



Fried On List Of Four for SJC Seat

By Greg Stohr and
David Weiss

Prof. Charles Fried has cleared the first major hurdle in his quest to fill an impending vacancy on the Massachusetts Supreme Judicial Court.

A screening panel this week voted to include Fried on a list of candidates from which Gov. William Weld '70 will choose in filling the seat.

Although the Boston Globe has reported that Fried is Weld's top choice, the governor's office was noncommittal this week, saying that Weld intended to interview each of the candidates before making a nomination. Weld is Fried's former student.

"All four of the candidates that the judicial nominating committee passed on are well-qualified," said John Brockelman, a spokesman for Weld. Brockelman refused to discuss any of the candidates specifically.

Brockelman said that "there is no set time frame right now" but that Weld would make his decision before Justice Joseph R. Nolan retires on June 13. Weld's nominee will need to receive approval from the eight-member Governor's Council, which is headed by Republican Lt. Gov. Paul Cellucci.

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Professor and Librarian Harry Martin and Dean Clark addressed student questions and concerns regarding the proposed closing of Langdell at an open forum on Monday.

Students Push For More Public Interest Funds

By Hope Yen

A student petition calling for more public interest funding sits on the desk of Dean Clark '72 as many law schools nationwide are reexamining programs to meet a surging student interest in "doing good."

Clark has not yet responded definitely, but student leaders said they are hopeful after he reversed an earlier decision and agreed this week to provide a national online database of public interest jobs. The database, priced at \$4,000, was the smallest of three demands sought on a petition signed by more than 500 HLS students urging a financial boost to the public interest program.

The student efforts here at

Harvard also reflect a broader push nationwide for law schools to help remove financial obstacles deterring students from public interest law, a broadly defined field which includes public defenders, judicial clerks and advocates at nonprofit organizations. Although more than half the admitted students to HLS express a desire to pursue public interest law, only 10 percent end up doing so after they graduate.

"Students really care, so the law schools need to do more to promote public interest, especially to encourage students who haven't made up their minds one way or another," said Shannon Liss '96, who spearheaded the HLS petition drive. "Law schools shouldn't funnel students into

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Library Brew Down To a Low Boil

By Katrina Randolph

Dean Clark '72 apologized to 1Ls this week for not notifying them sooner about the scheduled shut-down of Langdell Library for renovations during the 1996-1997 school year.

Clark came under pressure from outraged 1Ls who learned on April 5 that the home of the 1.8 million-volume library, the largest law school library in the world, would be closed during their third year. The announcement came just one week before course registration.

"I've been quite nervous about whether the school could handle [the renovation] financially. I thought if I kept saying we're going to do it, faculty and students would rely on it and be disappointed when it didn't happen," Clark told a group of concerned students at a forum Monday.

"I see it now as a mistake and I apologize for it," he said.

The \$25 million renovation project will virtually restructure Langdell. A ground-floor entrance, new elevators, increased audio-visual and technological facilities and more study areas are among the many changes planned. In addition, stack-supported floors will be eliminated, and Langdell North Middle will be split into two floors to house new stacks.

During the renovation, a makeshift library will be set up in the Ropes-Gray Room in Pound Hall. It will contain a core reference collection of 30,000 volumes and increased technology. The remaining 770,000 volumes currently shelved in Langdell will be put in temporary storage, said Librarian and Prof. Harry Martin. Other materials are even now only available by request. Increased library staff

will work in various sites on and off campus to help students find and retrieve necessary materials.

Students were upset about the possibility that the library renovation would make it hard for them to study and nearly impossible for them to complete their third-year papers. But they primarily were concerned that they had little notice of the plans. Clark said the renovation has been in the planning stage for six years, but the tentative go-ahead wasn't given until recently.

"The main problem is we weren't involved in the decision making process," said Bob Melson '97. Melson and Judd Serotta '97 got more than 400 1Ls to sign a petition suggesting alternatives which was presented to Clark.

The petition claimed that HLS administration planned the renovation "without any consideration for the needs of the student body, particularly those who are faced with the prospect of significant research without 96% of the sources we were 'promised' when we matriculated at the Law School."

Serotta said "There's a general sense that the Law School has put many other priorities above the academic needs of the Class of 1997. Among these are money, the prestige that having a newly renovated library will bring the Law School, and expediency."

At the forum Monday, Clark said he "thought it was an extremely thoughtful letter that expressed genuine concerns." He said he wants student leaders to advise the administration on issues such as alternative study spaces.

LSC President Rob Simmelkjaer '97 asked Clark whether any thought had been

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Democratic Senators Address Issues at Harvard

Mikulski Calls for New Attitudes

By David Weiss

The Democratic Party needs to change its approach and reestablish its commitment to the middle class if it has any hope of regaining political power in 1996, according to Sen. Barbara Mikulski (D-Md.).

"The Democrats need a new state of mind and a new way of approaching issues," said Mikulski, who spoke at HLS at the invitation of the Harvard Law School Forum on April 18. "For Democrats to be really moving ahead, we have to make change our ally and then stick with the middle class."

Mikulski called on Democrats to cease being "angst vindictive" and stop assuming



Sen. Barbara Mikulski

the victim status of the people they are trying to protect. She also recommended that the Democratic Party stop being a resistance movement in an era of changing approaches to government.

"We can't protect everyone and every line-item," she said, pointing to the abundance of job training programs and Housing and Urban Development programs as examples of places where consolidation and streamlining might generate more effective services.

Mikulski also cited middle class anger as a source for the recent impetus to change social programs, especially the welfare system. "The middle class feels that it has no more to give.

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Bumpers, Sasser Review First 100 Days

By Joshua Strathman

Sen. Dale Bumpers (D-Ark.) and former Sen. Jim Sasser (D-Tenn.) spoke to an audience of 100 on Monday about the Democratic party's current political situation.

The purpose of their presentation, sponsored by the HLS Democrats and the HLS Forum, was not only to convey the Democratic perspective on the events surrounding the First 100 Days, but also to "provide a reasoned response to the media hype from two people in the know," said Democrats co-Chairman Michael McNamara '96.

Bumpers focused on the current political climate and expressed "deep apprehension that this is indeed a dangerous time." He described this danger as an increased tendency on the part of the public to attribute their plight and unhappiness to

the government.

Bumpers listed a number of factors he viewed as responsible for this prevailing sentiment. He criticized talk shows as a rapid and broad-reaching conduit particularly adept at fanning popular discontent. He also faulted the present campaign finance system and its susceptibility to special interest groups. Together, these phenomena have wrought a debased and distorted electoral process, according to Bumpers.

Alongside these failings of the campaign system, Bumpers cited broader social trends, such as overpopulation, a growing disparity in wealth and a general increase in incivility, as contributing causes of public disaffection.

Finally, Bumpers remarked

that a growing "unwillingness on the part of politicians to trust constituents with a little common sense," was a particularly salient source of current voter unrest.

Especially worrisome, Bumpers said, is the way this discontent has been channeled in the present drive to amend the Constitution. While noting that proposed amendments are nothing new, he expressed alarm at both the scope of the proposals and the seriousness with which they are being pursued.

Bumpers conveyed his reservations concerning proposed amendments that would effect structural changes in the government. The line-item veto proposal, for example, would "transfer

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Sen. Dale Bumpers

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Groups Go to Asia Over Break

By Katrina Randolph

Fourteen students got a taste of Asian culture and government recently during trips to China, Hong Kong and Singapore.

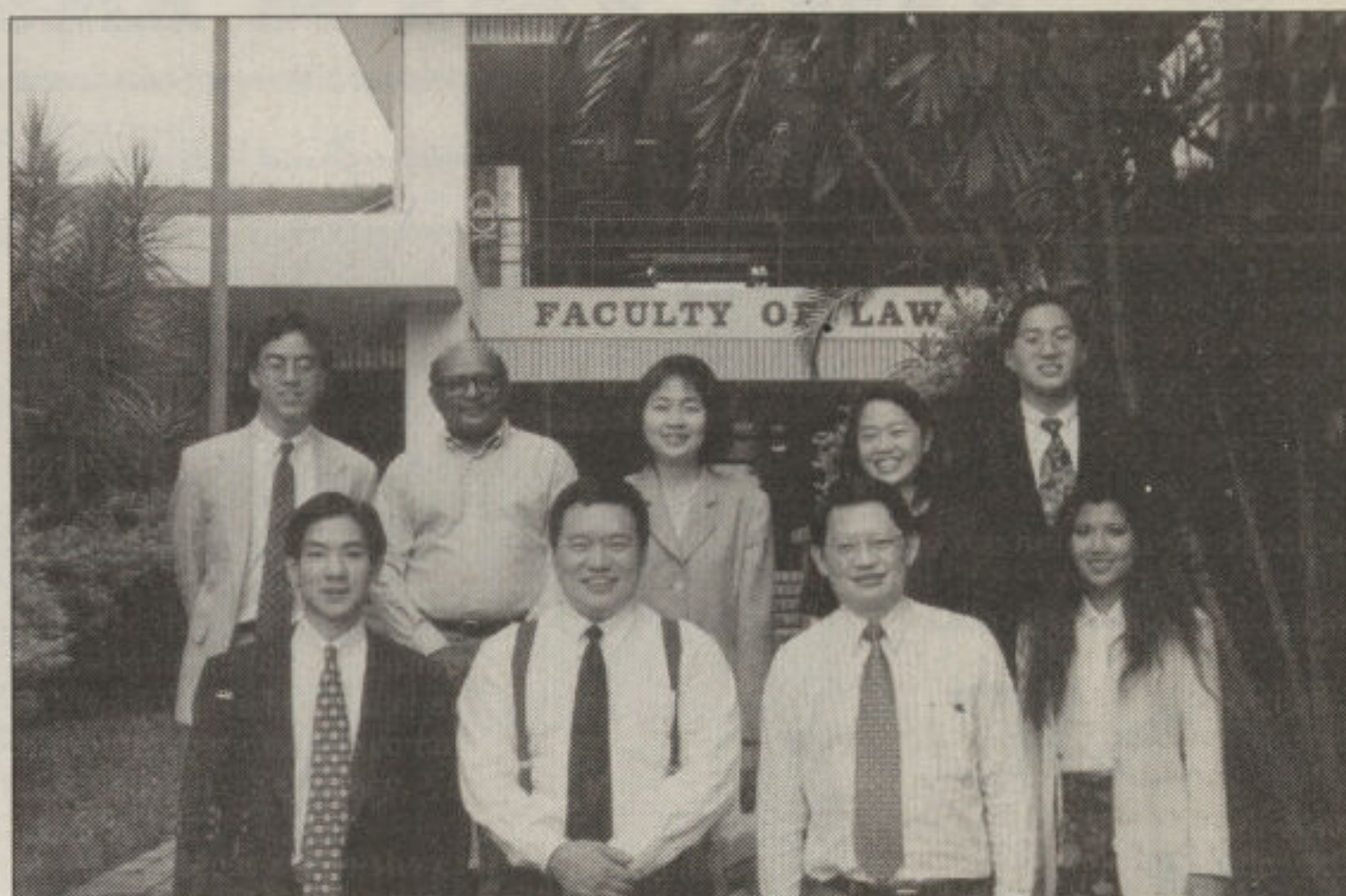
"China is perhaps the most important emerging market in the world right now," said Peter Furniss '95 of the International Law Society. He and five other students visited Beijing over spring break.

While ILS members were in Beijing, eight students in the Asia Law Society visited Hong Kong and Singapore. Both groups visited with high government officials, judges, ambassadors and lawyers to learn about Asian culture and business first-hand.

One theme ALS explored was the planned reunification of British-controlled Hong Kong with China in 1997. "The big question is, will China really honor the agreement that Hong Kong will retain its autonomy?" said Raymond Nomizu '96. Nomizu said many residents have received visas to live abroad, just in case China decides to take full control of the city.

In Singapore, students learned about the tradeoff between government control and individual freedoms, a hot issue in the United States since Michael Fay, an American, endured flogging as punishment for breaking a Singapore vandalism law.

Nomizu noted the differences and similarities between Hong Kong and Singapore. While both are crucial regional business centers, Hong Kong is far more important globally, he said. In addition, Nomizu said the nature of business-government relations is different — while Singapore is a very interventionist country, Hong Kong has a free market economy.



Members of the HLS Asia Law Society pose with Singaporean lawyers on the campus of the University of Singapore.

Similarly, China is a market with "special promises and special pitfalls," Furniss said. Its size and population are positive characteristics, he said.

"The people we spoke with often trained abroad, and were committed, capable people. It struck me that the populace as a whole is highly educated," said Furniss. "China has a long history of valuing education, and that shows."

On the other hand, "China has gone through a period of communist rule that has developed a command economy," one that is controlled by central government. "It has a very different tradition of law and of legal institutions," he said.

ILS meetings with government officials gave some members the impression that even China sees its command economy as an impediment to the country's economic development. Furniss

said the Chinese are importing a lot of Western culture and institutions, but he questions how much change they will allow.

"I think we all came back with a feeling that we need to learn more," Furniss said.

Students in the ILS delegation were Furniss, Reni Chang '97, Mark Hutchinson '97, Philip Berk '98, Eli Bukspan '95 [S.J.D.] and Fernando Irazu '95 [LL.M.].

Students in the ALS group were Nomizu, Nancy Wong '96, Connie Chen '96, Aya Gruber '97, Yumi Kakuta '95 (LL.M.), Albert Shu Yuan Lee '97, Jamie Metzl '97 and Edward Sun '95.

The law firms of Skadden, Arps, Slate, Meagher & Flom; and Winthrop, Stimson, Putnam & Roberts sponsored both trips.

War in the Former Yugoslavia Comes Home to HLS

Family, Law Link Students with Developments Abroad

By Debbie Solomon

As the end of the school year draws near, most HLS students are fretting about exams, third-year papers, summer jobs or graduation. Others, however, are more concerned about life outside the law school, where the temporary demolition of Langdell pales in comparison to the destruction of entire cities in Bosnia and Croatia.

Third-year student Karin Orsic worries that the fighting will spread to areas of Croatia where her family lives. Orsic's parents moved from Croatia to the United States in the 1960's, leaving behind many relatives. Her cousins' house in Karlovac was badly hit when the war began.

"Their home was so important to them," Orsic said. "They had brought in these beautiful kitchen tiles from Italy — a few tiles at a time. They had put so much effort into their home. Then the shelling began, and they had to hide in their basement for 3 days. When they emerged, the roof was blown off and the house was destroyed."

