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Many students took advantage of the sporadic warm weather this past week to get some exercise and have some fun before the stress of final exams hits.

New Committee Choices to Shape Faculty Hirings

By Hope Yen

As students press for faculty diversity, a key factor shaping the future face of hirings will be

Lambda Charges Bias in Faculty Appointments

By Victoria Kuohung

After speaking with several professors, Lambda has accused the faculty's lateral appointments committee, which recommends visiting professors for HLS tenure, of homophobia in its consideration of Visiting Prof. William Eskridge's potential candidacy.

Prof. William Eskridge—who is a Yale Law School graduate, tenured at Georgetown Law Center, and a Guggenheim fellow this year—taught Legislation and the Sex, Identity, and the Law seminar last fall term.

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determined quietly this summer by Dean Clark '72 when students and faculty are away.

That decision is the selection of the powerful appointments committees, which screen candidates for visiting and assistant professorships. The candidates they recommend are typically voted in for hiring by the entire faculty.

Though Clark appoints members every year, the choices made this summer could play a particularly crucial role. After a relatively inactive year of faculty appointments, Clark has said the Law School will be "cranking up the machinery" and working furiously to reach a core group of 78 by the year 2000. Currently there are 70 faculty members.

Many student leaders say that now, more than ever, a voice from minorities and women is needed on the appointments committees to help ensure that Clark fulfill his pledge to improve "diversity on all fronts" as Harvard Law School heads into the 21st century. Clark specifically has acknowledged the need

for more women professors, who now comprise 14 percent of the faculty, compared to a national average of 28.5 percent.

"It's definitely important to have women or male faculty members of color on the [appointments] committee," said Patience Singleton '96, president of the Black Law Students Association, explaining that those members could provide critical insight into the hiring process. "Our primary focus is getting African-American females, or women of color on the faculty. But that's not to say that we're overrepresented with black male professors."

Student leaders have been calling for greater faculty diversity through appointments of women of color, Latinos, Asian Pacific Americans, Native Americans, and persons who are disabled or openly gay. None of these groups are currently represented on the faculty.

Five African American male professors will comprise 7 percent of the faculty next year, a figure

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Bates Hearing Set for Tuesday

By Greg Stohr

An Administrative Board hearing is scheduled for Tuesday to consider charges that John Bates '95 is responsible for a rash of fraudulent activities in the west wing of Terry Terrace over the past six months.

The most serious of the allegations involve \$800 in fraudulent charges that appeared on another student's credit card bill. Bates is also accused of enrolling several of his fellow Terry Terrace residents in music and book clubs and then stealing the packages of CD's and books when they arrive.

Dean of Students Suzanne Richardson refused to comment on the allegations or confirm that Bates would be the subject of a hearing. She cited the Administrative Board's policy of not discussing pending disciplinary proceedings.

"I cannot comment, nor can I verify or not verify," Richardson said.

Bates also refused to comment on the allegations.

Several students from Terry Terrace, however, told the RECORD this week that they have been asked to appear before the Ad Board Tuesday.

One of the students, who asked not to be identified, said she already has written a letter to the Ad Board about charges fraudulently billed to her credit card account. The student said her February American Express bill included three charges, totaling about \$800, to two music clubs.

The student said that when she called the companies, she was told they had shipped packages of CD's to Terry Terrace. The student said she never saw the packages.

Sources say Bates has denied responsibility for the credit card fraud.

Residents of the west wing of Terry Terrace have told the

RECORD about receiving bills from music and book clubs they never joined. Residents have reported seeing dozens of boxes of CD's on the common shelf where mail carriers leave packages. According to the residents, some of the boxes have been addressed to residents of the buildings, some to fictitious or misspelled names, and some to people who do not live in Terry Terrace.

Other students say they have received unsolicited magazine subscriptions.

"The stuff is continuing to come in," Christina Erickson '95 said. "As we speak, I'm getting bills."

Students in Terry Terrace also have experienced a series of newspaper thefts in the complex over the last several months. But at least one student said he believed the thefts were unrelated to the alleged mail and credit card fraud.

Bates said he too had been victimized by the spate of fraudulent activities.

"I received the National Law Journal in my name that I never ordered," Bates said, "and my paper has been stolen numerous times."

Most residents of Terry Terrace are HLS students.

Two students told the RECORD they will appear before the Ad Board Tuesday, and a third said she was considering the Ad Board's request. Bates has asked at least three students to submit character references on his behalf, sources said.

