be done when

already a parent, but it is not by accident that most people complete most of their education when they are young and unmarried, or at least not parents yet. Maybe the classmates she seems to look down her nose at who decided to come to law school straight through or after their "obligatory" year or two in New York or DC aren't so foolish after all. (Don't count me, though; I waited seven years after finishing college to come to law school).

Third, as a straight WASP male, I may not have standing to complain, but I am offended that Ms. Klein Mahaffey puts herself as a mother in the same category as the first pioneering Jews, blacks, women and gays who fought discrimination coming to Harvard Law School. Certainly, neither the first Jews, blacks, women, gays or Ms. Klein Mahaffey "had to" come to HLS. But the similarity ends there. Those groups were and are discriminated against for immutable characteristics of the groups they belong to. Being pregnant and becoming a mother is not an immutable charac-

teristic; it's a choice that Ms. Klein Mahaffey made. I stand by her decision to make that choice, and I'm glad she has the opportunity to come here, but I really don't want to hear her complain about the burdens that her choice has placed on her.

Finally, I would like to point out to Ms. Klein Mahaffey that while she is suffering through a hectic life now, she will have benefits that we who have postponed parenthood won't have. She will know her children when she is much younger. She will get to enjoy her high-school aged children when she herself is young enough to really make the most of being a parent. Many of us, on the other hand, will be much older when our children are in the prime of their lives. She may be missing late nights at Rosie's, but she'll be more than amply compensated not too long down the road, in ways that probably are more rewarding to her and to any of us than the "great times" we're all having being young at HLS.

Matthew Huggins '96
December 7, 1994

The Angry Reader

I noted in the November 18 issue of the Harvard Law RECORD an editorial written by Mr. Stohr entitled "The Angry, Ignorant Voter." The author of this article must also be angry and ignorant. The author makes a number of unpleasant remarks about voters, the general tone of which is that they are dumb and stupid.

I might say that many of the people I know who are graduates

of Harvard, Yale and Princeton, three Ivy League schools, voted for the Republican candidates and while they might be very angry, they certainly are not "ignorant" unless Ivy League educations have failed. The change to a Republican controlled Congress in 1995 will certainly be a breath of fresh air in Washington, made possible by the "angry, ignorant" voters to whom we are most grateful.

The author of this article states that a number of voters are not familiar with the elected officials or their representatives. I wonder how many individuals the author of this article personally knows who are members of the United States Congress, if this is indeed the test for ignorance or lack thereof.

George D. Webster '48
December 12, 1994

Dean Griswold Remembered

I was Dean Griswold's student and [want to share a] recollection of his granite integrity and dedication to civil liberties and civil rights. A recent incident exemplifies these qualities.

It was in 1989, immediately after a divided Supreme Court held that a Texas statute that authorized the prosecution of a political protester for burning the American flag violated his free-speech rights under the Constitution. Much of the public, and many political leaders, including then President George Bush, condemned the Court's decision, and efforts began in Congress to amend the First Amendment to permit such prosecutions. The train was hurtling forward and, for a while, it seemed unstoppable. The first revision in our Bill of Rights since 1791 seemed a distinct possibility.

The American Civil

Liberties Union, with other groups, set about to alter public opinion and stiffen the spines of politicians who feared the consequences of opposing any proposal to "protect" the flag. An important vehicle to do this, we thought, would be a national committee of prestigious lawyers and scholars from across the political spectrum. To succeed, we needed suitable leaders.

Professor Charles Fried, who recently had returned to Harvard Law School after serving as solicitor general during President Ronald Reagan's second term, agreed to join me as a co-chair of the committee. But we needed a senior lawyer, of impeccable credentials and stature, to attract other leaders of the bar.

Erwin Griswold was the obvious choice, but I wondered whether, at his age and stage of life, he would want to become

involved in such a tumultuous issue, with the attendant controversy and publicity.

I need not have. Griswold unhesitatingly agreed to be a co-chair. His name and unmatched standing facilitated the formation of a strong committee, whose public statements and lobbying with key senators and representatives played a part in deflecting Congress from a constitutional amendment to a simple statute that the Supreme Court invalidated the next year.

By then, public attention passed to other matters and the political heat abated. Erwin Griswold's important contribution in derailing the strong movement to amend the Bill of Rights is another legacy of perhaps the greatest lawyer of our era.

Norman Dorsen '53
December 22, 1994

Whose Money Is It?

One Side's Tax Cut is the Other Side's Tax Grant

By Charles Fried

IF the competing Republican and Clinton tax cut proposals have you wondering what's the difference, it's all the difference in the world. It's the difference between a conception by which the government lets you keep more of what's yours and one by which government gives you a grant (tax break) to help pay for your education or your child care or the down payment on your first home. If you are coming from the Democrats' starting point and heading in their direction, you can be sure that in the end you will have less money in your pocket and more strings attached to what you do have.

A good way to start thinking about this is to go back to the idea of the "tax expenditure" launched some 30 or more years ago by Professor Stanley Surrey. He argued that certain targeted deductions — charitable contributions, home mortgage costs, medical expenses — for national budgetary purposes might just as well be seen as government grants to homeowners or to charities and their contributors. This useful analytical tool focused attention on the public policy justifications behind such deductions and cut through the obscuring tendency to see deductions as somehow fiscally cheaper than direct government grants.

But lurking behind the concept of the tax expenditure is a more sinister premise, which is a point not just about national accounting practices but about political philosophy and political economics. It is the subtle disposition to think of all income as virtual state property, and forbearance to tax away every last penny of it as itself a tax expenditure. When marginal tax rates reached as high as 90 percent (just before the



Reagan tax cuts they were over 70 percent) this was sometimes explained on the ground that no public policy justified allowing people to keep more income than that.

Here then is a glimpse of the deepest assumption behind a tax philosophy that may be waning but is with us still: All income is collective. People make more or less money only because the organized society permits it for its own collective purpose — whether as an incentive to effort and investment, or to allow a range of approved expenditures. The citizen is a kind of provisional administrator of the funds that "the economy" allocates to him to spend in socially approved or tolerated ways. And if that's the picture at the back of your mind, then purely redistributive taxes are completely unproblematic. After all, without some good public policy reason — such as encouraging saving or stimulating consumer spending — why should the collectivity, "the economy," grant some people more than others?

If you start at the other end, "the economy" is not just a word for what the government (actually or potentially) organizes and controls. It is the sum and locus of vast number of individual decisions and their outcomes. Private property is really private — it is not held in trust for the state — and how people manage and dispose of it is presumptively their business. To be sure, we are a society and we do have obligations to each other. There are certain things we can only do as a society — national defense, for instance. There

are other things that, while we might do them by private arrangement, we either want to do collectively or are persuaded we can do better that way. The court system and police and roads and public education are examples. And finally impulses both of prudence and humanity compel us to make sure that everyone in our midst has a fair chance to live decently and to interact socially and politically with fellow citizens on terms of dignity. All of these things must be paid for. Taxes are how we pay. And if some cannot pay their share without reducing them below the level that decency and dignity demand, then a greater burden must fall on those who can.

