



Harvard Law RECORD

America's Oldest
Law School
Newspaper

35 CENTS

Volume 100, No. 6

Cambridge 02138

Friday, March 10, 1995



Rep. Patsy Mink (D-HI) addresses an audience of about 180 at the closing keynote of the First Annual National Asian Pacific American Conference on Law and Policy. See page 3 for full story.

Visiting Profs. Offer a Glimpse of Future Faculty

By Hope Yen

James Whitman, a professor at Yale Law School, said he worried this past year when his Contracts class swelled to a whopping size of 18 students.

But when Whitman was offered a chance to be a visiting professor here to a first-year Contracts class up to 10 times that size, the former Stanford Law School professor, who holds undergraduate and law degrees from Yale, didn't take a moment's pause.

"It's Harvard," he said, in explaining why he couldn't pass up the offer.

Whitman is among a list of new visiting professors and lecturers scheduled to teach at HLS next school year, in a group that will teach courses ranging in the less typical such as human rights & indigenous peoples and environmental justice, to the more traditional fare of contracts, bankruptcy and criminal law.

These instructors' backgrounds and legal expertise possibly present the future face of HLS faculty hiring, as new professors are often selected from the pool of visiting professors. Last month, University of Pennsylvania Law Prof. Elizabeth Warren accepted a tenured position here after teaching bankruptcy law as a visiting professor last spring.

Dean Clark '72 has said he hoped to make about five appointments each year to reach a core HLS faculty of 78 by the year 2000. In particular demand are professors whose specialties lie in bankruptcy, administrative law and environmental law, and to a lesser extent, evidence and first-year subjects, among others.

Student leaders, however,

have also called for greater faculty diversity by appointing women of color, Latinos, Asian Pacific Americans and those openly gay. Clark has acknowledged the need for more women professors at the Law School.

"The people likely to be invited as permanent positions of faculty are likely the people that were here teaching in the last five years," said Associate Dean Todd Rakoff '75, explaining that those visiting professors largely represent the Law School's hiring pool. But next year's visiting professors are not necessarily the "immediate agenda" for hirings, he said.

Rakoff, along with Clark, Associate Dean Frank Sander '52 and registrar Sue Robinson decide the curriculum offerings each school year, a process which includes bringing in visiting professors and lecturers to meet course demand. Student input is received primarily by looking at class enrollments, Rakoff said.

"The most fundamental student involvement is the year-by-year student demand for courses," he said. "That sets the initial parameters against what we have to work. In addition, I and the dean and other administrators have students come to talk to us who particularly want to impress the need for one course or another."

The list of 12 professors and lecturers released by the registrar's office seems to reflect an emphasis on meeting curriculum demand, with nine of them teaching in areas where administrators have said there is a "clear" or "moderate" need for faculty appointments. The other three instructors will teach courses on human rights & indigenous peoples, artificial intelligence and

please see **FACULTY**, page 4

Council Runs New Elections for Representatives LSC Faces Challenges for Future

By Victoria Kuohung

By next Tuesday, the Law School Council will be populated with new faces after this week's supplemental elections — with 15 candidates competing for 13 positions — fill remaining representative seats on the LSC.

But the new members nevertheless will be grappling with the old question of the LSC's effectiveness, a question highlighted by the lack of candidates and the low voter turnout in last week's election.

Incoming President Robert Simmelkjaer '97, who served on the council as a 1L section representative in the fall, said that despite concerns about the council's relevance to students, he is confident that "we'll have an easy time overcoming the pettiness" that plagued the LSC last year.

"We have a strong group of people coming back as 2Ls and a strong group coming in," Simmelkjaer said. "There is going to be a renewed commitment to getting things done and

not getting at each other's throat over insignificant matters and personal feuds."

Pointing to the higher number of candidates running in the supplemental elections as an example, Simmelkjaer said he was "really excited by the first- and second-year classes, which responded in a positive way to our purpose of reviving Law School Council."

Simmelkjaer, Vice President Bob McCarter '97, and Treasurer Joe Miller '97 inherit a council legacy that, amid achievements such as holding several panels about diversity at HLS, has been publicly marked by interpersonal conflicts and recently by absenteeism that has cancelled one meeting this term and has prevented quorum in other meetings.

Acknowledging some of these difficulties, outgoing LSC President Willie Epps said he "wish[ed] my Law School Council could have made more progress in helping to improve Law School facilities."

"While we met often with [administrators], we just did not

get the tangible results we were seeking," he said, noting that LSC succeeded in "keep[ing] the Somerville Shuttle running throughout the entire school year." Prior to Epps' administration, there was debate about ending the shuttle service.

In analyzing the past year's accomplishments, Epps said, "LSC could have been much more effective if the well-meaning and hard-working representatives on council had not had to deal with a few narrow-minded obstructionists who enjoyed playing procedural games during LSC meetings."

But John Bates '95, an outgoing section representative who has served on LSC for three years, said the council's ineffectiveness was due in large part to "a lack of leadership."

"Any allegations of infighting as being the cause of a lack of business were clearly made by people who have not been involved in the council for more than one year," Bates said.

please see **LSC**, page 3

More Funding Urged for Court Translation Services

By April Rockstead

A panel organized to discuss race and ethnic bias in the justice system this week in Boston focused on inadequate funding for translation services as one of the thorniest issues raised by a recent report that confronted racial bias in Massachusetts courts.

The Massachusetts Council for Public Justice hosted the panel Monday afternoon to address problems outlined in a report released last fall by a Supreme Judicial Court Commission. The commission's report recommended several steps that could help remedy

bias in the courts, including improving translator services.

"The courts are chronically underfunded and if there's anything wrong with the interpreter system, it's that there is not enough money being put into it," said Ernest Winsor '63 of the Massachusetts Law Reform Institute.

"This comes back to the money crunch," agreed Robert A. Mulligan, chief justice of the Superior Court of Massachusetts.

As a result, Winsor said, interpreters are getting "burned out" and frustrated by a payment system that delays com-

please see **COURTS**, page 11

Sohn Evaluates Human Rights Movement

By Josh Strathman

Emeritus Prof. Louis Sohn [LL.M. '40], HLS Bemis Professor of International Law, spoke to an audience of about 75 people on Wednesday evening to commemorate the fiftieth year of the human rights movement by evaluating its history and presenting his views on its future.

Sohn's presentation was the latest in the Edward A. Smith Fellowship series, a program dedicated to featuring distinguished experts in the human rights field.

Prof. Henry Steiner '55, director of the law school's Human Rights Program, described Sohn's return as "a celebration of his many accomplishments" in the human rights field. Steiner said it was doubly appropriate to

invite Sohn in conjunction with this weekend's university-wide human rights conference because much of the growth in these programs built upon Sohn's innovative work.

Sohn emphasized the interdependence of human rights progress and economic development. He noted that although early human rights documents at the time of the U.N.'s San Francisco Charter often recognized this connection, the importance of economic factors has frequently been neglected.

To illustrate his point, Sohn described the development and fate of F.D.R.'s Four Freedoms. F.D.R. recognized that lasting protection of democracy and human freedom would require not only defeat of the current dictators, but also developments that

would undercut the lure of future "new orders." To this end, F.D.R. held out the promise of his Four Freedoms, freedoms that were intended to apply globally.

According to Sohn, the "Freedom from Want" was further defined in lists of economic rights regarded as necessary for the existence of civil liberties. These economic rights included such specifics as the rights to useful, creative employment; to a comfortable standard of living; to a good education; and to participation in a free enterprise system. During subsequent developments in human rights policy, however, such basics were often overlooked, leaving only broad citations to earlier slogans.

The Marshall Plan exempli-

please see **SOHN**, page 4



SPRING BREAK!

NASSAU from \$419

JAMAICA from \$449

CANCUN from \$419



Includes: RT airfare from Boston, 7 Night Hotel accommodations based on quad occupancy, hotel transfers. Taxes and surcharges are not included.

1384 Mass. Ave, Harvard Sq, Cambridge

617-497-1497

Going Once, Going Twice ...

Auction Items Going for a Good Cause

By David Weiss

Ever wish you could have one of your professors serve you for a change? Looking for a place to crash when you take that exotic spring break trip? Need a jazz combo or a cappella group to spice up your next party? Well, any or all of these items can be yours — if the price is right — through the Second Annual Public Interest Auction, which will be held in Austin Hall on Thursday, March 16.

The auction was founded last year to raise fellowship money for students working at summer public interest jobs.

"I thought it was a great way to make a statement that law school students are interested in public interest and to get more attention for public interest," said Shannon Liss '96, who spearheaded the effort to establish the annual function.

More than 600 people attended last year's auction, which raised over \$25,000 for public interest scholarships. And this year's organizers are hoping to top those figures.

"N.Y.U. raised \$41,000 [in their public interest auction] last week," said Kristi Kenniston '97, chair of the Publicity and Media Committee, "so now we have to compete with them."

Planning for the event began in the middle of the fall semester, when last year's organizers met with the 1Ls interested in running this year's event. Since then, the planning has been done almost exclusively by the 1L auction chairs, with advice from Liss and other former organizers.

"I thought [working exclusively with 1Ls] was great, because more 1Ls are looking for public interest jobs than 2Ls, so they are really enthusiastic," said

Stephanie Agli '97, chair of the Local Businesses Committee. "It's great to get really involved with an organization right from the beginning."

Among the innovations this year's coordinators added was Local Business Day, held in early February. Approximately 30 student volunteers were each assigned an area of Cambridge and went out and asked local businesses to donate an item or service to the auction. Requests were followed up over the past few weeks. To date, the entire process has yielded donations from over 40 area businesses, with more coming in every day. "I think it was helpful that we had people going face to face," said Agli.

The event itself will begin at 6:30 p.m. with a silent auction of approximately 150 items donated by students, professors, campus organizations, and local businesses. Participants will be able to view most of the items, and they can bid on them by placing their name and amount of their bid in an envelope by the item. "That way, no one else knows what you've bid," explained Kenniston.

The winning bids will be announced at the end of the silent auction, which will begin at 8:00 p.m. in Ames Courtroom. Due to last year's turn-out, Austin North will be used as an overflow room, and a live microphone will be available for anyone who wants to bid on items from there. Prof. Charles Ogletree '78 will be reprising his role as auctioneer, and will be joined by Prof. Carol Steiker '86.

"The glitzier stuff is in the live auction," said Kenniston, noting that the list of items currently includes two tickets to a Celtics game with Professor Dershowitz and his wife, the personal services of Law Review President David Friedman '96 for eight hours, and a weekend for two of

hiking and camping in the White Mountains.

"In terms of total gifts, it seems to be at least as many as last year," said Jessica Roth '97, chair of the Students Committee. "People have been genuinely enthusiastic, generous, and creative."

Auction organizers also combined some donations to create more intricate packages. One of the largest is a customized murder mystery party, which combines a donation of a murder mystery from a 2L, an offer to cook dinner for 20 by two 1Ls, and a happy hour donated by the Lincoln's Inn. Other packages include combined batches of cookies and combined offers of babysitting time.

None of these items is expected to go cheaply, though. "Legend has it that the dinner cooked by [Profs. Todd] Rakoff '75 and [David] Wilkins '80] went for \$600 last year," said Kenniston.

"I know things went well beyond face value last year. We'll have to see — it depends on the spirit of the people who come."

Members of the community are being encouraged to attend even if they do not think any of the items up for auction appeals to them. A Wasserstein/Andres grant will be given away as a door prize, and a mystery item will be raffled off at the live auction. "Even if people don't want to bid," said Kenniston, "it's going to be a big party, the same kind of atmosphere as last year."

Money raised at the auction will be used to fund Wasserstein/Andres grants for students working in the public interest sector this summer. Half of the money will be reserved for those students who have volunteered at least 10 hours to organizing and running the auction; the rest will go to those students still on the waiting list for those grants.

Radcliffe College presents The Radcliffe Alumnae Lecture

Linda Fairstein

Bureau chief of the Manhattan Sex Crimes Prosecution Unit and author of *Sexual Violence: Our War Against Rape*



Sexual Violence: Changing Laws, Changing Attitudes

► Tuesday, March 14, 1995
7:30 pm
Cronkhite Graduate Center
6 Ash Street
Cambridge, Massachusetts

Linda Fairstein, perhaps the foremost female prosecutor of rape and sex crimes in the country, has played an integral role in reshaping the rights of victims and the evolution of laws that define and prosecute the act of rape. As bureau chief of the Manhattan Sex Crimes Prosecution Unit (the nation's first such unit devoted exclusively to sexual offenses) since 1976, she prosecuted the Robert Chambers "Preppy Murder" and the Central Park Jogger cases, among many others. Fairstein will share the wisdom she has accumulated on the front lines in the war against rape and discuss controversial and timely issues, such as DNA identification of rapists, women as prosecutors, the false reporting of rape, acquaintance rape, juror biases, prostitutes as rape victims, and the prosecution of high-profile rape cases.

The Radcliffe Alumnae Lecture is free and open to the public. For further information, please call the Radcliffe College Alumnae Association at (617) 495-8641.

Sponsored by the Radcliffe College Alumnae Association and the Radcliffe Clubs of San Francisco and the Peninsula.



Radcliffe College
Alumnae Association
Radcliffe College
79 Brattle Street
Cambridge, MA 02138



HUMAN RIGHTS AT HARVARD



Interdisciplinary Faculty Perspectives on the Human Rights Movement

Saturday, March 11, 1995

10:00 am – 5:15 pm

Emerson Hall 105

Harvard Yard

- Why Human Rights Studies in a University 10:00 am
- United States and Global Human Rights 10:30 am – Noon
- Population Policies and Human Rights 2:00 pm – 3:30 pm
- Discrimination: Comparisons Among Gender, Race And Sexual Orientation 3:45 pm – 5:15 pm

For panelists, see posters around the Law School.

