



Harvard Law RECORD

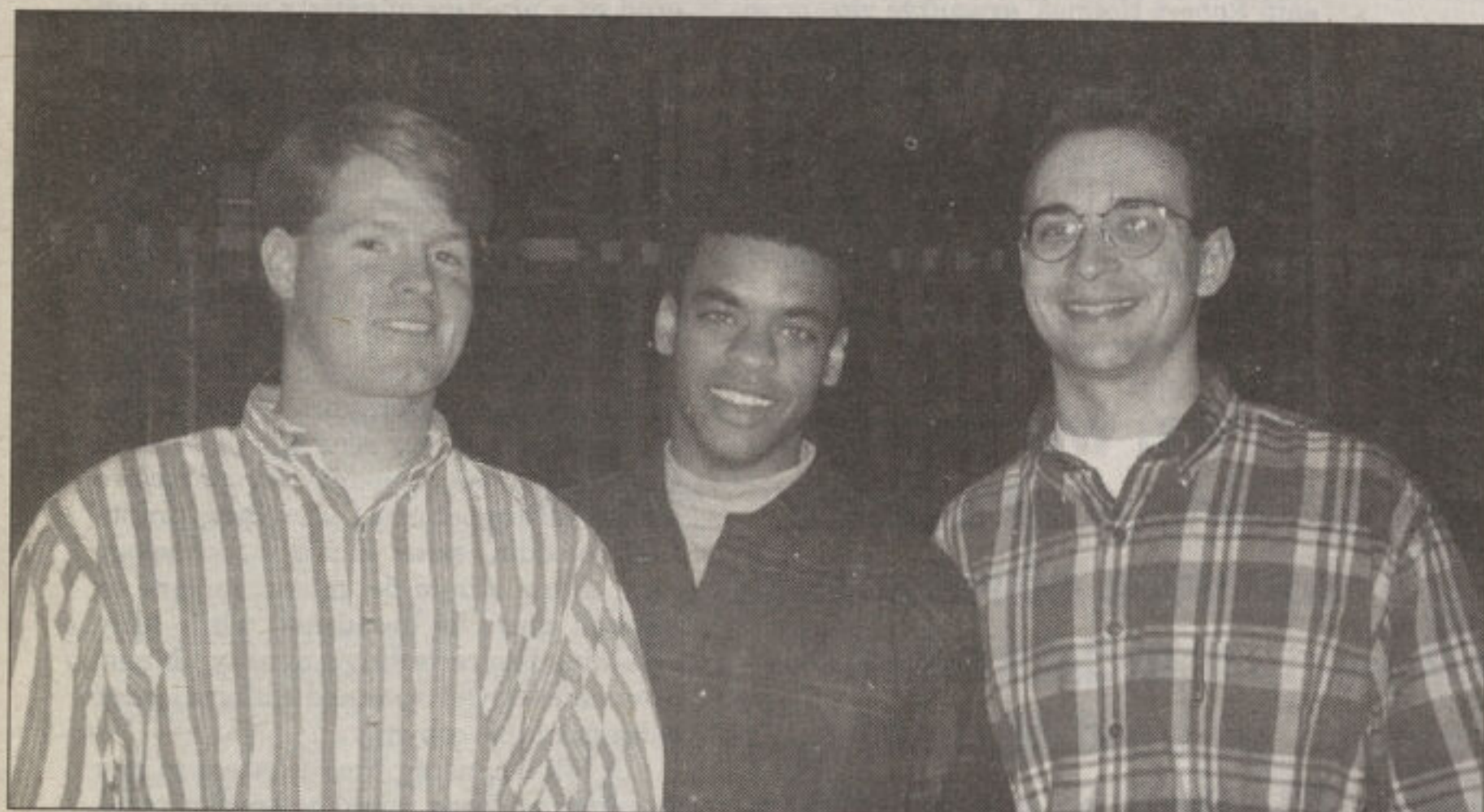
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Friday, March 3, 1995



With the officers' elections completed, Rob Simmelkjaer '97, Bob McCarter '97, and Joe Miller '97 are set to assume the leadership of the LSC.

LSC Officers Elected Amid Low Voter Turn-out

By Maria Politis

Amid no name-calling, no debates, little controversy, and low voter turnout, an all-1L slate of candidates won the top leadership positions of the Law School

New Reps Named, Other Elections Postponed

By April Rockstead

Nine people who submitted candidate statements for 22 open seats on the Law School Council were declared "winners" in lieu of elections last week, but 13 remaining seats will be up for election next Wednesday and Thursday.

So far, new representatives are, for the Class of 1997, Erica Littlejohn and Blythe Holden of Section IV, Nicole Lipman and Chip Nierlich of Section III, and

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Council last week.

Elected by a large majority were Rob Simmelkjaer '97, president; Bob McCarter '97, vice president; and Joe Miller '97, treasurer. Unlike those of recent past, last week's elections were a quiet event, drawing only roughly 26 percent of students to the polls, compared to approximately 40 percent last year. Simmelkjaer, McCarter, and Miller officially took over their respective positions earlier this week.

Simmelkjaer and McCarter attributed the low turnout in part to what they called a rushed election. "It was a sprint of a campaign," said Simmelkjaer. "Statements were up for only one [school] day." Candidate statements were due and posted on bulletin boards in the Hark last Friday; students voted the following Wednesday and Thursday. Monday was a holiday for all students, said McCarter, which left only Tuesday as a full day for campaigning.

While LSC vice-presidential

candidate and current LSC representative Joseph Dittkoff '96 agreed that the election was rushed, he thought student apathy was more to blame for the low turnout. "It's sort of like students are saying, 'Why should we be involved?'" he said. LSC presidential candidate William James Hoffer '96 agreed. "My class is sort of apathetic," he said. "It has seen what [little] the LSC has done recently. I think they objected in principle to voting for the LSC."

In contrast to such indifference, the new officials' enthusiasm is welcomed by many. "I'm pleased," said outgoing LSC Vice President Clarke Camper '95. "They seem enthusiastic, committed, and sincere. I think they are going to be really excellent." Camper also noted that the new officials, being 1Ls, have "a lot at stake," in the Law School, and therefore are probably even more motivated to accomplish a lot.

Simmelkjaer, McCarter, and

please see **ELECTIONS**, page 3

Law School Applicant Pool Drying Up

By Hope Yen

The number of students applying to Harvard Law School and other top schools around the country dropped as much as 20 percent this year in what appears to be a part of a four-year nationwide phenomenon of declining law school applications.

Although law school officials were reluctant to speculate on the possible reasons for the decline, many seem to acknowledge that high tuition and financial aid obligations, coupled with the prospect of heavy workloads as law salaries remained stagnant, are making potential applicants think twice about the wisdom of a law school education.

Other officials, meanwhile, stress the impact of pop culture, where the popularity of television shows about doctors such as "ER" is creating a surge in medical school applications at the expense of law schools.

HLS received more than 6,800 applications this year, representing a 17 percent drop from the previous year. The figure differs markedly from the previous two admissions seasons, when applications jumped 10 percent last year and 16 percent the year before.

The picture appears no different at other top law schools. Yale Law School is bracing for a 20 percent decline in applications. Stanford expects a 19 percent drop. And Boalt School of Law at the University of California at Berkeley is reporting a 10 percent decrease. Only Columbia Law School has defied the national decline this year, with preliminary figures showing an 11 percent increase in applications.

Nationally, the number of law school applicants dropped 7.8 percent, the fourth straight year of decline, according to the Law School Admission Council, which administers law school entrance exams.

George Dawson, chairman of LSAC and a professor at the University of Florida College of Law, said prospective law school applicants are being deterred by the prospects of oppressive financial aid obligations.

"This slide is very likely to continue," Dawson said of the national decline. "The costs of law school continue to increase. The immediate result of that is most students have to borrow more in order to attend law school."

"Another factor is the job market is flat — salaries have been flat for a number of years. As students face a situation where they have to borrow, they don't see a payoff at the end," he said.

The unemployment rate for new lawyers six months after graduation has slowly inched up to 13 percent, according to the National Association for Law Placement. Meanwhile, about 70 percent of HLS students receive need-based financial aid.

Despite the drop in applications here at Harvard, the quality of the applicant pool has remained high, said Joyce Curll, assistant dean for admissions. She said that those discouraged from applying to law school would tend to be students falling "in the middle of the pack" who aren't necessarily the top candidates for admission.

"The core of applicants for whom Harvard is a serious

please see **DECLINE**, page 3

CCR Lobbies, But Many Students Remain Quiet

By Greg Stohr

The Coalition for Civil Rights launched its annual push for faculty diversity last week, but with student activism at HLS declining, the debate over professor hiring remains quiet.

Approximately 30 students met with professors last week as part of CCR's "Lobby Days." But the number of lobbyists was a sharp decrease from the 70 students who met with professors in a similar effort last year.

In recent years, bitter disputes have characterized the debate over faculty appointments. But six months into a school year that has seen no

major controversies over hiring, much of the urgency and antagonism seems to have disappeared. Many students seem to have other priorities.

"It's tough for students to make time for protests when the issues aren't acute," said Sameer Ashar '96, one of CCR's two co-chairs.

The meetings last week were intended to be dialogues with professors rather than protests. CCR encouraged students to talk to faculty members about specific candidates, student involvement in the appointment process, and affirmative action — including Stanford

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Kozinski Discusses Judicial Decision-Making Processes

By David Weiss

In the absence of clear-cut rules, a judge's personal background can be a powerful factor in shaping the judge's view of a case, Ninth Circuit Court of Appeals Judge Alex Kozinski told an audience of about 70 in Pound Hall on Tuesday.

Titled "Teetering on the High Wire: Self-Indulgent Judicial Ramblings," Kozinski's talk described how his own experiences outside the courtroom influenced some of his rulings from the bench.

Recalling the sentence he handed down in a district court case, for example, Kozinski noted how the near loss of his infant son due to his inattentiveness at home factored into his decision to



Ninth Circuit Court of Appeals Judge Alex Kozinski reflected on the role of personal experience in a judge's decision.

give a lenient sentence to a first time offender.

"She had done wrong," he said, "...but I realized that she wasn't the only one in the court-

room who had done something wrong that week.... I am not a deeply religious man, but I real-

please see **KOZINSKI**, page 11



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Entertainment Industry Full of New Trails to Be Blazed

By Katrina Campbell

New attorneys entering the already-established sports and entertainment industry will find themselves trailblazers in several areas of the law.

Last Saturday's Symposium on Sports and Entertainment Law, organized by the HLS Committee on Sports and Entertainment Law and supported by the American Bar Association, convened high-level executives, well-known lawyers and consultants, as well as students from Harvard, Boston College and Boston University law schools, to discuss current and future legal issues in the entertainment industry.

Those issues span several areas of traditional law, including corporate law, intellectual property and contracts.

"We discussed ways the legal regime will be changing in the coming years with the information highway, and how we will have a lot of control in changing the law," said committee President Alissa Vradenburg '96.

Keynote speaker Jay Berman, chairman of the Recording Industry Association of America, spoke about international trade and copyright laws affecting the industry. Berman is involved with negotiations between the Clinton administration and the Chinese government to end extensive CD pirating. Vradenburg noted that Berman's trip to Beijing after the conference was followed by the closing of one of China's two major pirating operations.

Another issue debated by lawyers and executives at the conference concerned where the industry should scout new musical talent. "I see a lot of regional music coming out — Charleston, South

Carolina, and Virginia Beach, Atlanta," said Robert Holmes, executive vice-president of Sony Pictures Entertainment. "You will need to find your clients outside of New York and California."

Holmes noted that, although both Pearl Jam and Nirvana originated in the Pacific Northwest, few had believed the region would spawn a new music movement.

"You will need to find your clients outside of New York and California," said Robert Holmes, executive vice-president of Sony Pictures Entertainment.

New music in many ways is a reworking of old tunes, Holmes said. "As hip as you think we might be, if you look at the charts, I think the number one record in the country is Garth Brooks. Next is Boyz to Men, which is a old type of doo-wop. It's something we've seen before," he said.

Jay Cooper of Manatt, Phelps & Phillips, a Los Angeles-based entertainment law firm, noted a declining need for

music publishers. Since the 1960s ushered in a practice of artists writing and performing their own songs, publishers are needed less often, except perhaps to collect material, said Cooper.

But Michael Pollack, vice president and senior counsel for Sony Music Entertainment, countered Cooper. "The publisher also serves as a bank. You don't go to Citibank, you don't go to Shawmut — you go to the publisher," Pollack said.