The Ad Board holds a disciplinary hearing only after presenting a student with a formal charge that explains the nature of the allegation. Under the board's procedures, it may levy the charge only "if the Board believes it reasonably likely that the charged infraction can be established by clear and convincing evidence."

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Students Await Fate of TAP

By Hope Yen

Students said they are awaiting word on the fate of the Tenant Advocacy Project, a clinical program under the scrutiny of Dean Clark '72 for possible elimination after rent control ended this year.

The 50-member program of mostly 1Ls was advised in January to find a new direction after voters statewide approved a November referendum ending rent control in the three communities that had it: Boston, Brookline and Cambridge.

Before, students typically represented Cambridge tenants in hearings before the Cambridge Rent Control Board regarding eviction and rent

increases.

"The biggest thing about TAP is that it provides in the first semester an opportunity to take on real clients and real cases from start to finish," said Steve Weatherhead '97, who is TAP co-chair.

Weatherhead and co-chair Rachel Blum '97 submitted a proposal to Clark this week to allow the program to pursue its new direction of assisting clients in the critical area of public housing.

Though rent control officially ended for most tenants March 1, TAP has continued to have a full caseload comparable to previous years, including 12 in public housing and two in

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HRP Work Focuses on Women

By Maria Politis

A woman in Iran is arrested for refusing to wear the *chador* to cover her head in public. A woman in China is persecuted for violating the one-child rule. In Somalia, a young mother is persecuted because she refuses to allow her daughter's genitals to be ritually mutilated.

According to HLS Lecturer Deborah Anker, the above are all examples of women being persecuted for refusing to conform to social norms. Current U.S. law does not recognize such situations as reasons to grant political asylum to women seeking refugee status, said Anker. But, she said, a rare move by the nation's Board of Immigration to "designate" an administrative asylum case is a first step toward recognizing the unique problems of

women as a basis for granting political asylum.

"This is a very, very significant development," said Anker, who two years ago co-founded the Women's Refugee Project, a joint effort by the HLS Immigration and Refugee Clinic and Cambridge and Somerville Legal Services. Anker said the designation was an important victory for the Project, which had been vigorously lobbying the U.S. Board of Immigration Appeals to designate the case.

Designating a case, said Anker, means that a case granting asylum to a refugee will have precedential value for immigration judges. Normally, asylum decisions, while binding for the parties at hand, have no

such value.

The case granted political asylum to a Haitian woman who was beaten and gang-raped by anti-Aristide soldiers. The opinion found that the woman was "targeted ...

because of her political and religious opinion" and that the soldiers might attack her again. The opinion overruled the immigration judge, who ruled that it was "pure speculation...that the same attackers would rape and beat her again or kill her."

The case is significant, said Anker, because it is the first to recognize a rape as a political act and not as just a personal attack.

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Deborah Anker

TAP Defunding Being Considered

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rent control.

The new state law phasing out rent control protects many residents who are age 62 or older and disabled tenants. Rent control ends for those groups on January 1, 1996.

Weatherhead emphasized that TAP offers a unique alternative for students wanting clinical experience but who are deterred by the heavy time commitments or long waiting lists for the other programs.

Students in TAP typically work about five hours a week, with tasks ranging from legal research and investigating tenant complaints, to interviewing clients and oral arguments.

Since becoming dean, Clark has known to voice skepticism about clinical programs, believing that a school's limited funds should be funneled toward research and scholarship.

But Weatherhead said students hope the program will continue working in an area of the public sector constantly in need of legal services.

"It's a very diverse, good program," he said. "We're well on the way to make our transition [from rent control to public housing]. It would be a shame to cut it now when we're showing such signs of progress."

Law School Students Making an Impact In Human Rights Law

continued from HRP, page 1

While the opinion addressed granting political asylum in the rape context only, Anker said, "I would hope the decision would have a much broader impact than just sexual-related violence, [to include many] violations of human rights of women as refugees."

OAS Report Issued

The designation of the case is just one of three recent victories for the Women Refugees Project and the Human Rights Program. Last week, said Jennie Green, HRP's administrative director, which works closely with the Women Refugees Project and the HLS Immigration and Refugee Clinic, the Inter-American Commission of the Organization of American States issued a report which acknowledged scores of human rights abuses against women in Haiti by the Cedras regime.

Last fall, Green and several students in immigration and refugee-related clinical classes submitted affidavits outlining graphic descriptions of violence. One incident involved a woman being raped in front of her children. [See the RECORD, Sept. 30, 1994.]