Orsic's grandfather is Serbian, and she said that before the war Croats, and Muslims lived together peacefully and frequently intermarried. Ethnicity didn't seem to be a big issue. She finds it hard to understand how government-inspired nationalism could have turned neighbors and family members against each other.

Orsic's Croatian mother now makes a point of leaving the family Christmas tree up through the Serbian Orthodox Christmas. It is a small symbol of past harmony — of peaceful coexistence before ethnic cleansing and irrational hatreds

swept the region.

Many blame the Croatian government for using nationalistic propaganda to foment ethnic hatred, just as President Milosevic in Serbia brain-washed his constituents to hate Croats and Muslims. President Tudjman frightened the Serbian population of Croatia when Croatia first declared independence by resuscitating symbols used by the Croatian Nazi puppet-government during WWII — such as the "Kuna" currency and WWII era flags.

In addition, the Croatian government's discrimination against Serbs living in Croatia (firing them from their jobs, evicting them from state-owned apartments, changing the constitution to afford less protection to Serbian minorities) incensed the Serbian minority and readied them for war.

Orsic is not optimistic about the potential of international mediation to solve this conflict. In a conversation with a friend from the Helsinki Commission, Orsic once said, "It's like telling a husband and wife to negotiate reasonably after he has beaten

her with a baseball bat." "No," her friend responded, "it's like telling them to negotiate after he has beaten her with a bat and they know that they must live together for the rest of their lives!"

Life has changed dramatically for Orsic's relatives in Croatia. While they live under a facade of normalcy, they cannot help but fear the impending spread of war.

Her father's childhood friend now has the undesirable job of medical examiner in war-torn areas of Croatia, and one of his main tasks is to identify the dead. Since a single shell can strew body parts along the street, he sometimes has to check

shoes to make sure that the legs match up.

"It's amazing what people can get used to," Orsic said.

Payam Akhavan, LL.M. '90, will never get used to what he calls the International community's "dithering statemanship and political cowardice over Bosnia." Akhavan

is legal adviser to the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia. Previously, he was the assistant to Tadeusz Mazowiecki, U.N. Commission on Human Rights Special Rapporteur for the Former Yugoslavia.

The Impact on International Law

Akhavan explains that the Yugoslav war revived historical antagonisms among the European powers: "In response to the carnage in Croatia and Bosnia-Herzegovina, Europe regressed to replaying the balance of power theatrics of the First World War."

Coming in the wake of the Maastricht Treaty's promise of European accord and the democratic overthrow of totalitarianism, this regression was "a rude awakening for a triumphant West lulled in the complacency of post-cold war euphoria," Akhavan said. "The sheer barbarity of the war shattered the illusion of a New Europe that had finally emancipated itself from the fetters of a dark legacy of nationalist strife and hatred."

But, he believes, the international community's feeble response has potentially terrible consequences for international law. "When massive human rights violations go unchecked, we send a message to would be aggressors that we will

tolerate and even acquiesce to their crimes. The former Yugoslavia is a failure for the international community because we've sent the wrong message," he said.

This message may have already spread.

Akhavan said, "Some have suggested that the lack of western resolve in Bosnia has given impetus to hardliners in Russia to launch a ruthless military operation against civilians in Chechnya."

Prevention and Punishment

Akhavan works at the War Crimes Tribunal in the Hague, preparing for the trials of alleged war criminals who have committed genocide in both former Yugoslavia and Rwanda. While he believes that the Tribunal is an important step towards justice,

he is uneasy that it is being used to justify inaction in more basic areas such as actually stopping the war.

He believes that the international community should focus on prevention of war crimes rather than punishment once they are committed on a massive scale. Currently, he said, "we aren't interested until there is an eruption of mass violence and then we deal in ad hoc measures." In this context, he said, "the Tribunal is a fig leaf for our miserable failure to act."

In addition, Akhavan believes that we need to revamp out-dated conceptions of human rights protection.

"Realpolitik and human rights are not mutually exclusive," he said, adding, "the Former Yugoslavia and Rwanda have clearly demonstrated the integral relationship between international peace and security on the one hand and respect for fundamental human rights on the other."

"This understanding does not call for

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**"The Tribunal is
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said Akhavan**

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Panelists Debate Merits of Gangsta Rap

By Victoria Kuohung

Six panelists last Saturday discussed the effects of "gangsta rap" — a genre of rap music whose imagery and lyrics features violence against women, guns, and drug and alcohol abuse — on the African American community as part of the 12th annual Harvard Black Law Students Association spring conference.

Independent producer Jaz, rap artist and community activist Sister Souljah, Arrested Development's lead lyricist Speech, New York-based journalist Paula Walker, UCLA law professor Kimberlé Crenshaw '84, and Northeastern University professor Elizabeth Freydborg debated the merits of gangsta rap in front of an audience of about 150. The panel, moderated by Prof. Charles Ogletree '78, featured clips from gangsta rap and feminist rap videos.

Opening the discussion with a definition of gangsta rap, Jaz disagreed with the charge that the music promotes violence among its audience. "If the rappers were real gangsters they wouldn't be talking about [violence] — they'd be doing it," said Jaz.

"People blame entertainers for being negative role models, but it's the responsibility of the parents to explain it to them."

Gangsta rap has been attacked both within and without the African American community for promoting violence among youth. Black activists such as Reverend Calvin Butts of the Harlem-based Abyssinian Church have denounced the

music, at times staging highly-publicized protests by destroying rap CDs in public.

These actions, however, have heightened the indignation of gangsta rappers, who often see themselves as calling attention to inner city problems.

"Hip hop music [of which gangsta rap is a part] gives people who Americans never expected to hear from the opportunity to command the mike and podium," said Sister Souljah. "It's not a negative — it's a warning, a gunshot, an alarm people need to listen to."

Economic success from album sales, she said, helps people "escape from the ghetto." But professional and middle-class African Americans see hip hop as "embarrassing, airing publicly the dirty laundry of the ghetto," Sister Souljah said.

"Hip hop is a healthy thing, a god-send."

Walker, while agreeing that a positive aspect of gangsta rap is its ability to help rappers "achieve economic viability," disagreed with Sister Souljah and Jaz's estimation of its positive force.

"Gangsta rap is made out as a ghetto romantic that glorifies violence, and said that this is fun, funky, hip and cool," said Walker.

"It's not. It's dangerous and has a bad impact," she said. Walker, who lives in Harlem, reflected how her neighborhood has changed since she was a child and attributed its decline to factors including the cultural influence of gangsta rap.

Agreeing with the importance of rappers as social messengers while acknowledging the danger of promoting violence,



Jaz, UCLA law professor Kimberlé Crenshaw, Sister Souljah, and Northeastern Univ. professor Elizabeth Freydborg discuss gangsta rap at a BLSA panel.

Freydborg said the African American community is "not doing what we are supposed to be doing as professionals."

"We are dealing with a generation of children whom we have already dismissed," she said. "We've closed down the community centers. Where do they go? They hang out on the street. We are all role models and we have to have some accountability."

"Gangsta rap is not the only music out there. We are repackaging negative images that the mainstream propagates and sending it back to ourselves."

Reflecting upon the theme of role models, Speech highlighted the lead that

artists themselves have to take in improving the community.

"We as artists are role models and must offer solutions," he said. "We should use music as a political form to try to empower ourselves."

Focusing her comments on sexism in gangsta rap, Crenshaw underscored how the African American community is "endangered because of the position of its women," Crenshaw questioned how "a lot of black people have different sensibilities to racist imagery and sexist imagery."

"Why do we fail to make the leap between misogyny and what happens to our women?"

Fried Included In Final Four for SJC Seat

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Fried declined comment on his candidacy.

"I'm not giving interviews to anybody," he said, "not even my friends at the Harvard Law RECORD."

While Fried has emerged as a favorite for the post, his candidacy may run into more roadblocks. The SJC is comprised almost entirely of white men — Justice Ruth Abrams, who is white, is the court's only woman — and activists have pressured Weld to increase the racial and gender diversity on the state's top court.

Two reports issued by the SJC itself since 1989 have called for more women and racial minorities to be appointed as state judges.

The other three candidates for the seat reportedly include Appeals Court Judge Roderick L. Ireland, who is African American; Superior Court Judge Margo Botsford; and Appeals Court Judge Christopher J. Armstrong.

Brockelman said concern about lack of diversity on the SJC would be "a factor, but not the deciding factor" in Weld's decision.

Fried, who served as solicitor general under President Reagan, has also drawn fire from those who say he is too conserva-

tive for Massachusetts.

"The potential of Fried's nomination to the court sends a shock wave through the feminist community," said Toni Troop, vice president for action of the Massachusetts National Organization for Women.

Troop criticized Fried's "lack of understanding about sexual harassment," his

"very ambiguous position on reproductive rights and gay and lesbian rights," and his "very clearly articulated opposition to protection for affordable housing."

Although as solicitor general, Fried frequently argued against abortion rights, he said recently that he is pro-choice and would not seek to overturn *Roe v. Wade*. More recently, he was a vocal advocate for a ballot initiative to eliminate rent control.

Fried's colleagues on the HLS faculty this week had only praise for the longtime HLS professor.

"He would be spectacularly good,"

Clark said he thought Fried would continue teaching at HLS if he receives the appointment.

Dean Clark '72 said. "He is a very learned man, he is very good at assessing legal arguments, and he is very thoughtful and careful in his legal reasoning. He is a well-intentioned and sensible person."

Prof. Larry Tribe '66 said he hoped Fried would be nominated to the SJC, despite the philosophical differences

between the two on issues like abortion and affirmative action. Tribe noted that the battle over those two issues centers more on federal courts than state courts.

"I think [Fried's appointment] will greatly

improve [the SJC's] overall status as the first-rate court it ought to be and has been at times in the past," Tribe said. "He would add a great deal to its intellectual quality and depth."

"He is a very decent and often compassionate fellow, and I think that matters in a judge as well," Tribe said.

But John Bonifaz '92 suggested that

HLS professors like Tribe were merely supporting one of their own to ensure support for themselves down the road.

"I think the idea of Charles Fried being on the state's highest court poses a serious threat to the civil liberties and the constitutional rights of Massachusetts citizens," said Bonifaz, a board member of the Massachusetts chapter of the National Lawyer's Guild. "This is affirmative action for a friend of Governor Weld rather than a real merit-based decision on who is the best qualified candidate."

Clark called the opposition to Fried "a flash in the pan."

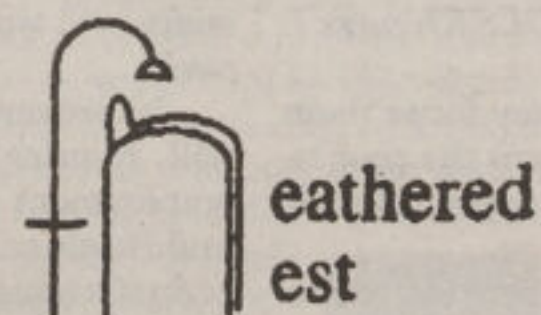
"I think many of the criticisms of him are quite unfair and overstated and very partisan," Clark said. "I think he is a fair-minded man and is not going to be affected in his judgments because some people are going to hit him over the head with arguments during this process."

"I don't think he's the kind of person who will take the opposite position, or harden his position [as a result of criticism]."

Clark said he thought Fried would continue teaching at HLS if he receives the appointment. Clark said "the most likely outcome" would be that Fried would continue to teach only Constitutional Law.

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BRIEFS



HLS Students Win Echoing Green Fellowships

Julia Harrington '95 has won a \$25,000 Echoing Green Fellowship to serve as a legal officer for the African Commission on Human and Peoples' Rights. Stationed in Banjul, The Gambia, she will provide legal services for people who file complaints of human rights violations.

Harrington's fellowship continues the work she began in the summer of 1993, during which she traveled to Banjul on a Human Rights Program fellowship to work with the Commission. After her 2L year, Harrington returned to Africa on both an Andreas/Wasserstein fellowship and a Student Funded Fellowship.

"This is what I wanted to do when I came here and it's satisfying, not to mention a great relief, to be actually able to do it," said Harrington.

On a general level, the fellowship is offered, at HLS, to women students to fund independent projects in public interest work. Other recipients of the fellowship this year were Cynthia Chandler '95, Romona Hamblin '94, Michelle McKinley '95, and Kim Soto '95 and Caroline Cuthbert '95 jointly.

Warren Wins Sacks-Freund Teaching Award

Third-year students this week picked Prof. Alvin Warren to receive the Sacks-Freund Teaching Award for being the best teacher at HLS. Ballot comments praised Warren for his wit, enthusiasm and knowledge of his subject — tax. Warren will receive a plaque on Class Day.

Past winners have been Profs. Areeda, Ogletree, and K. Sullivan. Remember Alvin, you have to declare the plaque.

Public Library Faces Separation of Church and State Challenge

An Arlington man said he plans to sue the City of Cambridge if it doesn't remove religious inscriptions inside the Cambridge Public Library. The inscriptions complained of are tablets containing the Ten Commandments, a number of proverbs, and quotes by St. Paul. City officials say that they will resist efforts to remove the writings but have placed a disclaimer near the tablets to explain their historical context and to describe the library's historical commitment to their donor. The library was donated to the city in 1889 with the maintenance of the inscriptions included as a condition to the entire gift.

Bumpers, Sasser Speak

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massive amounts of legislative power to the executive branch," he said, and should be resisted as too disruptive of constitutional separation of powers.

Bumpers said other proposed measures are not the proper subjects of constitutional amendment. He characterized the balanced budget amendment as "policy at its very worst — wholly unenforceable."

Sasser commented that although Democrats "must take their hats off to the unity Speaker Gingrich and the House Republicans have shown" and should recognize the first 100 days as a "public relations triumph," they also should not forego a deeper scrutiny of the contract's progress.

Sasser noted that the House's accomplishments so far have been in the politically safe areas of the contract. There is "no constituency out there for unfunded mandates," he said.

According to Sasser, passing the remaining elements will be considerably more difficult: "Now is the tough part, now they've got to start taking things away from people."

The biggest dilemma that Sasser sees facing Republicans is the reconciliation of tax cuts with promises to balance the budget. By Sasser's account, the Republicans are "talking in terms of cutting domestic discretionary spending by \$500 billion over the next seven years."