A hotly contested topic at the conference concerned performance rights to royalties for each time a song is broadcast. Currently, music companies do not receive such royalties because they receive profits from recording sales. But new technology may allow would-be music buyers to instead copy the broadcast, while fully retaining the recording's quality. Music companies however, would suffer a loss of sales from this copying.

A bill requiring broadcasters to pay royalties has been raised before Congress. Pollack said the Clinton administration supports the bill because it would harmonize U.S. music copyright laws with similar laws in foreign countries, many of which require performance rights.

"The principal opponent has been and is the broadcast industry. The broadcast industry says we're helping sell records," said Cooper.

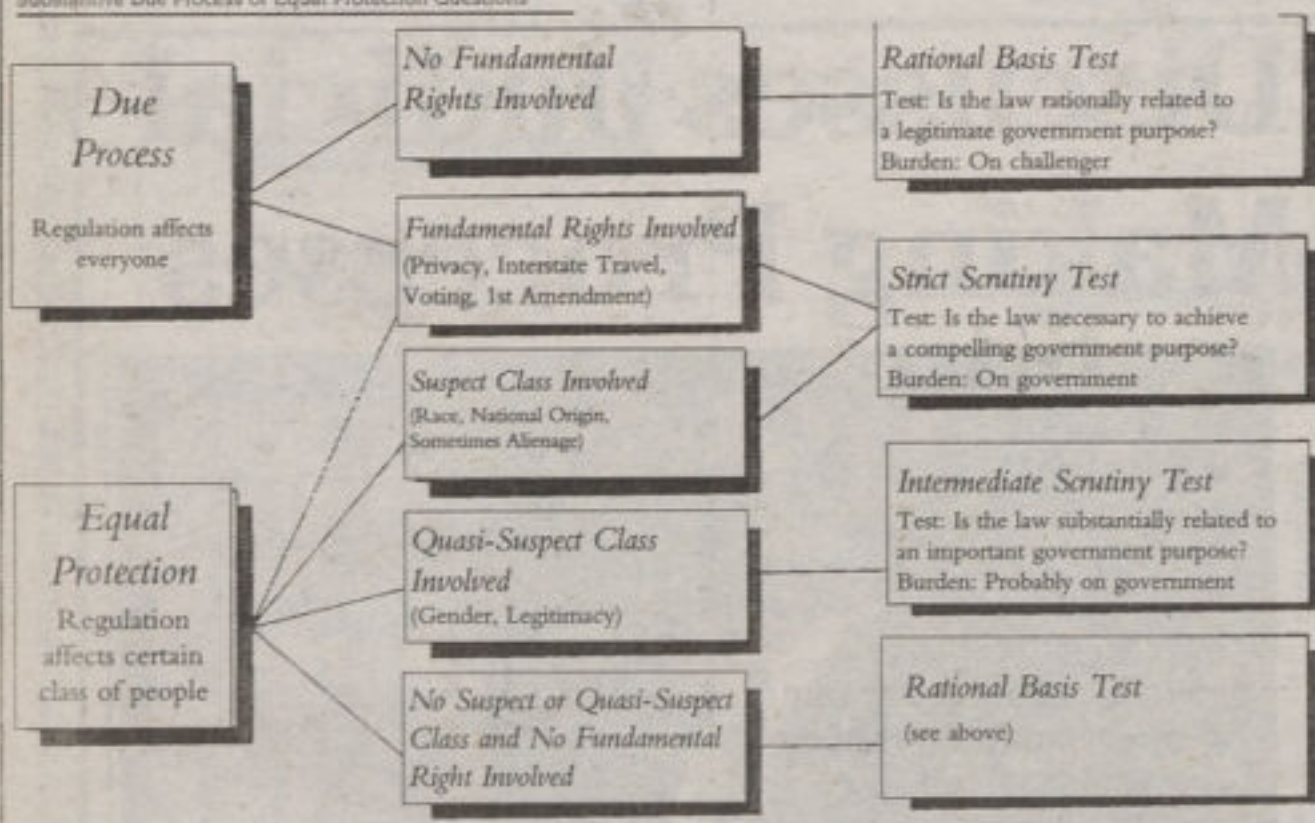
Such discussions both informed and excited students, said Vradenburg.

"[Students] really felt involved in the current controversies going on in the entertainment industry," she said. "In law school, you don't really get the sense of what's going on with practitioners in their daily lives. [The conference] gave more students a passion to get involved in entertainment law."

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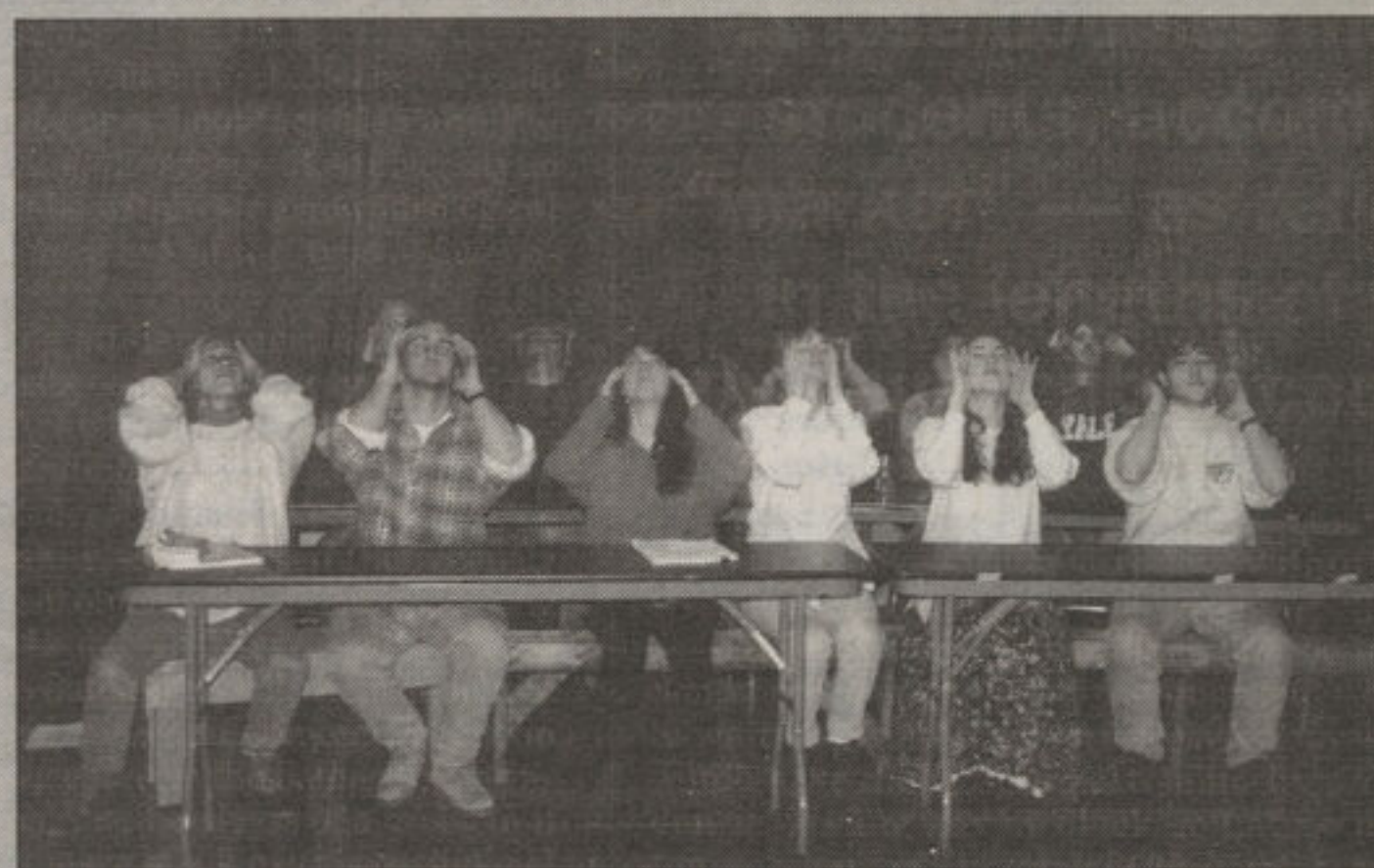


Photo Courtesy of Jeff Utback

Members of the Drama Society rehearse for "The Cocky Lawyer Picture Show," scheduled to go up March 8.

"The Cocky Lawyer Picture Show," the Drama Society's annual spring parody, will run next week from Wednesday through Saturday beginning at 8:00 p.m. each night in the Ropes-Gray Room. A musical comedy written jointly by Jamie Feldman '96, Dan Fiore '95, and Julie Sternberg '95, the play is being produced by Sternberg and Feldman while being directed by Fiore.

Narrated by Prof. Charles Neckercube (Brandon Baer '97), "The Cocky Lawyer Picture Show" is the story of Chad Sponginghouse (Erik Lindseth '95) and Sue Persilius (Laura Putney '95), two idealistic first-year Yale Law School students whose car breaks down in Cambridge on their way to New Haven. Chad and Sue meet Muffy Perlbinde (Hallie Levin '96) and Tobias Barrington (Dino Wu '97), two Harvard Law School 1L's, who bring them to registration at HLS. Persuaded by Dean Clark (Jamie Feldman '96) to remain at Harvard, Chad and Sue are pressured by HLS students and faculty to forsake their wholesome values in exchange for the financial security promised by corporate law firms.

Will Chad and Sue succumb to the economic allure of the firms, rejecting a lifetime of goals and dreams? Or will their souls be saved by a mystical prophet seeking to convert law students to ways of goodness and charity? Will Chad and Sue ever get to Yale? Act two provides the answers.

Tickets are on sale for \$6 in the Hark from 10 a.m. to 2 p.m. each day until the show. All seats are reserved.

Davis Reminds Students to Remember Larger Community

By April Rockstead

Actor Ossie Davis drew a standing ovation last week for a talk during which he asked black students to help him formulate "the right question" to ask in order to begin solving problems of racial equality.

Davis, a writer and political activist in addition to a film and stage actor, was a leader in the early civil rights movement and is known for delivering the eulogy for Malcolm X. His talk in Austin Hall last Wednesday, attended by about 60 people, was the keynote speech for the Black Law Students Association's observance of Black History Month.

"I have not yet been able to ask the right question," Davis said, "but you, with your fresh minds and your access to the law and the history, can come up with the right question."

Students, many of whom are more fortunate than others in the black community, should emulate the sacrifices others made for them, Davis said.

"I wish that you have access to the good life that America can provide," he said. "But I hope that you will remember, in the tradition of your parents, the rest of the community."

But Davis added that although black students should not forget their communities as a matter of principle, less altruistic reasons also exist for taking care of the "have-nots."

"We in the top strata would do danger to ourselves to forget those who are left behind," Davis said. "Judgment is coming. Our brothers and sisters from the other side of the track will confront us with their guns, and the fact that we're black will mean absolutely nothing."

Describing the problem confronting black America as one in which legal victo-

ries, such as that won in the landmark desegregation case of *Brown v. Board of Education*, have not led to true equality, Davis said the bulk of the struggle that remains revolves around economic issues that could portend massive social unrest.

"To a large extent, we were successful in our search for freedom — depending on how you define freedom — but we were not successful at all in our search for jobs," he said, adding, "Your civil rights are going to drive you crazy until you find a way to acquire your economic rights."

However, Davis cautioned, "The equality we demand depends upon our powers. You cannot really give it to us."

For example, he said, African

we felt for the women and their hungry children. We said that was why, but it wasn't," Davis said. "We wanted to sell them products to stimulate the economy."

Six percent unemployment in the general population comes out to 12 percent in the black community, Davis said, creating crime, social distress, and "the climate in which you will have to live out your lives."

"Our boys and girls cannot go from dropout status to any form of unemployment whatsoever," Davis said. "They become part of that six percent that the investors on Wall Street love so dearly. Out of their unemployment, we damp the fires of inflation."

Pointing to the L.A. riots, Davis said

"We in the top strata would do danger to ourselves to forget those who are left behind," Ossie Davis said.

Americans spend upwards of \$300 billion a year, but mere purchasing power is not enough.

"You need the institutions to control the power and collectively pool the money," Davis said. "We have the cash, we lack the control."

The institutions in place today work to disadvantage African Americans, Davis said, noting that economists say society needs about six percent unemployment in general population to balance it. Those who are forced to rely on welfare because of the unemployment are then able to buoy the economy in recessions by purchasing goods, Davis said.