For more information, call 495-9362.

APALSA Organizes First National Law and Policy Conference

By Maria Politis

Fact one: The criminal defendant is Asian Pacific American and has decided, on counsel's advice, to plead guilty to the crime with which he has been charged. Fact two: He knows he will appear before Judge Denny Chin, an Asian Pacific American newly appointed to the federal bench in the Southern District of New York.

To Judge Chin, the first Asian Pacific American federal judge appointed outside the ninth circuit, these two facts are certainly related. "I don't think it was a coincidence [that the defendant pled guilty], he said. "I think the lawyer thought he'd get a fair shake from me in terms of sentencing." And that, he concluded along with other judges who were participants in the First Annual National Asian Pacific American Conference on Law and Policy, can make all the difference when justice is at stake.

Drawing largely from personal experiences, five of the nation's prominent Asian Pacific American federal judges discussed their views on being selected to the federal bench, their experiences with discrimination, and how their ethnicity influences their tenure as members of the federal judiciary.

The five-member panel was one of seven panels sponsored by APALSA, the Korean Law Students Association, the South Asian Association, and the Asian Student Caucus at the Kennedy School, as part of their first national annual conference, organized to help identify a national agenda for Asian Pacific American issues in the law.

While it seems axiomatic that judges who are members of minority groups will bring a unique, heightened sensitivity to

the bench, the panelists stressed the due process implications of such added sensitivity.

"Judges are supposed to be fungible, but we know that is not true," said Judge A. Wallace Tashima '61, Federal District Judge for the Central District of California. "Judges are different. We all bring our life work and life history to our job. A judge with a little more compassion and understanding, with a different viewpoint really reflects on the court as a whole. People who come have more trust in the court...they believe they have a fair shot at getting justice before the court."

"What people want is justice and due process," said Judge Thomas Tang, U.S. Circuit Judge for the Ninth Circuit. "If they feel like they've been heard, they can understand losing." As long as litigants feel like they've been dealt with fairly, then they leave the courtroom satisfied, said Tang.

As a woman of color, Judge Marilyn Dolan Go '77, U.S. Magistrate Judge for the Eastern District of New York, said, "I feel sensitive to the fact that people expect more of me...Perhaps because of my background, I am more willing to take an extra half-day or two days of conferences to settle a case, or to listen. It's not the application of the law that is different, but just a willingness to listen, to look at the merits of a claim and deal with it head on." As a result, she commented, she has been told she is in "high demand" as a judge at the "correctional center," especially among Asian Pacific American defendants.

Judge Ronald S.W. Lew, U.S. District Judge for the Central District of California, summed up the point: "The rulings can all be the same, but the delivery is different. That makes a differ-



Judges Denny Chin (S.D.N.Y.), Marilyn Dolan Go '77 (E.D.N.Y.), Ronald S.W. Lew (C.D.C.A.), Thomas Tang (9th Cir.), and A. Wallace Tashima '61 (C.D.C.A.) answer questions during APALSA's first national conference.

ence."

Just as the panelists emphasized meting out equal justice, they recounted instances where they had experienced injustice on account of their race.

Tang, who graduated from law school in 1950 and is the most senior of the panelists, remarked that he could not find a job in California upon graduation. Tashima, who graduated in 1961, "before Title VII," could not find a job in the private sector, so he accepted a government job.

In contrast, Chin, the most junior member of the panel, said that while he had experienced "stupid, silly incidents," such as being asked what kind of [karate] "belt" he had while undergoing routine

investigation for the federal bench, he did not think he had experienced discrimination to the point where it had hindered his career.

Nonetheless, discrimination continues, said Go. She advised dealing with problems as they arise, describing them as "a matter of life."

To this day, she said, "there are those male attorneys who don't think I got to my position because of my qualifications," and who "think that the degree on my wall is a result of affirmative action." As a result, she said, they give her only "borderline respect" when in chambers with her.

"But that's all right," she joked, because in the end, "I make the rulings."

New LSC Looks to Brighter Future

continued from LSC, page 1

"The amount of infighting and discord in previous years has been substantially more and yet in those previous years, substantially more work was completed by the council," he said. "So it's inaccurate to say that infighting has any impact on tangible results."

However, Spencer Levy '95, an at-large representative on the outgoing council, blamed general apathy on campus as responsible for difficulties that hampered the LSC.

"A lot of people are jumping on the bandwagon now and saying that LSC sucks," said Levy. "I don't think it was a function of the council. I think it is a function of the student body as a whole."

"People are pointing fingers in all directions but I'm pointing a finger right back at us," he added. "There is a general apathy [that exists]. I've attended a lot of the speeches and forums, and people don't show up for these things either."

But Bates disagreed with Levy's assessment, saying that "student apathy may have resulted from a lack of tangible results by the council and a lack of knowledge of what the council does or is about."

"If students had seen that council was in some ways effective in the law school community in producing results as in prior

years, there would be more student interest in the council itself," he said.

Jessica Herrera '95, however, said council's low-profile was "not really anybody's fault."

"We came off a year when we did a lot of things and then this year we got bogged down with procedural problems," she said. "Also, people were just sort of stuck about what to do this year and a lot of people who were most effective in the past got burned out this year."

"I don't think [the charge about] lack of leadership is really true."

Agreeing with Herrera's assessment that a lack of leadership was not a problem with LSC last term, Miller expressed hopes of "dispensing with some of the petty disagreements that held up council" in order to achieve concrete results, such as funding social events and "working toward realistic improvements in the facilities on campus."

"We hope to do a lot of work through the committee system of the council so that when we have our meetings, people know our agenda, know what our goals are, and know what is being accomplished," Miller said. "I think [the outgoing officers] did a good job this past year, but they were tripped up a lot of times by infighting."

"As 1Ls we'll have a lot of enthusiasm and will work just as hard. Now that we

know the pitfalls that may lie ahead, we can avoid some of them."

Simmekjaer underscored the lesson his administration has already learned from both the officer elections and the general elections. "One of our goals is to look at the 26 percent and see if we can't do something to improve the participation and the interest of the student body in LSC," said Simmekjaer.

"We've never [held supplemental elections] this way before, we're never going to do it again, but when all's said and done, we're going to have a good group of people in," he said.

Ultimately, though, no matter what administration is in place, LSC has to overcome most students' natural perception of the irrelevance of student government to their lives, said Clarke Camper '95, the outgoing vice president.

"When you get a bunch of student politicians together, they can quickly marginalize themselves," said Camper. "A body like the LSC has to fight to make students see how it can be relevant."

"It's easy for the focus to turn to the partisan bickering because that is what the student body expects," he said. "It's not college anymore, and HLS is not as much a community as we would all like it to be. And LSC, like most other organizations, gets caught up in that scenario."

Koby Antupit
PHOTOGRAPHERS

Job Photographs
Résumé & Publicity
Instant Color Passports
Creative Portraits

Harvard Square
8 John F. Kennedy St.,
Cambridge
547-7552

Chef Lee's
GOURMET CHINESE FOOD

296-298 Beacon Street
Somerville, MA 02143

WE DELIVER

\$1.50 delivery charge in
Cambridge and Somerville

876-7666

5% OFF

with student ID.

Dining room and take-out only.

"This is one of the best Chinese restaurants around."
Harvard Law RECORD

"Chinese food with originality."
Boston Globe

"Easily the best Chinese restaurant..."
The Gotta Eat! Guide

NO MSG!

STUDENT FARES

LONDON	\$125
AMSTERDAM	\$215
PARIS	\$219
FRANKFURT	\$229
MADRID	\$249
BRUSSELS	\$199
MOSCOW	\$259
ZURICH	\$235
PRAGUE	\$229
EURAIL FROM	\$198

1/2 round trips from Boston. Taxes not included. Int'l Student ID may be required. Mix & match options available. Fares subject to change.

Council Travel

HARVARD SQUARE
1384 MASS AVE.,
CAMBRIDGE

617-497-1497

BRIEFS



Second Class Day Speaker Announced

Judge Amalya L. Kearse of the Second Circuit Court of Appeals will join Judge Abner Mikva in the 1995 Class Day festivities on June 7.

Judge Kearse, who accepted the Law School's invitation on Tuesday, will make opening remarks to the graduating class before presenting the Sacks-Freund Teaching Prize.

Kearse, a 1962 graduate from the University of Michigan, was appointed to the bench in 1979 by President Carter and is a perennial nominee to the Supreme Court. A world-champion bridge player, Kearse was the first African American partner at Hughes Hubbard & Reed before becoming a judge. She was also on President Clinton's short list to be attorney general in 1992.

Law School from Hell

In "Fear and Loathing at Harvard Law School," published in the March-April 1995 edition of Harvard Magazine, Michael H. Levin '69 compares Harvard Law School in the 1960s to a boot camp or prison "designed to dissolve every badge of self-worth and remake inmates' identities in the values of the enveloping whole." His article details the terror that drove students to bizarre behavior.

For example, Levin writes, "One guy, preparing for exams in the library, kept tapping his pencil on the table. I asked him to stop; he came over and grabbed my hand and apologized over and over, about fifteen times. Then he kept doing it."

Several students even took their exams in the infirmary due to bleeding ulcers.

Levin writes that his classmates' overwhelming rage is what he remembers best from his law school days. A 3L classmate told him, "I feel totally shafted. I was really committed to this place, but I just get madder and madder. I've been getting madder for three years...There are guys here so angry they could kill someone."

Levin describes how students, tortured by seeing dorm lights that stayed on later than their own, would sleep with their lights on "to outfox the competition."

He also reports that while the few women who attended the Law School in the sixties experienced their first unbiased grading experience via anonymous testing, their treatment in class was frustratingly sexist. One day per semester was designated "Ladies Day," when only women would be subjected to professors' "sadistic" Socratic method. In 1964, Dean Griswold invited the 11 1L women to dinner and interrogated each about "how she justified displacing a man." When then-Wellesley undergraduate Hillary Rodham (now First Lady) visited the Law School, a professor told her, "We have more than enough females at the Law School already."

Levin said he decided to write the article not out of vengeance but because "I wanted to know why my Law School interlude had been so horrid and whether it had to be that way." He writes that the Law School today is a virtual paradise of "faculty and courses transformed by civil rights and feminism, consumerism, environmentalism and their resulting cascades of revolution and reform" compared with the "sea of ruthless rivalry" it used to be.

— from the Harvard Magazine

Litigation Surrounds West's Foray Into Bar Review Preparation

West's entry into the bar review business, planned for this summer, has generated a web of lawsuits.

Harcourt General, Bar/Bri's parent company, first brought suit against two of its former executives hired away by West. Harcourt alleged fraud and breach of loyalty and claimed \$18 million in damages.

West recently responded with a suit against Harcourt alleging that the suit against the former Bar/Bri employees is an attempt to obstruct West's entry into the industry, and West's lawyer said the Bar/Bri's suit was "sham litigation."

The two executives, Stanley D. Chess and Steven H. Levine, were senior vice presidents at Bar/Bri. According to Bar/Bri, the two men plotted to "bring about the collapse of [Bar/Bri's] business," in part by "eviscerate[ing] the company's pivotal New York office." Chess was based in the New York office, while Mr. Levine was the director of the office in Washington and published the annual Bar/Bri Digest.

Chess said the allegations against him and Levine are "absolutely baseless."

In its responsive lawsuit, West alleged that Harcourt made "threatening statements" to other management employees "to the effect that they would be sued if they left Harcourt to join a competitor."

— from the Wall Street Journal

Business School Will Miss Dean McArthur

After 15 years as dean of the Harvard Business School, John McArthur announced his retirement at a meeting of the school's faculty on Monday. Faculty reactions ranged from disappointment to shock, but McArthur received an extended standing ovation from the entire audience after his announcement.

Returning President of Harvard University Neil Rudenstine, long rumored to have had "personal tensions" with McArthur, read the Robert Frost poem "Two Tramps in Mud Time" while praising McArthur.

"Rudenstine and McArthur gave absolutely no impression of difficulty," a faculty member said, referring to rumors of their animosity.

McArthur would not indicate his post-retirement plans, but did say that he had ruled out joining the mafia.

— from the Harvard Crimson

Visiting Profs. Named

continued from FACULTY, page 1

Jewish law.

One area of moderate faculty need is first-year required courses, which often enroll more than 150 students. More faculty are being sought to break the courses into smaller sections of about 50.

Whitman, whose research focuses on European legal history, said he will likely have to alter his teaching approach to accommodate the larger class sizes here at Harvard.

"I've never taught a class that large before," he said. "I'll do my best to be nice and friendly."

Kenneth Klee '74, an attorney at the Los Angeles firm of Stutman, Treister and Glatt who also teaches part-time at the UCLA School of Law, said his approach will continue to be "Socratic with a good sense of humor."

Klee, who was a principal drafter of the 1978 Bankruptcy Code, was appointed as a visiting professor to teach courses in bankruptcy.

"It always has been a lifelong dream of mine to come back to Harvard and teach," he said. "It's just icing on the cake to have Elizabeth Warren on the faculty because she's the best in the field [of bankruptcy]."

The visiting professors for the next school year are:

- Vicki Been, professor of law at New York University, who will teach land use regulation and a seminar in environmental justice.

- Hideki Kanda, professor of law at the University of Tokyo, who will teach Japanese legal studies and courses on Japanese business law.