Because many of these cuts will be in programs with considerable constituency groups, Sasser foresees substantial political difficulties for the House in their implementation. Noting the strong voice of the elderly, he cited health care cuts as a project certain to meet with resistance.

Sasser suggested that observers should "judge the success of the contract over the next six months," after it has had to address its first significant challenges.

Both speakers said the Democratic party need not abandon its core positions in the face of a Republican resurgence.

To do this, Democrats should emphasize policies of "enlightened self-interest" — helping one's self through helping others, he said. Reaching out to help the less fortunate, Bumpers said, not only "make[s] him a better citizen, it makes you a better citizen and makes the country greater."

Mikulski Critiques Welfare

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When they look around, they focus their anger on the poor. They want the poor to work as hard as they can to get off welfare," she said.

"We have to prepare welfare recipients to get off and then help them move off and stay off and have a safety net for kids."

Mikulski also argued that the "men in the house rule," under which benefits are cut off if there is an adult male living in the home, breaks up families, while the paperwork required by the system forces social workers to be "eligibility workers" rather than "empowering workers."

"Any social worker worth their ginger

snaps will work against the system," she said.

Improvement of the welfare system will require an improvement in the employment sector for the poor and the middle class, said Mikulski. "The poor cannot change this by themselves. We need to make sure there are jobs, and this is true for the middle class as well."

Mikulski called for both Democrats and Republicans to work together on developing a "national vision of where our economy will be in the 21st century."

"The poor will succeed only if America succeeds," she said. "We have to stop scapegoating, get real, and get ready for the 21st century."

Public Interest Petition Considered

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one kind of work without giving information and assistance so they can explore all their options."

By and large, the biggest deterrent has been rising tuition and limited financial aid, which have forced many students to forego their original aims of public service and head toward the higher-paying law firms.

Yet nationwide, more students these days seem willing to take their chances in the tight public interest job market, crowding job fairs and embarking on aggressive and creative fundraising drives. Last fall, hundreds of students crammed auditoriums at 50 college campuses around the country to watch a national telecast on the rewards and risks of public interest careers.

At N.Y.U. Law School, a \$5 million donation which will be matched by the school will provide virtually free educations to students who practice public interest law for 10 years after they graduate. N.Y.U. also has launched Pro Bono Students America, the national database which Clark recently agreed to provide here at HLS and which is already in use at many of the top law schools around the country.

"I do see a growing interest in students at [N.Y.U.] and across the country who are participating in public interest after graduation, both for students who want it as a full-time career and students who want to incorporate pro bono work in private sector life," said Steve Kelban, executive director of N.Y.U.'s public law center.

Students have long been committed to public interest, but are now more than ever pursuing their dreams as aggressive student lobbying has forced schools to reexamine their programming to provide greater access, said Hector Vargas of the National Association for Public Interest Law, which has grown from 15 campus chapters at its inception in 1986 to 128 chapters today.

"Law students are organizing at a more sophisticated level than they have in a long time. And I think at a national level, there has been more emphasis on public service. That attention has heightened interest," he said.

Indeed, student pressure has been the driving force behind OPIA's growth at HLS, where the program is now often used as a model for other schools seeking to meet the growing demand for public interest advising.

In 1989, when Clark first became dean, he eliminated the position of public service adviser, in a "reorganization" of the Career Services Office. But after hundreds of students and faculty demonstrated in protest, Clark changed course in 1990, creating OPIA and installing current Director Stacy DeBroff, in what turned out to be the first office of its kind in the nation.

Today, OPIA is considered the national model for other schools and its Public Interest Job Search Guide is regarded as the official source for jobs in the public sector. Next month, OPIA will also sponsor a workshop where schools will share ideas on improving public interest advising.

HLS students, meanwhile, continue to crowd OPIA for advising, typically creating a four-week waiting list for counseling appointments. Since OPIA opened in 1990, appointments have nearly doubled from 394 to 733 last year. Students seeking appointments this year have already surpassed last year's figure.

Students accepting public interest jobs upon graduation have also increased, from 30 in 1990, to anywhere between 45-65 students in recent years, according to OPIA.

The growing demands on OPIA demonstrate a need for more funding and services, Liss said. Clark initially rejected the petition request for the online job

database, but agreed to reconsider when student leaders met with him after the Second Annual Public Interest Auction last month, an event that drew 700 people.

Liss said she hopes Clark will respond soon to the other two demands of the petition. These demands seek more funding for summer grants and ask that HLS follow N.Y.U.'s lead in heading a major fundraising drive to provide more secure funding of Harvard's loan forgiveness program, the Low Income Protection Plan (LIPP).

Clark said in an interview this week that he changed his mind about the database after deciding it would benefit students. He acknowledged that the huge student interest played a role.

"We've been doing a lot of fundraising ... and we will be continuing that with a new vigor," Clark added.

But Liss said the Law School needs to do more.

"I am pleased with [Clark's] decision and I think the online database will be an important addition," she said. "However, at \$4,000 that concern was the least expensive for the Law School to satisfy. We are still waiting to hear how much of the capital campaign funding will be going toward expanding LIPP, summer public interest grants and OPIA."

Currently, more than 100 students are on the waiting list for summer grants, which provide \$2,000 for a minimum 10-week work period. Student leaders say more funding could be obtained from the Law School's \$150 million Capital Campaign Fund. They also would like to see Clark dedicate his proven expertise in fundraising toward the public interest program.

"We showed we were doing everything we can — now we're asking him to do everything he can," said Liss. "There were lots of people working on the auction because they didn't have summer funding. It shows how important it is for students to get that funding." More than 100 students, mostly 1Ls, worked to organize the auction, which raised \$29,000.

Clark said he will put out a letter next week that will break down how much of the Capital Campaign Fund is dedicated to public interest support. But he maintained that the Law School will continue its current level of funding unless he sees reliable, detailed data that indicates a need otherwise.

But Liss said Clark's passive support could cause great harm. She said N.Y.U.'s aggressive push of public interest threatens to undermine Harvard's leading reputation in the field, and thus draw away the many talented law school applicants who each year routinely express desires of pursuing public interest work.

"I think N.Y.U. is definitely challenging Harvard and if Harvard doesn't respond now, N.Y.U. will be the number one public interest school in the country," Liss said.

N.Y.U. officials have said they predict the school's new loan forgiveness program will draw many more students into public interest. N.Y.U. also held a public interest auction this year and brought in \$41,000, topping Harvard's \$29,000.

Vargas said the public interest programs at N.Y.U., Harvard and Georgetown are widely considered the best in the country. He agreed that prospective students will be looking carefully at what services each schools offer in this time of heightened awareness of public interest as fewer numbers apply to law school.

"We get calls from students all the time who are really unsure about the law school programs, and we provide guidance on how to investigate what the law schools have and how to compare them in different respects," said Vargas, whose organization also publishes a booklet detailing the different public interest programs. "More students are definitely looking more carefully at that."

G Y M R A T

Crunch Time

By David Koontz '96
Sports Editor



THE Gym Rat realizes that he has strayed from his bread and butter (or if you're a metaphor purist, his cheese and whatever you put on cheese) recently, what with Michael Jordan, baseball, and the RETCHIN' parody (they actually broke my leg for that picture). In the meantime, HLS hoops action has been more than just fantastic; it has been, as Prof. Gerald Frug might say, "quite good."

Evidence: The "B" League regular season finished with the East's Great Danes and the West's Gooch's Two-Headed Johnson as the only two undefeated teams, but don't pencil them in just yet for the finals. The opening round of the playoffs proved a little too interesting for that. In the "A" League, Lang Wiseman '96 strapped Well Hung Jury on his back (now isn't THAT an image) and propelled them into first place. So ponder, if you must, whether or not the Denver Nuggets can hack it against a second straight number one seed (they can't), or if half-price April Red Sox tickets are worth it (they're not), or if your friends are interested in watching your old tapes of the NCAA Tournament (they aren't). For my money, Hemenway Gym offers more thrills, chills, and spills than a trapeze act at a NASCAR race. So remain seated and grasp the handrails firmly as we plunge into HLS hoops yet again.

"A" League: I'm going to start with these guys because the "B" League playoffs just scream, "Big Finish." (Don't skip down the page, though - we'll get to it.) Well Hung Jury and En Fuego met head-on last Friday, both teams entering the game with a claim on first place at 7-2. Well Hung Jury continued its mastery of the six-point victory and added to the Legend of Wiseman. A lanky gunslinger from the hills of Tennessee who will kill me when he reads this description, Wiseman has the habit of scoring a bunch of points by taking (and making) lots and lots and lots of three-pointers. People still talk about his game against 3L, but don't ask me how many points he had. Yesterday, a source had put the total at 78, but that may be a little high since the team only had 66. Ask Wiseman himself, and he'll say he scored about five. To be fair, Well Hung Jury is not a one-man team. For example, you've got Scott "Look out because I'm" Cummings "Down the middle" '96, Jeff "I'm really tired of all these little guys fouling me but I'm not going to say anything" Holland '96, and of course Marc "mud Abdul-Rauf" Merriweather '96. These guys are all an integral part of getting Wiseman the ball. No, no, that was just a joke.

"B" League: First, congratulations to the Great Danes and Gooch's Two-Headed Johnson. Each team won under difficult circumstances in the final weekend. The Danes had to play back-to-back games, while Gooch had all it could handle with an otherwise undefeated Death Squad. The 1L Danes came into the foreboding halls of HLS, shrugged, and took care of business by playing smothering defense and mistake-free offense. In spite of that textbook description, they're anything but boring to watch. Gooch, meanwhile, has the Johnson brothers and the Levitt controversy, but this team wouldn't be undefeated without the fire of Tim "Gooch" Eckstein '96 and the ice of Tim "Take It" Strong '96.

The regular season allowed each team to play the other nine teams in its division once, but the playoffs provided some extra variety with an intriguing cross-seeding format. You had to wonder whether the higher or lower seed would have the advantage of never having seen each other. You had to wonder, that is, until you realized that no teams ALL YEAR had previously seen each other. Gooch's Two-Headed Johnson used the ancient don't-take-anyone-for-granted approach with the eighth-seeded HLAB Hoopers, and I can say without hyperbole that the result was the most exciting basketball game ever played. Gooch did not play particularly well at first, and captain Willie "Yes He Will" Epps '95 had the Hoopers taking and making smart shots and taking care of the rock. By half-time, it was obvious that HLAB was not going to go away. Epps guarded Todd Johnson '96 better than anyone has all year, and no one else was able to take up the slack against a tight Hoopers D. With "Cool Hand" Glen Abramson '96 and Octavio "Aire" Pedroza '95 slipping through Gooch's defense for clutch shots, HLAB found themselves up by six with a minute left in regulation. There's a reason I said regulation; Gooch made a furious rally, fouling and taking rebounds from missed free throws straight up the court, forcing a tie and a first overtime. There's also a reason I said a first overtime; there were, in fact, two before it was all over and Gooch had held on to avoid the upset. Afterwards, the Gooch team collectively expressed relief for not having taken HLAB for granted. Kind of makes you wonder what would've happened if they had.

The Great Danes faced no such trouble in rolling to the second round, where they will face a large Holmes Boys team. Spence-Air will hope that Gooch won't make like a wounded bear, while the Stone Cutters look in top form once again and are waiting to play the winner of Mo Knows vs. Hanson's Heroes. Since I was told to be objective about my seventh-seeded Sleestaks' upset of second-seeded Death Squad, I will only say that basketball has been very good to me and my teammates, especially to Anthony "Earl the" Pearl '96, who sank the game-winning 25-foot jumper with six seconds remaining. I've got to congratulate Death Squad on a hell of a season and keep my promise to Jacques Youssefmir '95, who was quoted as saying, "I just want to be quoted."

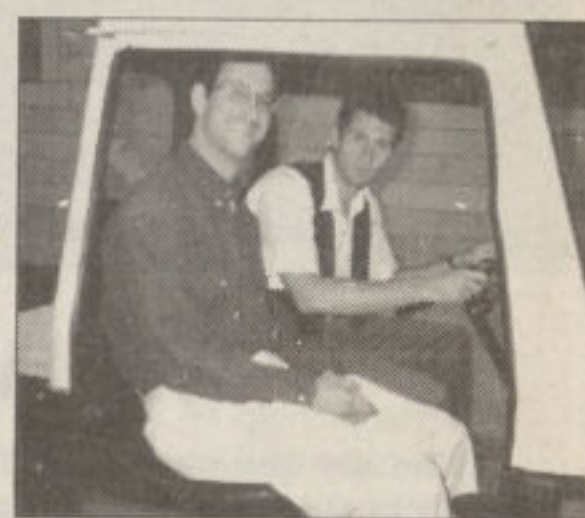
Intramural Basketball Standings as of Sunday, April 23

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

Compiled by Doug Cooperberg

FOOD - O - RAMA

Today's Aujourd'hui is Tomorrow's Yesterday



By Ted Cohen '95 and Jonathan Goldstein '95

RECORD Restaurant Guys

ACCORDING to Zagat's Boston Restaurant Survey, Aujourd'hui (in the Four Seasons Hotel, 200 Boylston Street; 338-4400) is one of Boston's favorite restaurants, and it's not hard to see why. Something ineffably "Bostonian" happens to you the moment you walk into this hushed, handsome, heavily flowered dining room. (Aujourd'hui definitely gets top marks in the three "H's" of fine hotel dining.) No matter how loose you felt meandering through the Public Garden on your way there, a bit of Henry James or Louis Auchincloss seeps into you when the hostess pulls out your chair and spreads your napkin across your lap for you. For the next two or three hours, you will submit to the restaurant's careful orchestration of a fetishized Brahmin dining experience. If you feel a little uncomfortable at the prospect, it's only natural: You're participating in a historical recreation. Think of an exquisitely upscale version of Williamsburg, and you'll get the idea; instead of demonstrating musket-loading, the staff serves with a capital "S."

Aujourd'hui, in other words, may put some of you off at the door; but that would be a shame because then you wouldn't see how your table faces the Public Garden. You also wouldn't see how good the food is. Granted, this comes at a steep price - a six-course tasting menu is \$70, and main courses are all in the \$30-\$40 range. (We were easily 25 years younger than, and several tax brackets below, everyone else there.) But if you're looking to splurge on graduation weekend [and really, what else is it for?] and you have a sweet-tooth for formal dining, Aujourd'hui is probably your place.