"The welfare system was not organized on the basis of the care and the pain

this pattern sets the stage for social chaos.

"If we continue balancing the economy with unemployment, we will create in other areas conditions ripe for similar explosions," he said. "Maybe if we send in enough crack, the poor will remain half asleep and of no threat. I doubt if that is the case."

But the new Republican majority in Congress, by attacking entitlement programs, may unwittingly set the stage for the way out of the cycle, Davis said.

"Now we have in Washington a group who has set out to take from the economy those cushions that keep it from totally collapsing," he said. "They think — and I think they are wrong in thinking — that the market will correct itself."

HLS Application Rate Decreased

continued from *DECLINE*, page 1

prospect and who have done the serious preparatory work to be here are the people who remain in our pool steadily year after year," she said. "There is every indication the class is going to be just as tough to get in and the class just as strong."

Women and minorities, for example, continued to apply to HLS in approximately the same proportions as last year, Curll said. This year, 41 percent of the applicants are women. Asian Pacific Americans make up 11 percent of the applicant pool, while African Americans comprise 9 percent, Latinos represent seven percent and Native Americans comprise one percent.

Many law school deans said the decline in applicants may be a good sign, one that indicates prospective applicants are thinking more carefully about their future. Gone are the days of the late 1980s, when the glamorous portrayal of lawyers in shows such as "LA Law" pushed unprecedented numbers to apply to law school.

"Certainly a phenomenon affecting

applications is a sense of the demands of working as a practicing lawyer and the effects on personal lives," said James Milligan, dean of admissions at Columbia Law School. "I think that is beginning to resonate. I think prospective law school applicants are thinking more carefully about if this is the life choice they want to make."

Prospective law school students instead may be lured into applying to medical school, which witnessed a surge in applications in the past few years, said Jean Webb, dean of admissions at Yale Law School. For those talented students prepared to pursue any graduate program, popular culture may be tilting the balance away from the legal profession, she said.

"LA Law" has been off for a year now, and in its stead is the O.J. Simpson trial, which portrays lawyers not so glamorously," Webb said.

Nationwide, applications to medical schools are reportedly up 2.9 percent this year. At Harvard Medical School, the number of applications jumped to 3,925, a 15 percent increase over the previous year. Although applications to Harvard

have steadily increased since 1989, no year has been this dramatic, said Theresa J. Orr, assistant dean for admissions and financial aid at the Medical School.

"It astounded the faculty that applications are up because medicine is the subject of some really bad rap these days, especially with health care reform," she said. "I think it has really helped the profession in that it's public. It brings the profession of medicine to the television screen."

"The TV shows also have helped," Orr added.

Lawrence Wu, a sophomore at Boston College who recently switched his major from pre-law to biology, said he wasn't willing to gamble his future on the legal profession.

"Going into law right now is just too risky," he said. "I'm not going to invest four years of law school preparatory work, three years of intense law school case reading and tens of thousands of dollars in tuition just to end up standing in the unemployment line."

"I'd rather spend my time watching 'ER,'" Wu said.

1L Slate Sweeps Elections

continued from *ELECTIONS* page 1

Miller will focus initially on student facilities, they said. "The thing we got the most feedback on [from students] was facilities," said Simmelkjaer. "Everyone has a lot of problems with the gym...we want to jump right on it for the first couple of months and focus on things that will have the most visible impact." Simmelkjaer said he has already called Hemenway and is working on "reopening a dialogue" between the LSC and the University, which runs the gym, in order to push for some improvements.

McCart said they will focus first on "the little things, like getting racks so people can read books while they use the machines."

Perhaps symbolizing the change in LSC politics from just a few years ago, fac-

ulty diversity will take the back burner — at least temporarily — on the LSC agenda.

Citing the improvement of student quality of life as "a more proper role for the LSC to be playing," Simmelkjaer said, "I think it would be presumptuous of me as LSC president to stand up and demand that [faculty diversity] come about. I don't even know what the predominant student opinion is [on the issue]."

However, the three do plan to "sit down with members of the faculty and Dean Clark and get a better sense of what role the student body can do and should do." Once a "decent consensus" among students can be ascertained, perhaps through a poll, then Simmelkjaer and his runningmates will focus more on the issue, he said.

Regardless, he added, "We are not

People will be more likely to respond to calls for economic equality — and more willing to listen to proposals such as "one job to each citizen at a living wage, inflation be damned" — if the whole nation is in desperate straits, and the "choice is between a fair and just society or no society at all," said Davis.

"What has happened in our country has come out of extremity," Davis said.

The challenge to black students is to think through the issues and be ready with a coherent strategy, Davis said.

"In the same way your mothers and fathers have struggled to acquire our freedom, you can acquire our equality," he said.

But Davis quickly cut off laughter that rippled through the audience in response to his suggestion that not everyone shared the students' talent for intellectual analysis.

"That is no mark against them," Davis said. "Most battles are won by the people, under the direction of others. Some people are good fighters, and we need good fighters, but strategic thinkers is what we lack right now."

While putting the issue of community involvement as a "challenge" to black students, Davis conceded that the community is itself in part responsible for black students' perceived apathy.

"Black students suffer from the signals we gave them at the beginning of integration," he said. "What the hell was that struggle about if not for you to live the good life, to sit in that seat, to drive that car? Then we say to black students on campus, 'Why the hell are you so apathetic?'"

"We have acted as though getting into white society was the end-all and the be-all, even if you leave everything else behind to get there," Davis said.

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LSC Positions Still Open

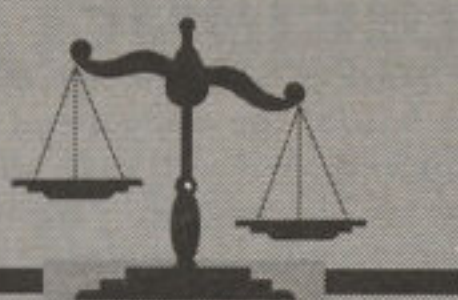
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Bob Bordone of Section II. The remaining seats for the Class of 1997, including the open Section II seat and both Section I seats, are to be filled in next week's elections.

All eight section representative seats for the Class of 1996 are unfilled, as are two of the six at-large seats. The four at-large representatives who are members as of the council's declaration are Dave Aronberg '96, Joseph Ditzko '96, Scott Goodreau '96, and Maeghan Maloney '97.

Those interested in running for open seats should file candidate statements by Tuesday, March 7 at 5 p.m. in the Dean of Students office.

BRIEFS



Shooting in the Square

Three men attempted to rob a Briggs armored truck making a delivery at the Harvard Square Cambridge Trust Company at 1:00 p.m. Wednesday, but were foiled by a guard who shot one robber in the head and the second in the shoulder. Police apprehended the third robber some distance away as he attempted to escape.

Food War Prompts Lock on Dane Refrigerator

Many dormitory halls throw parties or buy fun toys with the money allotted to them each semester by the Dormitory Student Affairs Council.

But second-floor Dane Hall residents will use some of their fund this year to buy a lock for their hall refrigerator.

Around the end of Fall Term, residents said they noticed food was disappearing from the hall kitchen.

"We talked to each other and realized that we all had things missing," said Sona Rewari '97, the hall's DSAC representative. "Downstairs it happened, but they left money. We don't even get that courtesy."

Since the food started disappearing, someone has stolen "everything from Lean Cuisine to frozen vegetables to ice cream" and added insult to injury by such tactics as cooking pizzas and leaving the crusts behind, Rewari said.

The thefts originally occurred late at night, but now happen during the daytime as well, Rewari said, adding that this week a resident who had just finished baking cookies left some on a plate in the kitchen for a 10-minute span in the afternoon — never to see them again.

When the residents began leaving warnings on a message board attached to the refrigerator, the thief — or thieves — responded, Rewari said, usually leaving "cocky and bold" statements.

After a recent theft, residents found a message on the board that said, "Nothing like somebody else's late-night snack to make me sleepy."

The thieves remained undeterred even after they apparently stole some Ben & Jerry's ice cream that the residents had laced with laxatives and labeled "Do Not Eat," Rewari said.

"We called the poison center before we did that, to make sure it was safe," Rewari added.

The residents now see locking up the refrigerator as the only solution. Rewari said a combination bike lock will be installed this week, with the combination disclosed only to floor residents and a few other regular users.

"Short of putting a guard in there, there's nothing else that can be done," she said. "We've all had it up to here. We're not just going to keep feeding them."

Professorship Established to Honor Tax Specialist

The Law School last week announced the establishment of a new professorship to honor tax scholar Stanley S. Surrey, an HLS professor from 1950 to 1961 and from 1969 until his retirement in 1981. Surrey, who founded the International Tax Program in 1952, died in 1984.

A former assistant secretary for tax policy with the U.S. Treasury Department, Surrey helped enact the Revenue Acts of 1962 and 1964 and prepared materials that led to the Tax Reform Act of 1969 and which laid the foundation for subsequent tax reforms. In addition, Surrey was the chief reporter for the American Law Institute's Federal Income Tax Project from 1948 to 1961, and he was a member of the American Tax Mission to Japan, which assisted in forming a new tax system in Japan, from 1949-50.

N.Y.U., Columbia Rolling in Public Interest Dough

The Chicago-based law firm of Kirkland & Ellis has granted both N.Y.U. and Columbia Law Schools a joint \$1 million endowment to create two \$30,000 fellowships for a graduate from each school every year.

The Kirkland & Ellis New York City Public Service Fellowship will support students who, upon graduation, enter the field of public interest to help populations in New York City that traditionally have limited access to legal services.

For N.Y.U. School of Law, the Kirkland grant is yet another incentive for law school applicants committed to public interest to choose it over other law schools. This year, N.Y.U. announced it would give free tuition to students who promise to work in public interest jobs for 10 years after graduation. In a New York Times article last fall, Nancy Slonim, deputy press secretary for the American Bar Association, said the N.Y.U. program offers students "a substantially higher amount of money" than other programs such as HLS's Low Income Protection Plan.

—from N.Y.U. School of Law's *The Commentator* and the *New York Times*

First Asian Pacific American to Attend HLS Dies

Masaji Marumoto '30, the first Japanese American to sit on a state supreme court and the first Asian Pacific American admitted to Harvard Law School, died last month in Honolulu. He was 89.

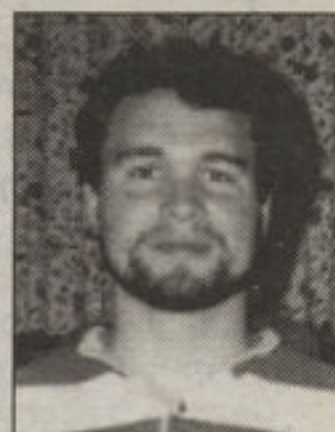
Marumoto, the son of Japanese immigrants, had been nominated by President Eisenhower to Hawaii's territorial supreme court in 1956, and was named to the state supreme court when Hawaii became a state in 1959. He resigned shortly thereafter to return to private practice, but returned to the supreme court for another term in 1967.

In addition, Marumoto was credited for helping prevent the forced evacuation of Hawaii's Japanese Americans to relocation camps after Japan attacked Pearl Harbor in 1941.

In recognition of Marumoto's contributions to the relationship between the United States and Japan, Emperor Hirohito presented him with the honor of "Second Class Order of the Sacred Treasure."

G Y M R A T

Relieve Your Baseball Angst



By David Koontz '96

Sports Editor

THIS week, the Gym Rat is thinking about more than just hoops. Since I have spent all but four years of my life in the Deep South (which, by the way, is also a brand of peanut butter), I tend to think of hockey as something that happens on ESPN inbetween NBA and college hoops highlights. I'm educating myself, but there's something really frightening about people who can stick their tongues out of their mouths without unclenching their jaws. I do know the Boston Bruins have Cam "Goal-a-Game" Neely. Big deal. The Atlanta Hawks have had Jon "Goal-a-Game" Koncak for years now. Problem is, two points a game isn't much to crow about in basketball, unless you're Dennis Rodman.

There is also this sport that I used to watch called baseball. Legend has it that all across America there were fields full of both real and plastic grass, rich brown dirt, and people who would dress in pajamas with belts and throw little white balls at each other. For years, I lived and died with the Atlanta Braves, mostly dying in the late '80s, until those magical '90s. So magical and powerful, in fact, that last summer when the Braves finally fell behind in their division, they were able to stop play altogether. But now the joke is supposed to be over. Did any of us really think that this lunacy would last through the entire winter? I am not a mediator. I am not paid to be a mediator (unless I get that one job, but never mind). But for those of you who need to release your anger, no matter which side you take, here is a little exercise you won't find in any negotiation workshop.