This brings us to the difference between Democratic and Republican tax cutting — whether Newt Gingrich's or Ronald Reagan's. Democrats cut taxes to stimulate the economy or buy off a constituency or to effect some specific goal like increasing home ownership. They make "tax expenditures," and then for fiscal reasons find budgetary cuts to pay for them. Republicans cut taxes because they think the money isn't theirs in the first place, and they want you to keep as much of what's yours as possible. The judgment that government is too big and does too much is just another way of saying the same thing. Tax cuts and government restructuring are not just two more social programs. They are the deliberate withdrawal of government, of collective/political control over a segment of our lives.

It may be that as these two trains of thought fortuitously cross paths over the next few months, they will seem to be the same trains headed for the same destination. But you can be quite sure that they will rapidly veer away from each other, and large differences will become apparent.



The RECORD's First 50 Years and Erwin Griswold

By Charles O. Porter '47

If Erwin Griswold had his way, the RECORD never would have been born. He and Contracts Professor Lon Fuller were the two faculty members who voted against allowing the newspaper to start in 1946.

Like my two co-founders of the RECORD, I was drafted into military service after my first year. We returned four years later, full of gratitude and guilt for being alive, uncrippled and back on track.

We hoped to live our lives to try to justify our survival.

My co-founders were Paul Hellmuth, recently retired as a lieutenant colonel on Gen. Spaatz' staff and Charlie Sweet, recently retired as a major in the Marines.

I became president, Paul, business manager, and Charlie, managing editor, some source of childish delight to me as a recently retired first lieutenant.

Dean James M. Landis gave us the go ahead in December of 1945, then he resigned and Griswold didn't take over until July 1, 1946.

Shortly after Griswold became dean, I wrote a brief biography of him based on research and seeing him in action in his federal tax class.

His mother wrote me a letter saying,

Charles O. Porter is co-founder of the Harvard Law RECORD.

"You seemed rather critical of my son but I could see that you really liked him." She had it exactly right. Read the statutes. Do your work. Be honest. Be humble but don't suffer fools or charlatans who insult your intelligence and waste your time. Gruff and acid-sharp he could be, but not far under that facade was a pussycat, sensitive and gentle.

Griswold quickly became a strong but never wholly uncritical supporter of the RECORD. In his memoirs he tells how sending the first issue of the RECORD to all the alumni woke him up to the fact that the school badly needed an updated mailing list of its alumni.

The key to the RECORD's immediate financial success did not turn on money pouring in from Harvard Square advertisers. We were subsidized by getting our share of dues paid by members to the Harvard Law School Alumni Association. In turn, we were a lively, human link with alumni who knew the school as a cold, impersonal environment.

This was the doing of the RECORD's godfather, Reginald Heber Smith [40], the managing partner in the top Boston law firm, Hale & Dorr, and, among his many other achievements, author of the seminal "Justice and the Poor," published in 1919, which sparked the expansion of legal aid in the United States.

After I served as a law clerk, 1947-48, for Ninth Circuit Justice William Healy, Reg invited me to be his assistant in his capacity as director of the Carnegie-financed American Bar

Association Survey of the Legal Profession.

Paul Hellmuth quickly became a hugely successful partner at Hale & Dorr. He wound up succeeding Reg as managing partner. Charlie Sweet? He went home to Washington, Pennsylvania, to become a distinguished judge. As for me, I had two terms in the U. S. House of Representatives, six months in Kennedy's White House and, since then, a lively law practice.

In 1951, my last year with Reg, Griswold tracked me down at my Waldorf Astoria hotel room during the American Bar Association convention. He offered me a tempting New York City job which I declined because I wanted to go home to Oregon and politics.

The dean's last letter to me was handwritten. It came from Pittsburgh, New Hampshire and was dated July 30, 1994. He wrote, "You have the origin of the RECORD as I recall it. Actually the plans were pretty much completed when I became Dean on July 1, 1946, now 48 years ago. It has been a very useful activity, except on a few occasions when it has had persons with very poor judgment as editors in chief."

"Whether a conference on the role of the RECORD would be of any use, I do not know. Some people would probably scream about 'Freedom of the Press' as if that matter were not the proper basis for discussion."

Is a fiftieth anniversary worth doing for the RECORD? I can't say for sure. It

could be of use if it explored the RECORD's evolution over those years. It could explore the RECORD's relation with the faculty, the student body, the alumni and the world in general.

We could evaluate my reservations about the slogan, "The Oldest Law School Newspaper." Being old doesn't automatically bestow merit. Originally, the name was the Harvard Law School RECORD because we didn't want any confusion with Harvard legal publications. I now concede that there has been no such confusion.

Except for the first subsidy from the alumni, I really don't know the reasons why the RECORD has lasted all these years unless, as I suspect, a wish to be informed and involved in the community of which they are a part motivates the volunteers who devote their precious time to produce a quality publication.

The 1996 golden anniversary could explore how the RECORD helped Dean Griswold, if it did, in increasing the School's quality and resources.