Our tasting menu began with a terrine of smoked salmon and sturgeon garnished with ossetra caviar and a drizzle of basil oil. The terrine had a perfect texture and an intense taste of the sea; we only wished there had been more of the basil oil on the plate. In any event, it certainly set the tone for everything to come: fresh ingredients of extremely high quality; elaborate preparations and presentations; and a fairly formal and conservative approach to flavors. Nothing jumps off the plate and knocks your taste buds for a loop, but the ride is smooth and professional. (There was one exception: an appetizer of fresh macaroni served in an intense stock of red wine and either veal or beef, finished with cream and studded with rich nubbins of squab and earthy black trumpet mushrooms (\$13.50). This dish will not only knock your buds for a loop; it'll blow them away.)

The next dish, a tiny quail, was perfectly roasted: the skin crackling, the flesh buttery and tender. The twist here is the bigarade - for the traditional bitter orange that flavors the honey-like glaze (as in duck à l'orange), the chef substitutes sour cherries, making for a less sweet and more complex sauce. The addition of pistachio nuts is an excellent textural touch.

Aujourd'hui's fish dishes fare less well. Both the coriander-crusted halibut with almost-never-seen braised ramps (those are wild leeks, with a much wilder, stronger flavor than the conventional kind) and tomato coulis and the grilled salmon in a root vegetable and lentil broth (\$31 for the latter) were slightly overcooked and underspiced. Even a little salt might have brought out the flavors in these dishes; instead, they were blandly disappointing after the quail.

Not so for the perfectly prepared rack of lamb: two miniature chops, grilled to a light pink and served atop a mound of gratinée potatoes, roasted sweet peppers and a soft-spoken olive sauce. The resulting dish is a primer for how to do lamb right. Though we sampled only a small tasting portion, chances are the \$38 entree portion is a safe bet.

By this point, we were beginning to dread the arrival of our waiter (well, waiting team, actually). Would it never stop? Were we fated to go on stuffing ourselves until the end of time? And there, as if in answer to our over-stuffed prayers, came the cheese course, signaling the denouement of this dining event. And quite some cheese it was. A chicken egg-sized blob of fresh chevre (goat's milk cheese) came served with a bit of sugarbeet and carrot oil. Thick and spiked with herbs, the chevre had the feel almost of cream cheese, rather than the crumbly stuff we're used to finding on our Greek salads.

Of course, there was still dessert to attend to. Here too, there was something of a production. When we had first taken our seats at the table (what was it? Two, three days ago?), a server had asked us if we would care for the dessert soufflé. If so, we had to speak up now, for the thing takes about an hour to prepare. We opted for the chocolate over the Grand Marnier version, and now, as it was plopped in front of us, we were glad someone had planned ahead. Remember Willie Wonka's chocolate factory? That room where everything is eatable, I mean edible? Well, Aujourd'hui's soufflé is like eating chocolate air. The top is pierced with a spoon and vanilla sauce is poured into its depths, leaving you with an impossibly light, yet utterly rich confection which would make Mr. Wonka blush.

Nearly as good is a banana tart tatine, composed of lightly fried banana morsels, dusted with confectioner's sugar and served along with white pepper ice cream. That's right, white pepper ice cream. Much less sharp than the original of this unusual dish created (presumably) by George Vongerichten of New York's Vong, Aujourd'hui's version is mild and tasty with just a hint of a bite to it.

So, call ahead. Have mom and dad warm up their credit cards. And reserve a spot at what is surely one of Boston's more memorable, thoroughly Bostonian dining experiences.

RATING: ★★★★★

What the stars mean:

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

Harvard Law RECORD

Founded in 1946

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Will We Ever Learn?

At the very time when many 3Ls were working furiously to complete the final masterpieces that would be their third-year papers, 1Ls were about to take up arms against the HLS administration due to the recent announcement that the tentative go-ahead has been given for renovation of Langdell during their third year. Talks of instituting a lawsuit, demands for a tuition rebate, and calls for an exemption from the third-year paper requirement are among the many products which have come out of the current fiasco. Not one of these ideas, however, will solve the underlying problem that has given rise to this debate: the lack of communication between the student body and the administration.

The fact is, both the administration and the student body dropped the ball on this one. While Dean Clark is correct in saying that notification prior to the matriculation of the Class of '97 would have been premature, to say the least, given the shelved state of the renovation plans at the time, the student body should have been notified when the plans were taken back off the shelf with the intention that they be dusted off and implemented. The Dean did recognize this duty by including a student on the committee, as he has throughout the planning process, but part of that student's role should have been acting as an advocate of the needs and concerns of *all* students, not just of what he thought might be necessary. That student should have been encouraged by the administration, and should have made it his priority, to talk with the LSC, the elected representatives of the student body, in order to bring a broader perspective of student views to the committee meetings. The library, after all, is as much for the students as it is for the faculty and the larger academic community, and general student views on what might be needed, in terms of both the library itself and the renovation stop-gap measures, should have been obtained.

However, the students are just as responsible for failing, as any Contracts professor would say, to fulfill their duty to mitigate. Stories have appeared in the RECORD regarding the potential for a Langdell renovation, and most students have heard rumors this year about Langdell closing in 1996. Why didn't anyone ask the administration? Dean Clark has made himself available to meet with students, both formally and informally, all year; if anyone took the opportunity to mention the rumors then, disclosure to the larger community might have taken place sooner. If students were afraid to approach the administration themselves, why didn't they ask the LSC to investigate? The truth is that we just didn't, and for that we must also share the blame for the current state of affairs.

The point of all this is not to point fingers or to explain the obvious. Rather, it is to suggest that we stop crying over spilled milk and start to work together — students, faculty, and administration — to make the renovation process as simple and as pleasurable as possible. The current LSC has taken some responsible first steps, forming a committee to address the issue and organizing Monday's forum to allow students to personally convey their views to the administration. The dialogue should not, and hopefully will not, end there, as there are still a number of issues yet to be explored, much less resolved. But both parties must remember that this should be a *dialogue*; each should continue to provide its suggestions and convey its concerns, but they should do so with ears as open and receptive as they expect the other party's to be.

Equally important, however, is the larger lesson this issue embodies for the students and the administration: communicate. Administrators should not suppose that students will not be concerned about proposed changes which may seriously impact their law school careers. Student representatives on administrative committees should remember that they are just that — representatives — and should keep their constituents informed, especially when the administration fails to do so. And students should be at least as willing to ask questions as they are to demand results; without doing the former, the latter will never be respected or heeded. Unless we all learn these lessons and heed them in the future, the Langdell renovation fiasco will only rear its head again in another form somewhere down the line.

— Weiss

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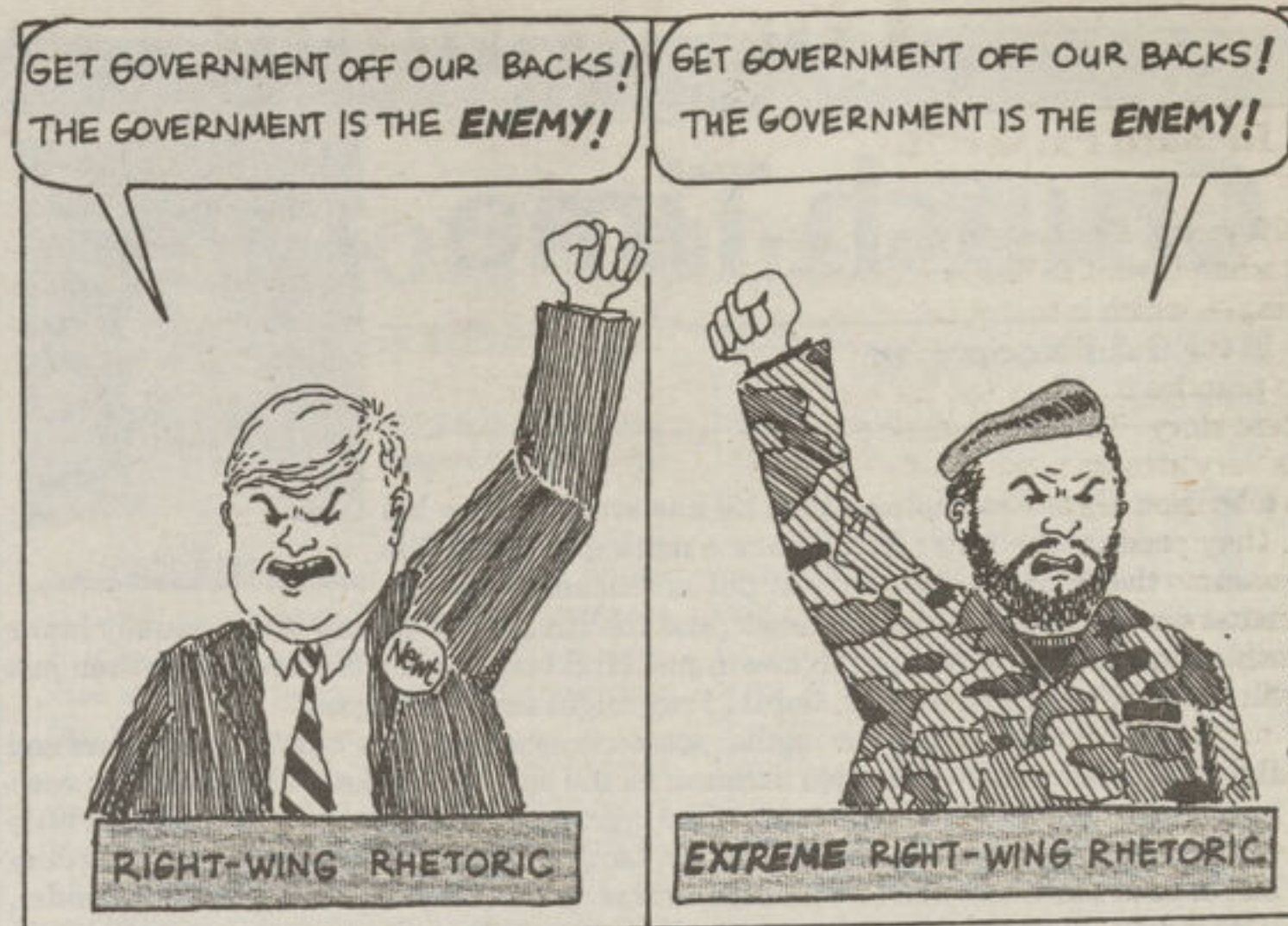
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—First Amendment, US Constitution



• Letters •

Langdell Closing Poorly Handled

The decision made by Harvard Law School's administration to close down Langdell Law Library for the entirety of the 1996-97 school year is indefensible. It represents the perverse idea that Harvard's academic integrity is worth less than the almighty dollar. The schedule for renovations closes the library for an entire year, makes only 30,000 books readily available (which is smaller than many law firm libraries), eliminates a necessary study area (especially for people in 9' x 12' Gropius rooms), makes a quality 3L paper (a requirement) nearly impossible for the Class of '97, and is generally unfair in putting the screws primarily to one class. In less than two days, over 80% of the Class of '97 expressed dissatisfaction with the scheduled closing by signing a memo that was given to Dean Clark this past week.

The closing of Langdell Law Library for the Class of '97's entire 3L year is particularly unfair. Members of the Class of 1997 received no notice of this closing before deciding to matriculate at Harvard Law School. Given the bragging in HLS's admissions materials about having the world's largest law library, I do not think it is wrong to expect to have use of that library while enrolled. If the closing had been made known to my classmates and me before accepting, many of us quite possibly would have selected a law school that has more than the 30,000 books that we have been so graciously promised for our 3L year. It is ironic that while Harvard University revokes an undergraduate's college acceptance due to an omission of information in application materials, Harvard Law School is omitting from its admission materials the fact that the law library will be closed AN ENTIRE YEAR! (Note: Other administration offi-

cials did not inform the Office of Admissions of the scheduled closing until April 5th.) Not one of the five prospective 1Ls with whom I spoke this week had heard anything about the renovation. But then again, the administration contends that closing the library for an entire year is simply not a big deal.

In the memo sent to students on April 5, the administration suggested that the library isn't necessary for a quality legal education given the existence of on-line services such as Westlaw and LEXIS/NEXIS. If this is truly the case, why not close the library for good? With such logic guiding HLS policy, are we to expect that Sally Struthers will soon be advertising correspondence courses where one can obtain a Harvard Law diploma? The bottom line is that on-line services are insufficient to replace the world's largest law library. They do not go far enough back in time for those wishing to research anything before the 1940s (or in some cases, the 1980s), nor do they include the bulk of information pertaining to the legal systems of other countries. Furthermore, they are inadequate for writing a 3L paper in the area of legal history. On-line services might be enough to provide an adequate legal education, but not a \$30,000 per year legal education.

Also in the memo to students, the administration recommended doing the 3L required paper, which is allegedly a culminating experience that draws upon past courses, in the 2L year. This is, for most, not an acceptable option. At the outset of the 2L year, most will not have a clue about a good topic. After all, the only courses that we have been allowed to take before our 2L year are the basic required courses (plus one elective). As for the few people who might know what area of the law they wish to

explore deeply, they would have problems writing a paper during their 2L year as well. Take, for example, the students who wish to write a paper in the area of Constitutional Law. What are they to do if their introductory course in that subject (perhaps with Laurence Tribe) isn't until the spring of their 2L year? One can hardly expect them to have the background necessary to write a quality paper on their topic at the same time they are taking the introductory course. It is obvious that this problem is likely to occur for a number of areas of study. And let's not forget the plight of those wishing to do a 3L paper on legal history. They have been told necessary materials will be "unavailable."

Not only are J.D.'s adversely affected; the LL.M. students in the Class of '97 get hit even harder. After all, they are only at HLS for one year — a year without a law library. It is hard to imagine that the LL.M. program will be very attractive in the 1996-97 academic year — if applicants are actually informed of the closing.

Yes, I do understand the need to renovate the law library. However, one must assume an ostrich-like position to believe that it must be completely shut down for a year in order for a renovation to take place. If other law schools can renovate their law libraries without closing them down, Harvard can too!

I strongly urge all HLS alumni to write to Dean Clark to express concern about the negative impacts that closing the law library for a full year will have on the law school as a whole, namely, a decrease in academic quality and, therefore, a corresponding decrease in academic reputation.