Read aloud to yourself or random passersby: "Damn, I am really tired of those selfish [owners/players] abusing us fans. They can take their [picket signs/replacement players] and go straight to hell. I mean, the [players/owners] have been dead wrong on every issue. And when I see [Bud Selig/Don Fehr] giving one more speech or interview, I just want to shoot my television set like [Elvis/Mister Rogers] did. At least [Sparky Andersen/Deion Sanders] has enough sense to stay away from it all." Repeat until angst-free.

No such problems anymore with HLS hoops. In the "A" League, 3L got up off the canvas with a vengeance, winning its first game after two losses. "The first two games were replacement games," explained captain Tony Barkow '95. The parity continued with First Time Offenders getting their first win over the previously undefeated Ball Handlers. There's no reason to suspect that the outcome would've been any different had certain members of the Ball Handlers not been in New Orleans wearing plastic beads and eating jumbalaya. The league is just that deep. With two wins this week, En

Did any of us really think that this lunacy would last through the entire winter?

Fuego (which is Spanish, of course, for "In your friend's Yugo") emerged as the lone undefeated "A" League team. En Fuego's Jake Schwarz '97 was less than thrilled with his initial nickname "Skills," so from now on he's Jake "The Body" Schwarz, which should also take care of our pro wrestling coverage.

This week the "B" League will be reported as one big mush, beginning with the Holmes Boys, who had what you might call a momentum shift. "Winning by 35 is a hell of lot better than losing by 32," confirmed captain Thad Johnson '96. The J-Men, led by the gritty gutty Dave Becker '95, handed (Squiggly Unpronounceable Symbol) Team Formerly Known as Levitt a loss, despite Sean "Are You Tough Enough to Take on This Man?" Kanuck '96's catchy and inspiring cheer, "Way to draw that violation!" Led by Dan Kisowsky '96, Mo Knows gave Death Squad a good game. Known off the court as "Dan," on the court Kisowsky becomes "Neion Dan" or simply "Kaz." Before bowing to the Great Danes, Intentional Foul rained threes, scoring as many points in a half as the Danes are used to giving up in a whole game. Members of Rich Cundiff, Go-to Guy were so stunned by Rich's three-point shooting display last week that they voted to change the team's name to Rich Cundiff, Go-three Guy. And finally, I had good news and bad news last week. The good news: I was finally healthy enough to play with my own team, the Sleestaks, who were undefeated without me. The bad news? Check out the standings.

Intramural Basketball Standings as of Sunday, February 26

TEAM NAME	WON-LOST	TEAM NAME	WON-LOST
"A" LEAGUE			
4. En Fuego	4-0	5. 3L	1-2
6. Ball Handlers	2-1	1. Black Plague	0-1
2. Well Hung Jury	1-1	7. All Guards	0-2
3. First Time Offenders	1-2		
"B" LEAGUE EAST		"B" LEAGUE WEST	
9. The Cunning Litigants	3-0	21. Death Squad	3-0
10. Great Danes	3-0	22. Gooch's 2-Headed Johnson	3-0
16. Stone Cutters	3-0	25. J-Men	2-1
17. Hanson's Heroes	2-1	27. & The Team FKA Levitt	2-1
12. The Sleestaks	2-1	23. Full Tort Press	1-2
11. Rich Cundiff: Go-to Guy	1-2	20. Holmes Boys	1-2
4. Sweat Hogs	1-2	18. Mo Knows	1-2
8. Grizzers	0-3	19. Spence-Air	1-2
15. HLAB Hoopers	0-3	26. TEAM	1-2
13. Intentional Foul	0-3	24. In Living Color	0-3

Compiled by Doug Cooperberg

Sophomore Slump

Good Benito

By Alan Lightman
New York: Pantheon
215 pp. / \$21.00 hardcover

By Mike Fischer '95

Book Review Editor



TWO years ago this May, in a frantic search for a quick read and a final RECORD column under the gathering storm called finals, I stumbled upon a book by MIT physicist Alan Lightman and enjoyed one of those delicious afternoons all readers live for, in which time, care, and self yield to the magic of good prose. Lightman's first venture into fiction, "Einstein's Dreams" is a collection of beautifully written and incredibly imaginative vignettes — the great scientist's dreams — of worlds with differing conceptions of time. There are worlds without a past and without a future, worlds where time moves in circles and where it progresses ruthlessly toward order rather than succumbing to entropy.

Carried by stunning conceits more reminiscent of the 17th century's great metaphysical poets than of the often pointless postmodern pastiche characterizing their 20th-century descendants, "Einstein's Dreams" nevertheless has everything to do with this century and with the monstrous ways in which the clock has come to dominate our lives. It haunts me still — and, given the months it eventually spent on the bestseller list, I imagine it haunts a good many others.

Lightman's just-published "Good Benito" suggests that this first success also spooked him. While "Einstein's Dreams" marked a brave and original challenge to literary convention, "Good Benito" is convention itself, afraid not only of its own shadow, but of all other shadows as well. While its predecessor trolled in deep and dark waters for prized and forbidden secrets, "Good Benito" is all light and air. One is swept away less by the breadth of its vision than by the unbearable lightness of a story which cannot even muster the courage to embrace its lack of conviction.

The book revolves around young physicist Bennett Lang who, much like Lightman himself, hails from Memphis but eventually moves on to conquer the big, bad North. The good Benito, as a boon companion names him, has as much of a rage for order as the bad Benito who preceded him. But while Il Duce made the trains run on time, the good Benito is defeated by the law of entropy. As the novel draws toward its close, the young man who had embraced theoretical physics because reality was too messy has made his tentative peace with an uncertainty which, he comes to realize, is inevitable.

It's an old theme, the stuff of Faust and Frankenstein, Freud and the Frankfurt School: A story of how proud science is humbled and of that great moment when the Age of so-called Enlightenment meets its repressed nemesis. As an English major, this theme has always been one of my favorites: I never was any good at those damned equations, and so I'm always up for yet another take on why poets are the unacknowledged legislators of the world. Indeed, one of the many wonderful things about "Einstein's Dreams" is the poignancy with which it explores this very theme through its portrait of a scientist who would come to regret his most important discovery for the rest of his life.

But old themes are also cursed by that which makes them great. Precisely because they're so rich, they've been mined often — and often all but mined out. One has to dig deep to find the treasures they still conceal, and all too often neophytes who are sure they've struck it rich return to the surface with only fool's gold.

"Good Benito" is, in this sense, a very foolish book. The characters around Bennett are never developed, serving instead as props through which, Lightman must have hoped, his readers would at least come to a better understanding of Bennett himself. We're treated to 30-odd pages of Bennett's encounters with the world's greatest scientist and her young and beautiful daughter, but just as Lightman seems poised for a latter-day rendition of "Rappaccini's Daughter," we're wrenched away, only to be served up equally truncated sketches of Bennett and his boyhood chum, Bennett and his melancholy rabbi, Bennett and the high school drama teacher with whom he has a torrid affair, Bennett and the suicidal wife whom he unaccountably marries.

Because Lightman demonstrates an almost pathological aversion to dialogue and a fatal lack of trust in his audience, his narrator in each of these sketches is forced to work a double shift, literally telling us why these relationships are important as well as what Bennett learns from them. Unfortunately, neither he nor Bennett are wise enough to learn from the drama teacher's insistence that "words are just indications. Words don't tell how someone is feeling."

What makes matters even worse is Lightman's faux minimalist style. Rather than accepting the limitations and thereby reaping the potential rewards of this difficult technique, Lightman joins the legion of would-be Richard Fords who admire minimalism's cool chic without understanding its purpose. Predictably, his better, more terse passages make way for a distracting, compensatory verbosity. And with a random, meandering plot built around characters starved for sustenance, there is a lot to compensate for.

Only in the novel's last scene does one get a glimpse of what made the predecessor of "Good Benito" so special. Having rushed his wife to the hospital full of sleeping pills, Bennett is unaccountably whisked north to his brother's house in Maine where we find him, ensconced with his six-year-old niece, in a small boat off the coast. As the sun begins to set and the fog rolls in, the two of them drift into an increasingly murky world in which shapes blur and color grows uncertain. For a few short pages, the writing is simply magnificent, and Lightman actually resists the urge to spell out what it all means. Would that he had resisted earlier. At least the close of "Good Benito" gives cause for hope that Lightman will emerge from this particularly dreadful sophomore slump to offer similar resistance — and equally beautiful prose — at some point in the future.



FOOD - O - RAMA

A Misbegotten Moon



By Ted Cohen '95 and Jonathan Goldstein '95

Restaurant Guys

OUR first visit to the Brew Moon brew pub/restaurant (115 Stuart St., Boston, 523-6467) happened to be in the company of a graphic designer from New York. As we settled into our moon-shaped chairs and gazed around the lofty room our designer friend began to chuckle and then to laugh outright. We asked what was up. "This is exactly how not to design a restaurant," she guffawed. And she may have had a point.

It's not so much the Starck-inspired light fixtures and mysterious wood obelisks; nor is it the cardboard stencils on every table (spelling out "brew moon") which are meant to be used as coasters. It's just that the place is trying too hard to be high concept. Take the bizarre, new-agey credo that appears on Brew Moon's napkins and matchbooks: "Brew and moon are indelibly etched into our human experience.... Beer is a food of the spirit. The moon was formed as a result of natural phenomena." I'm sorry, what? Somehow, this is supposed to mean that Brew Moon represents a fusion between tradition and modernity. After a couple of visits, we're not sure we understand.

But who goes to a brew pub for philosophy anyway? You go for the food. And the beer. So let's start with the beer. For \$5.50 you can sip your way through 5 four-ounce samplers of the various home-made brews. (These arrive, interestingly enough, in a rack that looks like something you would hang in your shower. Hmm — a little traditional, a little modern....) Best to start with the lightest so you'll still have a palate when you get to the darkest. Sad to report, what should be Brew Moon's forte is at best a mezzo piano: the light weight Boston Special Reserve is as characterless as Stroh's; Orion's Red Ale is bitter and clumsy with an acidic finish; the so-called English-style ale, Moonlight, is cloying; and the Eclipse Extra Stout is too thin and has an overwhelming nose of burnt coffee (not to mention a finish strangely evocative of soy sauce). Granted, a second tasting of Orion's (the best of the lot) fared better in frostier pint glasses, but the well-meaning brew master at Brew Moon could benefit from a visit to the Cambridge or Commonwealth Brewing Companies, two brew pubs that get it just right.

Like everything else at the Brew Moon, your eating experience is as carefully — and "whimsically" — orchestrated as an air strike. The Brew Moon Nachos (\$6.00) come not in the familiar tangle, but rather in three composed disks, each about 5 or 6 inches in diameter. Neatly layered with salami, cheddar cheese, scallions, and a salsa that looks suspiciously like tomato paste, this is just simply an unappetizing combination, the kind of thing a guy would throw together during Super Bowl half-time. The dill-fried calamari (\$5.50) are slightly greasy, but good with a squeeze of lemon; the accompanying nuoc cham dipping sauce (that's a Vietnamese-style fish sauce) is strangely thick and a little too sweet — sort of like a Good Seasonings version of oil-and-vinegar. And the wood grilled portabella mushroom (\$6.00) has come nowhere near the grill; it has been sautéed in way too much stale oil, with no trace of the promised "garlicky porter glaze." What you get instead is a bit of mealy, out-of-season tomato.

We fared somewhat better with the entrees. A fillet of salmon was deftly sautéed and served over a terrific mess of buckwheat noodles and julienned zucchini, yellow squash, carrots, shitake mushrooms, and seaweed (\$16). It was simple, tasty, and looked good. And while the spiced "bronzed" swordfish was a hair overcooked, and the anchovy butter a little timid, the garlic mashed potatoes were quite nice (\$15.75). On the lighter side, the Brew Moon has an array of sandwiches and salads that are both easier on the pocket and probably a better complement to the brews; a cheeseburger (\$5.50) was fine, if a little overcooked, and came on a good herb-flecked bun with excellent fries.