- Klee, who will teach two sections of bankruptcy and a seminar in Ch. 11 business reorganization.

- Murray Tracey Maclin, professor of law at Boston University, who will teach criminal law, criminal procedure advanced and a seminar on readings in criminal procedure.

- Peter Murray, currently a visiting professor here, who has been reappointed

for five more years. He will teach evidence and Introduction to Lawyering and the Legal Profession.

- Richard Revesz, professor of law at N.Y.U., who will teach environmental law and administrative law.

- David Weiss-Halivni, professor of religion at Columbia University, who will teach courses on Jewish law. He was appointed the Caroline Zelaznick Gruss and Joseph S. Gruss Visiting Professor in Talmudic Civil Law.

- Whitman, who will teach contracts next fall.

Visiting lecturers include:

- Russel Barsh, associate professor of Native American Studies at the University of Lethbridge in Alberta, Canada, who will teach human rights & indigenous peoples.

- John Pound, associate professor of public policy at the Kennedy School, who will teach corporate finance, corporate governance and corporate control. Pound was a lecturer here this past fall.

- Edwina Rissland, professor of computer science at the University of Massachusetts at Amherst, who will teach artificial intelligence.

- Kathy Smalley, of the Houston firm Trammel and Crow, who will teach real estate planning.

There are additional visiting lecturers planned for next year who will be invited in the next several weeks, Robinson said.

Barsh's course on human rights & indigenous peoples will bring to the Law School an intimate knowledge of the legal problems facing indigenous peoples and the ways the international system can be used to remedy them, said Prof. Henry Steiner, director of the Law School's Human Rights Program.

Barsh has represented a number of Native American tribes in the Northwest in litigation and is active in the United Nations Human Rights Subcommittee and other UN organs, including helping to put forth the pending UN Declaration on Rights of Indigenous Peoples.

"He's a prolific scholar and an excellent, energetic speaker," Steiner said.

Sohn Speaks at HLS

continued from SOHN, page 1

fied the successful coupling of economic and human rights policies, claimed Sohn. It was only by reconstructing the economies of war-ravaged Europe that political instabilities and their attendant erosion of human rights were averted. Sohn noted, however, that this recognition of the role of economics was not the norm: The promised benefits of the plan to the American economy were necessary to overcome the reticence of business interests to support such market intervention.

Pointing to the interdependence of economic and human rights acknowledged in both the Constitution and the Declaration of Independence, Sohn remarked on the irony of the United States' apparent reluctance formally to recognize these economic

rights as integral to broader human rights.

In looking to the future, Sohn stressed the importance of policies that would follow the spirit of the Marshall Plan. He cited an unstable Russia as a major potential threat to human rights. To prevent a rightward shift in Russia's leadership and a deterioration in its civil rights, Sohn advocated industrial restructuring supported by the West and Japan. This restructuring would involve the employment of the developed world's industrial capacity to satisfy Russia's development needs rather than simply channeling funds into a bureaucracy.

Although he mentioned Russia as the single most pressing development, Sohn advocated a global application of this restructuring strategy to address human rights abuses world-wide.

Jammin' the Night Away

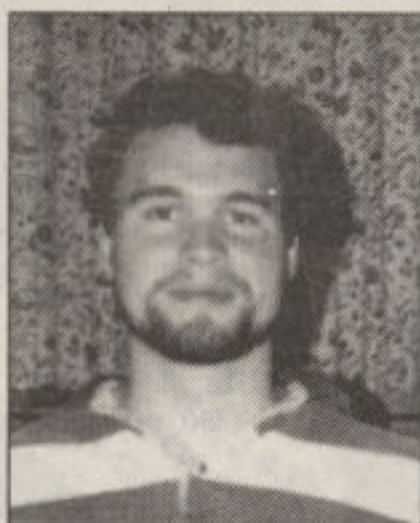


RECORD Photo/David Weiss

Byron Stiers '96, Chris Yeh '96, and Stephen Lapoint have been one of the many groups to play at TGIF, run by the Dormitory and Student Affairs Council. TGIF runs every Friday from 3-6 p.m. in the Backbench Pub and offers free beer, soda and snacks, as well as an open mike.

GYM RAT

Guess the Final Four, Win a Stamp!



By David Koontz '96

Sports Editor

CAN you name the Lethal Weapon 3 (not the movie)? Who gave Phi Slamma Jamma a taste of their own medicine, dunking at the last second to give North Carolina State the NCAA Championship? Who was the only man to hold Michael Jordan under 20 points? If you know the answers to these questions, you are more than ready to enter the Gym Rat's Final Four contest. The seedings will be announced this Sunday, March 12, and the deadline for your predictions is tip-off of the first NCAA Tournament game, which sources tell me will be the following Thursday. Tell me who you think will be in the Final Four, and for tie-breaking purposes, also predict the scores of the Final Four games and the Championship game. Just put your entry in my 2L Hark box, or if you're an alumnus and you trust that wacky government monopoly called the Postal Service, mail your entry to the RECORD.

Of course, every contest has a Grand Prize. I've given this a lot of thought, and I've decided that the winner will receive a genuine Flintstones ink stamp. The stamp bears a likeness of Fred and reads "Hollyrock." Now, I find it very hard to part with this. It was either the stamp or Super Bowl tickets, so there should be no complaints. Next week I'll have my own predictions, but in the meantime, no calling the Psychic Friends Hotline, although you are free to consult a Magic Eight Ball if you have one.

In other matters, my dad sent me some press clippings from my hometown paper, the Atlanta Journal and Constitution. On the back of an article cleverly titled "Hawks Travel Road to Success, Drop Bullets," was a tiny miracle of an article titled "Psychology Helps Explain How Fans React to Sports." Staff writer Bill Hendrick reported on psychologists' use of the terms BIRGer and CORFer to describe sports fans. You see, BIRG stands for Bask in Reflected Glory, which is what you're doing every time you turn to a stranger at a ballgame and high five. CORF stands for Cut Off Reflected Failure, which is what you're doing when you call Mike Greenwell a bum for not being Yaz, or when you call Yaz a bum for not being Ted Williams. "The lack of a regular season might deprive the citizens of Atlanta the opportunity to bask in the reflected glory of a powerful winning team," said Dr. Bob Cialdini of Arizona State University. Are there any plaintiffs' lawyers listening? Personally, I think the whole phenomenon can be readily explained as PERGers — Pathetic Excuses for Research Grants.

The papers aren't nearly as bad as television commercials. By now, sports fans know they've been targeted as some weird segment of the market. Kind of dumb, very patriotic, and born with the insatiable desire to drive a truck through a birthday cake. A certain Lube company offers Bad Weather Tips. At least they tell you they're bad up front. But in the false advertising department, there is actually a deodorant out there advertising 110 percent protection. Another brand of deodorant shows some guy after a tough ten minutes at the gym urging me to take the challenge because, after all, he did. Well, maybe if he triple-dog-dared me. There's just something wrong with daring the public to try your products. Witness a certain fast food chain, which apparently fries its chicken in Kentucky and then ships it worldwide, challenging sports viewers simply to eat its food. And finally there are the interminable Sea Trek (or is it Star Quest?) ads with which Sunday sports fans are all too familiar. This past Sunday, I was supposed to be sucked in by the line, "We can't take on a god, captain." Really.

Well, folks, I'll be back on the HLS intramural hoops beat with a vengeance next week. The Gym Rat will have an exclusive interview with Dave Levitt '96 in the aftermath of the March 9 Grudge Match between (Squiggly Unpronounceable Symbol) The Team Formerly Known as Levitt and Levitt's own team, Gooch's 2-Headed Johnson. In the meantime, here's some expert trash talk from Tim "Ouch" Elliott '96, who responded to the Gooch team's contention that TFKAL is a team loaded with hackers: "Rob Musselwhite [96] talks a good game," Tim admitted. "But on the court, he plays like Shawn Bradley trapped in Dave Aronberg's body." And those trivia answers? Brian Oliver, Dennis Scott, and Kenny Anderson of Georgia Tech; Lorenzo Charles; Dean Smith.

Intramural Basketball Standings as of Sunday, March 5

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

Compiled by Doug Cooperberg

FOOD - O - RAMA

Beautiful People, Beautiful Food



By Ted Cohen '95 and Jonathan Goldstein '95

Restaurant Guys

So we've all run the **Sonsie** gauntlet by now, right? (327 Newbury Street, Boston; 351-2500) You know the scene: You get out of the Number One bus in your sweat pants and high tops, ready for a stroll down Newbury Street. It's a beautiful day, and you feel relaxed, at ease among the B.U. freshman, until ... suddenly there are eyes burning into you. And these are *fancy* eyes. Don't look now, but there are 50 fashion plates sitting in the window of Sonsie, enjoying the parade of the woefully underdressed.

But what you didn't know — or perhaps, like us, were too intimidated to learn — is that Sonsie is an extremely comfortable and welcoming space. The candles and Gaudi-esque chandeliers provide the best dim-but-not-too-dim lighting we've seen in a long time (Boston restaurateurs, take note!). The bar is stocked with nice-looking people. The banquets are soft and wide. In short, it's easy to be seduced by the Sonsie *thang*.

But Sonsie is no mere tease: These appetizers deliver. Take, for instance, the skillet roast of mussels (\$9.00): a big heap of mollusks, sautéed onions, thin disks of carrot, and fried parsley in a simple and excellent broth of brine and chardonnay; sprigs of fresh oregano poke out of the skillet. But the kicker here is the accompanying sauce, a reduction of cream flavored with thyme and tarragon. It is sweet, smoky, and addictive. Ditto the steamed Korean beef dumplings (\$6.75), which come over a mound of new-wave kimchi: Here the sharp tang of vinegar cuts the richness of the meat, paving the way for a hot finish. We weren't expecting this dish to be anything special, but it certainly was. And a salad of grilled leeks, warm brie, and spiced walnuts in an excellent vinaigrette (\$7.00) was inspired as well. The leeks and brie are a strong match; the sharply contrasting texture of the walnuts brings them together nicely, and the concentrated dusting of spices — we tasted nutmeg, perhaps a little cinnamon — is a great way to season the entire dish. Although we didn't try them, a number of tables seemed to get the Vietnamese spring rolls (\$6.50), which are served up right: with lettuce leaves and sprigs of mint for wrapping.

Before you can catch your breath, the waiter is wheeling out your main courses. Following on the heels of Sonsie's shockingly well-executed starters, the entrees are

So, the next time you find yourself strolling past those well groomed people-watchers who frequent Sonsie's bar and sidewalk, suck in your gut, check your fly, and head for a table.

only slightly less inspired. A big beet risotto (rapidly becoming a standard in Boston) with smoke-grilled quail and wilted greens (\$12.75) arrives in a skillet. We were not impressed. Though the quail was tender and tasty, the risotto itself lacked the pungent taste of beets and was undercooked: too al dente for its own good. Moreover, the wine-infused sauce was bland and soupy. Far better prepared was a market fish special of perfectly steamed monkfish crusted with black peppercorns and buried beneath an abstract sculpture of skewered rock shrimp, batter-fried zucchini, scallops, mussels, green beans and a tangle of fried shoelace-like sweet potatoes. This is a dish that ought to come with an instruction manual. (When we asked earlier, as we often do, if the chef could give us smaller sized samples of certain dishes, he refused on the grounds that presentation was too important. He was right to do so. Some of these dishes would be equally at home in one of the galleries down the street.) If we had a complaint about the monkfish, it was that the dish failed to come together as a whole, and while the parts were all nice, the sum didn't quite add up.

Not so for a plate of braised beef cheeks, served bistro style in a veritable puddle of a super-rich beef reduction (\$16). Beef cheeks do indeed come from the steer's head and are one of the softest, fattiest, and most delicious cuts of meat. If there were a beef dessert, this would be it. The pile of mashed potatoes that accompanies the meat was disappointing: They'd been puréed well past the point of having any chunkiness left, and they lacked any particular character. Still, it is a good entree.

All of Sonsie's baked goods are baked on premises. The crusty white bread we got at the start of the meal was excellent. The desserts were even better. Of the six or seven choices (all \$6.50), we opted for a three-color chocolate dacquoise, a crumbly cake composed of layers of rich chocolate: dark, milk and white, and served on a light chocolate sauce. Just as good, if not quite as rich, was a honey-poached pear that comes with pear ice sandwiched between two caramelized sugar wafers: a satisfying finisher, especially with Sonsie's rich and bitter espresso to cut the sweetness. You'd be well advised to stop in just for dessert after a fruitless night of bar hopping.

So, the next time you find yourself strolling past those well groomed people-watchers who frequent Sonsie's bar and sidewalk, suck in your gut, check your fly, and head for a table. Good food that way lies.

RATING: ★★ 1/2

What the stars mean:

(no stars)	poor-satisfactory
★	good
★★	very good
★★★	excellent
★★★★	extraordinary

Harvard Law RECORD

Founded in 1946

Victoria Kuohung
Editor-In-Chief

David Weiss
Publisher

Why Are White People So Angry?

They used to ask the same question about Malcolm. And Martin. Now I'm asking you.

Why are whites so angry?

Angry about affirmative action. Angry about the "race box" on law school applications. Angry about making diversity a priority on campus and in the real world. Angry about BLSA's [former] membership policy. In essence, many whites seem angry because some black people are finally, in very small ways, being reimbursed for the stripping of their culture, slaughter of their ancestors, slavery of their people and segregation of their race. The fact that a few blacks have overcome the systematic injustice which has left most people of color permanent members of America's economic underclass doesn't mean racism is not a hurdle to success.