INS Guidelines to be Issued

Another victory for women human

rights activists is expected to come this week, when the INS issues guidelines for asylum officers who are faced with

officers are INS officials who help determine whether an individual should be given refugee status.

HRP: Working to Uplift Women

By Katrina Randolph

Faculty and students in the Human Rights Program are working on a project that they hope will help improve the status of women around the world.

As they gear up for the upcoming United Nations Fourth World Conference on Women, to be held in September in Beijing, students and faculty are revising a platform to improve women's conditions worldwide. The final proposal will be presented at the conference.

The conference marks "the end of the decade on women, which was proclaimed in 1985 in Nairobi," said Jennie Green, HRP's administrative director. "It's to assess where women are in the world today and where they are going."

Students are working for credit on a draft of the "Platform for Action," which includes guidelines to improve the status of women around the world. Organizations in other regions also are working on various sections of the draft in an effort to influence the final platform, said Green.

HLS students and faculty are working on four of the 12 sections: violations of women's rights in times of conflict, economic development, right to health and women refugees.

The group also is coordinating workshops for the Beijing conference. They include how the law relates to women's needs, how legal issues arise and the rights of women refugees.

Green said 30,000 people are expected to attend. Twenty HLS students are planning to go, she said.

women seeking political asylum for gender-specific harms, or for being persecuted because they are women. Asylum

can be interpreted correctly and protect women who have been the victims of gender-based human rights abuses.

War in the Former Yugoslavia Comes Home to HLS

Propaganda Poisoned Society, Claims Serbian LL.M.

By Debbie Solomon

Biljana Bakic, LL.M. '95, no longer knows her nationality. She does not even know what to call the country where she lived all her life.

"When I say I'm from Yugoslavia," said Bakic, "people yell at me, 'Where is it? That country no longer exists.'" She continued, "Although I am Serbian, I was always raised as a Yugoslavian, and we never felt these kinds of boundaries before. I have a hard time all of a sudden choosing my new national identity."

Bakic and others in Belgrade demonstrated against the nationalist policies of Serbian President Slobodan Milosevic, but his control of the media prevented political opposition from communicating their message or gaining momentum.

This week, the war in the former Yugoslavia exploded into regions which had lain dormant since the 1992 ceasefire between Croatia and Serbia (which left one-third of Croatia under Serbian control). Since the 1992 ceasefire, the fighting was largely concentrated in Bosnia. But, experts say, it was only a matter of time before Croatia tried to regain the territory it lost in 1992.

On May 2, Croatian forces captured a pocket of land held by separatist Serbs in Western Slavonia. Rebel Serbs reacted by shooting rockets full of cluster bombs into civilian centers of downtown Zagreb, the Croatian capital, killing five people and wounding 121 others. In addition, they kidnapped more than 100 UN peacekeepers.

This recent escalation threatens to fulfill the international community's fears of a wider and bloodier war with no end in sight.

The wars in Croatia and Bosnia were not the inevitable result of indigenous hatreds, Bakic said. Rather, they were carefully engineered by Milosevic, Franjo Tudjman, and other politicians who emerged from the old Communist establishment," she said.

"If you had mentioned the idea of war

in 1987, people would have laughed," she said.

Crushing Political Opposition in Serbia

Despite his current tyranny over Serbia, Bakic said, Milosevic won only 30 percent of the Serbian vote in the 1992 elections. It has been reported by some international organizations that this low victory and the 1990 elections that brought him to power were rigged. In particular, Biljana said, biased coverage by the government-controlled media unfairly aided Milosevic's campaign.

For instance, she said, hundreds of thousands of Belgrade Serbs rallied against Milosevic in March, 1991, two months before the war in Croatia started. However, Bakic said, "No news of any

the rally wearing blindfolds to symbolize how people did not see what was happening to them. However, Bakic said, it was impossible to publicize the events since Milosevic controlled the media and blocked satellites that showed news of the march.

"Milosevic's most powerful weapon was his control of the media," Bakic said. "To protect it during demonstrations, he always placed the largest concentration of police in front of the TV station, even more than those guarding his own offices."

Bakic described the idealism and eventual disillusionment that left her feeling powerless to change the country's trajectory towards war.

"When you see 10,000 students marching together, it seems there are so many things you can change," she said.

"This situation has lasted for so long that people became apathetic and completely senseless to what was happening to them. One gets used to surviving, rather than living," Bakic explained.

opposition to Milosevic were broadcast. The rest of the country had no way of knowing about the Belgrade rallies."