With dessert, however, we came crashing back to Earth. Take, for instance, the Brew Moon pudding, which is listed on the menu as steamed in ale and served with caramel sauce and vanilla ice cream (\$5.00). We were expecting a revision-

Other people seemed to be pretty happy at Brew Moon; both nights we were there, the huge space was fairly packed with a young and boisterous crowd. But if it doesn't want to be eclipsed by the next wave of trendy, overmarketed theme restaurants, this Moon had better fix the craters in its menu.

ist version of bread pudding. What we got was a measly slice of fairly good chocolate cake, next to a pool of bland caramel, with no ice cream. And the bronzed seasonal fruit tart (\$5.00) was an unmitigated disaster: an intimidating wedge of stale, freezer-burned cake topped with (seasonal?) peaches. Now we're not complaining about eating peaches in February — if you can get good peaches, we'll eat good peaches. But these were exactly what you'd expect of a peach in February: hard as a rock and alternately bitter and tasteless. We can't believe somebody let a dessert like this leave the kitchen.

Other people seemed to be pretty happy at Brew Moon; both nights we were there, the huge space was fairly packed with a young and boisterous crowd. But if it doesn't want to be eclipsed by the next wave of trendy, overmarketed theme restaurants, this Moon had better fix the craters in its menu. (And if we launch one more moon-related metaphor into this review, you can hit us. Ow.)

RATING: 1/2

Harvard Law RECORD

Founded in 1946

Victoria Kuohung
Editor-In-Chief

David Weiss
Publisher

Counsel for the Council

What would happen if you threw an election and virtually no one showed up? The Law School Council was forced to answer that question not once but twice over the past two weeks. First, the Council declared the slate of 1L candidates victorious in the LSC executive election based on the votes of only approximately one quarter of the student body. Later, without even holding an election, the Council announced that, out of 22 available positions, the nine people who did run had all won.

This does not indicate a lack of interest in politics or the electoral process. Both the conversations in the Hark on any given day and the number of HLS graduates in elected offices indicate that student here are not the part of the population which has turned its back on the electoral process. Rather, the low voter turn-out and lack of candidates show that students are wondering why they should waste their time either voting for or participating in our student government. In short, it is a sign that students have lost their faith in the LSC itself.

Nor is this attitude unwarranted. After showing some initiative last spring on the Law School's grading policy and last fall on the disclosure of student funding awards, the LSC apparently imploded. Political infighting has ranked with poorly-attended diversity panels as the most noteworthy achievements of the Council since last October. Further, LSC meetings themselves are poorly attended; according to two LSC members, the Council has not reached a quorum at its meetings for several weeks.

If the new LSC leadership has any hopes of attaining its goals of improving the quality of life here at HLS, it will have to begin by improving the operations of the LSC itself. But it will take more than changing a few by-laws. Rob Simmeljaer '97, Bob McCarter '97, and Joe Miller '97 will have to take the energy and enthusiasm they displayed in their campaign and not only apply it to their jobs, but also instill it in other Council members. They will have to put an end to the political infighting which has divided the Council and hampered its operations this past year. And, most importantly, they will have to demonstrate the result of these efforts to the HLS community through constant contact with the student body and through substantive action on behalf of their constituents.

HLS students essentially have written off the Council as an ineffective organ at the Law School. It will be up to the new Council to change their minds and to use LSC's unique position to bring about those changes students really want to see at HLS. Failing to do so not only will mean another year of lost opportunities, but also may mean confirming students' loss of faith in the Council — a development which could hamstring the Council for years to come.

—Weiss

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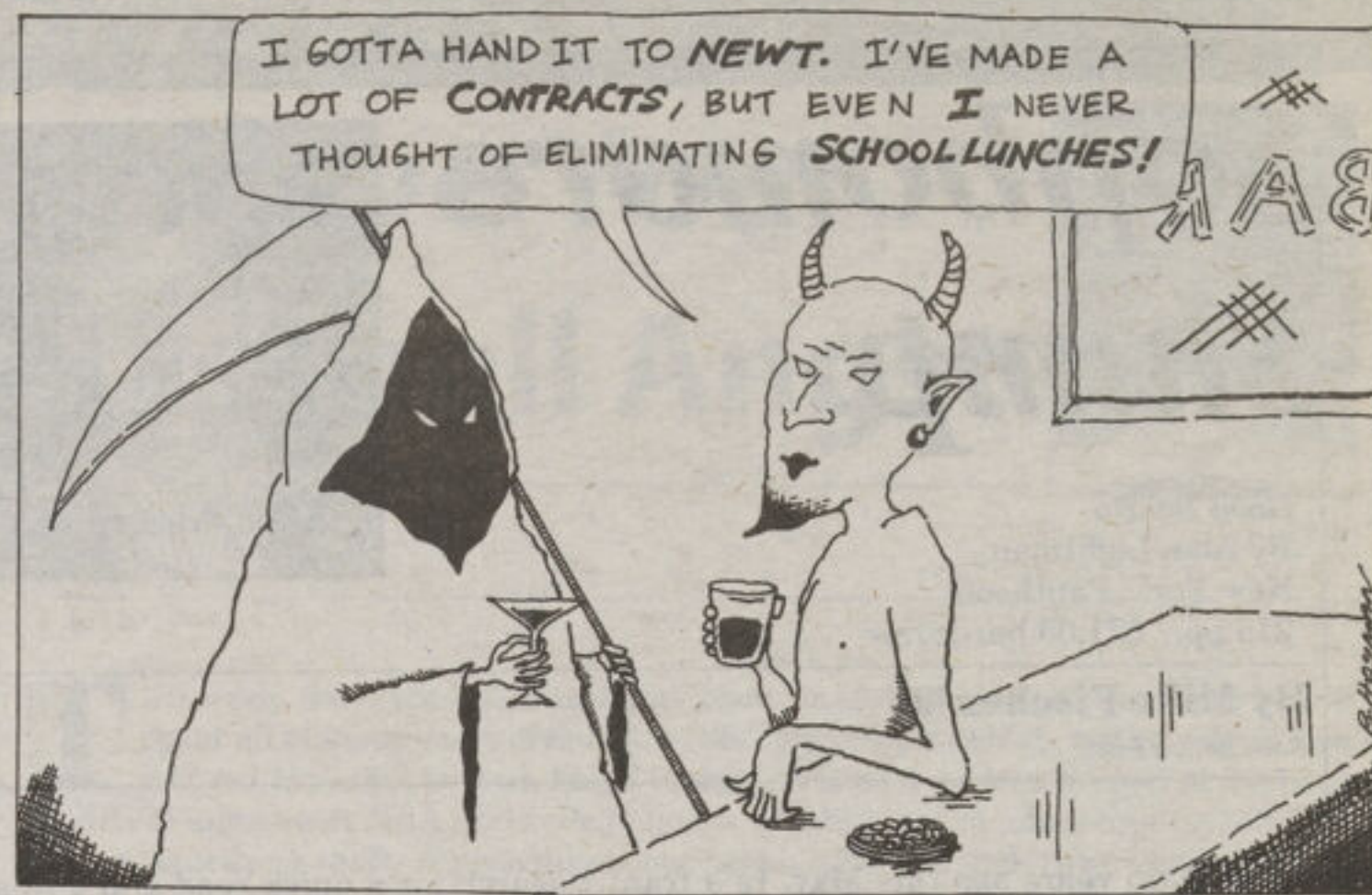
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—First Amendment, US Constitution



• Letters •

Affirmative Action a Misguided Policy

I found last week's panel on affirmative action to be both interesting and informative. I was relieved to learn that the Law School admission policy rejects any explicitly "redistributive" theory of affirmative action (i.e., that we ought to have a certain number of minorities simply to make up for past discrimination) in favor of a system based on "merit" and "fit." Even this facially sensible system of affirmative action is, however, theoretically flawed and racially biased.

If I understood Dean Curll's comments correctly, HLS admissions considers race in two different contexts. First, it considers race in determining what obstacles were faced by a candidate, so that their test scores and life achievements can be taken in context. Second, it considers race in attempting to achieve a "diverse" class so that all students can benefit, in the classroom and outside it, from the varying perspectives brought by diversity. Unfortunately, while both context for achievement and diversity are attractive goals, neither has any direct relationship with race.

To begin with, the admissions process assumes that minorities are inherently disadvantaged on account of their race in a way that non-minorities with otherwise identical applications are not. This assumption may be true in some cases but is most certainly false in others (it being impossible to tell how difficult one's life has been by looking only at the color of one's skin). Further, it is assumed that this disadvantage is uniformly reflected in lower grades, test scores, and life achievement. Even assuming disadvantage, uniformly lower achievement is at best unlikely. Given completely identical student applications (except for race), can we assume that the minority would have done better if not for the emotional angst caused by the percep-

tion of living in a racist society? Or that he has suffered from insuperable overt racism in education and work, i.e. teachers giving lower grades to minorities? The former proposition is untenable and the latter is at best questionable. Further, both ignore the systematic preferences in education and hiring that minorities have received already. At my undergraduate college, for example, minorities received free tutoring and more generous financial aid, while their poor white classmates worked longer hours and couldn't afford tutoring. (Last week's panelists suggested that minorities' presumptively lower scores are caused by "lower expectations." Again, it is impossible to tell based on race alone what expectations an applicant has faced.) Why should we assume the worst, even for wealthy and well connected minorities, at the expense of their white counterparts?

Race is at very best a proxy for disadvantaged status, at worst an indication of racist views about non-minorities' inherent advantages. Further, even as a proxy it is unfair to non-minorities because they have no easy way to express any disadvantages (race based or otherwise) that they may have faced. The law school application simply doesn't have a box that you can check off (white, but disadvantaged). Dean Curll suggested that white applicants could list their disadvantages in the personal statement. Even if this unlikely step were taken, would any admissions committee really believe that academically successful whites were disadvantaged? Or would they just think them whiners? My personal experience is that the latter perception rules, administering an extra strike against any non-minority naive enough to mention the challenges they have overcome. I doubt that any non-

handicapped, non-minority ever takes advantage of this opportunity to claim victim status, and I doubt that they would be taken seriously if they did. Finally, if the personal statement is such a good place to claim disadvantage, why cannot minorities use it as well?

The argument from diversity also suffers from serious flaws. It is explicitly racist in that it assumes that of two identical candidates, "diversity" can be determined on the basis of skin color. Is not the diversity sought after really diversity of thoughts, ideas, and experiences? If so, what does skin color have to do with any of the above? Factors such as schooling, religion, culture, travel experiences, political leanings, geographic origin, and economic class are all valid indications of diversity. Skin color, without more, shows nothing. It is silly to assume that of two identical candidates, the one with more melanin is somehow more "diverse" and therefore should be privileged.

Finally, I asked Dean Curll when affirmative action would no longer be needed at HLS. After much evasion, she finally answered that that day would come when her minority friends would feel safe jogging through white neighborhoods. Why is she unconcerned that her white friends do not feel safe in minority neighborhoods? Whites, too, are attacked based on race. If we wait for the end of all senseless violence before correcting our reverse-discriminatory system, we will have a long wait.

Dr. Martin Luther King, Jr. dreamed of the day that blacks would be judged by the content of their character and not the color of their skin. Could we not hasten that day by simply eliminating the "race" box on HLS applications?

Patrick J. Lannon '96
February 28, 1995

We've got a Speaker too, Eh?

Many thanks to Fenno for those kind words about Canada in his Feb. 9 column. While I was thrilled to see Canada featured in your pages (we Canadians always get sort of giddy when we are mentioned in the American press), I have to call your attention to an error Fenno made about the Canadian political system. Just to set the record straight for your readers: Canada is a large capitalist democracy located directly to the north of

the United States. Popular Canadian exports to the United States include hockey players, yuppie beer, and Pamela Sue Anderson of "Baywatch." Canada also has an organized federal government, known as "Parliament," and one of the principal officers of Parliament is called the "Speaker of the House." The current Speaker's name is Gilbert Parent. He is responsible for regulating parliamentary procedure, overseeing the

House of Commons budget, and casting tie-breaking votes in cases of legislative deadlock. In many ways he is similar to your Speaker of the House (except that he is officially non-partisan and doesn't have a lucrative book deal, a goofy haircut, or a bizarre vendetta against the poor). Just in case anyone wanted to know.

Jamie Feldman '96
February 19, 1995

WRITE TO THE RECORD!

The Law v. Women

By Abbe Smith and Sally Greenberg

THERE is something about sex and the criminal law that never seems to serve women, no matter what side we're on. Whether it's the charges brought, the punishment sought or the evidentiary rules that control the course of the trial, if there's a woman in the picture, she's going to need more than a team of lawyers to champion her cause.

Take the Susan Smith case, for example. When was the last time a capital prosecution was brought in a case of family violence that remotely resembled the facts here? Think of the number of men across the country who have killed their kids and their wives, and try to come up with one who is facing the death penalty for it.