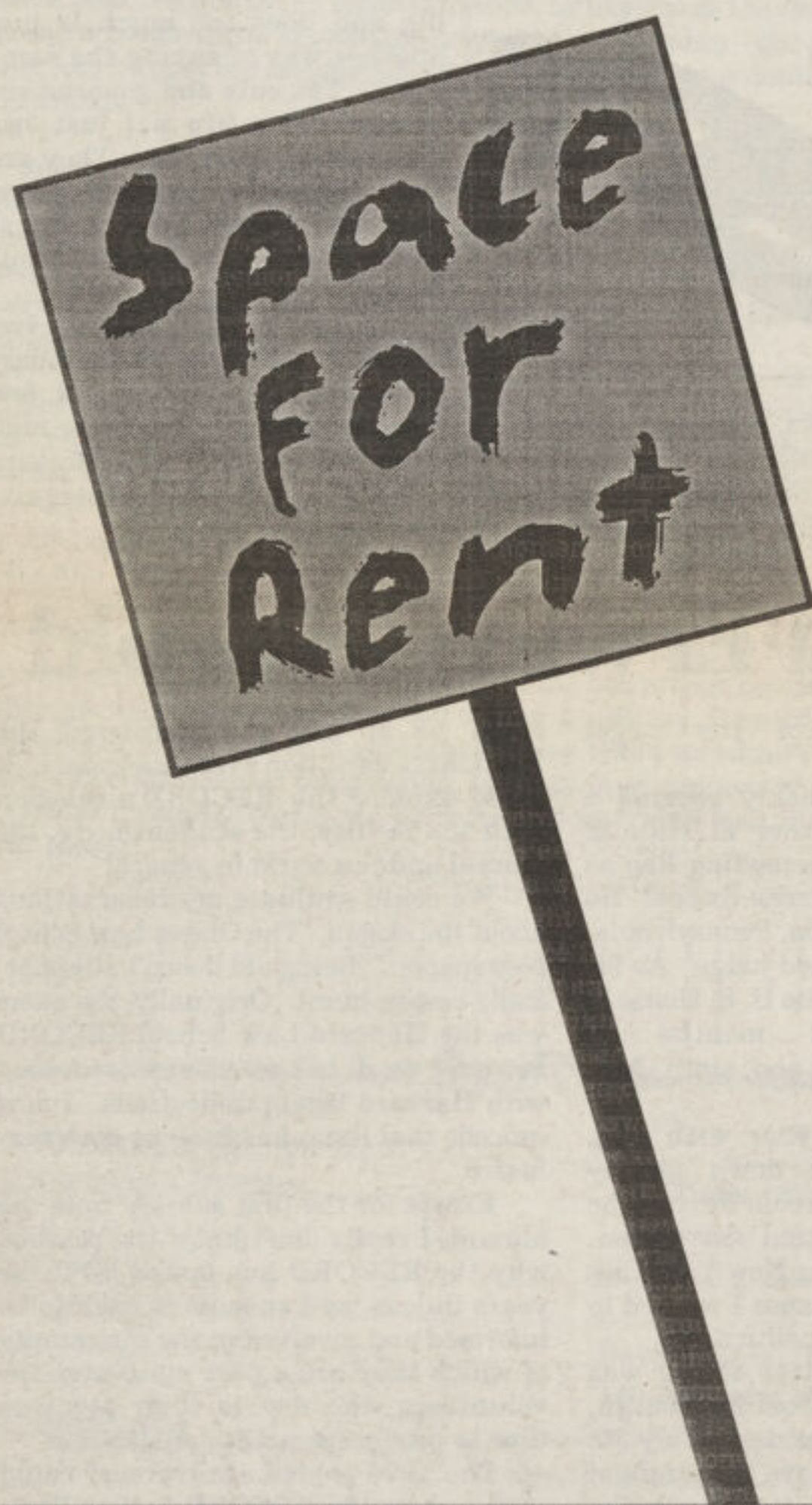
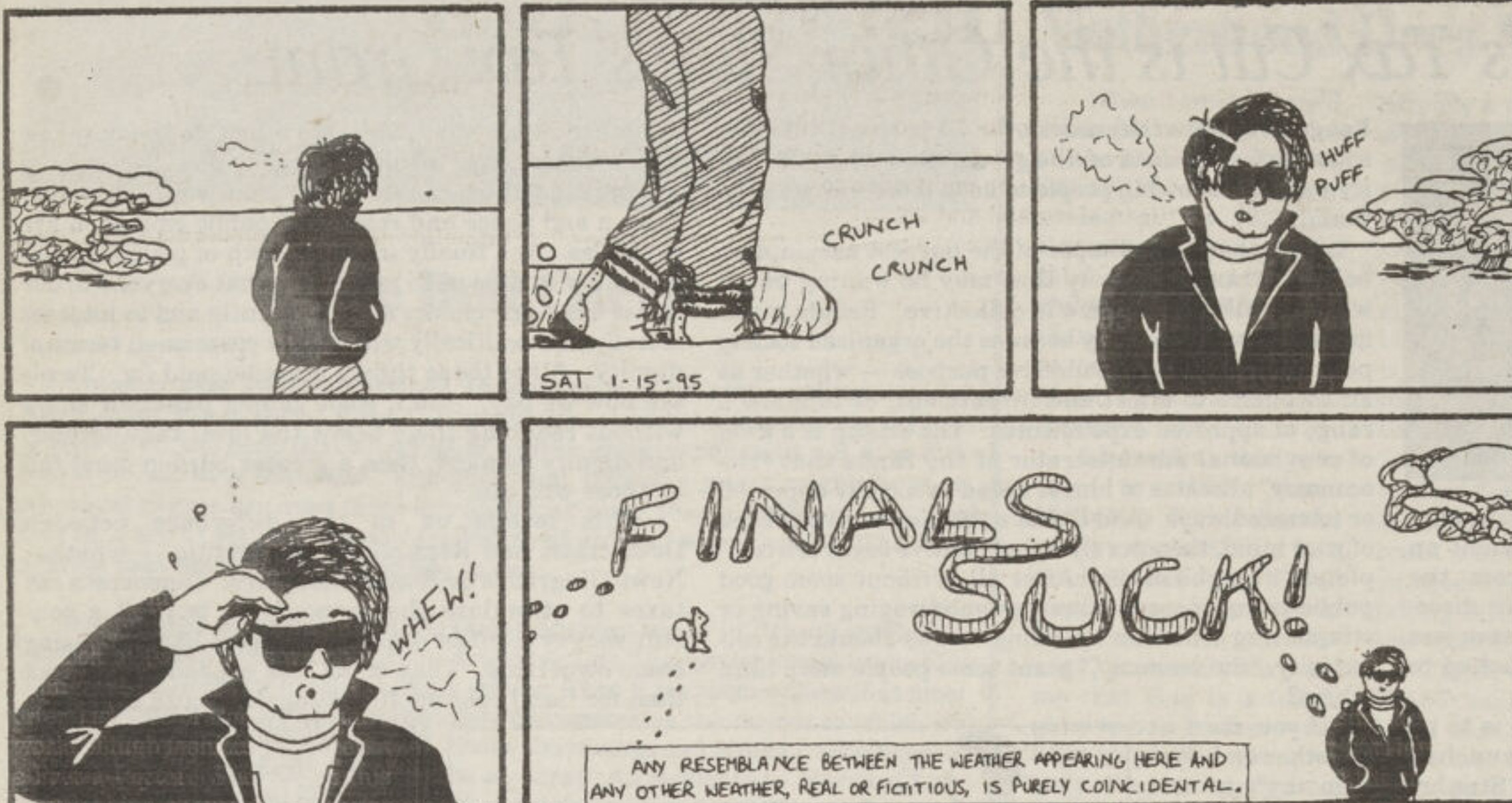
If any of you readers, ex-RECORD staffers or not, cotton to the idea of a RECORD golden anniversary conference in 1996 to assess where the RECORD has been and where it should go as a law student newspaper in the next half century, please write me a letter, 132 East Broadway, Suite 314, Eugene, OR 97401, and do write Dean Clark [72]. We'll need his blessing to make the occasion worthy of the RECORD's accomplishments and its potentialities.