Whites' anger today is similar to the fear Reconstruction-era whites felt when newly-freed slaves began to vote. Then, they just disenfranchised blacks outright. It is like the anger that prompted Southern whites to force a repeal of the federal "40 Acres and a Mule" offer, in which ex-slaves would have received a portion of plantation land on which to begin a new life. (Maybe if that deal had been kept, we wouldn't have the problems we're having today.) Blacks often have analogized our history to a race in which black athletes are forced to start a mile behind whites. Simply because Carl Lewis and Jackie Joyner-Kersey finish at the top, it doesn't represent a win for the entire black race. Many white students do not recognize the multitudes who have been left behind because their experiences with black people are limited to the privileged few who make it to Harvard.

Whites should stop griping. Do not for one moment think that someone white was left off this year's admit list because someone black got in on an affirmative action plan. Instead of keeping statistics on the numbers of blacks in so-called affirmative action programs, try counting the number of blacks who have been denied opportunities because of their race.

So often blacks hear whites explain that they should not be punished for black suffering, since they did not own slaves. On an individual level this proposition is still invalid. Why should the individual black person suffer alone? As long as you, your parents and your family have capitalized on America's racist past, you are enjoying the privileges, and blacks are suffering from the disadvantages. If you have not worked actively to eradicate racism and policies of inequality in this society, you are in debt.

This doesn't mean blacks should sit around and reap the benefits. Black people did not make it out of slavery, Jim Crow and the Civil Rights Movement by sitting around. We must use our skills and intelligence to capitalize on what little America finally has to offer us.

Either the Supreme Court or Congress, whichever group decides it wants to go first, will soon eliminate affirmative action. I assume many who read this - black and white - will be delighted. Some blacks will be relieved that they no longer will be perceived as inferior, surviving only with the help of the "black crutch." Some whites will think an undeserved benefit has been eliminated, and that everyone will be on a level playing field. Despite the elimination of affirmative action, a few blacks will continue to prevail.

And then white people will find other reasons to be angry with black people. History does repeat itself.

— Campbell

Staff

EXECUTIVE EDITOR.....	Katrina Campbell
SENIOR EDITORS.....	Jim Lank, Maria Politis, April Rockstead
COPY EDITOR.....	Colin Meeder
EDITORS.....	Debra Dickerson, Hope Yen
BOOK REVIEW EDITOR.....	Mike Fischer
INTERNATIONAL EDITOR.....	Debbie Solomon
MUSIC EDITOR.....	Jeff Bucholtz
RESTAURANT GUYS.....	Ted Cohen, Jonathan Goldstein
SPORTS EDITOR.....	David Koontz
CONTRIBUTORS.....	Christopher Cuniffe, Terri Gerstein, Calvin Gladney, Josh Sternoff
CARTOONISTS.....	Brian Cheng, Brad Hoylman Matt Kelly, Stuart Rees, Sheila Tuller
GENERAL MANAGER.....	David Clark
ADVERTISING MANAGER.....	David Patton
EDITOR EMERITUS.....	Greg Stohr

Printing By The Harvard Crimson

Editorial/Letters Policy

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

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

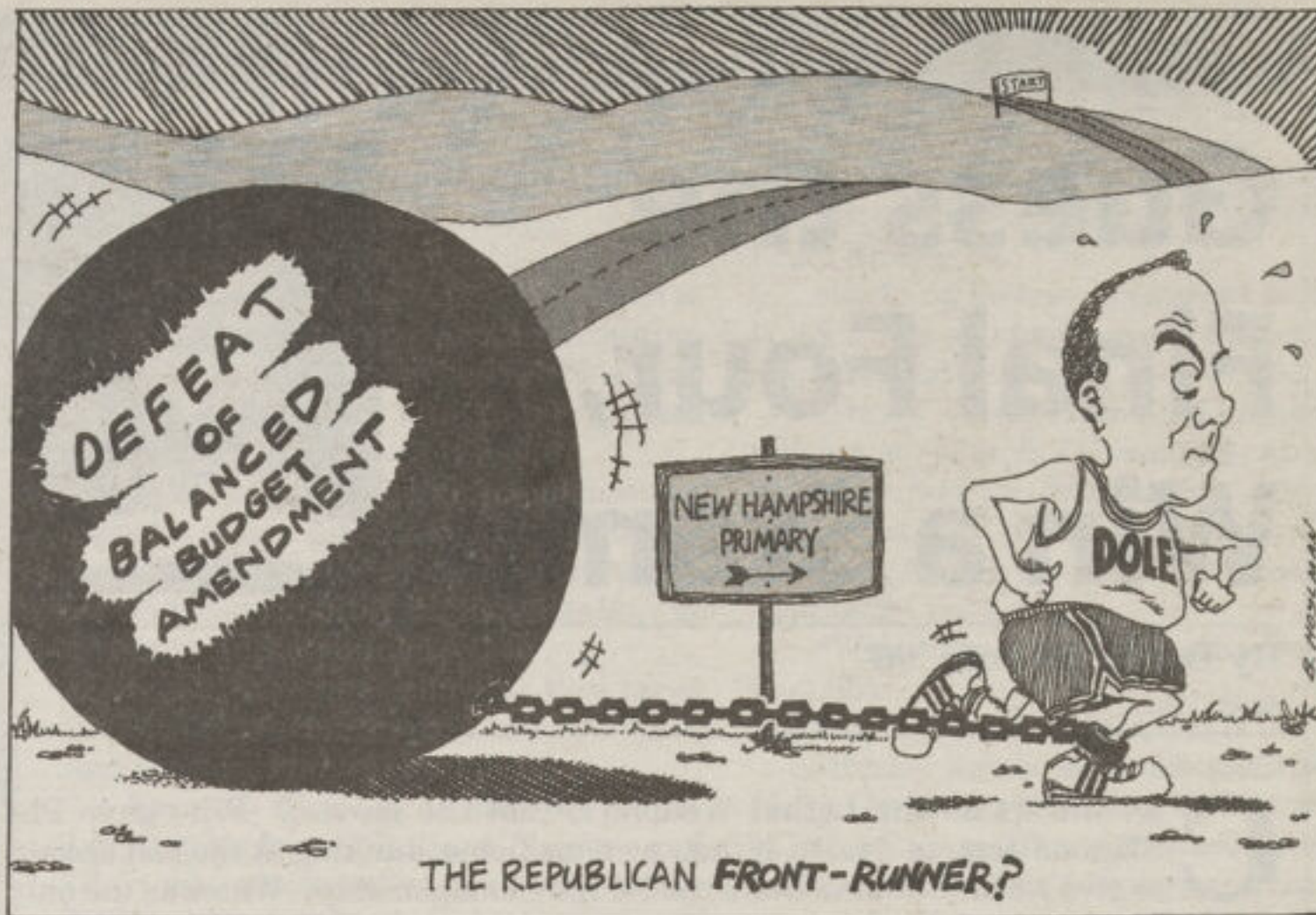
Submissions may be sent to The RECORD at the above noted address, dropped in the RECORD box located in Harkness Commons; or left in the 2L Hark box of Victoria Kuohung. All copy must be typed, double-spaced, and submitted on paper and on a computer disk (Macintosh or IBM). The RECORD reads and appreciates every letter we receive; we reserve the right to edit letters for space as necessary. We will return your disks. Off-campus subscriptions are available. Subscription price: \$30.00 year mailed; \$35.00 year mailed outside U.S. Individual copies: 35 cents at newsstands, 50 cents at the Law School, \$1.00 mailed, \$2.50 for back issues and reprints. Second-class postage paid at Boston, MA and additional mailing offices.

© 1995 by the Harvard Law RECORD Corporation and by the contributors.

THE RECORD IS COMMITTED TO EQUALITY AND DIVERSITY. WE STRIVE TO PROVIDE A FORUM FOR THE FREE EXCHANGE OF IDEAS. AS A RESULT, THE OPINIONS REFLECTED IN ARTICLES, EDITORIALS, AND CARTOONS ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THE OPINIONS OF THE RECORD.

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

—First Amendment, US Constitution



• Letters •

Be Informed Before Criticizing Affirmative Action

I am writing in response to Patrick J. Lannon's letter decrying Harvard's affirmative action policy (RECORD, March 3, 1995). Lannon's diatribe, while earnest, ultimately collapses under the weight of its misconceptions and flawed premises. Lannon chose to address two main issues: 1) whether race is a good indication of obstacles overcome by individuals, and 2) whether "skin color" should be used as a basis for diversity. Neither issue was addressed adequately.

When discussing race as a social obstacle, Lannon belittles the impact of racial discrimination that pervades this country even in these enlightened times. He casually dismisses the notions that minorities must deal with the "emotional angst" of living in a racist society and that they face "insuperable overt racism" in education and the workplace. These notions, according to Lannon, are "untenable" and "questionable." Regarding the "emotional angst" point, Lannon cuts down his own position since his assumption begs the question: How can anyone other than members of a group know if they suffer emotionally or not? By definitively asserting such angst to be illusory, Lannon presumes to speak on the subjective experiences of others when he cannot possibly know what those experiences are. One can only conclude that the best way to grasp

the subjective experiences of a certain group is to make sure members of that group are around to communicate their perspectives to the rest of us. Lannon does, albeit inadvertently, make a valid objective point that overt racism isn't "insuperable." It obviously can't be, since people of color are overcoming it every day.

As Lannon turns to the issue of race as a basis for diversity, his argument unravels to the point of illogic. He lists factors such as schooling, religion, culture, geographic origin, and economic class as valid indications of diversity, but claims race, "without more, shows nothing." Well, who is saying to look at race alone? As articulated by Dean Curl at last month's panel on diversity, this school's policy is to consider race as one of a number of factors (presumably including the other items on Lannon's list). The exclusion of race as a factor in diversity seems completely arbitrary and devoid of reason. Why does, say, one's home state and not one's race constitute a basis for diversity? Does Lannon really believe a black person from Minnesota shares a commonality of experience with other Minnesotans but not with other black people? Furthermore, Lannon's use of the term "culture" works to undermine his exclusion of race as a valid factor. What is culture if not an expression of one's racial and/or ethnic

background? Some anthropologists spend their entire careers trying to extricate the concepts of race, ethnicity, and culture. Lannon's attempt to separate race from culture would be impressive if it weren't so facile.

Lannon, and those who share his views, wonder when affirmative action will no longer be necessary. Well, the object of the policy is not diversity in and of itself but, rather, a greater understanding between diverse members of our community. It serves no purpose to declare the pointlessness of racial diversity without first exploring the opportunity to learn from the various groups that are represented throughout the student body. When will affirmative action no longer be necessary? Probably around the time individuals like Lannon stop pontificating on the irrelevance of race while they are surrounded by people whose lives have been affected, even ravaged, by racism. If we truly hope to eliminate racial bias, we must first acknowledge its existence and confront its evils.

I do not begrudge Lannon his right to express an opinion. I simply feel that, if one is going to form opinions about the obstacles others have faced in a racially conscious society, those opinions should be of the informed variety.

Jon-Peter Kelly '97
March 3, 1995

Houston Fellowship Not De-funded

I notice in the letter from Kiya Kato '96 and Sameer Ashar '96 in the February 24, 1995 issue of the RECORD a reference to the one-year Houston Fellowship being defunded. This is not the case. The Harvard Law School is offering for 1995-1996 two fellowships designed for law graduates who are interested in careers in law teaching and who will "enhance the diversi-

ty of the profession." One of these fellowships is in honor of Charles Hamilton Houston, the distinguished African American lawyer and teacher, and the other is named in honor of Reginald Lewis, an African-American who graduated from here in 1968 and who served as CEO of TLC Beatrice Foods International (and after whom the Lewis Building is named). Each fel-

lowship is in the amount of \$30,000. The Houston Fellowship was previously administered by the Graduate Committee and was for two years (leading to an LL.M.). That fellowship is now non-degree and is administered by the Lewis Committee, which I chair.

Randall Kennedy
February 27, 1995

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the RECORD as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

Each alumnus/a receiving a RECORD subscription through the Harvard Law School Association should be on notice that \$5.00 of H.L.S.A. annual dues are used to purchase the RECORD subscription that he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began on July 1, 1994 and ends on June 30, 1995 purchase a subscription that begins in January 1995 and expires in December 1995.

Return Address:
Harvard Law School Assn.
Harvard Law School
Cambridge, MA 02138

SECOND CLASS POSTAGE PAID AT BOSTON, MA AND ADDITIONAL OFFICES.

Exxon's Campaign To Undermine Jury Award

By Arthur R. Miller '58



In the last several weeks, the Exxon Corp. has attempted to turn on its head the \$5 billion punitive damage verdict imposed on it last September for derelict and reckless behavior with regard to the 1989 Exxon Valdez oil spill.

Distressed with the outcome of the trial it requested, Exxon has worked hard to shift the debate — and the blame — entirely. Working through many channels, Exxon has attempted to create the appearance that the jury's conduct was more outrageous than its own and that the concept of punitive damages should be given closer scrutiny than its own actions after the spill.

Having been associated with the litigation, I cannot leave these impressions unaddressed. After all, Exxon put a captain who it knew was a relapsed alcoholic back at the helm of a huge supertanker brimming with toxic crude oil in the treacherous but formerly pristine waters of Prince William Sound.

As much as it has tried, Exxon simply cannot ten-

Arthur R. Miller '58 is the Bruce Bromley Professor of Law at Harvard Law School. Reprinted with permission from the author.

ably argue that it received anything less than an exceedingly fair trial. Judge H. Russel Holland excluded all evidence that he felt was unfairly prejudicial. And, due in large part to Holland's exhaustive instructions, the jurors appear to have put emotion aside and relied solely on the evidence presented and the law as explained to them.