Smith faces execution not because she falls into that purportedly narrow category of vicious killer who poses such a threat to society that she must be put to death, but because she is a bad mom who managed to fool a lot of people into thinking she was a grieving mom. She faces the ultimate punishment not because of who she is or what she is alleged to have done, but

Abbe Smith is the deputy director of the HLS Criminal Justice Institute. Sally Greenberg is chairwoman of the Gender and Justice Committee of the Boston Bar Association.

because she made a lot of people mad.

Her timing couldn't have been worse. This is the era of the Bad Mom. Whether it's lazy welfare moms or selfish working moms, all of our social problems can invariably be linked to somebody's mother. If Claribel Ventura, the Boston mom charged with child abuse for scalding her young son, could receive the death penalty, there are many in this social climate who would advocate for it.

But consider the O.J. Simpson case. Though he is alleged to have intentionally and brutally killed the mother of his children as well as a man he had never met and, like Susan Smith, made public appearances proclaiming his innocence, O.J. Simpson does not face the death penalty. One does not have to support capital punishment to note the double standard. Killing a mom is not as bad as a mom killing.

And then there's the question of evidence. Why is it that the details of Susan Smith's romantic history — especially her obsession with the boss' son, who appar-

ently liked Smith better without kids — are likely to be aired at trial as relevant to both her motive to kill and her unredeemable character? And yet only a limited

number of examples about O.J. Simpson's history of violence and violent threats — against his former wife, against suspected boyfriends of his former wife — have been ruled admissible at trial.

Criminal trial judges must be watchful to make sure that juries do not render verdicts based on something other than the specific charges in the case. Criminal defendants should not be adjudged guilty because of their prior bad acts or bad character.

But is it our imagination that the system seems much more protective when it comes to men's prior bad conduct than women's? While we might expect that jurors would bring to the case the cultural biases that exist outside the courthouse, judges and prosecutors, whose duty it is to embody fairness and justice, should do better.

This is the era of the Bad Mom. Whether it's lazy welfare moms or selfish working moms, all of our social problems can invariably be linked to somebody's mother.

• Letters (cont.) •

1L Reflects: All B-B-B's Really Are Not So B-B-Bad

I am a 1L. I got a B- in Crim. I got a B in Torts. I got a 59 on the Civ. Pro. midterm where the highest score was a 70 and the lowest a 50. My undergraduate GPA was 4.0. While these are not the first B's I've ever received, they're certainly the first B's to show up on any of my transcripts.

I "know" that law school grades don't always identify the best attorneys, that they only measure a very limited set of skills, and perhaps not even those very accurately. I "know" that considering the grand scheme of things, I'm feeling more hurt right now than is justified by the actual wound received.

Why, then, have I just divulged my grades to the entire RECORD-reading pop-

ulation of HLS? Writing to the RECORD is part of my very personal crusade to get over this. I am living the nightmare every well-meaning professor or upperclassman warned me about before grades came out and I want to wake up.

I suppose I should just go ahead and wax philosophical about why grades shouldn't matter. Well, OK, but if I'm really going to get over this, I'd better first face up to the ways in which grades do matter.

For starters, there's the job search. By all accounts, grades influence the hiring decision like little else can. They're a ready-made way for firms to rank prospective applicants that isn't susceptible to subjective, soft inter-

pretation. Now, everyone says that it doesn't really matter what kind of job you get for the 1L summer. But it's hard to give up the identity of being the most desirable applicant. Further, I personally plan to stay in Boston; this is a very competitive market. Maybe I won't even get a job this summer, and I've yet to hear someone tell me you don't need a job, or how to explain in an interview for a 2L summer job why no one would hire you the previous summer.

Another aspect of the significance of grades was related to the International Law 1L elective class by Prof. Weiler. He said he'd observed a terrible thing happening to a disturbing number of "the 90 percent of 1Ls who realize

they aren't at either the top or the bottom of the curve" — they disengage. They take the grades they receive after the first semester as predictive of their future performance at HLS, determine that if they're not at the top or the bottom it doesn't matter where they are, assume that they can avoid the bottom five percent with a perfunctory effort, and lose the intellectual curiosity they had in the ardor of their law school youth.

Should this happen to us, our lives at HLS may become bleak and colorless, as we go through the motions of completing graduation requirements, eschew the unique opportunities for the rewarding experience HLS affords us, and fix our sights on the day we get out of this

god-forsaken hellhole.

Things look pretty bleak, right? But here's why, in my more lucid moments, I really do believe that in spite of the blow many of our egos have suffered, grades aren't the Alpha and the Omega. HLS is only a very small piece of a great big world, after all — a world filled with ice cream cones on fine, hot summer days, shiny new shit-kicking cowboy boots, and babies taking their first halting, joyous steps. OK, so we didn't make the Review, but I'd bet there's not one person outside our circle of colleagues and family who wouldn't look askance at us if we started bitching about being at the bottom of the top. HLS students are without a doubt the blessed few, and a transcript

full of B's simply cannot change that.

Well now, don't you feel better? Right. I'm still feeling somewhat inferior, myself — I mean, maybe I'm just as fine a person as any "A" student, but why can't I be a good person and an "A" student? One of the sweetest people I know damn near maxed-out on the Civ. Pro. midterm! So I think I'll wallow in self-pity a while longer. Though I most sincerely regret ever having occasion to roll around in this mud, I'm trying to be sensible and remember what a privileged little piggy I am — after all, what appears to be your standard mudhole is really one mighty fine wallow.

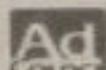
Paula Isola '97
February 26, 1995

DRUNK DRIVING DOESN'T JUST KILL DRUNK DRIVERS.

Killed 11/1/89
Killed 3/18/92
Killed 5/14/93
Killed 12/5/92
Killed 6/23/93
Killed 12/29/89
Killed 3/29/91
Killed 11/8/92
Killed 2/27/94
Killed 3/22/87
Killed 12/24/92
Killed 8/26/90
Killed 5/18/91
Killed 3/23/93

If you don't stop your friend from driving drunk, who will? Do whatever it takes.

FRIENDS DON'T LET FRIENDS DRIVE DRUNK.

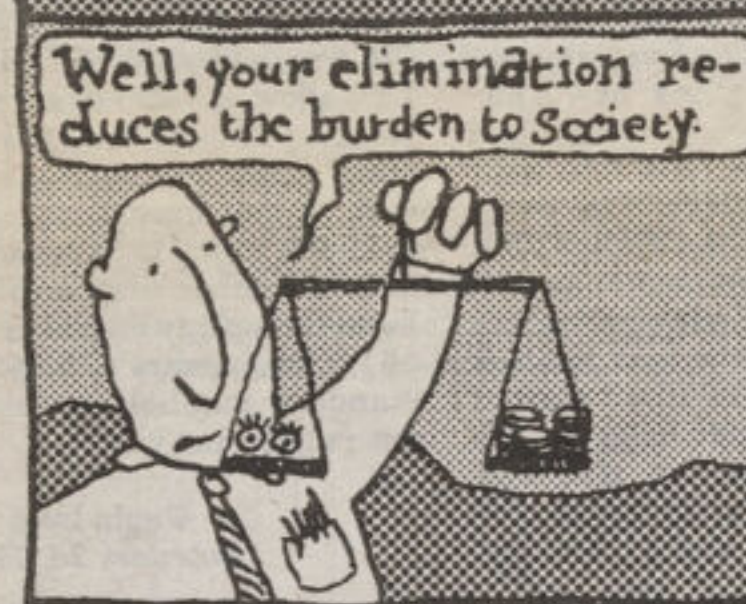


Temporary Insanity

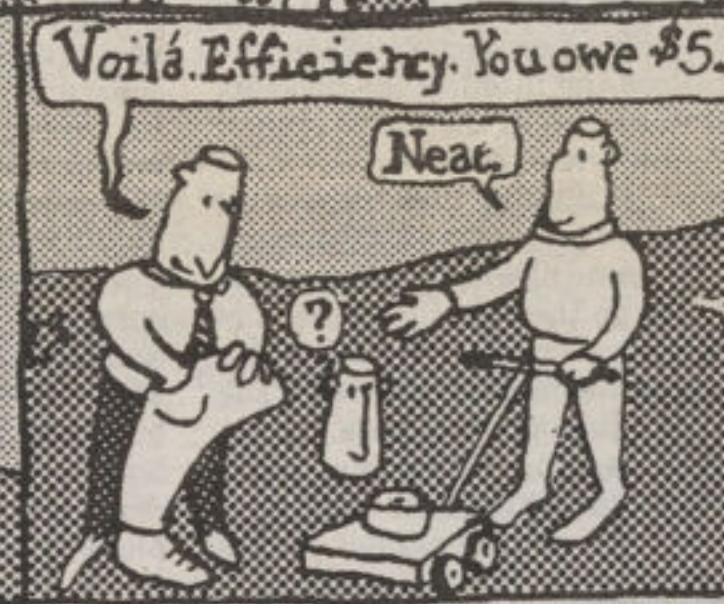
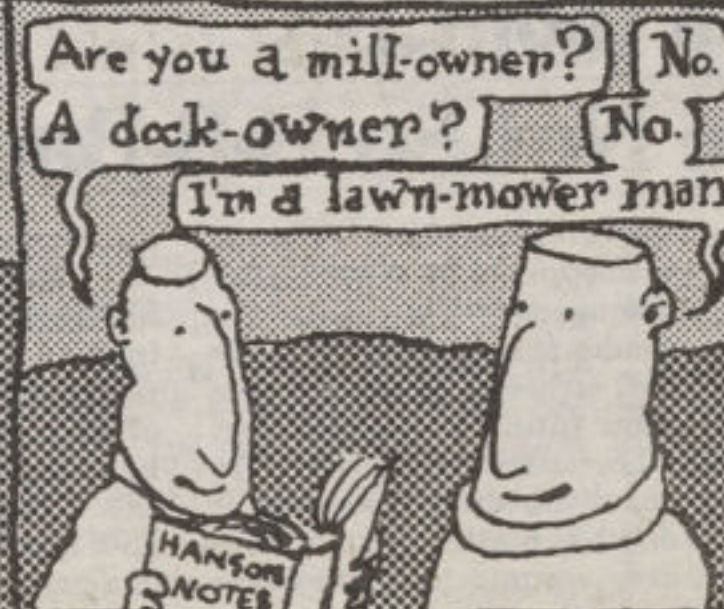
By Sheila Tuller



Civil Procedure



"Coase at Work"



M.J. Kelly



The Comic Strip Formerly Known as Prince

By Stuart Rees



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CALENDAR

Cosmic Logic

By Jeff Bucholtz

The big musical event of the week happens Saturday (3/4), as the Worcester Auditorium welcomes the two-room, eighteen-DJ, nine-hour rave known as the **Logic Trance 2 Tour**, presented by Urb Magazine (a very cool LA techno, house, and rap rag) and Germany's Logic Records (who've just decamped in NY).

The highlight should be the 1 a.m. live set by **Cosmic Baby**, one of the leaders of the Berlin techno scene. If you're stuck in a law school rut, and sick of the Square, this promises to be a unique change of pace; where else can you dance until 7 in the morning?

Get presale tickets at Beat Non-Stop (236-6534). Space prevents a complete description, so try the info line at 617-499-7744, or feel free to call me for directions or DJ info.

Tonight (3/2), Avalon (931-2000) hides the pink neon in honor of **Rancid**. Unlike Green Day, who look like the bored suburban kids they are, Rancid look like they might actually be in a riot, instead of just inciting one and then escaping. Unfortunately, their singer's British accent isn't any more convincing than Billie Joe's. Dude, you may be Rancid, but you ain't Rotten.

"Lupus took the life of Flannery O'Connor/She wrote some books and then death came upon her." Thus spake **Killdozer**, in but one example of the touching lyricism that abounds in their reliably perverse oeuvre. They're one of the most unhealthy bands around, and what's really scary, they look completely normal. Mama Kin (536-2100) may regret this booking (Sunday, 3/5).

Although **Fishbone's** bass-slapping, party time ska-punk made the world safe for Chili Peppers and fellow travelers, they've never translated their enormous influence into commercial success. Still, they can always be counted to put on a fun show, and this Tuesday, Avalon's Ground Zero.

With "darling come here/f—k me up the" for an intro, and "I'm gonna sit on your face" for a chorus (and that's the cleaner version), the **Lords of Acid's** "I Sit on Acid" was the new beat/acid house anthem of 1989. Its insistent fuzzed-out trance rhythms and even more insistent breathy sex kitten vocals moved, titillated, and offended dance floors the world over, and the Lords have been trying to cash in on the same gimmick ever since.