Demonstrations organized in later years were also ignored by Serbian media, Bakic said.

Despite this, Bakic joined those protesting Milosevic's agenda. In 1992, she helped to organize huge student protests in Belgrade that virtually shut down the university for three weeks.

During that time, students camped out at the university. They took over campus buildings, held rallies, made pamphlets, and brought in speakers. The only time they left the university was for a public rally.

More than 10,000 students marched to

"However, with 'government's' mass media, money, and arms, one feels completely useless."

This sense of powerlessness and the effects of the economic embargo have allowed the war to continue with little organized opposition according to Bakic.

"This situation has lasted for so long that people became apathetic and completely senseless to what was happening to them. One gets used to surviving, rather than living," she explained.

Bakic believes that Serbia was the original aggressor in the conflict, but that Croatia has been inaccurately represented by international media. "Serbs are definitely responsible for starting the war in Croatia and Bosnia. But once the war

started, Croats became as bad as the Serbs were. Of course, in this sort of war there are no good and bad guys. Once you have your sister or brother killed, you want revenge, and you don't care who you kill."

Another obstacle to opposition is the fact that vast numbers of young people have left Serbia. During the war against Croatia, many draftees went into hiding. In Bosnia, numerous young men, told that they would be killed themselves if they refused to fight their neighbors and friends of a different ethnicity, also tried to escape.

Bakic said the story of a young Bosnian boy illustrates the irrationality of the war. "He was drafted by all three armies," she said. He lost his identification card, and his name reflected a mixed marriage. His first name sounded Muslim, and his last sounded Serbian.

"They don't care. They just draft," she said. "Ethnic identity of the individuals, even those fighting this war, is only a mask under which craziness or struggle for survival is hidden."

Communism and Nationalism

Bakic explained that Yugoslavia's communist history is crucial to understanding the origins of the war.

"Communism had an incredible impact on the individual," she said. "Party membership was the only route to power and success, and the individual's qualities and merits were completely ignored."

In addition, she said, the authoritarian Communist system "prepared the majority of Yugoslav citizens to accept an offered 'truth' regarding their supposed mutual hatreds and inevitable conflicts without a minimum of rational doubt."

After World War II, President Tito ruled Yugoslavia by balancing its constituent republics (Croatia, Serbia, Bosnia, Slovenia, Macedonia, and Montenegro) plus the two autonomous provinces (Vojvodina and Kosovo) against each other.

please see BAKIC, page 11

Panelists Debate Value of Peremptory Challenges

By April Rockstead

While prosecutors, defense lawyers and judges argued about whether peremptory challenges in jury selection allows lawyers unfairly exclude some jurors, a non-lawyer at last weekend's Harvard Defenders 45th Anniversary Symposium said the issue may be moot.

Lawyers' ideas about group sympathies are simply unreliable as predictors of potential jurors' true biases, said Edith Greene, an associate professor of psychology at the University of Colorado and liberal arts fellow at the Law School.

"Neither race, nor gender, nor socioeconomic status, nor ethnicity seem to predict verdicts," Greene said. "Human decision-making is so much more complex than where we have been."

But a former district attorney said peremptory challenges — which allow either side in a criminal trial to exclude a certain number of potential jurors without having to give cause — permit attorneys to evade requirements that juror exclusions not be made on the basis of race or gender and are morally troubling.

"The racial use of peremptory challenges raises the question very deeply of state involvement in discrimination," said Elizabeth Holtzman '65, now at Herrick, Feinstein in New York.

Another panelist said the effect of excluding minority jurors also has a larger impact on minority communities.

"It matters because children also have the perception that there are two justice systems," said Prof. Deborah Ramirez '81 of Northeastern Law School, "one for the wealthy and white, the other for the historically disadvantaged."

Ramirez said she supports revamping jury selection to add a set number of "affirmative peremptories" that would allow defendants to pick some people for the jury call. Then, each side could make negative peremptory challenges, with the existing official prohibition of racial motivation in place.

Others disagreed, calling the plan "lunacy," and arguing it would ultimately backfire against minority defendants.

In addition, many panelists defended peremptory challenges as necessary to prevent the inclusion of jurors the attorneys suspect are "flaky."

"Practicing lawyers believe we do need peremptory challenges because judges can't be trusted to tell who should be excluded for cause," said HLS Prof. Carol Steiker '86.