As soon as the \$5 billion punitive damage decision by the jury was announced, Exxon immediately started questioning the jury's capability. Never mind that Exxon lauded the jury during an earlier phase of the trial, when the plaintiffs claimed Exxon owed them close to \$900 million in compensatory damages. At that time, however, the jury looked at all the evidence and came up with its own figure: just \$287 million — a third of what originally was claimed. Exxon's lead counsel commended the jury for the "obvious care you took to decide the case on the facts presented in his courtroom and under the law given to you."

The Valdez trial was admittedly large and complex. But the jury obviously understood matters well enough to reduce the plaintiffs' compensatory claims to just a third of what they were asking. In doing so, they established themselves as the very antithesis of the runaway, emotional jury portrayed by Exxon.

One reason the jury was able to comprehend this large and complex matter was because of the way the trial was so carefully structured. Exxon, in fact, benefited from and helped create that structure.

First, the judge imposed a novel mandatory punitive

damages class at Exxon's request. This highly unusual procedural mechanism forced anyone with a claim against Exxon to take part in this one trial. If the punitive damages awarded are ultimately upheld, they will be the only punitive damages Exxon ever has to pay with regard to this incident.

Furthermore, extremely tight constraints were placed on the plaintiffs, who were not permitted to present any emotional or inflammatory appeals from fishermen, natives, or anyone else directly affected by the spill. Exxon, on the other hand, was allowed to sketch a "human face" through the personal testimony of Exxon executives, which even included discussion of their wives' emotional reactions.

Finally, the judge gave the jury exhaustive instructions designed to provide Exxon every benefit of the doubt.

Exxon should remember that the citizen jury is the bedrock of our justice system. It should also note that the citizen jury's ability to award punitive damages when a defendant's conduct recklessly endangers others has — for centuries — provided a mechanism to deter similar conduct by others. Exxon does itself and juries everywhere a disservice with its current campaign to undermine the jury's authority.

Of course, as we debate this issue in the press, it is easy to forget that the matter already has been decided in its proper forum, the courtroom. A jury determined that Exxon acted recklessly and deserved to be punished. That verdict should stand.

• Letters (cont.) •

Election Improprieties Reflect Lack of LSC Leadership

Two weeks ago, the Law School Council held officer elections, drawing only 26 percent of the student body. Some credit this low turnout to student apathy and a rushed election. I believe it is more reflective of the failure of the council to produce any tangible results this year. Unfortunately, problems arose with these elections, and these problems, combined with the failure of the council to produce student benefits, reflect a lack of leadership on this past year's council. Hopefully, this year's council can pick up where the council under Enu Mainigi '94, left off — providing tangible results that students could really appreciate.

Several improprieties occurred during the officer elections. The election guidelines require the appointment of an independent election commissioner, to provide for a nonpartisan, neutral arbiter and to encourage an impartial election. Instead, the election was run by the current vice-president, and one "ticket" received the endorsement of his previous running-mate, the current council president. In addition, candidates names were neither listed alphabetically nor randomly, but by ticket, with the endorsed ticket being placed first on the ballot. When the votes were tallied, the vote totals reflected the order of placement on the ballot.

The election guidelines also require that the LSC president hold a meeting with all candidates, where they receive a copy of the guidelines. This did not occur, resulting in various guidelines violations, the most apparent of which was campaigning in close proximity to the polling area. In addition, the guidelines suggest a presidential debate, to allow the electorate to hear the candidates' platforms and allow the candidates to escape a mere popularity contest. Unfortunately, no one organized such a debate. It would have given students the opportunity to hear what the candidates had accomplished (or not accomplished) on the council for the last year, and their ideas and future goals for the council. Finally, at least one student who was working the polls has been telling classmates who to vote for.

"Council for the Council" March 3, 1995) stated that political infighting "has divided the Council and hampered

its operations this past year." This statement was clearly made by someone who was neither a member of this year's council, nor any previous year's council. As a member of the council for three years, the amount of infighting is substantially less than in the previous two years, and possibly the past five. In addition, I

What ever happened to the promises made by this past year's leadership?

believe few council members would call this year's council "divided." Above all, the "infighting" that occurs at general council meetings has not in any way precluded legislation from coming forward or hampered operation. As experienced council members know, substantially all of the work occurs outside council meetings.

In my first two years on council, amid serious division and controversy, the council completed or substantially investigated the following projects: pass/fail surveys and legislation, Hemenway improvements, a new LSC Constitution, election reform and new guidelines, expanded library printing, dental plan investigation, blood drives, the ATM, new computer facilities, meetings for student organization leaders, the Hark change machine, Hark food improvements, free e-mail, improved campus lighting, Somerville Shuttle, course advisement meetings, a welcome party with the dean's office, student meetings for the Somerville Shuttle and the dog policy, and the used book sale. The council also provided the impetus for last spring's party and created a mentoring program for first-year students.

The past year has seen very few accomplishments. Although there was an investigation into student funding awards, the appointment of a student diversity board, a blood drive, last spring's party, an investigation into changing

the interviewing dates, a probe of registration complaints, a day with the dean in the Hark, and a meeting for student leaders, in many respects, the council has regressed. In the past year, we have seen the end of the used book sale, the failure to appoint all of the student positions on faculty-student committees, the demise of the first-year mentoring program, a failure to guide first-year section representatives in their duties, and a failure to adequately press pass/fail with the dean and faculty.

What ever happened to the promises made by this past year's leadership? Hemenway improvements? Seinfeld night? Lunch with the dean in the Hark? A night-time walk to Somerville with the dean? "Improving the quality of life?" "More LSC-sponsored social events?" "Administrative services improvements?" The "pledge to sponsor a DSAC-hosted TGIF that envisions administrators and faculty rubbing shoulders with students at the Back Bench Pub?" "Expanding menu selection at the Harkbox Cafe?"

What the council needed this year, like every other year, was strong leadership. Someone who would take control, exert pressure on committee chairs and other council members to get work done and present business to the council. What we got was leadership that was inactive in regards to the daily workings of the council, and in some situations, did not even fully perform their duties. We saw meetings that started late, and some that had to be canceled for lack of quorum. The main concerns of this year's council leadership appeared to be faculty diversity and whether students who post statements are cowards if they refuse to sign those statements. The lone exception was Tania Dominguez, Treasurer, who performed her duties far beyond what was expected or had previously been done by other treasurers. She has made the job of treasurer easier for those following in her footsteps.

In closing, I am reminded of the words made by this past year's council leadership during their campaign last spring: "Expect more." What we got was less ... much, much less.

John Bates '95
March 5, 1995

Council Has Made Significant Contributions This Year

Your editorial of March 3, 1995, suggesting that students have "lost faith" in the Law School Council correctly captures popular sentiment regarding the council. When my class ('95) arrived on campus in fall 1992, LSC political infighting was making national news via GQ magazine. During my class' second-year at HLS, our duly-elected student government representatives spent most of their time debating the merits of the infamous "Balanced Beer Amendment." While some personal and political disputes have continued to fracture the council during the Class of 1995's final year at the Law School, I respectfully submit that council activities and decorum are improving. This year:

1) The LSC encouraged Dean Clark to take action on the "Recommendation for Grading System Reform." As you know, for more than a semester last year under Erik Lindseth's leadership, the 10-member Academic Affairs Committee of the Law School council discussed the issue of whether the Law School should change its grading system. To ensure a robust and informed debate, the Committee surveyed a) top-20 law schools regarding their grading schemes, b) employers recruiting and hiring from the Law School, and c) Law School students themselves. After tabulating the results of all the surveys, the Committee proposed an overhaul of the current system, which is supported by students and sensitive to the School's professional reputation. Our concept of reform would require 1L's to take all first-year basic courses, including those given in the spring semester and over the full year, for grades of "Honors," "Pass," or "Fail." In addition, students would be allowed to elect the "Honors-Pass-Fail" grading scheme for not more than five courses taken in their second or third years. Dean Clark has promised action on this proposal late this month.

2) The council was responsive to student complaints, complaints and criticisms of Harvard Law School and the Law School Council. With Jon Kissane '96, Jessica Herrera '95 and Angela Payne '96 taking the lead, we worked with Gardner Merchant to get better food and services in the Hark dining commons and Harkbox Cafe. New improve-

ments in the dining commons include a better salad bar with "bullet containers," a bread bar, charcoal grill, home-made desserts, more variety in beverages, Spitfire Chicken/Pasta Bar, Ben & Jerry's pints, pizza station, stroller bread for deli sandwiches, and a double-sided, L-shaped register for faster service. New improvements in the Harkbox Cafe include the sandwich of the week, healthier sandwiches, Tropicana juices, and more student employees. LSC also lobbied the University's Athletic Department to make improvements in Hemenway Gymnasium (i.e., new padding on walls surrounding the basketball court, cleaner floors, more weight-lifting equipment, and better hours). The council played a crucial role (re: Jon Kissane '96) in students receiving free e-mail for the first time this year. Under Spencer Levy's initiative, LSC sponsored a blood drive on campus. LSC also worked with security to improve lighting on campus and successfully administered as a series of elections: Class of 1995 Class Marshal elections, fall LSC elections, LSC officer elections, and spring general elections.

3) LSC Vice President Clarke Camper '95 chaired a council ad-hoc group which interviewed and appointed Law School students to 10

Funding Board allocations to Law School organizations be made public. We also discussed the ways in which organizations here can consolidate resources. Another reception is being planned for this semester.

5) The Law School Council voted to be a charter member of the Dean of Students Advisory Working Group. The group sponsored "A Dialogue Across Differences" on Thursday, November 17, 1994, and "Student Diversity and the Harvard Law School Admissions Process" on Tuesday, February 21, 1995. Two more programs are planned for this year. Other organizations participating in this group include APALSA, La Alianza, BLSA, CCR, Democrats, Republicans, Federalists, LAMBDA, and WLA.

6) Members of the LSC have met weekly with Dean of Students Suzanne Richardson and periodically with Dean Clark, the Visiting Committee to the Law School, the University's Academic Council, and alumni to discuss improving student services and the quality of life here at the Law School.

7) To help revive a constructive dialogue between the faculty/administration and students on the issue of faculty diversity, members of the council helped assemble a Faculty Diversity Task Force. The goals of this task force are threefold: a) to meet with Dean Clark and members of the Harvard Law School Appointments Committees on a regular basis to discuss the Law School's appointment process; b) to re-educate the student body on the Law School's appointment process through newspaper articles and student forums; and c) to solicit faculty diversity concerns from students and relay those sentiments to Dean Clark and the faculty members of the Appointments Committees.

While this year's council did not dramatically change the Law School, it has made significant contributions to our community. Let's pray that the incoming administration captures the hearts and minds of all HLS students by building on some of the projects we started.

Willie J. Epps, Jr. '95
LSC President
March 8, 1995

... I respectfully submit that Council activities and decorum are improving.

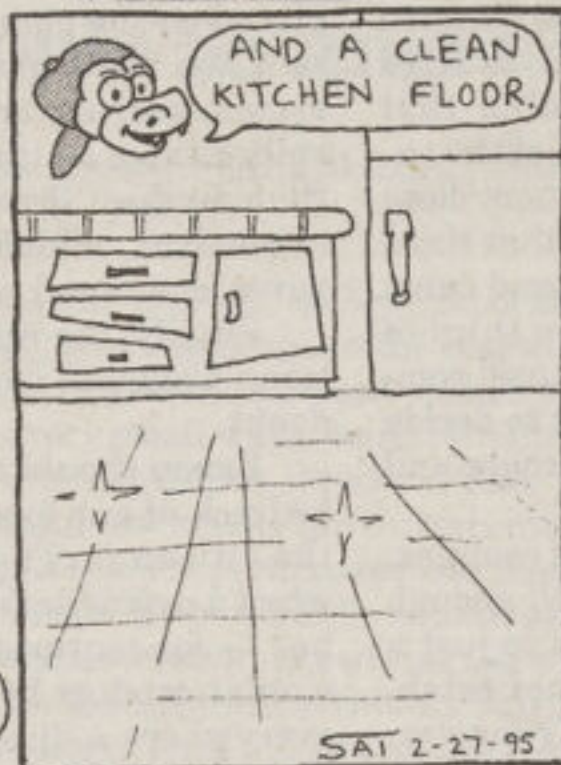
Law School Faculty-Student Committees.