Bob Melson '97
Vice-President, Dormitory
Student Affairs Council
April 18, 1995

• Letters are continued on page 10 •

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The Coming Legal Backlash

By Prof. Richard Parker '70



FOR 20 years, I've taught criminal law. But when I want to find out what's happening — which is to say, what's going to happen — in the O.J. Simpson case, I talk to people who practice it. They tell me a more or less consistent story. The case against Simpson, they say, is very strong; most people watching the trial on television are likely to conclude that Simpson is guilty; yet, they predict, the jury is not likely to convict him. Let's assume they're right. What then?

What matters most is not the blow-by-blow of this case but the possible implications for tens of thousands of others. How will the public react to a hung jury or an acquittal? How might its reaction register in the political process? Might it spark reform of the criminal process? Should it?

For answers to these questions, practicing lawyers may be the last ones to consult — just as Tom Foley turned out to be the least reliable forecaster of the 1994 elections. The questions come at a moment of liberation of reformist political energy. New voices of ordinary people, first on talk radio, now in governing majorities, are getting a hearing. They are rejecting the wisdom of "enlightened" elites, overturning taken-for-granted ideas. It's a populist moment, in some ways like the mid-1930s or the mid-1960s. Ideas about the "adversary system" of law enforcement — no less than ideas about federalism or public spending or welfare — are now potentially up for grabs.

One thing is safe to predict: The media will package the outcome through a menu of three familiar takes on the system. The question is which of them, in this political environment, is most likely to catch the public's imagination — and how the prevailing take will affect proposals for basic reform.

Call the first take on the adversary system the *Insiders' Take*. It focuses on the "contest" between the adversaries, defense counsel and prosecutors, each fighting as hard as possible for his or her "side" within the ample limits of the law. Their strategies and tactics, eloquence and demeanor, even their personalities and relations with one another are fascinating. The victims and witnesses and evidence are pieces they move, with the defendant and the jury the ultimate pieces. Other lawyers second-guess their moves, tantalizing us with insider lingo and insights. The coverage of sports and political campaigns has reached the law.

The *Insiders' Take* diverts attention from the legal system that sets the terms of the "contest" it implicitly celebrates. The system is just accepted as a given. Proposals for its reform seem academic and uninteresting, or at least not of immediate interest. So the outcome of a trial is enveloped in quiescent platitudes: "The jury has spoken," or, "Our system of justice has worked its will." The lawyers on the losing side may complain about the judge's decisions or the conduct of the lawyers on the winning side. Yet the focus remains on their strategies, their eloquence, their demeanor and so on.

The *Insiders' Take* will likely continue to dominate establishment media legal coverage. But (assuming the practicing lawyers are right about the outcome of the trial) it probably won't prevail with the public for long. The reason is that the *Insiders' Take*, however familiar, is on life-support in today's populist climate. The Simpson case promises to pull the plug.

Even in the establishment media, the *Insiders' Take* on adversary contests is under stress. Think again of the coverage of sports and politics. For some time now, reporters have supplemented their analyses of the moves of the contestants with analyses of the underlying systems at work. And they've begun to proclaim the decadence of those systems — whether player compensation systems or systems of campaign finance. This tendency is often put down as "cynicism." But it is the "cynicism" of the child who said the Emperor had no clothes — that is to say, realism. People are now energized to criticize systems — even beyond the ones the establishment media want to criticize — at the root and in their own words.

When it comes to courtroom adversary contests, the public is poised for systemic criticism. Lawyers have never been popular. Certainly, they're less popular than professional athletes and are probably down there with career politicians. What's more, in reaction to massively publicized criminal cases (the Menendez brothers, Bobbitt, etc.), systemic criticism of the legal process has recently begun to find a resonant voice. As George Fletcher shows in a new book, "With Justice for Some," ordinary people have increasingly looked at these cases from the standpoint of the victims and have been appalled at the "justice" meted out by the system. Something, they sense, is deeply wrong.

With the Simpson case, this popular systemic criticism is ready to take political arms. The public has been in on this one from the first day, and through coverage often

unpacked and unfiltered by the *Insiders' Take*. The supermarket tabloids have focused as much on the substance of the case and on the victims as they have on the maneuvers of the lawyers. Radio talk shows rarely offer comments about the lawyers; most callers seem to want to talk about whether he actually did it. Most important, the public is able and eager to tune in to the courtroom on television without kibitzing by "experts." As with the Nixon

impeachment hearings, people will feel able to make up their own minds. And, as with C-SPAN coverage of the Congress, they will feel sufficiently familiar with the cast of characters to criticize the lot of them and the games they are playing. Overexposure tends to loosen the critical tongue. It impels us to try to see through day-to-day posturings and discern what, more deeply, is going on. When the concrete result strikes us as wrong, it emboldens us to condemn systemic decadence. The people who condemned decadence in the congressional system of Democratic Party rule will be inspired, by this case I think, to condemn decadence in the adversary system.

But what decadence? If the *Insiders' Take* is to be eclipsed — if the public is no longer to be in thrall to lawyerly narcissism — what sorts of systemic criticism and proposals for reform will emerge? Two will compete for the popular imagination.

Call the first the "Enlightened" *Elitists' Take*. Its focus is sharp: on our sentimental reliance on juries. It attributes unjust outcomes of criminal cases to the incompetence of the amateurs to whom the system assigns so much power. Their incompetence is inherent not just in their amateur status, but also in the arbitrariness or ignorance or stupidity or prejudice that, it assumes, too often characterize ordinary citizens. With these disabilities, jurors are either too easily manipulable or too likely to go off on their own, despite the evidence and the law. Trial lawyers — who fancy themselves expert manipulators (they'd say persuaders) of juries — tend not to adopt this view. But it is a perennial in the bar and the law schools, and has recently seemed to be waxing in wider elite circles.

The juries refusing to hand down convictions in the infamous cases of the past few years — Rodney King, Menendez, Bobbitt — have been dismissed this way. Should the Simpson jury follow suit, it isn't hard to anticipate the terms of its vilification. The race of the jurors will doubtless be a centerpiece.

The reform proposals that follow will likely be disappointing. The right to trial by an "impartial jury" in criminal cases is, of course, guaranteed by the Constitution. The requirement of "impartiality" has been massaged into proposals that judges aggressively "instruct" the jury on application of the law, even more than they do now.

Proposals have been offered to make jurors more "representative," protecting victims as much as defendants against prejudice, and to limit the power of counsel to pick and choose among them. As a practical matter, however, none of these familiar proposals meets the basic criticism of jurors-as-irresponsible-amateurs.

More radical proposals might be offered, to require enhanced, neutral indices of juror "competence," or further to discourage defendants from opting for a jury trial at all. But the latter hardly counts as radical, since the vast bulk of criminal cases are already, through plea bargaining, resolved without trial. And the former flies in the face of a long-standing idea: the rough equation of "competence" for jury service with "competence" to vote.

There lies the key weakness of the "Enlightened" *Elitists' Take*. Its condemnation of juries sounds too much like — and, I think, is like — prissy condemnations of the voters after an election. Arguments based in contempt for the majority of ordinary people work well in sheltered elite settings. As political arguments for reform addressed to the general public, they work less well. At a populist moment, they aren't likely to work well at all. A majority supposing it has just ousted one smug elite won't want to see itself as embracing another.

Which leads to the remaining option. It's the one I'm betting on, and rooting for. Call it the *Populist Take*. The focus of its criticism is on waste, smug abuse of power and disdain for ordinary people. The systemic decadence it identifies is the same decadence that the majority of voters identified and condemned in Washington last November. It is suited to the moment.

The waste in our system of criminal "justice" — in terms of allocation of collective resources — is easy to see. Our goal is fair, accurate and effective enforcement of the law. The question is how much time and money and talent we should spend and how we should spend it. We could spend on every case the resources that will, eventually, be spent on the Simpson case. In every case, lawyers and investigators might explore every complexity, testing every

bit of evidence, as elaborately as in the Simpson case. But the adversary system might then bankrupt us before the health care system does the job. As with health care, choices to do less than we could do must be made; as with health care, resources ought to be expended fairly, where they'll do the most good. From this perspective, the level of expenditure on the Simpson case will strike you — especially if you conclude he was guilty and he gets off — as a waste.

But why should the public see it this way? It's Simpson's money, isn't it? Why shouldn't he spend it as he pleases, just as the rich spend whatever they want on health care? The difference is a matter of public morality. If Simpson gets off, the public won't feel just that he didn't "deserve" to walk. It will feel that he deserved much worse.

Besides, the issue is not just waste, but toxic waste. If the people conclude that Simpson is guilty, but he gets off, they will look to see how his high-priced counsel did it. They may conclude that his lawyers, his "officers of the court," having been delegated power by the adversary system, intentionally used that power to obscure the truth, to derail enforcement of the criminal law. When they're

reminded that the system itself allows, even encourages, such behavior, they are likely to be reminded as well of the sort of smug systemic abuse of power that so offends them in government generally.

What will most offend them, however, is the disdain for ordinary people revealed as inherent in the adversary system: for the victims and their loved ones, for the people who "work hard and play by the rules" and for those who are charged with crimes but who don't have millions of dollars. Oddly, this last is the most egregious. For the ideologues of the adversary system don't really pretend to care much about the first two.

It's the defendants whose rights they celebrate.

In the "great case" of *Gideon v. Wainwright* the Supreme Court announced the "obvious truth" that "in our adversary system" poor defendants "cannot be assured a fair trial" without counsel. *Gideon* was based, in turn, on *Griffin v. Illinois*. There, Justice Hugo Black established, as a central Constitutional concern, "equal justice for poor and rich, weak and powerful alike." Speaking for the Court, he proclaimed that there "can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Yet that is precisely what the "kind of trial a man gets" still depends on. (Indeed, most ordinary defendants, pressured to make a plea bargain, get no trial whatever.) The Simpson case will dramatize that truth with a vividness probably unprecedented in our history. Ordinary people will smell the contempt for them beneath the celebration of the system by Simpson's high-profile trial attorneys.

At least two sorts of reform proposals might meet this populist criticism. The first involves some kind of "socialization" of legal services. Lawyers' responsibilities to take clients assigned them by the courts, or to take clients at substantially reduced fees, might be substantially expanded. Lawyers might be assigned to cases at random, as judges are now. Or they might be obliged to join "legal maintenance organizations" that sell insurance at regulated rates. But such schemes, smacking of big government regulation, would probably go the way of the Clinton health care plan. While they would do something about unequal justice, they would not address the other problems of disdain for ordinary people at the root of the adversary system. Nor would they address the problem of toxic waste.

More attractive will be proposals that address those problems directly and deal indirectly with unequal justice. These are proposals for "downsizing" the adversary system. Trials would be radically abbreviated. Judges would be assigned the responsibility — subject to summary advice and criticism by counsel — to sift, assemble and present most evidence to juries and to sharply restrict the extravagance of lawyers on both sides. Cleansed of the systemic invitation to manipulate the system, the law would be more respectful of victims and of the ordinary people who obey it. Some of the resources saved by reform could then be reallocated among all cases, including the vast majority that now are resolved without any trial of any sort.

In the literature on such proposals, there are studies of (partial) adumbrations in European criminal justice systems. Also in the literature are warnings that there must be a check on the fairness of the abbreviated trial, a check less wasteful and less toxic, more respectful and more effective, than an adversary blow-out. Although no one (as far as I know) has produced a blueprint for the United States, a simple message attractive to a broad constituency is more important, initially, than a blueprint. Blueprints should be developed gradually and openly, not in academic isolation by a new Ira Magaziner. And the simple message already exists: downsize the system.

But what if the practicing lawyers are wrong? What if Simpson is convicted? Will that deflate proposals for systemic reform? Probably. An opportunity, one some of us have been awaiting for some time, will have slipped away. But only temporarily. Another one will come along. We'll just wait a while longer for the next really big case — and the next populist movement — to end the adversary system as we know it, at long last.

The waste in our system of criminal "justice" — in terms of allocation of collective resources — is easy to see.

With the Simpson case, this popular systemic criticism is ready to take political arms.

Richard Parker is a Professor of Law at HLS and authored "Here the People Rule: A Constitutional Populist Manifesto." Reprinted with permission from author.