Voodoo U, these wacky Belgians' new disc, packs a dual punch of cheese: cheap, clichéd lite techno sounds and even cheaper, more clichéd sexploitation lyrics. The whole operation gives off the pungent stench of cold, calculated, cynical corporate plotting: "Well, I hear the kids are into techno these days, and they'll always be into sex, so let's put together some techno that'll make that goddamn atrocity they always play at basketball games sound like real music, and find some hot chick to tease the little monkeys." Problem is, 13-year-old boys can't get into clubs, so the Lords are failing to, uh, exploit their target audience.

Column of Virtues

By Debra Dickerson '95

I have irrefutable proof that HLS grades are random — mine just arrived and I actually got credit for the fall semester. Not only should I have flunked, my Secured Transactions prof should have hunted me down and slapped my face for that "Bondage: The Other Secured Transaction" essay. (I doubt he would recognize my face though.) Actually, I think what really happens is that the profs' secretaries get a print-out from the registrar correlating the ID numbers of students with paid tuition bills to students who took exams. If they match, the student gets a passing grade. Let us not forget that those who are asked to leave tend to stop paying.

As much fun as all this newfound free time has been though, I am beginning to worry about my future in the legal profession. If anybody ever actually asks me to apply any of this co-dependent, collateral ectopic stuff, I'm going to be in deep trouble. I may actually have to hire a lawyer to do my work for me. In fact, the more I look back over my record as a legal scholar, the more it occurs to me that I should perhaps be keeping my options open. In that vein, I have recently become aware that Harvard grads are making quite a name for themselves as Hollywood writers. How hard could that be? Not only that, I've found a way to make it timely. In the spirit of our new political era and the resurgent popularity of unbridled capitalism, I have begun roughing out ideas to present to the power brokers in TV land.

The game show racket ought to be the easiest to crack. Given what the IQ of their average viewer must be, I ought to be able to write for them between naps in Environmental Law. Here's my idea for a new, conservatively-correct game show: "Jeopardy of Virtues."

Alexander Trebeck (he'll have to start using his full name if he wants to keep his job; 'Alex' could be a bisexual dodge) will offer the contenders clues to answers that enhance the nation's morality and teach our youth the proper lessons. Consider:

"Alexander, I'll take 'Liberal Whines' for \$400."



"Very good. As you know players, this category requires you to match the correct fuzzy-headed liberal with the whine he, not he or she but he, made famous. For added difficulty, you must also name the year of the whine, the vintage so to speak. Ready players? Here's your clue: 'National malaise', 'War on Poverty', and 'Here, see my cute little dog Checkers.' So sorry player number one, that was a trick question. Please follow the man behind you in the jackboots."

"Now that we have your full attention remaining players, it's time for a new category. Player number two?"

"Uh, OK, Alex. I mean Alexander! I'll take 'Do As I Say, Not As I Do' for \$500."

"Excellent choice. Here is your clue: 'This patriotic American hero believes we have to get tough on all those criminals using technicalities to beat criminal rapers.'"

"Who is Oliver North?"

"That's right Mr. Whitebread and remember, sometimes, you have to go above the written law. Five hundred dollars to player number two! Pick again."

"I'll take 'Conspiracy Theories' for \$200, Alexander."

"Conspiracy Theories: Things Those Mushyheads Are Actually Right About But Which We Can Plausibly Deny.' For \$200, here is your clue: 'Roseanne, Ellen, and Grace (Under Fire).' Player number one?"

"Who are loudmouthed, unladylike wo- I mean, girls who should think less about man-bashing and more about fixing themselves up?"

"Incorrect, Mr. Whitebread. No self-respecting conservative denies that. Player number three?"

"Who are three consistent ratings queens whom we nevertheless deny the dignity of last names in stark opposition to the treatment afforded Mr. Seinfeld?"

"\$200 to player number three. Pick again."

"I'll take 'Non Sequiturs' for \$500 Alexander."

"Players, this is the category that asks you to respond with the proper change of subject when some

disadvantaged minority has you on the ropes. Ready? Here is your clue: 'Only a bigot would say something like that'. Player number two?"

"What is 'I'm not a bigot, I'm politically incorrect'?"

"Right you are. We would have also accepted 'I know you are but what am I?' Play again."

"I'll take 'Flip Flops' for \$100."

"This is the category that asks you to pinpoint what superficially appear to be fundamental conservative inconsistencies but which have in reality been ordained by God the Father Himself Amen. Here is your clue: 'It's not the outcome that matters, whiner, it's the procedure. But sometimes, it's the other way around.' Mr. Whitebread?"

"What are affirmative action and the criminal justice system?"

"Correct."

Given that opportunism is back in vogue, I have taken a page from the conservatives and, even as we speak, am positioning myself to capitalize on any hint of counterrevolution. My fallback idea for Hollywood is an updated version of Unsolved Mysteries, just in case the liberals recapture America from the infidels. I envision a show which explores the day's truly important mysteries.

The first episode would find Robert Stack investigating a true conundrum: African Americans who vote republican. He will interview Thomas Sowell and Shelby Steele as they compute the

extra time required for the police harassment attendant upon any excursion to or from their expensive neighborhoods; they will consider factors of added difficulty such as time of day, presence of white women in the vehicle, and whether any white-on-white killings have been blamed on blacks recently. Their statements of staunch support for this practice will be replayed backwards and forwards at both high and low speeds at NASA labs to expose any messages from extraterrestrials or the Beatles that might help us unravel this paradox.

With ideas like these, who needs law?

With ideas like these, who needs law?

Fenno

Fenno awoke feeling his muse. Usually, Fenno preferred to have his muse feel him, but a poet must take his inspiration as he finds it, he decided. Laying on his back, pondering the yellowed Farrah poster thumbtacked to the ceiling above his bed, he allowed the words to flow through him. The muse's creative power was amazingly effortless this morning...

Sing! Goddess, the Wrath of Achilles....

"Wait, dammit. That's been used. Try another beginning"

There once was a place called the Hark...."

"That's better. Nice rhythm, too."

Where girls in dog collars do bark.

"No way! They'd string me up for publishing that. This place has been way too anal since Gromm left. How about some simple couplets?"

Nesson, Bebchuk, Fried and Clark Pontificate without a spark.

"All right, so far. Of course, my friends will all be terribly jealous, if they're not included."

Debra Dickerson likes young mens, To catch 'em she wears her contact lens.

"Hmm. It scans okay, but the rhyme is rough."

Nobody talks to poor Greg Stohr. He hems and haws, he's such a bore.

"Okay, forget the couplet idea. Start over, and go easy on the RECORD staff, this time. If they get mad at me, they'll start ordering all vegetarian pizzas again."

Farrah, Farrah, on the ceiling,

The sight of you just sends me reeling.
Your vision seems to scintillate,
Each morning as I...

"Hey! That's kind of personal, don't you think?"

... meditate.

"Oh. Sorry. Go on."

They say we think, therefore we are,
But that don't help to pass the bar.
Instead we memorize stupid cases,
And write glib papers on Critical Races.

Students argue policies of Law & Economics,
But fail to see the world's a stage, and they are stand-up comics.
We think we're at the center, of the whole wide universe,
It's clear our grasp of reality is getting worse and worse.

Take a walk, write a book, give your mom a call.
Give yourself the gift of time, to forget about it all.
School will be here waiting, whenever you get back,
But while you are away, you might find something that you lack.

"Very nice. Anything more?"

That's all for today.

"Thanks. Now if you'll excuse me, I'm going to ... meditate."

Quote of the Week

"Everyone likes diversity so long as it falls within a narrow ideological band. We need less of this type of diversity."

— Ninth Circuit Court of Appeals Judge Alex Kozinski

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FORUM CONVENIENS

On Not Being a Butcher

By Markus Hartmann '96

RECORD Columnist

In the unlikely event a Harvard Law student wanted to pursue a career as a military lawyer, the Office of Career Services has decided in advance that she must be hysterical and in need of moral guidance. The military is prohibited from recruiting on campus at Harvard Law School. Last week I set out to find the reason for this boycott of the military. My initial inquiry was answered when I was handed a piece of HLS stationery with the attendant boilerplate affirmative action statement. It was even suggested to me that because homosexuality is like race, the ban on military recruiters is justified. Therein lies the problem.

The decision to ban the military because of the "Don't Ask Don't Tell" policy was made by a panel of appointed faculty members and students. How nice. Without the benefit of a written record, the panel decided that the tender students of the Law School need not be given the opportunity to have the military visit them at the same job fairs that recruit students into Corporate America or the world of public interest.

The Uniform Code of Military Justice (UCMJ) is federal law. The most recent policy on homosexuals was instituted by our commander-in-chief, President Bill Clinton. Despite the furor over the UCMJ, it reflects the values of more than a few states of the union. So one asks: What is the source of the morality that HLS cites as it so blatantly thumbs its nose at the federal government?

The answer is illusive. It is not found in any traditional Judeo-Christian notion of morality. The underlying assumption in the traditional religious understanding is that one's sexuality is a moral choice. Some of the more progressive religious sectors have come out against the ban, but why should their viewpoint be given primacy? The new policy on Gays in the Military ("GITM"), reflects the traditional understanding of sexuality. The military is no longer supposed to worry about disposition, just activity; yet the on-campus ban continues. The secular notion of right and wrong is reflected in the federal law. It is not too difficult to imagine the outcry had the appointees taken a similar approach to organizations that support abortion rights. Banning military recruiters is a cheap form of political protest that strokes the trendy consciences of people who probably would never dream of donning a uniform.

As a result of this selective moralizing, last year's Democratic-controlled House voted 271-126 for H.R. 375, which prohibited all Department of Defense contracts from going to those schools which prohibit or impair campus military recruiting. In a maneuver that reflects Harvard's legal philosophy, HLS artificially separated from the University so it could continue the ban (since HLS does not get any DOD funds directly). In an effort to force HLS and a handful of other law schools to comply with the federal law, Rep. Gerald Solomon, R-N.Y. raised H.R. 142 in January. The bill would prohibit any federal grant or contract from being awarded to educational institutions that do not allow the secretary of defense to have access to students on campuses or to obtain certain student information for recruiting. When HR 142 passes, the formal ban at these law schools should discontinue. As the old saying goes: "Money talks."

What motivated the "appointed ones" to decide to ban the military was not morality. It was the same intellectual sloppiness that colors HLS' blanket affirmative action statement. It is a political belief and strategy that holds whenever discrimination rears its ugly head, the affected suffer a fate "just like being black." Gen. Colin Powell gave the most eloquent response to that proposition in the GITM context when he argued that the two traits were not equivalent.

The History of "Like Being Black"

The first historical attempt at the "just like being black" strategy occurred when a group of New Orleans-area butchers challenged Louisiana law incorporating

Banning military recruiters is a cheap form of political protest that strokes the trendy consciences of people who probably would never dream of donning a uniform.

slaughterhouses. *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872). The meat-cutters who were forced to work under state restrictions invoked the 13th and 14th amendments claiming the restrictions deprived them of the opportunity to practice their trade. The butchers did not prevail, but their tactic lives on in American political discourse and here at HLS.

It is a relatively easy task to defend affirmative action for the descendants of slaves and Native Americans. Unlike the romantic saga of immigration, these two groups were in no way volunteers in this great American experiment. Additionally, both these groups suffered directly at the hands of the government for their official "subhuman" status. The federal government is trying to ease the nation's collective conscience by allowing Native Americans some autonomy on their own land. African Americans will have to wait a long time for the promised "40 acres and a mule."

The larger the affirmative action umbrella, the harder it is to justify. Do wealthy immigrants who have recently arrived here deserve affirmative action more than a poor white male? Does someone with an elite educational pedigree deserve a place because of ethnicity, while a product of the public schools does not? What about affirmative action for the well-connected? African Americans may justifiably be cynical about any abandonment of affirmative action that does not include eliminating the "relative who attended this university" section on the admissions application or the oh, so subtle "letters of recommendation."

I would not contemplate arguing the merits of every other group's entitlement to redress, only that we should be selective in our use of the "just like being black" standard.

The "appointed ones" understanding about what it is to be a minority in America is summed up by their overused refrain: "It is just like being black." The people who make that argument either are sloppy or just making a political calculation. The results rarely benefit affirmative action's intended beneficiaries. As a result of this piling on, the arguments that once persuaded white males, particularly congressmen and senators, have lost their moral force.

THE REASONABLE WOMAN

Not So Fast, Prof. Guinier!