But some said the current system, which allows peremptory challenges but bars them if made on the basis of race or gender, hamstring those who would exclude a flaky juror who happens to



Deborah Ramirez (far left), Edith Greene, and Owen Walker debated the importance of peremptory challenges in jury selection at the Harvard Defenders 45th Anniversary Symposium.

belong to a minority group.

"It has been impossible for prosecutors to strike a minority juror because of the low number of minority pools in some areas," said Sara Lord '84, assistant U.S. attorney in the Northern District of New York.

Author Jeffrey Abramson '78, a professor of politics at Brandeis University, said the Supreme Court case that prohibits racial use of peremptory challenges should stand even if it is sometimes wrongly applied.

"Batson stands for something so far above the flaky juror problem that if that is a cost, it is a cost we should rush to pay," he said.

Prof. Alan Dershowitz added his decidedly defense-oriented perspective with another look at the desirability of having some "flaky" jurors.

"Since my client is almost certainly going to be guilty — statistically, in most cases — the last thing I want is a jury that will tell the truth, the whole truth, and nothing but the truth," he said.

Committees to Determine Faculty Diversity

continued from FACULTY, page 1

which is comparable to the national average, according to the American Association of Law Schools. One of them is an assistant professor up for tenure at that time.

Meanwhile, 10 women currently hold positions on the faculty, four of whom will be up for tenure by the year 2000. Three joined the faculty this year after accepting offers made in previous years.

The Women's Law Association said it appreciates Clark's recent efforts in hiring white women. But much more needs to be done to bring in women of color, and those who teach feminist jurisprudence, said Lisa Westfall '96, an at-large board member for WLA.

"We don't know what's happening," said Westfall, referring to the Law School's failure to hire a professor to teach courses on women and the law. "We don't know why a string of visiting professors come to teach feminist jurisprudence every year but none works out. It's a big mystery why they're not here."

This year, no people of color sit on either of the two appointments committees, which oversee entry level as well as laterals and promotion hirings. One woman, Prof. Martha Minow, serves on the six-member entry level committee, which evaluates candidates for assistant professorships.

But the real power seems to reside in the four-member laterals and promotion committee, a group that current chair Prof. William Fisher '82 acknowledged is "unusually small" for its influential role in assessing visiting professors and current assistant professors for tenured positions on the faculty. As a member on both appointments committees, Clark has one-fourth of the total vote in laterals and promotion.

And that group holds particular strength now, after Clark said the entry level committee has shut down for the year as HLS focuses on more senior candidates with established credentials.

Fisher emphasized his committee does not operate in a vacuum separate from the opinions of the entire faculty.

Typically, the members seek faculty input before making recommendations, which are then voted on by the entire faculty, Fisher said. Two-thirds faculty approval is required for a hiring.

"Appointments committees don't operate as insular bodies where they decide on a recommendation and then spring it on the faculty," Fisher said. "They consult constantly with the faculty formally and informally." But whoever sits on the com-

mittee definitely "does matter" in shaping hirings, he said.

Currently sitting on the committee are Fisher, Clark, Prof. Hal Scott and Prof. Larry Tribe '66. The group is considered ideologically balanced, with Clark and Scott as the more "conservative," focusing on a candidate's objective qualities of scholarship and expertise. Fisher and Tribe are regarded as more "liberal," sympathetic to the values of a professor's background.

Tribe has reportedly said he would not serve on the committee another year if asked, due to time constraints. His seat thus leaves at least one opening for a woman or person of color to take his place, student leaders say.

Students have also pushed for their own voice in faculty hirings, calling for non-

"If you only focus on the Lani Guiniers of the world, you're missing a whole new crop of women of color," Patience Singleton '96 said.

voting, advisory seats on committees and asking that an institutionalized process be set for students to meet prospective candidates. Though Clark has met with many student leaders to listen to their input, a formal mechanism is needed to ensure their voice is truly heard, they said.

This year, bids from three visiting professors whom several student groups had touted for hiring — Mary Becker, William Eskridge and Pamela Karlan — have been blocked by faculty members. They will not be invited for tenured positions, faculty sources said.

"I think I speak for many students in saying that we are disappointed," Westfall said. "We are disappointed that Prof. Becker didn't get an offer. Students loved her."

Fisher acknowledged that faculty disagreement over candidates has stalled the hiring process this year, noting that the last offer was made last fall to Dan Halperin, a tax professor at Georgetown University Law Center. Two recent acceptances by University of Pennsylvania Law Prof. Elizabeth Warren and Boalt Hall School of Law Prof. Einer Elhauge came

from offers made in previous years.