Temporary Insanity

By Sheila Tuller



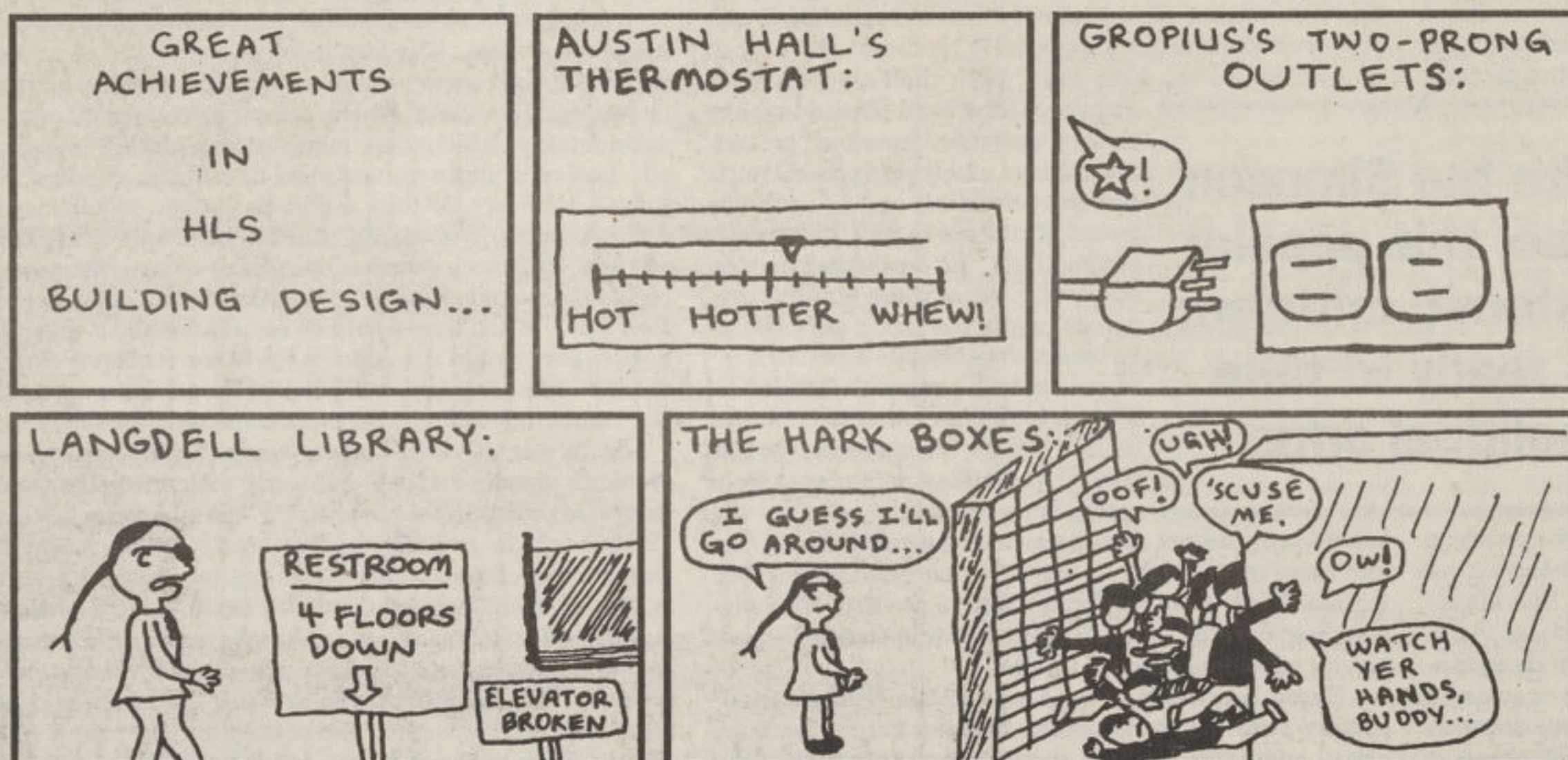
Civil Procedure

M.J. Kelly ©1995



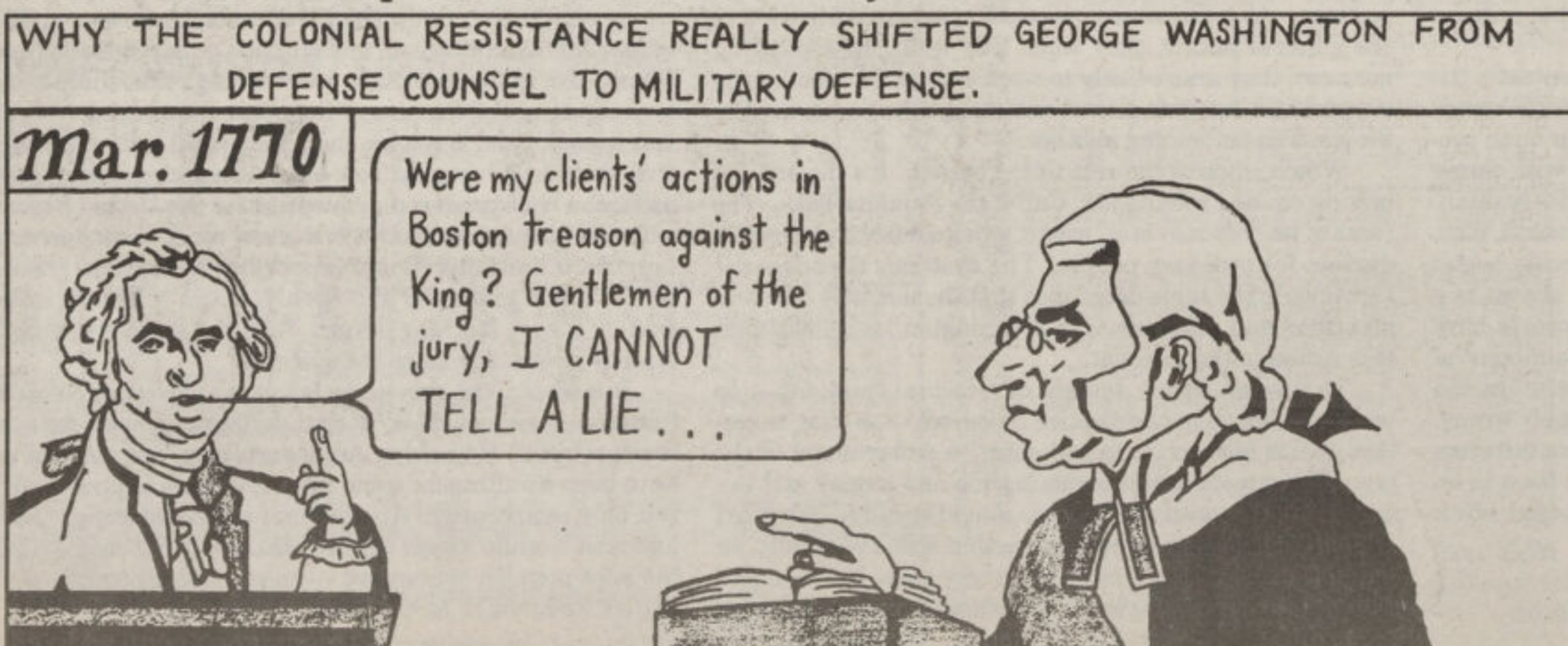
Backbench

By Brian Cheng



The Comic Strip f.k.a. Prince

By Stuart Rees and Bill Zimmerman



CALENDAR

Walk All Over You. Baby

by Colin Meeder

Well, it looks as if Jeff chose a pretty bad week to take off, because the sleepy town of Boston is rocking most fiercely. Tonight, it's **They Might Be Giants** at the Avalon (262-2424). While fierce is not necessarily the word one might use with this band beloved of undergrads everywhere, they have indeed been rocking a good deal more since adding a pretty terrific rhythm section.

This evening also brings the **Commitments** to Venus de Milo (421-9678). "Featuring original members from the movie" screams the ad, but I'll bet the big red-haired guy and the old, wizened trumpeter aren't among them.

Speaking of relics, it's **Siouxsie and the Banshees** at the Orpheum (931-2000) and **Gutterball** with the **Steve Wynn Quartet** tonight downstairs at the Middle East (497-0576).

If the **John Patitucci Quintet** tonight at Regattabar (937-4020) are an acoustic group, it'll be pedestrian mellow jazz. If they're electric, it'll be bombastic Brazilian-infused fuzak with an audience full of bass players and their bored lovers. It's your call.

Friday brings the **Fourth Annual B & D Ball** to Man Ray (864-0400), although something tells me that if you were into that kind of thing, you'd already know that. You and the Gimp will thrill to performances by "The Incomparable Lulu" and "Mistress Carmen;" vendors include Nocturne Bondage Furniture and Leather by Danny. Oh, my.

On Saturday, it's Boston's Next Big Indie Thing, **Kustomized**, at the Paradise (351-2526) and the **James Cotton Blues Band** at Regattabar. The amazing **Steve Turre** (you know him as the SNL Band's trombonist) brings his Sanctified Shells big band to Scullers Jazz Club (562-4111) the same night. Once you've heard "All Blues" played on a conch shell, you never go back.

The Pharaoh of Flannel, the Big Kahuna of the Thunderbroom, Mr. Mike Watt comes to the Avalon on Sunday (4/30) along with the **Foo Fighters**, a stupidly named band featuring two surviving members of Nirvana. After the mall rats have swooned all over Dave Grohl, you can slay 'em with your punk rock cred by shouting out for "Bob Dylan Wrote Propaganda Songs" during Watt's set.

If that's not your thing, the **Boston Philharmonic** will perform works inspired by *Romeo and Juliet* as composed by Tchaikovsky and Prokofiev at Sanders Theater that afternoon. My roommate, who's in the bass section, assures me it will be fabulous.

A veritable poopload of bands will be on Lansdowne St. on Wednesday (5/4) as part of the **Phoenix/WFNX Best Music Poll** celebration. Cool groups include the **Mighty Mighty Bosstones**, **Royal Trux**, **Shudder to Think**, **Ned's Atomic Dustbin**, **Letters to Cleo**, and **Come** — and we're promised that more will be announced. Be still, my beating alternaheart. Call 931-2000 for tickets.

Are you ready, boots? **Nancy Sinatra** comes to Mama Kin (536-2100) on Thursday (5/4). This is likely to be the single greatest musical event of this century. Really.

Subliminally Yours

By Debra Dickerson '95

JACK Kemp, through an organization called Empower America, wants to sell us a national 17 percent flat tax. This proposal is the centerpiece of Rep. Dick Arney's "Freedom and Fairness Restoration Act." Ever the bold visionary, Jack's employing the daring strategy of telling us only that the tax will be, uh, 17 percent and, er, flat. He knows hardworking Americans are too busy working off the crippling national debt inflicted on us by the tax-and-spend liberals to waste time thinking about issues of vital significance. He's taken that onerous burden on himself.

What effect will having the bottom fall out of that revenue pool have on us as a nation and on our standard of living? What will we have to give up? Given its regressivity, need we acknowledge and address what many will feel to be a fundamental unfairness? There was no mention of an income floor below which no tax would be assessed; perhaps this is the way to go, but don't the problematics bear mentioning and the increased hardship on those always asked to bear increased hardship deserve acknowledgment and justification?

Jack does what every politician seems to be doing these days — giving us the old razzle dazzle and fancy footwork. No angry white man in America today could resist the only bit of analysis proffered in this proposal (I'll spare you the constant underlining and never-ending exclamation points):

"Freedom and Fairness" will accomplish 3 things:

- It will give you and nearly every other American a tax cut.
- It will cut government spending.
- It will restore tax fairness to the millions of Americans who pay far more than their fair share each year to the federal government.

These guys should write comedy. Ballyhooing this proposal as "cutting government spending" is like advising an amputation because of the saved wear and tear on the patient's shoe leather. Both statements are essentially correct but might perhaps benefit from slightly closer inspection. The word "disingenuous"



comes to mind.

Mr. Subliminal, from Saturday Night Live, should narrate these things. After Jack speaks of "[R]estoring tax fairness to the millions of Americans who pay far more than their fair share...", Mr. Subliminal should whisper "Iacoece. Trump. Tribe."

Of course, Kemp only wrote to solicit my input on the enclosed petition to Congress demanding tax relief and passage of the Freedom and Fairness Act. This is necessary because "[p]owerful, well-financed liberal special interests [which have absolutely nothing in common with the NRA or the Christian Coalition], who've dedicated themselves to chiseling more and more federal aid from Uncle Sam year in and year out [leave Sen. Helms and tobacco out of this], are already lining up against this bill." Mere opposition to the bill, it seems, marks one as supporting the "liberal spending explosion that is choking our economy and expanding government at every turn!" I'm sure the repeated appeals for donations were only an afterthought.

At least Kemp's mailing included a visual aid, a sample copy of the postcard-sized tax return we'll all get to fill out if his proposal passes. Having had to fill out the federal, Massachusetts and (the devilishly difficult) California returns this year, I have to admit to a secret thrill at sight of the form's simplicity. Also, I have to admit that when I got my first law firm check last summer and saw the tax bite, for one burning moment, I, Debra Jean Dickerson, was Rush Limbaugh. Visions of illegal aliens dashing across the border to sign up for welfare, teenaged mothers watching soap operas all day while selling their food stamps for cigarette money, and fat cat corporations paying no taxes made me want to threaten to buy a gun and call talk radio so I could foam at the mouth like everyone else. I don't think that response is a very useful one though. Tax reform is a subject I, like most people, am

amenable to, but Mr. Kemp's got some serious 'splain-in' to do.

Unfortunately, before I finished this column, I received a solicitation from the Democratic National Committee. It's as bad as all the others. Like the Heritage Foundation's mailing, it contains a phony-baloney, very official-looking poll complete with fake, tracking numbers, and loaded questions.

"Do you favor or oppose Republican efforts to enact a capital gains tax cut which would deliver 70% of its benefits to households making more than \$200,000 per year?"

☐ Favor ☐ Oppose ☐ Undecided ☐ Hate you for this attempt at naked manipulation

"Do you favor or oppose Republican plans to make huge cuts in entitlement spending including reductions in Medicare and federal employee retirement programs?"

☐ Favor ☐ Oppose ☐ Undecided ☐ Unable to respond due to violent knee spasms

I have often said that we have exactly the kind of politicians we deserve in this country. Whenever a politician tries to tell us the hard truth or to engage us in intelligent discussion we vote her out of office in the first instance, tune her out in the second. Given this state of affairs, I think the parties should stop wasting their time faking these mailings, speeches etc. and just give us what we really want.

First, affirmation of how much better we, of the correct political beliefs, are than our opponents and, second, entertainment passed off as intelligent, responsible discourse.

I envision a scantily clad, posing Arnold Schwarzenegger holding a photo of his wife Maria Shriver. Analogizing from his bodybuilding and movie careers, he would extol the manly virility of the free market and the "right" kind of immigrants. Michelle Pfeiffer could read Clinton's speeches from a teleprompter while wearing her Catwoman outfit and using her whip to emphasize the major points.

I have often said that we have exactly the kind of politicians we deserve in this country.



Fenno wasn't bleeding too much. A few drops here and there as he walked down the hall.

Usually, he didn't stir the margarita mix in the blender with his hand, but he'd been late to class and had forgotten to bring all his utensils. Professor Kaplow had been irked at the noise of the blender in the back of the room, as usual — but then again, he never turned down the double stiff drink that was passed to the front, so Fenno figured it was okay — until he got his finger jammed in the bottom of the machine while it was on the "crush" setting.

Not to worry, Fenno thought. I'll just bop on down to the clinic during break and get a bandage. Such innocence.

"Can I help you?" asked the highly-trained-health-care-provider standing behind the counter.

"Yes, I nicked my finger in the blender, and I'd like a Band-Aid, please," responded Fenno brightly, gallantly masking his pain.

The smile on the woman's face froze, then melted away. "You're actually bleeding? Now?" she asked, voice trembling.

"That's right. Darned blender took the skin right off of my finger. See?" Fenno said, wondering why the woman's face was turning ash white. "You don't look so good yourself. Are you feeling all right?"

The woman turned to the other highly-trained-health-care-provider who had left her newspaper to see what all the commotion was. "We don't actually give out bandages, do we?" she asked her coworker.

"Certainly not!" the other exclaimed. "Think of the liability! We can't just go around handing out medical supplies. And would you please stop bleeding on our counter?" she asked irritably.

Fenno was confused. "This IS a clinic, isn't it?"

"Well, yes, but you have to see a doctor before we can do anything for you."