4) The council hosted The Reception for Student Government Leaders last semester. At that gathering, we discussed various issues of great importance to organizations at the Law School, including a council resolution suggesting that all Student

Temporary Insanity

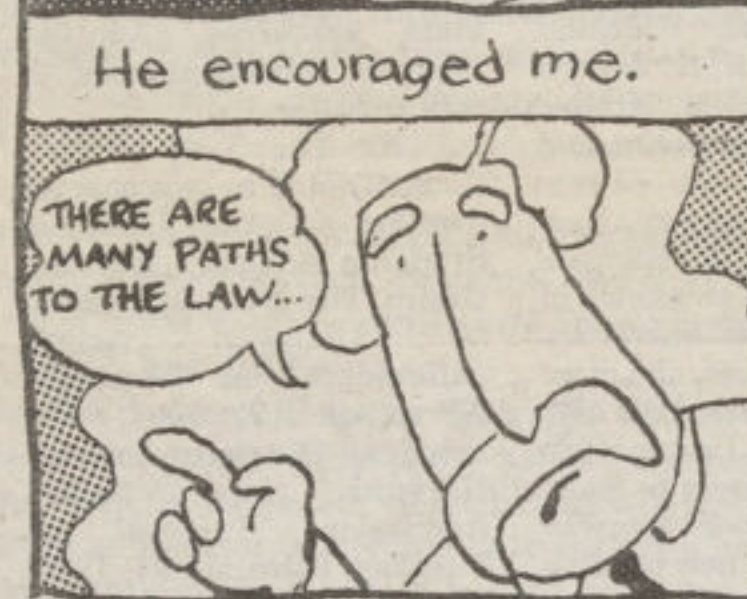
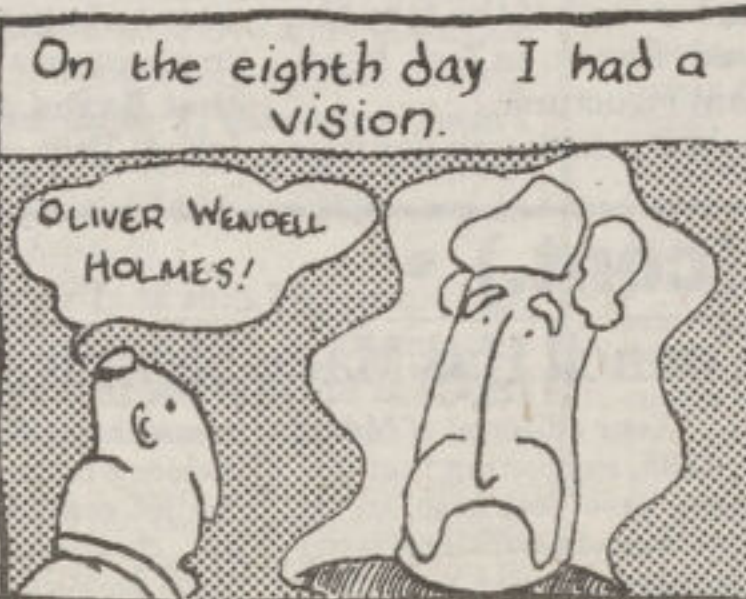
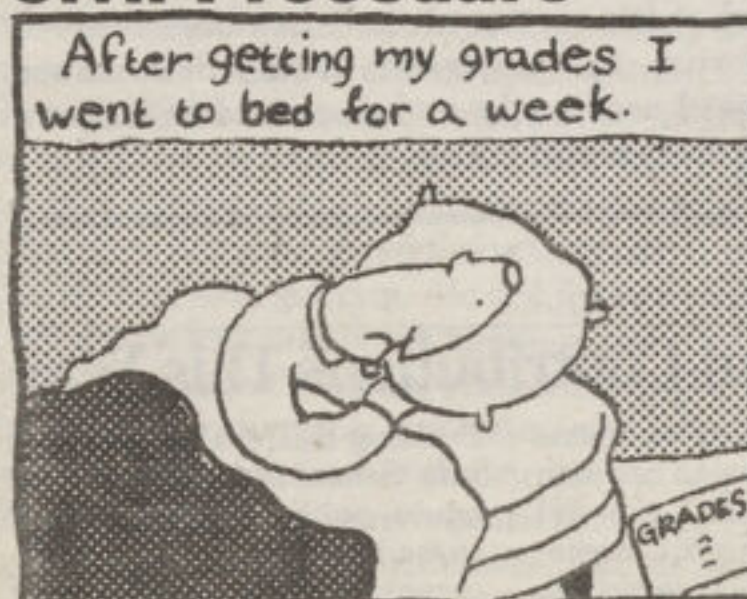
By Sheila Tuller

Introducing THE MISGUIDED ADVENTURES OF THE INSTIGATOR



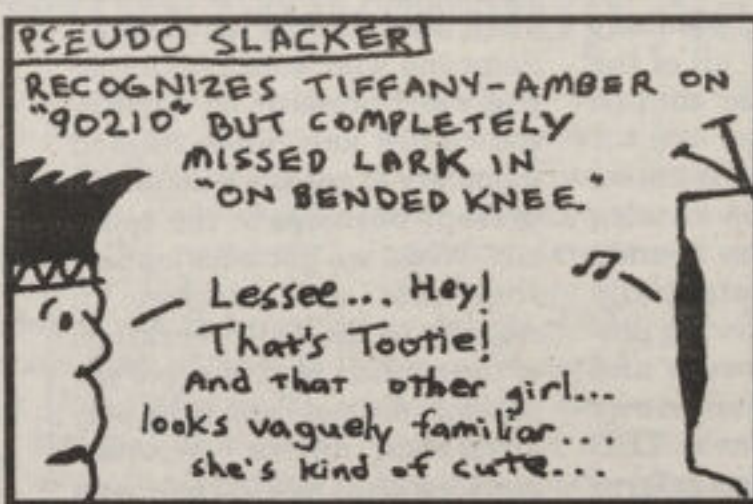
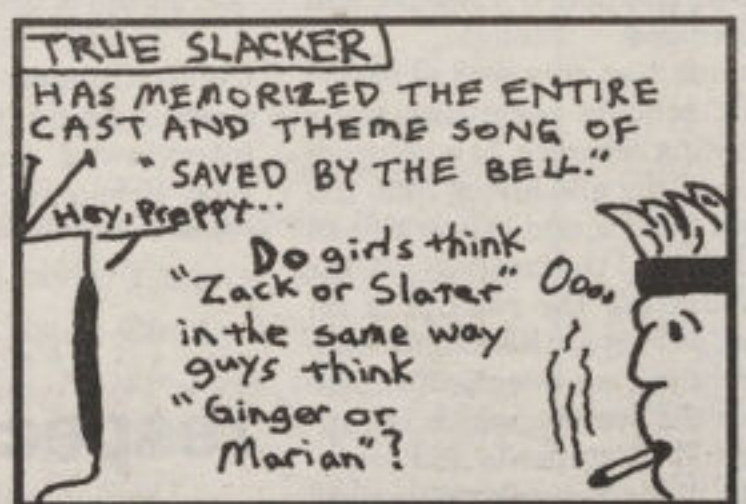
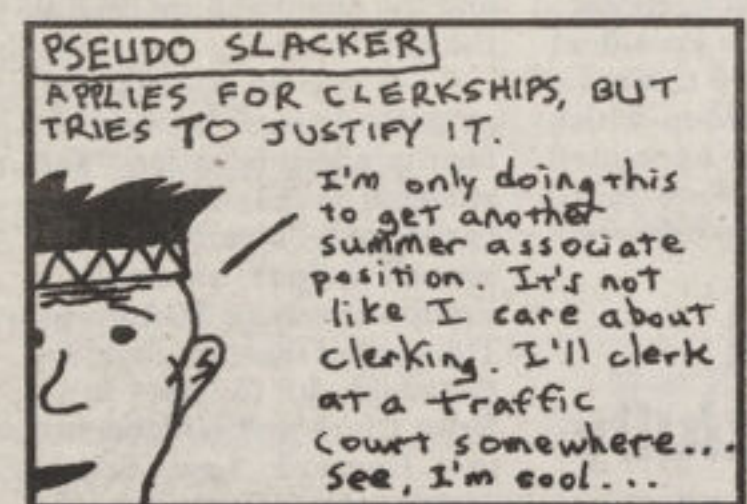
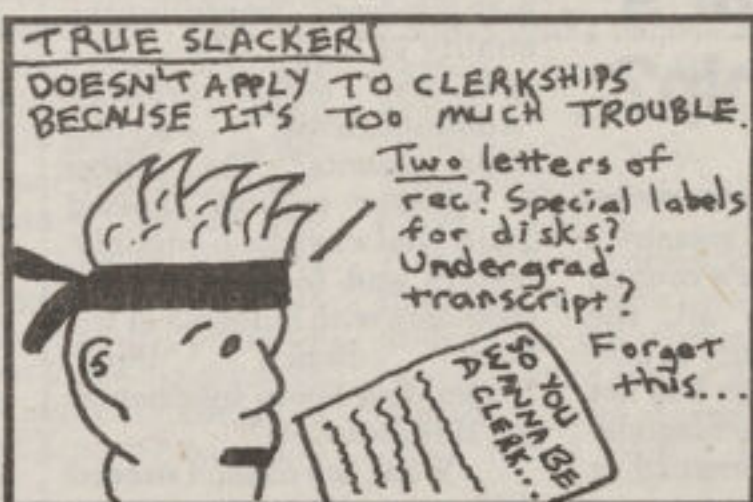
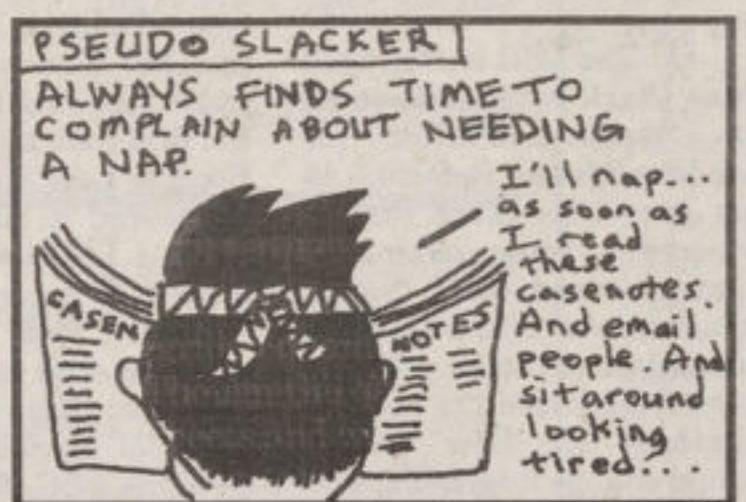
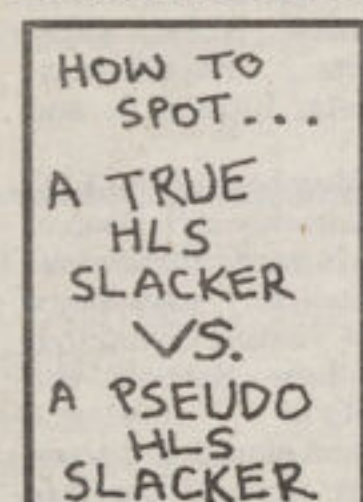
Civil Procedure

M. Kelly 1995



Backbench

By Brian Cheng



The Comic Strip Formerly Known as Prince

By Stuart Rees



CALENDAR

It's All Fun and Games Til Somebody Gets Sued

by Jeff Bucholtz

It's kind of a slow week for shows in Boston, but the HLS Drama Society more than fills the void with its libel show, running now through Saturday (3/11) night in Ropes-Gray. "The Cocky Lawyer Picture Show" follows in the footsteps of worthy predecessors such as last year's "My Fair J.D.," and hopefully will do an equally impressive job of poking fun at the people around here who take themselves too seriously.

In fact, if "Cocky Lawyer" lives up to its pedigree, one can hope that some of its targets will be driven into ignominious retreat back into the dank holes from whence they crawled to plague the HLS "community" to nurse their newly-punctured bloated egos. Just kidding! It's all in good fun, really!

Actually, and unfortunately, this year the objects of parody are apparently being consulted beforehand about the play, which can't help but dull some edges that ought to be razor-sharp. "I understand the trend of 'sensitive society' is to take other people's feelings into account," lamented one bitter friend, "but let's face it — some of these bastards have been torturing us for years, and if there is a god, getting parodied in the school play is just the beginning of the punishment they've got coming."

Whatever happens, though, please just don't sue them — remember, they're the Drama Society, not Law School Council.

Sunday (3/11) evening, before its transformation into one of Boston's biggest gay club nights, Avalon (931-2000) hosts Oasis for an early show. After being hailed by the British music press as (what else?) the new Beatles, Oasis invaded the U.S. last fall to a notably cooler reception.

Persistent touring and catchy tunes have paid off, though, as "Live Forever" sits firmly ensconced in MTV rotation, and Oasis make the jump up to the big-time of Avalon. Providence's Velvet Crush, who sound more like the Beatles than Oasis do, open.

Just down Landsdowne Street at Mama Kin (536-2100) on Sunday, it's Chris Connelly and Low Pop Suicide. Connelly's most famous as the singer of the Revolting Cocks, an industrial supergroup of sorts that at one point united members of Ministry and Front 242 in drunken side-project sloppiness.

But on his solo albums, Connelly has broken from his past (and his fan base) to indulge in a seemingly never-ending Bowie tribute. Connelly does have a good voice, and his arty pop isn't bad, but it lacks the punch of Revco's "Deliverance"-inspired classic, "Beers, Steers, and Queers." Low Pop Suicide's newest disc also distances itself from the group's industrial-flavored debut and wears its Bowie influence on its sleeve.

It can't be easy to get kicked out of a band that titled an album *Rum, Sodomy, and the Lash* and whose original name meant "kiss my ass," but Shane McGowan managed to drink so much that even the rest of the Pogues couldn't stand it. His first solo tour stops at Avalon on Thursday (3/16).

Shadowboxing

By Debra Dickerson '95

As part of ITA, students were required to attend a multicultural awareness workshop. Volunteers were asked to represent one facet of their identities (e.g., man, heterosexual, working class). (They were asked what they did and didn't like about being in that group, and the audience was confined to supportive statements.) All the places quickly filled, except one: For a long, excruciating time, no one would step forward to represent the middle or upper classes. Imagine, HLS suddenly running low on either.

Of course, the main reason for anything that *doesn't* happen around here is apathy. Then there's shyness, and (like me) impatience with touchy-feely stuff. This time, however, there was more. Unmistakably, the predominant feelings in that room were denial and fear. On every row, students turned to assure each other they were most certainly *not* middle class (few could even bring themselves to consider being upper class). Others sat stonyfaced, rigid, and silent.