By Linn Brady '96

RECORD Columnist



A recent New York Times article about Professor Lani Guinier's research at the University of Pennsylvania Law School begins with a story about a particularly creative technique male law students at U. Penn. have devised to get ahead. Their method of success: enrolling in courses with large numbers of women to increase their chances of getting a grade higher than "qualified." The women in the class, the theory holds, act as a "Q-buffer" because they can be easily outperformed by any male in the class. According to the New York Times and Guinier, these men were definitely "on to something" because women receive lower grades than men at U. Penn.

The article, titled "Men Found to Do Better in Law School Than Women," perhaps should have been called "Men at U. Penn. Will Stop at Nothing to Win," or "Men at U. Penn. are in Serious Need of Psychological Counseling." Guinier and the New York Times point to worn-out clichés about women to explain the disparity, but the only certain conclusion that can be drawn from the U. Penn. research is that the men

The article, titled "Men Found to Do Better in Law School Than Women," perhaps should have been called "Men at U. Penn. Will Stop at Nothing to Win."

at U. Penn. suffer from such a hyper-aggressive need to succeed that they deserve a special section in the DSM-IV manual.

The so-called "sex gap" discovered by Guinier was based on findings that men at U. Penn. were three times as likely as women to be in the top 10 percent of the class following the first year. According to the study, although the gap narrowed in the next two years, it was a gap that could not be breached because first-year grades skewed the rewards to be found later in clerkships, jobs, and law review membership. Guinier and her co-authors could not point to any one cause to explain the disparity in grades, but Guinier said a possible explanation, based on student questionnaires and interviews, is that the law school experience is "effectively hostile to women."

The fact that many women, like many men, experience feelings of alienation in their first year of law school is not a stunning news bulletin. But the fact that the article seemed to seize upon this as a possible explanation angers me. Instead of looking deeper to explore other possible answers, the same, tired, old stereotypes were dragged out and treated as a substitute for more meaningful analysis. In effect, the article seemed to say that women's emotional responses to the classroom experience prevented them from performing well. One professor in the article noted that law school "reinforced men in their ways of thinking," while women experienced "tears, agitation, staring at the floor and twisting of Kleenex." (Funny, I never noticed any women bringing boxes of tissue to Contracts. I guess the women at Harvard use their sleeves.) By contrast, the article intimated that women who were successful in law school had done well by acting unnaturally. Instead of acting like women, the article said, they imitated men by behaving aggressively, "dominating discussions and treating them as an opportunity to score points." The first explanation treats women as beings who are so governed by their emotions that they are incapable of logical thought. The second explanation effectively undermines their accomplishments by treating successful women as some kind of aberrant mutants.

A close examination of the U. Penn. law school figures does not indicate that there was a huge disparity in the distribution of law school rewards. The largest gap was that between those selected to be in the Order of the Coif: 12 percent of the men were chosen as opposed to six percent of the women. Arguably, by examining only the top 10 percent of the class, the study did not provide enough information to make the argument that a gender gap exists. Other figures would be useful to know, such as the median and mean grade point averages, and the grade distribution of women throughout the entire class.

Finally, Guinier's study was based solely on the population of one law school. Given the lengths to which certain students at U. Penn. are willing to go in a system that appears to factor academic achievement not on letter grades but merely on passing and failing, the atmosphere at U. Penn. would seem hostile to anybody.

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The Gotta Eat! Guide

NO MSG!

CCR Lobbies Despite Little Reaction

continued from CCR, page 1

Law School's policy under which one of every two appointments must come from an "underrepresented" group.

Ashar said the process was both an effort to solicit faculty views about issues and "to tell the faculty that we're still concerned." Students met with about half the faculty, Ashar said.

Professors who spoke with the students generally said the meetings were useful, though the faculty members tended to temper their enthusiasm.

"If lots of students are talking to lots of faculty about their concerns, that can't help but be a good thing," said former Dean James Vorenberg '51.

Some professors said the most useful aspect of the discussions were comments from students about specific teachers. CCR is touting three professors and one lecturer who have taught at HLS this year, including two women — Mary Becker and Pamela Karlan — and two openly gay men — William Eskridge and William Rubenstein.

"I told them that's exactly the right way to do it," Associate Dean Todd Zakoff '75 said. "If they come around and talk to you about people they've had as teachers, that gives you some additional insight into why those people should be specially valuable to the student body."

"I appreciate having the kind of input from students that appeals to my understanding of the situation rather than adgering me."

While the Law School has a policy of not publicly discussing specific candidates, it frequently extends permanent offers to visiting professors.

Student activism over faculty diversity has declined markedly over the past two years. During that time, the Law School has extended eight permanent faculty offers, six of them to white women.

While Ashar applauded the Law

School's recent hires, he attributed much of the decline in activism not to student satisfaction with progress toward diversity but to the administration's public positioning. He said the administration was avoiding controversy in part by "just not doing anything dumb."

"They've been very careful in their statements," Ashar said.

In a letter to the RECORD last week Ashar and fellow CCR Co-chair Kiya Kato '96 suggested that the administration was working to "appease" students by forming groups that "make us believe we have some say in the quality of our education." As an example, Ashar and Kato pointed to the Student Task Force on Diversity, a group of five students, including Law School Council President Willie Epps '95, that is attempting to work with the administration on hiring issues.

This week Ashar backed off his criticism of the Epps group, calling it "useful."

Ashar said the recent offers to women should not deter students from pursuing other goals, including bringing women of color, Latinos, and Asian-Americans onto the faculty. He also called for more "curricular diversity."

Ashar conceded that CCR has been largely inactive this year after having been in the forefront of the diversity fight in the past. He placed part of the blame on himself, saying, "Kiya and I haven't been able to put our energies into it the way co-chairs should."

But Ashar said he was encouraged by the number of 1Ls who have shown an interest in improving diversity. He also said the number of people who participated in Lobby Days was surprising "considering we hadn't undertaken consistent action throughout the year."

CCR's diversity drive will continue over the next several weeks as the organization will gather student signatures on petitions to the administration.

Kozinski Speaks on Judging

continued from KOZINSKI, page 1

ed that God had shown mercy to me."

Kozinski said, however, that inherent dangers exist in basing decisions on personal experience. "What if my son had died from a drug overdose? Would it be appropriate to let that influence my decision?" he asked.

According to Kozinski, the opportunity for personal experience to factor into a judicial decision is inversely related to the parity of the rule involved. "The more near-cut the rule, the firmer the precedent, the less likely I am to rely on personal experience," he said.

Thus, decisions on constitutional issues, with their amorphous nature and the lack of concrete political judgments to which one can refer, are particularly subject to such an influence, said Kozinski.

But Kozinski cautioned against examining judicial appointees' personal experiences to weed out those whose backgrounds would lead them to vote a particular way on a given issue.

"We need to worry less about how a

judge will vote in a particular case and more about whether there is something in their background that will allow them to bring a unique perspective" to the bench, Kozinski said.

Kozinski went on to challenge the calls for diversity on school faculties and the courts, saying, "Everyone likes diversity so long as it falls within a narrow ideological band. We need less of this type of diversity."

Fielding student questions after his talk, Kozinski described how he clerked for then District Court Judge Anthony Kennedy and how he himself ultimately became a federal judge.

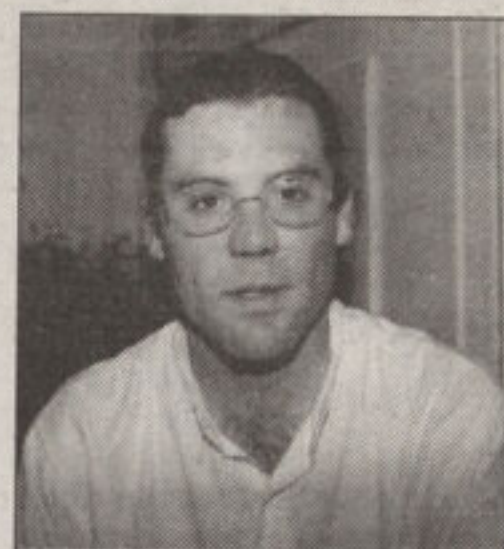
Kozinski also discussed the recently proposed cap on punitive damages, saying that while he did not disagree with the use of punitive damages as a moral sanction, he felt their use as an economic sanction dangerously changes the balance of power in litigation. "I'd have less of a problem if we exerted more of a supervisory judicial role over them than we do," he added.

The talk was sponsored by the Harvard Federalist Society.

Diversity: Not at Any Price

By Matthew Huggins '96

RECORD Columnist



I thought I would present a topic that I feel hasn't been adequately covered — or perhaps bludgeoned — in the pages of the RECORD: faculty diversity. I favor diversity, but not at any price.

I'm in favor of diversity in a situation in which all other things are equal. Diversity has independent value. For example, I think there is a real value for a white guy like me to have a black professor. Having a black man as a role model and authority figure has affected me in a positive way. This is where I part ways with the standard conservative response to diversity.

But while it has independent value, diversity does not have absolute value. I disagree with the idea of diversity-at-any-cost. Diversity costs money, and in certain circumstances it would force students to accept a kind of education we wouldn't pay for ourselves. Let me explain.

No course has a set cost, but there is a "price" reflected in the length of the waiting list. If diversity proponents are saying that we should hire a minority professor to teach a seminar in Asian Pacific Americans and the Law, as one letter to the editor suggested ["HLS Must Take Steps to Diversify", RECORD, Feb. 24, 1995], while courses like Corporations, Ad Law, and Con Law are hopelessly oversubscribed, I disagree. If instead they are saying that given two otherwise equally qualified candidates to teach corporations or con law, we should choose the more ethnically diverse candidate, I agree. I believe there are qualified minority scholars out there. But professors should be hired to bring their perspective to courses students want to take.

Any regime that forces upon us more courses we don't want to take while continuing to limit our access to courses we want and need is paternalistic and must be rejected. Let us not lose sight of the fact that it is the substance of the courses we should consider. This idea seems to get lost in the conversation. While the Left is running around, saying, "We have to hire minority professors to teach anything they want," and the Right is running around, saying "Excellence should be the only criterion," a lot of HLS students are getting shut out of Con Law, Fed Lit, Corporations and Evidence — substantive courses we need to take to become good lawyers, courses we can't all take because there aren't enough professors to teach them.

I hope it's not overreaching to say that many of us came here to become good lawyers. Part of being a good lawyer is understanding the racially diverse society in which we will practice. A huge part will be knowing the law. And it bothers me when I hear people push for a change that might expand the former at a cost to the latter. But it doesn't have to come at such a cost. The hiring of Elizabeth Warren to teach bankruptcy and Diane Ring to teach tax are great examples of bringing in faculty members from traditionally underrepresented groups to teach courses that students want and need to take. It is pos-

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sible to achieve faculty diversity within the context of filling out the substantive curriculum.

The thrust of our hiring should be in those courses most "valued" by students, according to what the "market" — as reflected imperfectly in the lengths of waiting lists for oversubscribed courses — dictates. This is where diversity would have the most impact: minority professors teaching large numbers of students. Hiring gay or black or Latino professors only to teach variations of "oppression law" ghettoizes the professors, and perpetuates stereotypes about minorities which run counter to the whole goal of faculty diversity.

Essentially, this is not a question of race at all. The student-faculty ratio here is simply shameful. But given this situation, faculty diversity is just a value that has to compete with other values in a harsh climate. Professors — minority or not — should not be hired if they are just going to teach some specialty seminar. Certainly, Harvard has the resources to hire anybody it wants. But WE don't have the room in our schedules to take courses for 4 or 5 years until we get the ones we really need. It is our time and our tuition money that frame the market for courses.

There is the problem that minority professors come, but don't stay. One argument would be that HLS just has to hire enough minorities to develop a "critical mass," which would create a friendlier atmosphere. Obviously that didn't work with Derek Bell or Susan Estrich. And it's not clear to me why we should care about these people. But, if such "critical mass" hiring can bring in professors to teach basic 1L and 2L courses which students need and want to take to become good lawyers as defined by the students, then that's fine. But the "price" for faculty diversity where students — minority students too — still will have to wait-list for courses they want, even after more faculty have been hired, is too high.

I was very hesitant to write this column, for fear of offending anyone. I find it odd that I am apprehensive about saying I'm tired of sitting in huge classes while I sit on the wait-list for other huge classes, and that I'm opposed to any system of faculty hiring — race-based or not — which doesn't immediately address this situation. Faculty diversity is a fine thing, but it is not a value which trumps all others. I'm for diversity, but not at any price.

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