"Okay," said Fenno, relieved that some progress was being made. "May I see a doctor, please?"

"You need an appointment." The highly-trained-health-care-providers said in unison.

Fenno couldn't tell if the situation was truly ludicrous, or if he was just dizzy from loss of blood, but he thought he'd try one more time. "When can I get an appointment, then?"

"We don't have anything available until June. What's your ID number?" the highly-trained-health-care-providers responded. Fenno could not tell if the women were smirking or if their facial muscles had been twisted by whatever lobotomy had created the zombie-like creatures in front of him.

"There ARE bandages here in the clinic, aren't there?" he asked.

The women looked at each other questioningly. "I think there are some in the back room," one ventured after a moment's thought.

"Perhaps you could just go back to your crossword puzzles for a minute while I step in back," Fenno suggested, thinking he might be able to sneak a Band-Aid out into the hall and treat himself.

"Oh, no you don't!" one shouted.

"You're not tricking us into helping you!"

"Now get out of here, before we call security!" screeched the other.

Fenno beat a hasty retreat into the hall and pondered the fate of modern bureaucratic medicine as he returned to class. At least, he thought to himself, I don't need any first-aid cream. Tequila is a fine disinfectant, especially when applied both topically and orally.

Quote of the Week

"There are many more subtle ways to control the classroom than paddling."

— Prof. Todd Rakoff '75

Psst. Hey, you.
Yeah, you.
If you want to get in a final word in the RECORD, you'd better act fast. Next week is the last issue of the RECORD for this year!

• Letters (cont.) •

Reason Trumps Animal Rights

Michelle Lerner's column setting forth the standard "animal liberation" manifesto is a curious mix of emotional appeals based on the "horrors" of animal testing and selective facts and half-truths designed to provide a veneer of intellectual argument on the underlying tug on the heartstrings. Judging from the epithets scrawled on her locker, neither form of argument is carrying the day with some segments of the law school community, and with good reason. But, of course, she deserves a more civil response.

First, the facts. Lerner cites a group called "Physicians for Responsible Medicine" for their claims that animal testing is not scientifically necessary. This group are neither physicians nor responsible. By their own claims, only five to six percent of their approximately 50,000 members are actually physicians; on top of that, efforts to confirm the status of those claimed to be physicians indicate that many are not, in fact, doctors. Moreover, this group and others like it, as the small number of scientist-members indicate, clearly do not represent the mainstream of American scientific opinion. The American Medical Association and other major medical and scientific groups emphatically agree that animal testing remains both useful and scientifically necessary. To cite groups like "Physicians for Responsible Medicine" as representative of scientific opinion, without even noting that their views are disputed by the vast majority of scientists, is intellectually dishonest at the least.

Moreover, the main thrust of her argument is that alternatives to animal testing of products exist which, implicitly, render animal testing unnecessary. As evidence, she

suggests human skin patch tests, tissue cultures, and computer modeling. The suggestion of computer modeling is most misleading: To model the effect of a chemical agent on living organisms, you need to know the effect (you can't model what you don't understand). Furthermore, tissue cultures and other suggested alternatives never can replicate the biological complexity and intricate interactions within a living being. Scientists cannot, of course, exactly replicate human biological systems with animals, but they carefully choose which type of animal they use to most closely mimic the human system or systems, such as eyes or ears, which they wish to study. Alternatives do exist to be sure, but they are imperfect alternatives.

Mainstream opinion in the scientific community believes that a wide range of medical advances would have been impossible or at least unlikely without live animal testing. These include the whole range of infectious disease vaccines, heart transplantation and bone marrow transplantation techniques, numerous antibiotics, heart medications, and even recently-developed AIDS drugs. Without animal testing, many of these advances surely would not have occurred, and others would have occurred only much more slowly and consequently with much higher loss of human life in the interim.

Accepting Lerner's arguments regarding animal testing means foregoing some, perhaps all, of these medical advances. Ultimately, any product is tested on humans at the time it is released for sale. Lerner suggests foregoing the knowledge that before a medical or cosmetic product is used by a human, it was first tested on

another living organism. For many of us, this is enough to reject the "animal liberation" position.

But our rejection is based on deeper beliefs. A fundamental gap exists: either one believes that humanity is clearly superior to other forms of life on this planet, and thus properly able to conscientiously use animals for medical and other product testing and for food and clothing — in short, to improve the quality of human life — or one believes that humanity is only equivalent to animal life, and thus has no right to use animals.

For whatever reason, a majority of Americans consistently affirms their belief that humanity is in fact superior. For some, it is rooted in religious belief, arising out of the narration in Genesis that the Creator gave humanity "dominion" over all the earth and all that is on it. For others, it is a purely logical argument, that because of humanity's clearly apparent superiority in sentient development and civilization (the communicative abilities of whales and dolphins notwithstanding), human beings are necessarily superior and equally as necessarily may wisely use animals to improve their lives.

Regardless of the reasons, these are the fundamental beliefs which most of us hold. Unless and until the "animal liberation" crowd is able to explain why these deeply held beliefs regarding human superiority are wrong, they will be unable to persuade us that the wise use of animals, be it for product testing or for clothing and nourishment, is somehow itself wrong.

Ryan M. Schwarz '95
April 19, 1995

Harvard Law School is Not All Bad

I read the excerpt from Harvard Magazine which appeared in the March 10, 1995 issue of the RECORD describing how terribly Harvard Law School students suffered in the years 1966-69. Over the years, I have read similar complaints in the RECORD and elsewhere. In fact, although I am sure there must have been at least one, I can't remember ever reading a positive article concerning the law school experience.

I have found that as the years go by, people who are satisfied with things or at least feel that they are reasonably under control, hardly ever express such views in writing.

On the other hand, the complainers are quick to memorialize their grievances. Thus, whether it be a residential co-op, religious institution, politics, law school or just about any organization, complaints are plentiful and praise is rare.

Accordingly, I would like to note that while I suffered from a lack of confidence during my years at Harvard Law School, particularly during the first year, the three years were an overwhelmingly positive experience. I built the foundation for a lifelong career, made many friends whom I still see, learned how to more or less think logically, and have many fond memories. The nutty

behavior described in the article may have been present during my years at HLS, but I either never noticed or have long forgotten them.

All in all, I am most grateful for the opportunity to have attended Harvard Law School. For those students who do not find their current stay to be particularly enjoyable or worthwhile, my hope is that your memories of the place will, by a kind of alchemy, become pleasant with time and that you will, as I do, look back upon your law school years as something to cherish.

Arthur J. Greenbaum '55
March 28, 1995

Apologies for Overstepping Bounds

In the March 10 issue of the RECORD, I refuted an anti-affirmative action letter-writer who wrote that whites would not claim disadvantage in their personal statements or, if they did, would not be believed. That entirely offensive letter, especially this absurd claim, so inflamed me that I lost my perspective.

I wrote from my vantage point as a law tutor that white and/or privileged students often claim disadvantage. That's as far as I should have gone. Instead, I wrongly gave two examples, such a clear violation of my ethical duty, not to mention common sense, that I still wonder what possessed me. I didn't consider how invasive and

unprofessional that would seem and then decide to do it anyway; I never really thought about it at all. Somehow, it seemed to me that since they were students I liked and approved of, that made it alright. As if anyone but me could possibly know that. Also, given the negative tone of the piece, it just doesn't wash.

Pressed for space, I also mischaracterized one student's difficulties with water polo by failing to explain my point adequately. I settled for saying he wrote 'convincingly' of his troubles as a character-builder. How else could that make him seem but crafty and manipulative? I used him as an example because

his statement is one of the few I'll remember. Regardless of his socio-economic background, he learned some of life's most basic lessons struggling with that sport. If only I'd asked permission to use it.

I apologize, to those two students in particular and Harvard undergrads in general, for dragging them into this. Even though one of the students offered herself to be used as an example, it's just not a good idea for Harvard tutors to discuss Harvard students' personal information so they can score points in an argument.

Debra Dickerson '95
April 26, 1995

Crime, Punishment, and Gina Grant

Professor Ogletree's column in last week's RECORD took a narrow and legalistic view of the Gina Grant case and in doing so badly missed the mark. To Ogletree, the Gina Grant controversy is tragic and unfair because her juvenile criminal record is "sealed." Ogletree and other apologizers for Gina Grant raise this issue again and again, seemingly blind to the crucial fact that Grant's sealed record is irrelevant.

A sealed juvenile record is just that, a sealed juvenile record — an official criminal file to which the public has sharply limited access. Nobody has broken into the Gina Grant file or unlawfully obtained information from it. It has been violated neither in fact nor, as Professor Ogletree weakly argues, "in effect." Harvard has simply made a decision, based on freely available information, not to admit a candidate of highly questionable moral character. That Harvard recently became aware of Gina Grant's dubious past is neither surprising nor troublesome, given that the Grant case was a controversial cause célèbre in South Carolina not long ago, and given that Grant thrust herself into the spotlight four weeks ago in a major news story — presenting herself as an "orphan" overcoming long odds.

A sealed juvenile record cannot, and is not meant to, completely repair the natural damage to an offender's

reputation that results from committing a criminal act. It is not a judicial gag order to all who know about a crime never to mention it again, nor is it a thought-control order to all private parties who touch upon a criminal offender's life to ignore that person's past forevermore when making

A sealed juvenile record cannot, and is not meant to, completely repair the natural damage to an offender's reputation that results from committing a criminal act.

personal character assessments. A sealed juvenile record does not require newspapers to burn all copy relating to a criminal incident or prohibit interested

citizens from sending that copy via U.S. mail. It does not, and should not, make a criminal act simply go away, evaporate in the mists of time — regardless of how much Gina Grant and her legal counsel wish that were the case.

In any event, how Professor Ogletree could ask for this particular crime to evaporate more than it already has is hard to fathom. South Carolina's "tough law and order system" waved a magic wand and made it disappear, giving Grant a slap on the wrist and a clean slate. In "The Merchant of Venice," Shakespeare advocated as a legal and moral ideal "tempering justice with mercy." Today, permissive intellectuals like Professor Ogletree advocate the lenient reverse — tempering mercy with justice. Thankfully, the general public doesn't yet agree and still clings to the unenlightened belief that individuals should pay a fair price for their actions. This is why, in arguing that Gina Grant's criminal past should not overshadow her "straight 'A' average and her innumerable extracurricular activities," Professor Ogletree has a harder case to make than he thinks — one he can't come close to making with murky misrepresentations about Grant's sealed juvenile record.

David S. Clancy '95
April 15, 1995

THIS IS IT!!!

If you think your taste buds and writing skills are up to it, enter the RECORD Restaurant Reviewer writing competition!

Submit a brief writing sample exhibiting your food critiquing and column writing ability to Ted Cohen '95 by May 15.

Pieces will be judged by current RECORD restaurant reviewers and editors.

Call Ted Cohen at 576-9606 if you have any questions.

Langdell Debate Continues

continued from LANGDELL, page 1

en to notifying admitted students or applicants about the renovation.

"I don't think there was an official decision," Clark said. "This has been a long time in coming, and a long time until it starts." He said he expects a "semi-final" decision in June, with final competing decisions being made sometime next year.

"We can reconvene the faculty-student committee to reconsider putting it off a year on the strength of the notice argument," he said.

In defense of Clark and the renovation committee, renovation committee member Stuart Rees '97 said only recently the committee realize the 15-month schedule would work.

"This [plan] was taken out of the freezer in February, when the committee was restarted," said Rees. "They had a plan as of a couple of years ago. But things have changed." Rees said plans had to be modified because of new cost estimates.

"It's not like everything can just kind of happen. This is a dance that needs to be perfectly choreographed."

"The disruption," he said, "is not going to be any less, even in the alternative plan. The actual effect on our class would be equal, even if the project were read out."

Still, Rees admitted, "Given that we know that this is going to provoke people no matter what, there were things that we could have done better. This is an issue that I actually thought the Dean and

[Martin] did not address as well as they might have," he said.

But even Rees' appointment to the committee has been questioned. He was recommended to Clark by committee member Prof. Joseph Singer, who as Rees' Property professor knew of his background in real estate. The LSC, which usually is in charge of making most student appointment to faculty and administrative committees in September, was never notified. And, since LSC didn't appoint Rees, he never reported back to them. The lack of communication, some say, contributed to the problem.

But Simmelkjaer said he is unsure whether LSC would have been in charge of that appointment, because the committee was formed in February, not September.

Most agree the dialogue that has come out of the controversy has been positive for everyone.

"I think that Dean Clark has really had kind of an eye-opener to the number of problems students have on this campus," Simmelkjaer said. He said the LSC will continue working with Dean Clark to find an acceptable response to student concerns.

Simmelkjaer noted that the issue has had a "domino effect" in that it has brought to the forefront other, somewhat related student complaints, such as the lack of suitable study areas and poor faculty-student relations.

Rees agreed, saying, "Where progress can be made is in forcing the faculty to actively concentrate on student issues in this early stage."

"I don't think there was an official decision [about the renovations]," Clark said.

Student Works on Tribunal

continued from TRIBUNAL, page 2

new moral revolution — it is political reality. Although the consciousness of ethical decision-makers has not caught up to the new reality."

Akhavan said that preventive action is much more cost-effective than the billions spent each year to maintain "peacekeeping" UNPROFOR soldiers and ships of humanitarian aid, not to mention the cost of housing refugees, trying to contain the fallout of criminal activity and war profiteering, and dealing with the spread of nationalism and violence to other parts of the world.

"It just doesn't make sense economically," he said.

The international community could have reacted in the early stages of the conflict, he said, through diplomatic measures even through the limited and selective use of armed force. For example, he said, there was considerable delay in deployment of peacekeeping forces in Bosnia.

At this point, Akhavan said, it is unrealistic to believe that negotiated settlements can solve the problem: "It's like a doctor proscripting a healthy diet for a patient with terminal cancer."

"It is imperative for the international community to engage in the sort of peacekeeping which will lay a solid, long-term foundation for the reconstruction of the former Yugoslavia," Akhavan said.

This calls for the punishment of those responsible for terrible crimes so that they can be removed from the political arena and so the various ethnic groups will learn to identify perpetrators as individuals rather than as entire nations."

And, he said, even though the Tribunal may not be able to imprison war criminals who are harbored by their countries, at least "the Tribunal can blacklist, accuse and confine them to their country, while also preventing them from entering refuge in a third State at some point in the future."