You can tell the story of America through the study of class and race, but you can't have an honest and intellectually rigorous discussion about it.

In the February 17 issue, my RECORD colleague and fellow Air Force veteran Jim Lank credits conservative Thomas Sowell with providing a critique which, while basically admiring "The Bell Curve," puts it to a rigorous analysis that renders its racial conclusions "inconclusive at best, and misleading at worst."

The significance of this critique, we are told in the final paragraph, lies in its source. "Sowell's calm but vigorous counter to ... 'The Bell Curve' demonstrates the extent to which the political left has abandoned its role in public debate. While pundits and pols on the left scream, 'Racism!' the right has managed to begin a genuine inquiry into the truth of the matter. If the left can only protest and hurl accusations while the right conducts an open and vigorous discussion, then the left will quickly forfeit whatever remaining credibility it has to speak on the subject."

My, my what a lot of things we are told here. Not persuaded of or educated on, but told and expected to



take on faith. The problem with this manner of thought is that it assumes its conclusion, i.e. that the left is intellectually moribund, the right is where the intellectual action is. Mr. Lank's editorial is only adequate if you are looking for an "amen corner." However, those who disagree, have no opinion on the subject, or reject strawman arguments can only be annoyed.

"Pundits and pols on the left" may well "scream, 'Racism!'" but how are we to judge? We are given no insight as to how

many of these leftist critiques have been undertaken, how many the writer has read, and specifically how they fared under scrutiny. Why not name names? Clearly he did not read the ones I read, many of which made Sowell's same point. Nor could he have read National Review's symposium (better balanced than The New Republic's but still predictably in conservative, largely unscientific agreement.) "The right has managed to begin a genuine inquiry" in the February 1995 American Spectator? One Sowell piece, and "[t]he right conducts an open and vigorous discussion?"

Patrick Lannon '96, in the March 3 RECORD, submits another example of assumed conclusions that even the boys at National Review would envy. This letter is such a treasure trove, it's hard to know where to begin. Decrying affirmative action, he writes, "... [C]an we assume that the minority would have done better if not for the emotional angst caused by the perception 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? ... [B]oth ignore the systematic preferences in education and hiring that minorities have received already." (Emphasis added.)

So we only *perceive* this society as racist, do we? Perhaps Mr. Lannon meant "e.g." rather than "i.e."

above. Surely there are many examples of greater significance than the one proffered (more denial?). Isn't the overt racism that matters most here the substandard, segregated school systems that so many have no choice but to attend? It's so much easier, isn't it, to laugh off the notion of a teacher grading by race than to explore whether and how poor/minority children are disadvantaged in the public educational process? By the time their age cohort applies to law school, it's been much too late for far too long. And as for the systematic preferences presented as so pervasive, why was it that I had to enlist and earn my degrees with sweat equity? I must have been out making hospital corners and going to night school when they came by with Bessie and that 40 acres.

Mr. Lannon could be written off as just another apologist for entrenched privilege had he restrained himself in any degree, but he did not. "... [W]ould any admissions committee really believe that academically successful whites were disadvantaged? ... My personal experience is that [they'd be thought whiners] administering an extra strike against any non-minority naive enough to mention [in the personal statement] the challenges they have overcome. I doubt that any non-handicapped, non-minority ever takes advantage of this opportunity to claim victim status...." (Emphasis added.)

As a resident law tutor at Currier House, I have read upwards of 50 personal statements. Without our prompting, easily 60 percent of our students find some way to make themselves appear somehow disadvantaged, though far fewer actually are. That includes one of my favorite students, who took her nanny with her to a Swiss boarding school. Another wrote convincingly of his inability to play water polo as a character-builder.

As do most of his ilk, Mr. Lannon concludes with the de rigueur MLK reference that proves he's not a racist. Doused in denial, smug with self-pity, and versed in victimhood, but not a racist.

You can tell the story of America through the study of class and race, but you can't have an honest and intellectually rigorous discussion about it.



Someone had screwed up. Big time. Everyone in the room could sense impending doom. Learned scholars and practitioners were about to be embarrassed. The fragile egos of insecure 1Ls were in terrible danger of premature deflation. The Law School's reputation was going to be permanently tarnished.

Fenno was judging first-year Ames.

His co-judges, a federal district court judge and a staff attorney from People for the Ethical Treatment of Animals, looked on in amazement as Fenno strode into the room, briefcase in hand.

"Nice robe," offered the judge, secretly wishing he'd worn his own.

"Thank you!" replied Fenno, "You don't think I overdressed, do you?"

"Not at all. I especially like the 'Chief Justice' stripes on the sleeves"

"Sewed them on myself," said Fenno proudly.

As his first act as Chief Justice of the Ames moot court, Fenno promptly got down on all fours and crawled beneath the PETA attorney's desk.

"What are you doing, you cretin!" screamed the woman, pulling down her skirt, remembering that she hadn't shaved since that all-nude protest in D.C. last fall.

"Sorry, just needed an electrical outlet."

"Oh. Are you plugging in your computer?"

"Nope, my blender." Fenno said, standing up and pulling a bag of ice from his briefcase. "Who wants salt on their margarita?"

"Pig," muttered the PETA lawyer.

"Oh, that reminds me," said Fenno, "I've got pork rinds, too, if you want some. Very crunchy."

"Can we get on with this?" asked the judge.

The first clueless 1L stood up and stammered, "May it please the court..."

"Stop right there, counselor!" barked

Fenno. "What's your National Review?"

"Huh? I mean, would the court please rephrase the question?"

"You know, that thing judges are always talking about. What am I thinking of?" he asked the federal judge.

"Standard of review," said the judge. "But why don't we let counsel get through their opening remarks, before delving into such intricacies of jurisprudence?"

"Fine by me," slurred Fenno, "I have to warn you, though, I'm laboring under a heavy burden of proof already. About 180 proof, to be exact."

While the 1L continued his opening statement, shouting over the sound of the blender, Fenno's mind wandered. He considered the PETA treehugger sitting next to him and decided to make amends for crawling under her skirt.

"Sorry about that incident below the desk," he whispered. "I didn't see anything, really."

"Really?" asked the woman, relieved.

"Really," said Fenno. "Except, of course, for that shocking tangled mass of hair on your legs. And I won't mention that to anyone. Your secret is safe with me."

The PETA attorney stood up. "I'm leaving! The dean will hear from me about you!" she shouted, storming out.

The judge looked questioningly at Fenno.

"Wonder what got into her?" Fenno asked. "Mind if I smoke?"

The judge gritted his teeth. "I'm allergic to cigarette smoke."

"Okay, I'll stick to stogies, then," said Fenno, cheerily, as he lit a Portofino.

The judge stumbled out of the room, gasping for air.

Fenno turned his attention to the stunned 1Ls. "Are you done? Good. Then I'll give you my decision: I find you all in contempt of moot court for wearing polyester suits in public. I sentence you all to 100 hours of community service, consisting of serving drinks at Lincoln's Inn. Case dismissed!"

The 1Ls tried to protest, but Fenno was already packing up his blender — he had two more panels to go to that afternoon.

Think you can tell the difference between nutmeg and allspice? Be a restaurant reviewer for the RECORD!

Call Vicky at 495-4418 for details.

The Perpetual Profile

By Calvin Gladney '97
Guest Columnist



THE four of us piled into my 1982 Audi hastily, intent on getting to the store before it closed. The cold winter air was the catalyst to our garb: We all wore hats pulled down low, big heavy overcoats and rugged hiking boots. The store was only a couple of blocks away in the white section of our neighborhood. As I drove down the two-lane street, I noticed a police car drive uncharacteristically slowly past me. I locked eyes momentarily with the police officer behind the wheel. Was it coincidence or was he staring? I turned the corner and slowly advanced up the block. But the closed gate on the building belied a fruitless trip: The store had closed down for the evening. Disgruntled, I made the next right turn preparing to go to a supermarket for some unrelated items. It was then that I saw the police car in my rearview mirror.

"Hey, that cop is right behind us now!" I shouted.

A bright light pierced the darkened sky and a shrill horn blared from behind me. Anger and panic gripped me simultaneously. Why is he stopping us? I pulled over to the side of the road. I rolled down my window. Suddenly, his face appeared above me.

"What are you guys doing around here?"

Thoughts swirled in my head. A sassy remark may yield a baton to the jaw. It would be best to cooperate. Yet, I felt that I didn't need to tell him anything; there was no need to justify four AfricanAmerican males in a car owned and being driven properly by the licensed driver.

My reply: "We didn't do anything wrong, Officer."

He peered down at me suspiciously.

"Let me see your license and registration."

I motioned to my friend seated next to me to get my registration out of the glove compartment. I handed the officer my Massachusetts driver's license.

"We didn't do anything wrong officer," I repeated.

"Well, you don't have to tell me where you're going," he replied.

He shone his flashlight onto the small plastic card. As he looked at the card, I began to worry because my friend couldn't find my registration and insurance card. But I didn't want to make any sudden movements which might be interpreted as a lunge for a weapon. Damn, I thought frantically to myself, if my registration is lost, this cop is going to get really suspicious!

The officer aimed his flashlight in my face.

"Why do you have a Massachusetts license," he snorted. "Do you go to school there or something?"

"Is it a crime to have a valid Massachusetts license in New York, dickhead?" I answered caustically.

Okay, let me take that back. I didn't say that. But I would have if I weren't so scared. My reply:

"Yes, I go to Harvard Law School."

He glanced back at the license with a smile which would make a Cheshire cat jealous — or scared. I sat there wondering whether telling him I went to Harvard Law would end up as a positive or negative. But suddenly I knew that Harvard had done what my general innocence could not — alleviate his suspicions.

"Well, you know, I saw you guys driving around like you didn't know where you were going...."

So?

"... so you know.... Look, I'm not trying to bust your balls or anything."

He handed me my license and turned off his flashlight. I glanced over at Chris, who had still been unable to find my registration. The officer noticed the visual exchange.

"Aw, don't worry about the registration."

Abruptly, he turned and walked back to his car. As he got into his car, another police car pulled up. He motioned them away with a casual wave of his hand. Silently, we watched the policeman drive off into the night.

It wasn't until Criminal Law class the other day that I realized the gravity of that situation. The incident wasn't representative of one randomly racist cop hassling some unlucky black youth on a dark night. We fit the profile. In *U.S. v. Harvey*, an officer testified that he pulled over a vehicle for two distinct reasons:

Regardless of my Cornell University degree and my attendance at Harvard Law, I will always, wherever I go, fit the profile.

1) there were traffic, speeding and equipment violations and 2) there were *three young black male occupants in an old vehicle*. The officer stated that they fit his profile of, and experience with, drug traffickers on that highway.

This opened my eyes to an unsightly future: In many senses, I would always fit the profile. In my neighborhood, just as in *U.S. v. Harvey*, being African American, male and young in a old car gives cops (at least in their minds) enough "reasonable suspicion based on articulable facts" to allow them to hassle you. A traffic or equipment violation wasn't necessary. And an old car like my 1982 Audi is just as much fodder for harassment as it would be if I were driving a 1995 Audi. For then the police might *really* suspect I was a drug dealer, robber, or some other criminal.

What would have happened if I had handed the officer a Massachusetts license and would have said I attended the New England School of Law as opposed to Harvard? I cannot possibly know. What would have happened if I had made the sassy (but in a legal sense, perfectly acceptable) comments that first came to mind when the officer asked me what I was doing with a Massachusetts license in New York? I cannot give an answer. Unfortunately, there is one thing I do know, and it is a fact from which I cannot escape. Regardless of my Cornell University degree and my attendance at Harvard Law, I will always, wherever I go, fit the profile.

A Modest Proposal: The Two-Year Law Degree

By Christopher T. Cuniffe '96
Guest Columnist



My grandfather graduated from Notre Dame Law School during the 1930s. He called himself a double-domer, having attended Notre Dame for his undergraduate years as well. He completed both his undergraduate and law school programs in five years. He was not taking part in any kind of accelerated program. Rather, this was the program: Students took part in an integrated undergraduate program which included law courses. After five years, you left South Bend with a law degree. Before being admitted to the bar in New York, he was required to serve a one-year apprenticeship and then pass the bar exam. He went on to operate a successful practice in upstate New York for over 50 years.

Times have changed. The first half of the 20th century saw a tremendous period of political assertion by the American Bar Association and the Association of American Law Schools who took offense to the entrepreneurial success of less elite "diploma mill" law schools often run by practitioners. In 1921, the ABA issued its Root Committee Report recommending that admission to the bar be conditioned upon graduation from a law school that met certain minimum requirements, including a three-year course of study. The ABA also announced its intention to publish a list of qualifying schools. The AALS, which has been criticized by some for its cartel-like behavior, wanted to go so far as to outlaw night schools such as the one my father attended altogether.

In 1922, the ABA sponsored a Washington Conference to push its new standards forward into law. Chief Justice Taft, among other notables, addressed the delegates, criticizing the "surplus" of lawyers: "We have all the lawyers we need now." With the exception of a few renegade states, the trade organizations have since successfully transformed the ABA's list into a national accreditation system with each state requiring graduation from an ABA accredited three-year law school as a precondition for entry into the legal services market.