Annoyed? Peeved? Wish there were more snow?

WRITE TO THE RECORD!!!

Temporary Insanity

By Sheila Tuller



Think you're quick on
the draw?

Find yourself
doodling pictures of
Dean Clark during
class? Put your
skills to use!

Join the RECORD as
a staff cartoonist!

Call Vicky or David at 5-4418.

CALENDAR

Rage Against the Flava

By Jeff Bucholtz

One of last year's most successful new bands was Rage Against the Machine, whose bracing fusion of aggro hardcore funk-metal and radical multiculti lyrics won the LA quartet legions of privileged white fans on safe, neatly manicured campuses, not to mention piles 'o cash for Sony, their duly reviled imperialist corporate masters.

Don't get me wrong, I thought Rage's debut was fresh-sounding and musically inspired, but snivelings of victimization ring hollow, even farcical, from a band that's getting paid big-time and one of whose members owns a Harvard degree.

This hypocrisy has not been lost on bands from a similar musical tip who actually live in the hood and might know a bit more about whence they whine, from Infectious Grooves' brutal dis of Rage frontman Zack de la Rocha on "Do What I Tell Ya" to downset's eponymous debut.

Rage are always good copy, but they make for an especially good lead-in to tonight's downset show because the two bands sound almost exactly alike. If there's a bandwagon problem here, though, it's Rage's problem, because while their Harvard-educated guitarist was still in Lock Up and de la Rocha was probably still in junior high, downset was already playing out in LA.

Downset's PC preachiness is less cloying than Consolidated's because it's enveloped in furious grooves and steeped in punk energy, but expect to suffer through the between-song lectures that fling guilt about wildly.

Opening at Local 186 tonight (1/20) are New York bands Madball and Dog Eat Dog. Madball feature the kid brother of Roger Miret, ex-frontman of hardcore legends Agnostic Front, but they flavor their tight, well-played tunes with a heavier sound that moves them closer to 90s metal than to 80s hardcore.

Despite being written off by Beavis & Butt-head as "a bunch of butt-munches," Dog Eat Dog are a fun band and worth checking out if you're into Boston's Mighty Mighty Bosstones, the plaid-clad pioneers in the genre of metallic riffs, punk velocity, ska saxophones, and rapped vocals.

Also tonight, Suzanne Vega headlines a benefit at the Orpheum (931-2000) for Harvard Square's Passim coffeehouse, a venerable folk music space that is experiencing financial difficulties, and local funk legends Chucklehead play at Landsdowne Street's newest addition, Mama Kin (536-2100).

Tomorrow night (1/21), Beantown's entry in the be-the-next-Nine-Inch-Nails sweepstakes, Big Catholic Guilt, take the stage at Mama Kin with fellow local industrialists Zia. Amsterdam's indie darlings Bettie Serveert preview their brand-new slab of now-grungy, now-pretty guitar rock at the Middle East (497-0576) on Sunday (1/22).

At an in-store in Queens last weekend, rapper Craig Mack put a little too much flava in the ears of the cops and got himself arrested for inciting a riot after the store closed the door on the larger-than-expected crowd. Hear his take on the publicity stunt, er, incident, at Lupo's (401-272-5876) in Providence on Sunday.

Koby Antupit

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Handball Against the Curb

By Debra Dickerson '95

In the military, no assignment is real until you get your orders. This precious document makes it official that you are getting the hell out of Dodge and PCSing ("permanent change of station") to the next place that you'll spend all your time bitching about. Once the admin wonks get off their butts and process your orders, you become officially FGMO (pronounced 'fig mo'): "finally got my orders". That means that you can start "outprocessing." This is a mysterious ritual which requires the departing member to be absent from her office for hours, and sometimes days, at a time while winding up her affairs. On its most basic level, however, being FGMO means two very important things: 1) you get to start backing out of work ("Sir, since I'm FGMO, maybe we should start training Captain Dipschitz for this detail") and 2) short jokes.

I rather imagine the first point needs little explanation. It's a time honored Air Force tradition that departing members are presumed to have lost the capacity to work for a living as they get closer to reassignment. Also, I suppose it has to do with the revolving door nature of military assignments. People are always on the move, so as soon as you're sure you're losing someone (i.e., they get orders), you start side-saddling them with their replacement so there's no lack of coverage. Also, after a couple of moves, only the dumbest of the dumb fail to figure out how to, shall we say, "creatively" outprocess for the better part of any given workday. The Air Force is a big place. Lots of room to hide.

Short jokes, I would imagine, are peculiar to the military. "Short," in this context, merely means that you're leaving soon. Some people start the count-down when they get their orders, but we purists discounted any PCS farther away than 60 days. In the military, anything can happen and often does: you have to think



short term and keep your affairs in order. (I waited six months for orders sending me to Officers' Training School — when they came, they gave me eight days to wrap up my life in Maryland and get to San Antonio for three months en route to Denver for six months.) Only the greenest troops start counting before they're "double-digit midgits."

Once you're FGMO (and happy about it), some people make FGMO displays. You tape a copy of your orders on your barracks room door and on the front of your desk for all your friends to deface. All short-timers are then required to repeat the traditional short jokes: "I'm so short I'd have to pack a lunch to take a hike around a dime" or "I'm so short, I could play handball against the curb." At every opportunity and for no reason at all, you tell others just how short you are: "Hi, I'm Major Nuisance." "Nice to meet you, I'm Twenty-seven and a bag drag. This is my wife, Thirteen and a wake-up." What would be considered Tourette's Syndrome anywhere else is a virtue in this circumstance: whenever anything at all bothers you, you just bark "SHORT!" and carry on. (I, of course, extended this courtesy to any man I was shortly to leave behind. They'd piss me off, I give em the once-over, remark "short," and go home to erase their number from my phone book. Leave the base, leave the man, I always say.)

So, once again, I'm FGMO (and happy about it)! I got a job they can't back out of, and I actually know where I'm going in June. All of a sudden, I'm feeling short. Real short. All that stands between me and some creative outprocessing from the HLS campus is that third-year paper.

What are the odds, I wonder, of stapling some ripped out RECORD pages together and passing off my columns as a paper? Of course, I'll need the Psychiatry and the Law guy as my advisor to pull it off. Nah, bag it. Even a HLS prof can't be that oblivious to reality. Desperate times require desperate measures — Plan B it is then.

Draft Contract

I. Parties: Debra J. Dickerson (the "seller") and Beelzebub (the "buyer"). [The buyer is also known as the "devil," the "beast," "Satan," "Lucifer" or "Mr. Speaker." The seller is often referred to as "that —,"¹]

II. Purpose: As consideration for a lifetime of worldly wealth, fame, and glamour,² the seller hereby promises to forfeit her immortal soul to the buyer upon her death.