Peacebuilding also calls for the economic and social reconstruction of the

country through development aid or economic assistance," he said.

"Just getting a group of warlords together to sign an agreement is short-sighted approach which will not bring about lasting peace," he added.

Post-hoc Rationalizations for the Spread of Violence

Of the former Yugoslavia, Akhavan said, "The tribal war thesis is largely an illusion. Other than being simplistic, it is often also an attempt on the part of the West to wash its hands of the war by declaring it inevitable."

"On the contrary, many have suggested that the war was carefully calculated to serve the interests of political elites and that the public was prepared by years of misinformation and indoctrination," he said.

More than half the population of Bosnia has been displaced, and cities like Vukovar in Croatia have been leveled building by building. Akhavan recalled one of his first visits to the war-torn region while on a mission for the Conference of Security and Cooperation in Europe in Croatia and Serbia: "I shall never forget the first time I flew over Vukovar — the 'the Hiroshima of Europe' — in a U.N. helicopter. The horror of the devastation and human suffering was something no words could adequately express."

His first-hand experience makes Akhavan impatient with abstract moralizing about the war: "This grim reality is worth remembering lest we betray the suffering of the Yugoslav peoples through callous and haughty intellectualizing."

And despite the challenge of resolving the conflict in the former Yugoslavia, Akhavan said, "There is no place for cynicism because it is defeatist attitude which looks for instant resolution of a problem which necessarily entails a long term solution. We should have no illusions about the long term commitment necessary to solve these problems, but the means are there. If you don't look at the root of the problem it is simply going to reoccur."

FORUM CONVENIENS

The Culture of Death

By Markus Hartmann '96

RECORD Columnist

"Broad sectors of public opinion justify certain crimes against life in the name of individual freedom, and on this basis they claim not only exemption from punishment but even authorization by the state"

— Pope John Paul II
"Evangelium Vitae"

The Association for Homosexual Rights v. Planned Parenthood Federation of America

April 28, 2045

FUTURE, Senior Circuit Judge.

The Planned Parenthood Federation of America was organized by Margaret Sanger in 1921 to provide the general public with information on family planning. It has headquarters in New York City and centers in approximately 750 communities throughout the United States. Planned Parenthood has traditionally conducted research and offered medical services, including contraception information and devices, abortion, and sterilization. In 2020, Planned Parenthood began offering genetic testing as part of its overall program.

The Association for Homosexual Rights (AHR) was established in 1999, when the scientific community established a definite genetic link to human sexual orientation. As a result of this finding, the remaining barriers to full integration for homosexuals in the American community began to crumble. AHR's aim is the "elimination of all barriers to political, educational, social and economic equality" for homosexuals and individuals living "alternative lifestyles."

During the last 10 years, AHR began to realize a substantial decline in its membership. Numerous studies were conducted to determine if the prevailing social attitudes had forced members back into the closet. There was no evidence of such a trend. There was evidence that a substantial number of couples were electing to abort their fetuses when it was determined that the fetus had a genetic predisposition to homosexuality. AHR estimates that this trend began shortly after the scientific community established the genetic link and that the effects of this trend have become increasingly evident. Estimates made in early 1990s put the percentage of homosexuals at approximately 10%. The 2040 census puts that figure at less than 2%. There seems to be more than enough statistical support for AHR's claims.

AHR has sought to enjoin the testing of fetuses for the genetic traits that indicate one's sexual orientation. Twenty states have enacted legislation banning the practice of using abortion for sex selection and sexual orientation selection. AHR argues that this procedure is violative of the 14th Amendment's Equal Protection Clause. They have been joined by the Catholic Church, numerous Muslim leaders, and many other American religious organizations who have filed amicus briefs arguing that "potential life" is in fact "life" and deserves the government's protection.

Planned Parenthood has countered with the argument that the couple's right to privacy in the early stages of pregnancy should not be violated. To interfere with the right to abortion in this instance is violative of the 14th Amendment's concept of personal liberty as well as the 9th Amendment's reservation of rights to the people which "includes the right of a woman to decide whether or not to terminate her pregnancy." *Roe v. Wade*, 410 U.S. 113 (1973).

This case involves a claim of constitutional protection for the remainder of *Roe's* "fundamental right" to privacy under the Fourteenth Amendment. As AHR and the states would have it, this Court would be compelled to examine the motivations behind a woman's decision to have an abortion. Planned Parenthood seeks to have the basic principles of *Roe* recognized here.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S. Ct. 2791 (1992), this Court declined to overrule *Roe* explicitly. Of particular relevance to this case was the Court's recognition of the right of a woman to choose to have an abortion before viability and to obtain it without "undue interference from the state." As a result of *Casey*, many states have placed restrictions on abortions. The question before the Court is this: Would the regulation of genetic testing and the prohibition against factoring in such information into the decision to abort a fetus place an "undue burden" on a woman's right to choose?

Over the last 80 years of our nation's history, the Court has treated the interests surrounding sex, marriage, child-bearing and child-rearing as falling within the broad category of the "right to privacy." It is well established that, "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972). Privacy ceases to exist when we evaluate an individual's motivations for her actions and prohibit some motivations but not others. Our fundamental liberty is incompatible with the notion that we must first inform the government when we choose to exercise a "fundamental right."

AHR and the states argue that genetic testing for a predisposed sexual orientation is having a genocidal effect on homosexuals. The Court is sympathetic to their position from a moral perspective. Sex selection, testing for Down Syndrome, and the recent eye color, hair color, skin hue, height selection, and personality type genetic tests have raised serious moral and ethical concerns in our society. There is no doubt that these practices are violative of the natural law. Unfortunately, that area of the law is outside of this Court's jurisdiction.

The Supreme Court has repeatedly held that prior to viability, the fetus is not a "person" as that term is used in the Fourteenth Amendment. The state statutes and AHR's position would place a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. Our constitutional tradition does not permit a qualitative analysis by the state of a woman's most private decision. Although we find the practice of aborting a fetus based on certain genetic traits morally repugnant, "the mere [invocation] ... of the controversial realm of morals cannot [suffice as] justification" for AHR's injunction or the regulation by the state. See *Poe v. Ullman*, 367 U.S. 497, 545 (1961) (Harlan, J. dissenting).

Thus, the Association for Homosexual Rights' request for an injunction to halt the process of genetic testing for sexual orientation is denied. The laws prohibiting the procedure are invalidated on privacy grounds.

STUDENT, dissenting.

(Dissenting opinions can be sent in to the Harvard Law RECORD.)

A Better Idea Than "Hauser Hall"

By Robert Weissman '95

RECORD Columnist



URGENT MEMO

To: Dean Robert Clark
From: Robert Weissman '95
Re: "Hauser" Hall

FOR the good of Harvard Law School, I am writing to ask you – to implore you – to stop before it's too late. Scheduled for this upcoming weekend, the formal, permanent naming of the former Holmes Field Building after a large donor – the Hausers, who contributed \$13 million to the Law School – would be a terrible mistake.

The long-standing tradition at HLS, of course, has been to name buildings after great legal scholars and Law School leaders: Pound, Langdell, Griswold. (The naming of the International Legal Studies building after Reginald Lewis was an exception, but not one which seemed to set a precedent, coming as it did after his untimely death.) This HLS tradition is surely an honorable one, symbolizing the Law School's commitment to scholarship, the university motto of *veritas* and the notion that the profession of law should concern itself with the pursuit of justice, not just advancing the interests of well-heeled clients.

Before abandoning that tradition for the shameless, unbridled commercialism which has engulfed college sports (witness, for example, the Poulan/Weed Eater Bowl), the nightly news (ABC News is now "brought to you" by a corporate sponsor every night) and rock 'n roll (see the Woodstock of the Pepsi generation), Harvard Law School should pause and reflect.

It makes no sense to sell the names of HLS buildings. It is simply not worth it. Not when we could rent instead.

Here's what I am thinking: The Hausers gave \$13 million but, as I understand it, with a present value of \$10 million. No doubt that is a lot of money. But it was a one-time payment. And not everyone who might want to put their name on an HLS building has that kind of cash to donate. I am guessing you could rent the nameplate on an HLS building to a different alum each year for something like \$3-5 million a pop.

With a larger pool of potential donors, you could start renting the names of other HLS buildings, too. You could have some package deals (i.e., one year of Griswold for \$3 million but two years for \$5 million) to take advantage of reduced "transaction" costs.

Look, you know all about how markets work. Once you get going with this stuff – especially once you overcome the silly reluctance to let corporations attach their names to HLS property – it could really be fun. Even the name of the Law School could be rented. I think you would want to retain the name Harvard, but a company (or an indi-

It makes no sense to sell the names of HLS buildings.... Not when we could rent instead.

vidual, if they could come up with the cash) could combine its name with HLS for period of years: General Motors' Harvard Law School, AT&T's HLS, whatever. Students and alumni could identify themselves not by the year they graduated, but by their company era. And I don't really see any reason to confine the rental market to names of real property; how about Exxon's Environmental Law, Raytheon's Taxation, Philip Morris' Torts? Substantial funds could flow here. (But you would want to leave Law and Economics alone; you wouldn't want anyone to think there is any bias there.)

I know a few objections come right to mind. But I think they are all easily addressed.

First, I know you worked really hard at getting the Hausers to cough up as much as they did. You know exactly what went on, but my sources tell me that you put in a lot of hours on this one – working with legions of tax and trust attorneys to hammer out the most advantageous deal for the Hausers; getting them to agree to a \$9.5 million present value donation, but desperately wanting that last half million to make it an eight-figure gift; interviewing something on the order of 100 of their friends and acquaintances to craft a lobbying strategy; and finally getting them to agree to the final increment at a summer concert at Tanglewood. But you can't let that expenditure of energy stand in the way of a better idea – that would be an example of what every introductory economics student learns to call the sunken cost fallacy.

Second, the Hauser name was just chiseled into the building. This one's my fault; I should have sent this memo to you earlier. But the damage can surely be undone, and I don't expect it should cost too much. And here is a piece of good news: the name on Griswold, at least, is not etched in, but written in metal letters nailed into the building. That will make it easier to change the name on that building; and once you fill in the already engraved names on other buildings, you can just switch over to metal letters, avoiding future problems.

Finally, you are probably worried that some of the renting names could provoke protests. (You may remember what happened at the Kennedy School in 1979; K-School administrators tried to name their library after donor Charles Engelhard, who made his money from the gold mines of *apartheid* South Africa, but had to back down in the face of student protests.) But the beauty of renting is that it is only temporary. In a year, or a few years for a package deal, the controversial name is out and a new one in. And if anyone knows how to wait out a student protest movement, it's you.

There is one significant problem with the renting concept, however. If the names of buildings, classes, etc. are being rented out, what's left for past, present and future scholars – including a certain formerly bearded corporations professor – who make their mark at HLS? My thought is that, strange as it may sound at first, some of the donors will be too humble to want to put their own name on a building and instead may designate a favorite professor or dean to stand in for them. If that doesn't work, maybe some of the classrooms and smaller bits of Harvard could be set aside to honor the names of professors and deans. Doesn't Clark Bar sound better than Backbench Pub, anyway?

In Search of the Perfect Metaphor

By Matthew Huggins '96

RECORD Columnist



YOU know what they say about the Harvard professional schools and sports. If the B-school were a sport, it would be something rough, competitive and exclusive like squash, where you might actually get a bloody nose, but don't worry, you'll all go for Tanqueray-and-tonics afterwards anyway. If the K-school were a sport, it would be volleyball with no one keeping score, because it's all about process and consensus and the group. And the Law School would be long distance road cycling, something long, lonely, hard, painful and expensive. And the med school would probably be the iron-man competition. But I'm not here to write about the med school.

So, thinking as I did that the Law School's metaphorical sport was long distance road cycling, imagine my shock when I was in Cyclesport and the salesman told me that he had sold maybe two road bikes in two years. Could I have been wrong? Could the joke have been wrong? All mountain bikes, the man said. All he ever sells are mountain bikes. Now, I knew that mountain biking could not be the metaphorical law school sport. First, it's far too pleasurable to be Law School. Second, you need mountains and forests to do it, not an over-manicured faux colonial campus stuck in the middle of a sea of rusting concrete and asphalt. So what is the Law school Sport?

I took a look in Hemenway and I thought: Stairmaster. Stairmaster is the Law School sport. You work and you work and you work, and yet, you never get anywhere, but you do get sweaty and worn out in the process, and eventually you quit.

And then I thought about what a friend of mine said about there being two law schools here, the corporate law school and the litigation law school. Or did he mean the private sector law school and the public sector law school. All the color ran out of my

I took a look in Hemenway and I thought: Stairmaster. Stairmaster is the Law School sport.

face. Could it be that maybe there is not one single law school sport, but many? One for each law school at the Law School?

For the corporate transactional types, it would have to be something macho. Rockclimbing. No, too eco-conscious. Football, or rugby. Yeah, rugby. It's hard, cold, brutal and muddy, but at least there's a keg.

For the litigators, it would have to be something argumentative. Like those pick-up games of kickball we used to have when I was a kid which we would never finish because someone would start arguing about whether beaming a kid on his way to third base directly on the head counted or not because everyone knew you weren't supposed to bean a kid right in the head. Or baseball. Yeah, baseball, something involved, complicated, essentially boring for hours and hours and hours, punctuated every once in a while by some excitement, before somebody decides to invoke procedure and go on strike.

For the public interest types, it would have to be something hard, yet meaningful. Hiking the Appalachian Trail with sandals and a toothbrush. Crossing the Atlantic in a twelve-foot Sunfish. Running the Iditarod race with a Nordic Track.

For the academic types, it would have to be something hard and arcane. Playing golf blindfolded, relying only on directional cues read to you backwards by the opposing team. A Pentathlon of speed skating, badminton, Greco-Roman wrestling, bungee-jumping and archery.

For the administration, it would have to be something utterly inscrutable. A game of hide-and-seek where no one ever gets to be it. A big game of marbles where everyone has picked up their marbles and gone home. Perhaps some type of zoo-zither-tar-zay, a roller-skate sort of lacrosse and croquet. I puzzled over the sports the different law schools would play. I sat and I thought and I wondered all day. I puzzled and puzzled till my puzzler was sore. Then I thought of something I hadn't before. Maybe law school, just maybe, meant a little bit more. Maybe law school didn't have to be such a chore. Then I thought, naaah.

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