As we break into the information age, I think it is time to revisit the justifications for requiring lawyers to complete three years of study at a law school. The

It is incumbent upon leading national law schools, such as Harvard, to take the lead by offering the option of a two-year law degree.

most basic argument offered by the ABA and others is the legal disaster argument: The requirement is needed to protect the public from incompetent lawyers who will confuse assault with battery, distribute Aunt Tilley's estate per capita rather than per stirpes, cause corporations to commit various ultra vires acts, and forget to write "Witnesseth" on all legal documents. This claim can be challenged on several independent grounds; I will just make three quick points:

1. The Market. If less than three years equals incompetence, why is it that my grandfather's clients never complained? There is a giant with bigger muscles than the ABA who protects the interests of the public; his name is Adam Smith. I would simply point out that while law firms look for many diverse qualities in their job applicants, incompetence usually is not among them. Note also that incompetence is not a professional quality eagerly sought by clients.

2. Tort Law. When the market fails, it turns out that lawyers can get sued.

3. The Bar Exam. Although it is by no means a precise predictor of future job performance, it is effective in collecting incompetents in its filter.

Putting these safeguards aside, one has to ask why three years at a law school are superior to alternative three-year programs. Why not have an option of attending two years of law school plus one year clerking for a judge? Why not a third year working for a public interest organization or government agency? Why not a third year as a research assistant for a law professor? Why not a third year of study in a law-related field, such as government or public administration? Why not a third-year apprenticeship with a private law firm? In summary, what is so special about law school that makes it so superior to these and other alternative modes of legal training?

Most 3Ls that I know are bored to death with academia, and this detracts substantially from their educational experience. I think many students would find the options I've mentioned to be appealing. For instance, take a student interested solely in public interest work. The third-year public interest option would provide such a student with a superior educational experience for his or her intended career at a significantly reduced cost. Perhaps it is a fear of losing tuition dollars that makes law schools wary of my proposal. While my proposal would result in unemployment for a few law professors, many students could substantially reduce their debt burden and these savings could be passed on to consumers of legal services.

The ABA accreditation system has become a special interest dominated, bureaucratic nightmare. As Charles J. Meyers, former dean of Stanford Law School, has noted, "perhaps the highest, and most disturbing, cost is the tendency of the regulations to stifle educational innovation." In my view, the states should completely remove the ABA from the process. While basic reform is needed at the state and federal level (federal loans can only go to ABA-accredited law schools), private institutions also need to step forward and break ranks with the ABA. It is incumbent upon leading national law schools, such as Harvard, to take the lead by offering the option of a two-year law degree. The degree could be given a different name to distinguish it from traditional three-year J.D. programs. I imagine the degree would be especially appealing to students who don't actually intend to practice law. More importantly, the introduction of the two-year option by leading law schools would open the door for state legislatures to approve some of the third-year options that I have suggested or others which the legislatures deem appropriate. Then, I would like to see the ABA try to take away Harvard's accreditation.

More Court Interpreters Are Needed, Says Panel

continued from COURTS, page 1

ensation to those translators who are independent contractors rather than full-time court employees.

"A lot of people are being paid on a per diem basis, but are working every day," he said.

But Mulligan said the problem was not an unusual one for courts.

"As one nears the end of the fiscal year," he said, "there are some issues that don't get paid." Mulligan added that people interested in the problem should lobby legislators for better funding for translation services.

Estela M. de la Cruz, a New Jersey attorney and a member of the New Jersey Supreme Court task force on minority concerns, said translators serve better treatment from the Massachusetts courts.

"If you don't pay them, you will lose them," she said. "Sometimes their job is more intense than that of the judge or the clerk."

But Mulligan suggested the commission's focus on courtroom services was misguided.

"I thought that the interpreter services provided to the court in the courtroom were pretty good," he said. "I think

the issue is the availability of interpreter services for lawyers dealing with the clients and for people coming in to [court] clerks' offices."

During the panel's question-and-answer session, panelist Margaret A. Burnham, a practicing attorney and former Massachusetts trial court judge, fielded a question about the extent to

which issues of race and poverty overlap to prevent true access to the justice system.

"It's clearly the case that if you don't have a dream team, you're at somewhat of a disadvantage," Burnham said. "But separate and apart from any element of discrimination based on class is the issue of racial bias."

Burnham also criticized commission recommendations relating to affirmative action as "lacking any real teeth."

The panel's host, the Massachusetts Council for Public Justice, formed to keep the public informed of issues relating to the administration of justice

following a 1972 conference sponsored by the American Judicature Society and the Massachusetts and Boston Bar Associations. The council is a nonprofit corporation whose members include lay citizens, members of the legal communi-

"I think the issue is the availability of interpreter services for lawyers dealing with the clients and for people coming in to [court] clerks' offices," Robert A. Mulligan said.

The Harvard community is invited to a memorial service for Erwin N. Griswold

- Friday, March 10, 2 p.m. in Memorial Church, Harvard Yard. Parking will be at the Soldiers Field Park Garage, Western Avenue, and busing will be provided.

Speakers will include:

- Dean Robert C. Clark
- Professor Archibald Cox
- Judith Richard Hope, Harvard Corporation; Paul, Hastings, Janofsky & Walker
- Derek Bok, University Professor and President Emeritus, Harvard University
- Roswell B. Perkins, Debevoise & Plimpton; President Emeritus, American Law Institute
- Robert F. Drinan, S.J., Professor of Law, Georgetown University Law Center; Dean Emeritus, Boston College Law School

For more information, call (617) 495-3118.

Un-Moot Court

By Terri Gerstein '95

RECORD Columnist



LAW school? Boring?

Not since the beginning of 2L year.

Since then, I've been to jail and I've been laughed at by court officers, I have repeatedly woken up a sleeping translator who found my refugee client's story soporific, and I have discovered the fastest way to get marriage certificates from Puerto Rico. I sadly hugged some clients good-bye, and gladly handed over other clients' files to the next semester's student. I've represented battered women, and now, in my criminal defense clinical, I'm likely to represent a client accused of battering. I have heard stories of suffering and abuse, been moved by people's courage, and been enraged by our system of "justice."

I also got academic credit for all of the above.

There is simply no substitute for the learning experience offered by a clinical course, which allows you to spend 2-4 hours a week in the classroom, and 10-20 hours a week actually getting practical experience in that area of law. Here at Harvard, which has one of the best clinical programs in the country, the opportunities run the gamut: You can represent tenants being evicted, AIDS patients, civil rights plaintiffs, refugees, small business owners in low-income areas, criminal defendants, the Commonwealth of Massachusetts, and the United States of America.

Clinicals allow you to learn by doing and then talking (instead of learning by talking about doing, as in most law school classes). They provide an opportunity (finally!) to wed the theory of the law with the practice. In this way, clinical legal education leads to a more sophisticated theoretical understanding of the law, informed by practical realities, as well as more reflective, thoughtful practice. Clinical courses give meaning to the concepts you learn in your first-year courses: "Warranty of habitability" has new significance as you watch rats and cockroaches scurry across the floor of your client's frigid kitchen, chips of lead paint falling from the ceiling.

The supervisor-student relationship is important as well. Most students receive lots of feedback, attention, and care from their supervisors — much more than in a regular law school class, and much more so than in most summer and starting jobs. I've found wonderful mentors through the clinical courses I've taken. In a less ideal scenario, however, not "clicking" with a supervisor would in itself be valuable preparation for work. Also, the clinical faculty contains the only women of color or openly gay instructors at the Law School.

Clinicals give students an opportunity to have an effect on the real world, and to use our talents to serve people who are in need.

The educational aspect extends beyond simply legal learning, however; hands-on experience working with low-income clients can provide a social, political, and moral education as well. For all students, particularly those who have never lived or worked extensively in a poor community, learning about the day-to-day realities of your clients' lives can challenge or expand your world view and awaken a sense of compassion, responsibility, shared humanity, or justice.

Some poignant images from these last two years have imprinted themselves on my mind and heart: Dora's face, pale with fear, when she learned her husband had bought a gun. Elyse's small hands, outlining the size of the table she hid under when the Tonton Macoutes stormed into her Port-au-Prince house. A short woman (not my client) wearing a thin coat, who spent the whole day in jail last week waiting to be arraigned for her "crime": allegedly stealing a bottle of Robitussin and some throat lozenges from CVS.

Clinicals give students an opportunity to have an effect on the real world, and to use our talents to serve people who are in need. The grade doesn't matter; the real issue is insisting that "dispensable" people's voices be heard, helping them stand up for their rights, and fighting for justice.

From a less altruistic perspective, taking clinical courses can be quite helpful for career considerations. For public interest students, taking several different clinical courses can help clarify what area of law most excites you, while simultaneously helping you develop useful skills which make you attractive to public interest employers, who have little time or resources to train new hires. For people more focused on the private sector, firms, too, often look favorably on clinicals.

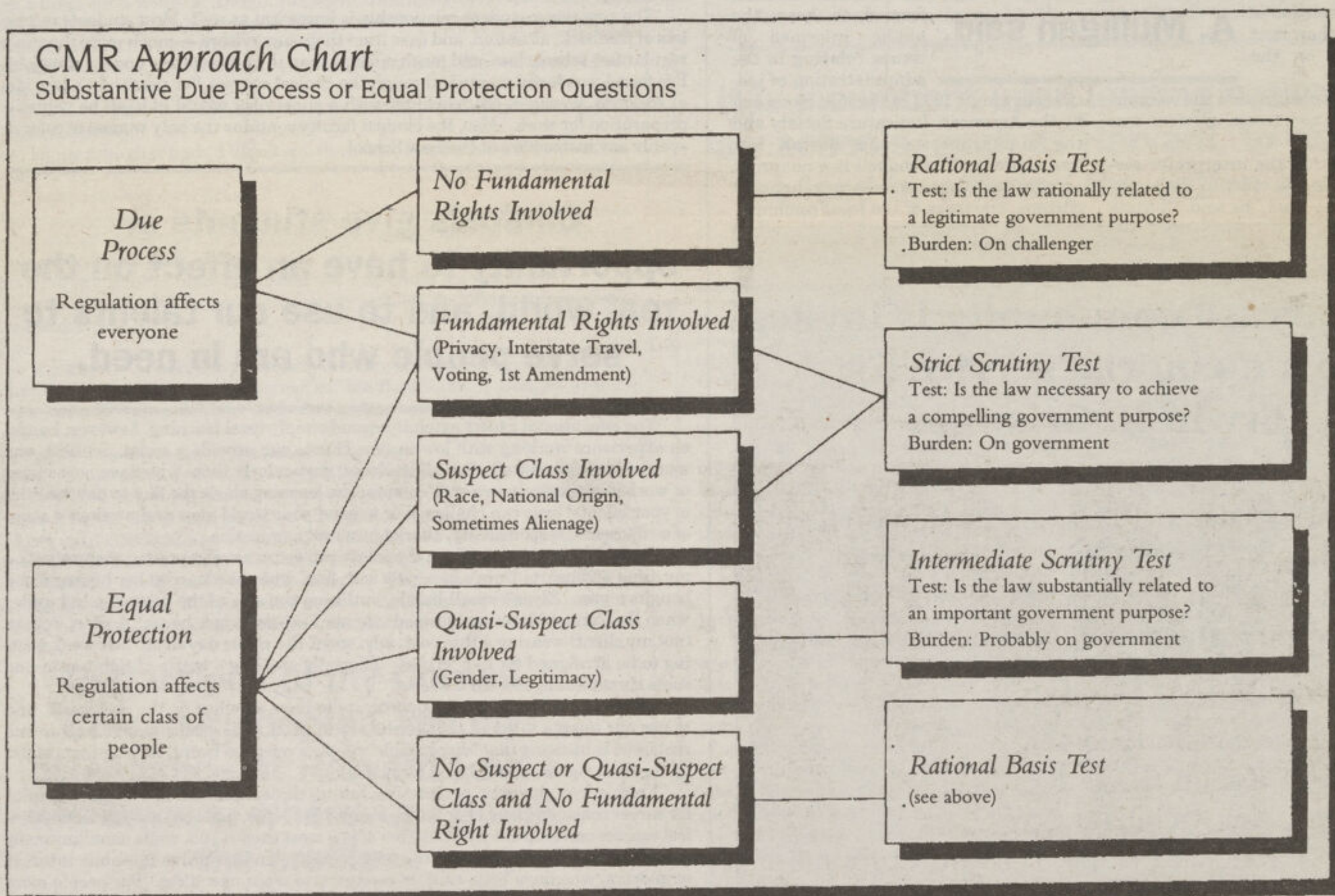
As important as these other considerations, clinical courses are fun, particularly if you are an active, on-the-go kind of person. One friend of mine spent a semester hobbling on crutches, Polaroid camera in tow, snapping shots of rodents and roaches to be used in the Boston Housing Court. And what better way to make close law school friends than to go through this baptism by fire together?

Because of the educational, professional, and moral challenges involved, at least one clinical course should be a requirement for graduation from Harvard Law School. Medical students do not become doctors without ever seeing a patient; would-be educators are student teachers before leading a classroom of their own. Hands-on practical experience, combined with academic reflection on that experience, should be an integral part of legal education. I cannot fathom why it is considered more important for law students to know the rule against perpetuities than to know — firsthand — how to interview a client, go before a judge, haggle with an opponent who doesn't want to get to yes, or learn how to maneuver in a particular court.

At present, however, taking a clinical is not a requirement, so students must themselves take the initiative. Go to the Clinical Informational Meetings (March 13 and 23) and the Clinical Forum (April 5) and ask questions. Use the remaining weeks before clinical preregistration (April 6 and 7) to do some investigation: talk with professors, clinical instructors, and clinical students, and visit potential placement sites to see where you might like to work.

Remember: even though you're still in law school, court does not have to be moot.

GO WITH THE FLOW.



Bar/Bri gives you flow charts, mnemonics and other learning devices. One more reason why more people take Bar/Bri than any other course.

barbri
The Flow Chart Course