III. Forum selection: To be determined.³

IV. Arbitration: To be determined.

¹Stricken by the seller. Given name will suffice. Asshole.

²Aforesaid 'glamour' is to be of the Tina Turner variety (post-Ike, of course). Said glamour includes, but is not limited to: (1) a perpetually hairless body from the eyebrows downward; (2) abs chiseled enough to do laundry on even though seller (a) neither diets nor exercises and (b) will be given the ability to eat like Rush Limbaugh. (Paragraph 1 section 4 of seller Limbaugh's contract is hereby incorporated by reference.)

³We can't go on wrangling about this. I continue to feel that my recommendation of the State of Ames as the logical place for any litigation deserves attention. The best legal minds in America practice cutting-edge law there. The same goes for the arbitration clause. I cannot in good conscience submit to arbitration by the new Congress — hell I can face, but that's as far as I go. Therefore, in the spirit of compromise and good will, I accept your previous recommendation of arbitration by ordeal.



Fenno was restless. It was a balmy 60° outside, and the hockey strike was over. He had run out of Rhino Ammo, and most of his enemies now had holes the size of Texas in their torsos. All that was left was his reading assignment for Gender Discrimination. But Fenno had already given up on that sorry subject. The turning point came when he learned that, under current law, it is harassment to force a female employee to fish for change in your pockets. St. Matthew had always taught him otherwise: As long as Fenno was willing to do something to others, Fenno could make them do the same to him.

Unwilling to waste another day cooped up in his grimy cell in Gropius, Fenno ventured outside to engage in his favorite pastime (after cross-gender change fishing): myth testing. Inspired by Leonard Nimoy's great performance in the classic series "In Search Of," Fenno and his friend Del sought to confirm or debunk as many HLS myths as they could. What follows are several of their more shocking discoveries:

GRADES ARE RANDOM. Last semester, Fenno had conducted a bit of an experiment. For Federal Courts, he did no homework, read no cases, and did no outline, but took the exam. He got a B. For Corporations, he did no homework, read no cases, did no outline, and paid Prof. Hanson \$500 to take the exam for him. He got a B. (Perhaps he should have asked Prof. Kraakman instead.) And for Evidence, he did all the homework, read all the cases, burnt the required incense, and did three separate outlines, each adhering to a different paradigm: classical legal theory, critical legal theory, and Nesson's legal theory (i.e., the law is a black turtleneck). However, he declined to take the exam. He got an A.

THURGOOD MARSHALL AND JOHN MARSHALL ARE NOT RELATED. Here Fenno and Del relied on HLS' fine written works collection currently housed in Langdell. Apparently, despite the simi-

larity in the last names, the two Supreme Court justices are not kin. Following the genealogical map provided in a book entitled "Famous Descendants of John Marshall," Fenno and Del found no Thurgood, nor even a Thurman or a Thurston.

THERE IS NO STATE OF AMES. This was a tough one. Fenno thought Ames was somewhere in the Deep South near Idaho, but Del, who is really good at naming state capitals, couldn't think of Ames' capital. The issue was finally resolved when some nice guy named Steve at the ILS library led the dynamic duo to this thing called a "map," which clearly showed that there was no Ames. Fenno concluded that the joke is on all those anal students who run around preparing oral arguments and writing long, boring briefs about the law of Ames — and especially those who go so far as to cheat just to increase their knowledge of the law of Ames. There is no Ames.

DETLEV VAGTS IS NOT DEAD. This one required some trickery. One day, as Prof. Vagts was lecturing about his experiences in the Crimean War, Del started a commotion in the far corner of the classroom by setting off a small grenade. At first, Vagts did not react, as he did not hear the explosion, but as all the students began to flee the room, he looked over at the smoke. Fenno crept up behind Vagts and, with a scalpel, cut a nick in the professor's neck to get a blood sample. Later tests run by Health Services indicated that the donee was in fact alive and with child.

NEXT TIME: Fenno unmasks Deep Throat

Quote of the Week

"Whose turn was it to come up with the Quote of the Week this week?"

— Greg Stohr, when the RECORD was ready to go press.

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Pro-Life Murder

By Catherine Caporusso '95
Guest Columnist

THE REASONABLE WOMAN



As someone who has spent the last two summers working on the issue of abortion clinic violence, I was not surprised by last month's shootings at two Boston-area women's clinics. What did surprise me was the shock expressed by the leaders of Operation Rescue and other organizations devoted to terrorizing women and abortion providers. It seems clear to me that Randall Terry and his colleagues are responsible for the deaths of Shannon Lowney and Lee Ann Nichols, as well as David Gunn, John Britton, and James Barrett.

Before some of you start writing letters raving about the First Amendment, I should stress that I am speaking of moral, not legal, responsibility. I consider John Salvi himself to be legally responsible for the crimes he has committed. In addition, I do not blame the deaths on those who lobby for anti-abortion legislation or operate "crisis pregnancy centers." The murders are an inevitable outcome of the rhetoric and strategy of the anti-abortion "rescue movement," which has organized blockades and other attacks on clinics since the summer of 1988. I have four reasons for this assertion.

First, as many commentators have pointed out, the leaders of anti-abortion "rescue" groups constantly refer to abortion as "murder," doctors as "baby killers," and clinics as "abortionaries" and "death camps." The Operation Rescue hotline playing the week of the Brookline murders declared that women's clinics are "trafficking in human flesh." Members of the rescue movement often describe themselves as fighting a "holy war" against the "abortion holocaust." Pat Robertson once said that abortion providers are "worse than Stalin, worse than Hitler." Unlike some newspaper columnists, however, I would not argue that anti-choicers should stop referring to abortion as "murder." This is what they believe abortion is. Such language seems to be an integral part of "pro-life" philosophy.

Second, since its inception, an essential feature of the rescue movement has been the argument that anti-abortion Christians should "obey God's law over man's law." Operation Rescue followers believe that they are justified in breaking state laws against trespass, vandalism, and harassment. Those charged with such violations often attempted to use the "necessity defense," now championed by Paul Hill. Even now, some argue that the newly-enacted federal law against clinic violence violates their rights to free exercise of religion.

Third, rescue movement leaders have long condoned other violence against abortion providers. Some have posed for photographs in front of a bombed-out women's clinic. Pro-Life Action League newsletters encourage readers to send letters to people who have been incarcerated for clinic arsons and invasions. Participants at a 1983 anti-abortion conference wore lapel pins in the shape of a stick of dynamite with the words "Have a Blast" underneath.