"My hope is that we make some real progress [on diversity]. There are some good, promising cases coming in the immediate future," said Fisher, who declined to name them but indicated they might be presented for a vote this spring or next fall.

But faculty sources said no new appointments are planned for a vote at their final meeting of the year today. Instead, up for a vote will be two former HLS professors seeking to return: Christopher Edley, who took a two-year leave of absence to work for the Clinton administration, and Richard Stewart, an environmental law professor at New York University. As an unspoken rule, faculty generally approve the reappointment of former professors.

Student leaders are also troubled by Clark's apparent disdain toward hiring new assistant professors, noting that these younger scholars are the ones more likely to be women or minorities. Law schools slowly began admitting members of these groups in the 1950s and 1960s, and only today are the full effects being felt with more women and minorities in the faculty hiring pool, they said.

"How many tenured women of color professors are there in the country? If you only focus on the Lani Guiniers of the world, you're missing a whole new crop of women of color who are interested in the legal profession," Singleton said. Guinier, an African-American University of Pennsylvania law professor, is rumored to be on the brink of accepting a visiting professorship at HLS.

Clark has said the focus on visiting professors affords HLS an opportunity to examine a candidate for proven expertise and scholarship. But student and faculty critics have said the potential of promising young scholars who have varied life experiences should not be discounted.

Indeed, such personal backgrounds may hold greater weight as more minorities and women apply to law school, all of whom will bring varied perspectives to classrooms that were historically white male. This year, 41 percent of the HLS applicants were women. Asian Pacific Americans made up 11 percent, while African Americans comprised 9 percent and Latinos represented 7 percent. Native Americans comprised 1 percent.

Student leaders said they are hopeful that Clark will stick to his promise to build a more diversified Law School.

"We will keep reminding him of promises he made," Singleton said. "If he doesn't follow through, we'll have to call him on that."

Book now before the Rush!

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BRIEFS



Putney Directs HLS Documentary

Turning a classroom idea into video reality, Laura Putney '95 will be producing a documentary on life at the law school, an effort prompted by a Harvard Magazine article titled "Fear and Loathing at Harvard Law School" and inspiration from Prof. Richard Parker's [70] Law and Literature seminar.

The documentary, which is based on 25 half-hour interviews, analyzes how institutional myths — supercompetitiveness, the Socratic method, the 1L experience, "thinking like a lawyer," and the final exam system, for instance — survive and affect people's lives. Putney said the film will be "edited around topics, hopefully juxtaposing people who disagree in order to get a broad base of viewpoints."

"I let people talk about what they want to talk about [in the documentary] because that is the best way to get at their views," said Putney. "Two-thirds of the interviewees are 3Ls."

Those students represent a new stage of student life at HLS, said Putney, since they "came in at the end of student protests."

Putney, who has a friend working for Ted Turner, will use Turner Educational Services for editing. To give the documentary visual interest, Putney will include shots of "things that typify our era here, such as shots of Hauser Hall being engraved."

"I always wanted to make a documentary about the Law School because it is the kind of place which inspires people to talk about it, and I wanted to be in on that tradition," said Putney.

ILS Delegation Goes to Indonesia

Indonesia was the Spring Break vacation spot of choice for five International Law Society students. The delegation went to the cities of Yogyakarta and Jakarta for eight days to learn about current issues facing the country's 180 million people.

Brad Gordon '95, who went on the trip, said the group met with government officials, law professors and students, and public and private practitioners. They learned about legal education, recent legal reforms and current challenges in Indonesia.

Tony Anghie, S.J.D. '95, Lee Schwartz '96, Julia Schwartzman '97, Valerie Thean, LL.M. '95 and Gordon went on the trip.

Ad Board Hearing Set

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Upon a showing of clear and convincing evidence, the board may impose a range of penalties, including a reprimand, suspension, "dismissal" (under which a student is expelled but can reapply to the school), and expulsion. Dismissal and expulsion require approval by two-thirds of the faculty.

The subject of a hearing may be represented by counsel.

Harvard University police have said they identified a suspect through the use of a surveillance camera last month but would not say whether the suspect was Bates. One student said police told her they also found at least some of the fraudulently obtained CDs in the suspect's apartment.

Detective Richard DeCruz, who has spearheaded the investigation, this week said only that the matter was "still under investigation."

At least one student questioned whether police would ever make an arrest in the case.