Fourth, rescue groups have chosen to focus their attention on doctors who provide abortions rather than on "merely" blocking clinic entrances. Randall Terry vowed "to do everything we can to torment providers . . . to humiliate them, to disgrace them, which is our right." Daily or weekly pickets in front of physicians' homes are common. Anti-choicers have stalked the children of abortion providers, passing out flyers in front of the schools they attend. Shortly before the murder of David Gunn, members of Rescue America burned an effigy of the doctor during a rally.

The philosophy of the anti-choice rescue movement can be summed up by the slogan of Operation Rescue, which appears on all of its publications: "If you believe abortion is murder, act like it is." John Salvi, Paul Hill, and Michael Griffin followed their instructions perfectly.

Don Treshman, the head of Rescue America, said recently, "There are 30 million dead babies on one side and only five people on the other side, so it's really nothing to get excited about." Even if Treshman is not excited about the killings, he should at least be pleased with their results. The number of doctors and facilities performing abortions in the United States is declining, and only a

I am not naive enough to believe that there is substantial "common ground" between the active participants of the abortion debate.

small minority of medical schools now teach the procedure. This is a direct response to the tactics of the anti-choice rescue movement. Operation Rescue is winning its "war." Women's right to abortion will be meaningless if we cannot find physicians to provide them.

I am not naive enough to believe that there is substantial "common ground" between the active participants of the abortion debate, as many columnists have recently asserted. Anti-choice organizations have long opposed attempts to reduce the number of unwanted pregnancies through sex education and birth control. Only one anti-abortion group, Feminists for Life, supported the Family and Medical Leave Act. Women's rights organizations, on the other hand, have always worked to provide women with a wide range of contraceptive and procreative options. The only useful agreement between pro-choice and some anti-choice groups may be a condemnation of murderers like John Salvi and the anti-abortion leaders who provided a justification for his crime.

The pro-choice movement needs your help. I urge you to join or contribute to groups like the National Organization for Women, the Feminist Majority Foundation, and Planned Parenthood. Money is needed to pay for increased security at clinics across the country, including metal detectors and bullet-proof vests, as well as initiatives to increase the numbers of abortion providers. You are also encouraged to attend a rally and march on January 22 (the anniversary of *Roe v. Wade*) at 1:00 p.m., beginning at the Boylston "T" Stop and ending at the Arlington Street Church. Patricia Ireland will be a guest speaker. Finally, I am currently working for both Planned Parenthood of Massachusetts and NOW's class-action lawsuit against Operation Rescue. Please contact me if you'd like to help out.

Lewis Had High Expectations

continued from LEWIS, page 1

lawyer, one must study hard."

As a senior Lewis discovered that the Harvard Law School had pioneered a summer program that invited African-American students to Cambridge to experience law classes, he was determined to participate. Although his grades did not officially qualify him to be among the four chosen from Virginia State, Lewis asked a professor to write a substantive recommendation letter and was eventually selected to attend.

Toward the end of the summer, during which he had distinguished himself as an articulate and forceful speaker, Lewis spoke with Prof. Frank Sander '52 about being admitted to HLS. Sander and other professors who had noticed Lewis as one of the top students in the program convinced then-Dean of Admissions Louis Toepfler both to admit Lewis without an official application and LSAT and to secure grants to help pay his tuition.

From those first days on the HLS campus and throughout Lewis' years as a millionaire lawyer and businessman, HLS became a major part of his life. A frequent visitor to New York City's Harvard Club, Lewis became a member of the Visiting Committee of Harvard's Board of Overseers and served also as a member of the Dean's Advisory Council and the Executive Committee of the Campaign for Harvard Law School.

In 1992, Lewis also donated \$3 million to HLS to found the Reginald Lewis International Law Center; several fellowships for minority careers in law teaching, as well as research in third-world law, business, and development; and prizes for papers about international business. He was also instrumental in securing a contribution from King Fahd of Saudi Arabia for the Islamic Legal Studies Program.

Lewis' philanthropy toward the Law School was part of a larger commitment to social concerns throughout his career, first as a lawyer at Paul, Weiss, Rifkind, Wharton & Garrison; then as founder of the all-African American Wall Street law firm of Wallace, Murphy, Thorpe and Lewis, later to become Lewis & Clarkson; and finally as the owner of McCall's and TLC Beatrice International.

In 1972, Lewis defended the Wilmington 10, a group of African-American activists including former NAACP Director Benjamin Chavis who were protesting school desegregation in Wilmington County, North Carolina.

In 1987, he created The Reginald F. Lewis Foundation to manage his donations to educational, civil rights, medical, and artistic organizations in the U.S. and France. Part of these grants included a \$1 million gift to Howard University.

And in 1992, Lewis established The Reginald F. Lewis Memorial Endowment, created with the purpose of raising \$100 million for the NAACP.

Although Lewis kept close ties to the African-American community and, as Walker noted in a RECORD interview, was

"very diligent" about remembering to help those who were less fortunate than him, "he didn't like being held out as an example."

"As one man, Lewis didn't like people saying that he was a role model," said Walker. "He felt it put an inordinate amount of pressure on him to live his life according to some unreachable standard. He was not into a deification of Reginald Lewis. He was keenly aware of being human and of shortcomings and as such he did not like being placed on a pedestal."

"His focus was for people to concentrate more on the man's deeds than on the man himself."

As Walker writes in the book, Lewis' public relations manager Butch Meily recalled how Lewis was upset about the attention to his race in media reports about the Beatrice acquisition. "This is a success story due to the transaction, not because of my race," Lewis said to Meily. "Iacocca is not cast as an Italian-American businessman and Icahn is not a Jewish-American. Why should I be an African-American?"

In his early years managing his own firm, too, Lewis tried to avoid relying on government programs designed to help minority businesses. "When he started acquiring companies, there were certain types of government subsidies for minorities that he just didn't want to have anything to do with at all," said Walker.

But both as a student and as a businessman, Lewis benefited from

such affirmative action programs.

"Lewis benefited from affirmative action through the Harvard Law School summer program," said biographer Blair Walker in a RECORD interview. "He did recognize that but it wasn't something that he liked to dwell on necessarily. He never went so far as Clarence Thomas [to criticize affirmative action] but he tended to look askance at affirmative action even though he was a beneficiary and had done all right."

In addition, after leaving Paul Weiss, the mainstay of his legal work came from transactions involving Minority Enterprise Small Business Investment Companies, which were venture capital firms formed by corporations with the encouragement of the U.S. Small Business Administration during the Nixon Administration.

Lewis' success, however, was not just a result of relying on affirmative action programs. His workdays would often stretch to 18 hours, and working eight hours per day on the weekends was not unusual. At times, he would jet between four or five different countries in the space of a few days in order to attend to business.

"Lewis' life and accomplishments, and the fact that he was able to contribute to the Law School the way he did, represents the availability of opportunities to African Americans," said Robert James '95, BLSA chair and organizer of the December book-signing. "[His story demonstrates] that African-American students and graduates of this institution are valuable members of the community — just as valuable as any other people in this community."

"As one man, Lewis didn't like people saying that he was a role model," said Walker.

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NO MSG!

"Special" Rights

By Scott Wiener '96

RECORD Columnist

QUEER VIEWS



PERHAPS the central goal of the gay and lesbian civil rights movement is to allow all Americans, not just those who are attracted to the opposite sex, to enjoy the privileges that most take for granted. When you think about it, this really is not too much to ask.

But for some people, this is too much to ask. In the name of "tradition," or "religion," or "family values," those who oppose gay rights do everything in their power to prevent gay men and lesbians from acquiring the privileges that straight people routinely enjoy. The opponents of gay rights mount hateful campaigns against gay men and lesbians; they sponsor ballot initiatives to institutionalize discrimination; they beat and kill gay men and lesbians; and they oppose attempts to teach children that homosexuality is not dirty and evil.

But as hate-filled as the campaign to repress and to persecute gay men and lesbians is, the enemies of gay liberation understand that most Americans are not hateful. The anti-gay zealots realize that if they hope to succeed in keeping gay men and lesbians in an inferior position in society, they must disguise their true motive (i.e. hate). They therefore employ the rhetoric of "special rights."

The rhetoric of "special rights" is quite simple. It argues that if the law explicitly recognizes and/or protects gay men and lesbians, then gay men and lesbians are receiving "special" privileges that straight people do not receive. After all, heterosexuality is not explicitly recognized and protected, so why should homosexuality be recognized and protected?

This argument is invalid because it contains an unstated premise that gay people and straight people are already equal, a premise that is patently false. The law currently recognizes and protects heterosexuality while explicitly or implicitly disallowing recognition and protection of homosexuality. There are numerous examples of this inequality:

- straight people can marry their partners, thus legitimating their relationships and securing all the benefits that marriage confers (e.g., health benefits, tax breaks, the ability to adopt, etc.); gay men and lesbians, however, are forbidden from having officially recognized relationships and therefore share in none of marriage's benefits;
- straight people are not normally fired if they do their job well; in forty-two states, however, gay men and lesbians have no legal protection from being fired solely because they are gay or lesbian;
- straight people can display affection in public and can talk about their relationships openly; gay men and lesbians, however, are "making a statement" and being "inappropriate" if they dare to discuss or to display their lives in public;
- straight people are allowed to have sex in all 50 states; in 23 states, however, it is illegal for gay men and lesbians to have sex;
- straight people are allowed to keep and to raise their children as long as they are reasonably good parents (and, for the most part, even if they are terrible parents); gay men and lesbians, however, live in fear of having their children taken away from them because they are "per se unfit" parents;
- straight people (or at least white straight people) are protected by the criminal justice system; gay men and lesbians who are victims of crime, however, often find that their attackers go unpunished because of the ambivalence or antagonism of police, prosecutors, and judges;
- and the list goes on.

The truth is that gay people and straight people are not equal. Straight people enjoy enormous privileges ("special rights," if you will) that gay men and lesbians are denied. Laws passed to protect gay men and lesbians are therefore anything but "special."

The truth is that gay people and straight people are not equal. Straight people enjoy enormous privileges ("special rights," if you will) that gay men and lesbians are denied. Laws passed to protect gay men and lesbians are therefore anything but "special." How can anyone argue, in good faith, that it is a "special" right to keep one's child if one is a good parent who happens to be gay or lesbian? How can anyone with even the slightest understanding of the issues believe that it is a "special" right not to be fired from one's job or evicted from one's apartment solely because one is gay or lesbian? In what possible way is it a "special" right for gay people to receive the same protection against crime that straight people receive? How is it a "special" right to be allowed to live one's life without living a lie?

The answer is simple. No one with a modicum of intelligence really believes that these are "special" rights. But there are people who have decided for some sick, twisted reason that they have nothing better to do with their lives than to pick on gay men and lesbians. These pathetic individuals understand that, given full information, the vast majority of Americans would oppose the institutionalized discrimination that characterizes American society. They therefore mount campaigns of lies to convince Americans that gay men and lesbians are asking for something "special."

The rhetoric of "special rights" is dangerously appealing. There are many people who believe that they do not know any gay men or lesbians and that they have no stake in the advancement of gay rights. These individuals are very susceptible to the lies and mindless propaganda that the enemies of gay civil rights promote. Gay men and lesbians are therefore working feverishly to expose the propaganda of "special rights" for the hate-filled nonsense that it is. One can only hope that they succeed.

Republicans Riding the (Third) Wave

By Kim Yahr '95

Guest Columnist



Is everyone here familiar with the lingo of Alvin Toffler's book "The Third Wave"? Because the new folks on the Hill in Washington are. Newt Gingrich and his protégés have made "Creating a New Civilization: The Politics of the Third Wave" — a short follow-up to the original by Toffler and his wife — required reading for the Inside-the-Beltway crowd. It provides a whole new perspective on American politics well worth examination.

The Third Wave stands for the proposition that three "waves" or revolutions have swept humankind since its beginnings — the agricultural, the industrial, and the information revolution, the lattermost of which you and I bear lucky witness to. Each revolution in turn worked such incredible and unexpected change on society as it played out that the resulting society was unrecognizable to the previous one.

A political party anticipating the onset of such a revolution is like a Florida resident watching a hurricane approach. It knows past assumptions and structures will

The new group of Republicans who swept into Congress in November appear to be advocating many policies responsive to Third Wave changes.

be shattered but cannot really picture what life will be like when it's over. As with hurricanes, only the lucky or the adaptable survive.

Which of our two political parties is better positioned to adapt and possibly profit from the changes in store from the Third Wave? To answer that question, an examination of the changes afoot is necessary.

Most obvious is the change in the U.S. labor markets; as in other technological-advanced countries, industrial and nonskilled labor jobs are disappearing, being replaced by jobs in the service sector. But other consequences, less well-noted, will also have great political impacts. For instance, the advent of the global economic community may signal the demise of Keynesian economics; instead of producing more jobs, government spending now has the effect of sending money overseas since less and less is produced at home nowadays. Other changes will be necessitated in government due to the sheer quantity of information now available. It is becoming less and less feasible to concentrate decision-making power at the top of any structure, since one mind is simply not capable of achieving an adequate grasp on the information surrounding all the increasingly complex problems we encounter.