"They've left it to the Ad Board, basically," said the student, who asked not to be identified. "I don't think they thought it was a large enough priority. I guess when you think about it, it really isn't that big a deal from their point of view."

"However, they caught him, which is the really big deal."

The credit card fraud victim, however, said she believed the police were still actively investigating her complaint.

Richardson said the Ad Board's policy was to "let students know at the first opportunity" of any disciplinary actions by putting a notice in the Adviser. If the Ad Board makes a decision on Tuesday, it could notify students as early as Thursday.

But history suggests the Ad Board might not inform students of the exact

penalty. In 1991, the Ad Board found that two students had used Law School facilities as part of a scheme to defraud music clubs, but the Adviser notice said only that the students had been "disciplined."

Several students in Terry Terrace refused to rule out the possibility that they would take legal action after the Ad Board decision.

"A number of us are thinking about that," said one student. "But you know what's going to happen. Finals will hit, and then everyone will be busy, and then people will be occupied with their summer jobs, and it

will be forgotten, particularly when he moves out."

Students also speculated that the fraud departments of the affected companies might get involved.

"I think the general sense is that if the Ad Board doesn't do anything, one of the companies that has an interest will take some action," one student said.

Several students in Terry Terrace refused to rule out the possibility that they would take legal action after the Ad Board decision.

Lambda Charges Bias in Faculty Hiring

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Eskridge is openly gay.

Although neither Dean Clark '72 nor Prof. William Fisher '82, who chairs the four-person committee, would comment on specifics of the Eskridge case, outgoing Lambda Co-Chair Scott Wiener '96 said the committee decided not to send Eskridge's case for a full faculty vote.

Wiener said Eskridge fell victim to homophobia from both faculty conserva-

tives and liberals. "The faculty was content not to have any openly gay professor, and homophobia definitely plays a part in that," said Wiener. "There is another kind of homophobia of the left going on, where some people thought that if they were going to get an openly gay faculty member, they wanted someone who does queer theory."

"But this assumes there is just one gay slot on the faculty, which can only be filled by a gay studies scholar. So openly gay potential professors are being held to a different standard than straight people."

The lateral appointments committee must recommend candidates by a majority vote before they are considered by the entire faculty. At that point, a two-thirds vote must be achieved in order to complete the appointment.

Candidates for whom the committee does not complete a final vote technically can be considered again in the future, said Fisher. Citing confidentiality concerns, Fisher declined to specify whether Eskridge had been invited simply for a short-term visit or whether he had been seriously considered for a HLS professorship.

Conceding that the hiring process is

not "perfect" and that it has been fraught with past difficulties, Fisher questioned Lambda's charges and said he would be the first to be "angered if homophobia had anything to do with the Eskridge situation."

"For a long time I have been a staunch supporter of affirmatively recruiting women, minorities, and openly gay candidates," said Fisher. He also said he was "reluctant" in certain cases to send candidates to the full faculty without a majority vote in committee because it often leads to

the faculty "debating their qualifications in public."

"This has hurt candidates in the past," said Fisher, pointing to the cases of Regina Austin and Anita Allen, two African American women professors who were rejected by the faculty in the 1980s.

An anonymous faculty source also questioned Lambda's charge, saying that Eskridge's sexual orientation was not the determining factor in his bid for a faculty appointment, but rather that

Eskridge's scholarship "just wasn't striking enough."

In addition, Eskridge seemed "a little too eager to please," and endeared himself to many conservative faculty, which alienated many potential liberal supporters, said the source.

Eskridge, who will be publishing a casebook on sexual orientation and the law, said his visit was "not officially designated as a look-see visit."