Finally, as Toffler points out, the Third Wave has vast implications for power structures in society. Whereas in the past, the privileged were the "owners of the means of production," i.e., capital or raw materials, tomorrow's privileged will be holders of knowledge. And unlike raw materials, knowledge is an inexhaustible resource, capable of being shared profitably by many instead of monopolized by few.

The new group of Republicans who swept into Congress in November appear to be advocating many policies responsive to Third Wave changes. They favor broad deregulation, which will enable our businesses to be flexible enough to withstand global competition. They also support decentralization of government decision-making, as illustrated by their initiative to allow states to craft their own welfare policies. Their emphasis on "family values," while smarmy at times, is consistent with emerging trends in brain-work industries which allow telecommuting, flex-time and job sharing.

Yet the Republicans have significant liabilities as well. They remain wedded to big business interest groups mired in Second Wave thinking, not to mention the First Wave farming lobby. But even more significant is their posture toward the millions of Americans displaced by changes in the economy, who, along with the uneducated poor, are faced with a job market they are simply unprepared for. It is unclear whether Republicans have any affirmative ideas to appeal to this ever-expanding constituency. After all, this group will be far more concerned with food on the table than with upholding the principle of limited government. Yet Newt et al. appear to be willing to compromise their limited government ideals when they see a grave enough problem (e.g., rescuing a generation of children through the use of orphanages), which bodes well for the party's survival despite this current vulnerability.

Were today's Democratic Party to wake up from its strange "me too" phase, it would be well-positioned to appeal to the displaced and jobless mentioned above. Not afraid of activist government, smart Democrats would propose tremendous subsidization of education and technical training, coupled with guaranteed daycare, to capture this emerging constituency early on. The Democrats also have a clued-in fringe, led by Al Gore, who want to reinvent government and who believe the touted information superhighway to be as much part of the nation's infrastructure as federally-built roads.

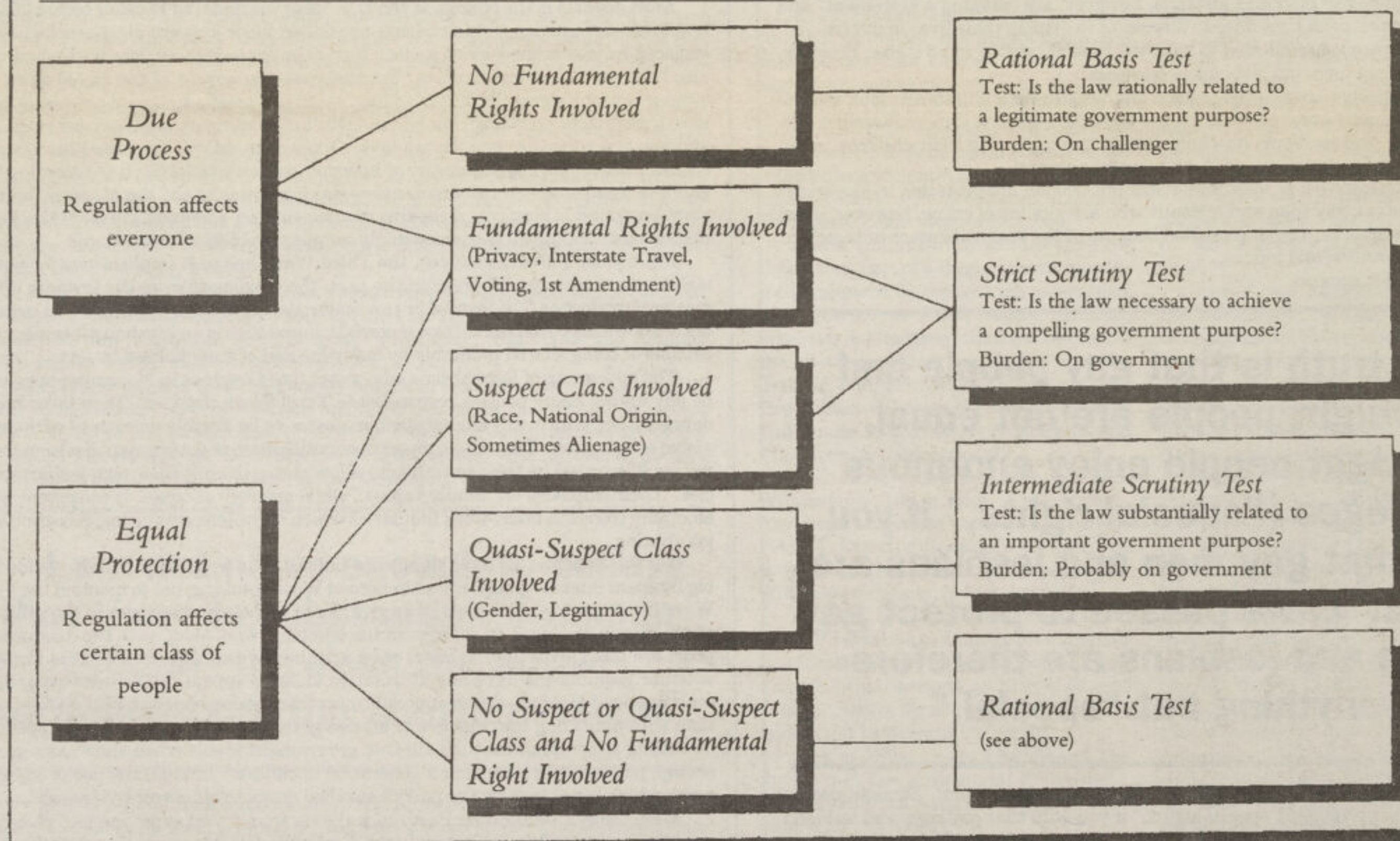
Yet, unfortunately for the Democrats, they are currently led by a dinosaur. President Clinton's recent pick for chairman of the party, Sen. Christopher Dodd, was chosen largely for his appeal to labor unions, a dying Second Wave constituency if there ever was one. Indeed, to understand the extent of Clinton's obliviousness to Third Wave change, one need look no further than Hillary's health care plan. This model of centralist, bureaucratic Second Wave thinking included proposals like a new National Health Board in Washington to decide whether you and I would buy and pay for insurance which included mental health coverage, whether we want that or not. Clearly, the Democrats' greatest liability heading into the future is their tendency to rely on centralized government solutions to respond to the diverse needs of citizens.

For now, the Republicans have seized the advantage — their leadership is working to prepare as the storm approaches (to return to the hurricane analogy), while the Democrats blithely ignore weatherman Al Gore. Whether the Republicans retain their present advantage depends on many factors, but fortunately for them, one of them is Newt Gingrich. Whatever else you think of Newt and his personality, he's a man with a feel for history, he's a brilliant strategist, and he's got his eye on the future.

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