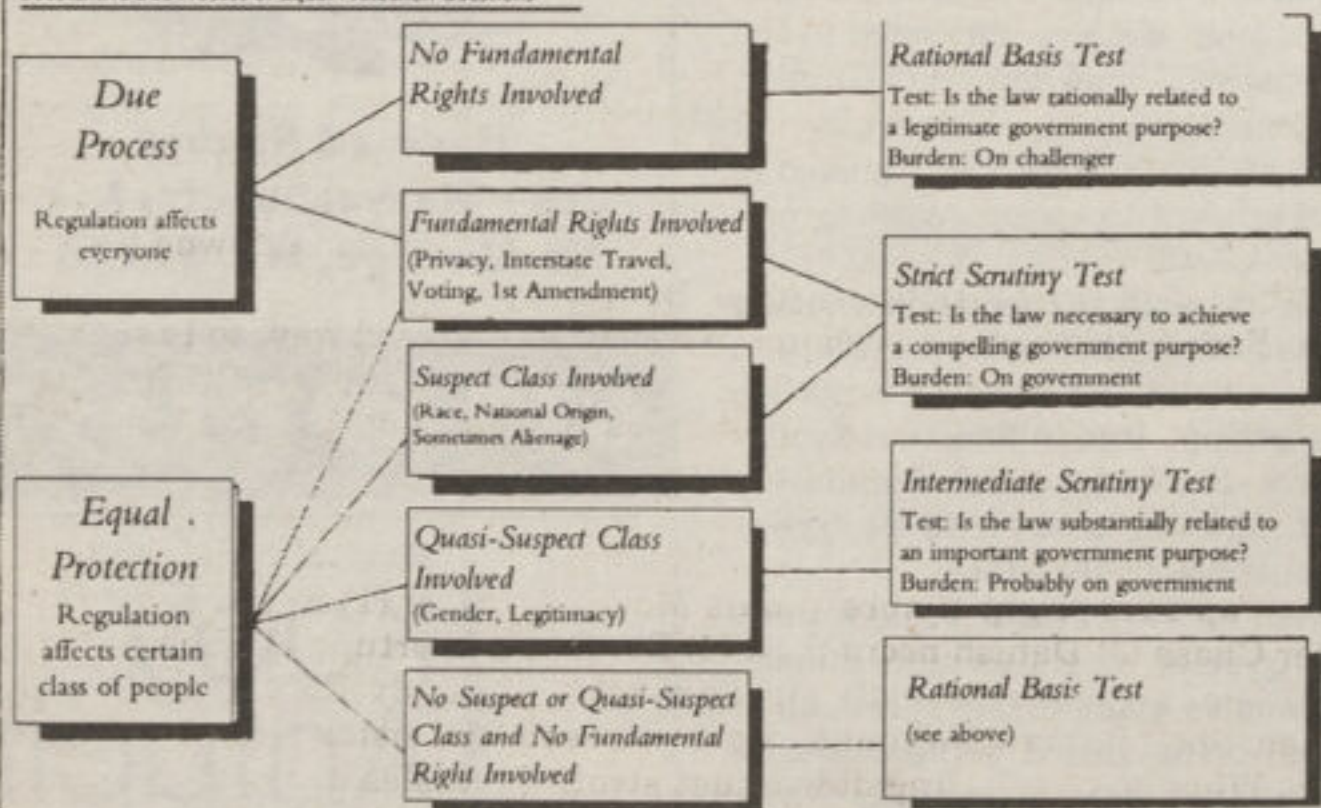
"Harvard more than delivered on everything that it suggested I could get out of the visit," said Eskridge. "To the extent that there is ever any possibility of a permanent offer, that is completely up to Harvard, and I have not asked for one. No promises were made in any way."

Wiener said Eskridge fell victim to homophobia from both faculty conservatives and liberals.

GO WITH THE FLOW.

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G Y M R A T

Wait 'til Next Year

By David Koontz '96
Sports Editor



WELL, folks, this will be the last time the Gym Rat comes to you in the 1994-'95 season. If the good people at the RECORD see fit to have me back as sports editor next year [not a chance - Ed.], I'll create a crack staff that will cover the world and elsewhere. The Dean of Students' office already has come through with funding that will allow yours truly and four "scouts" to cover the French Riviera, just in case something sports-related happens there. The office did, however, refuse funding for a trip this week to New Zealand to watch the America's Cup finals. Somehow they found out it was being held in San Diego instead. I love cheering for the good ol' USA, and yachting is no exception. My favorite cheer goes something like this: "Uh, go, you boat."

I also would like to take this opportunity to mention other sports I don't mention very often, namely volleyball. Commissioner Jeff "American" Litvack '95 has done a heck of a job giving both the rabid and less-than-rabid players a forum. He leaves behind some big shoes to fill (figuratively), but there is no truth to the rumor that next year's commissioner will have to act in the law school parody. Another note on volleyball: I cannot let the year pass without giving tribute to the single most inspired and fiery volleyballer I have seen to date. Matt "The Knife" Queler '96 can bump, set, and spike, but his most important asset is his keen coaching sense. You might be able to catch him early next week in the playoffs — the actual date is not set yet, so ask the volleyballer nearest you for details.

HLS hoops fans might be in some suspense right now, and unfortunately, they'll have to stay that way somewhat. Fans on the East Coast know what it's like to pick up the morning paper only to find the West Coast action from the night before listed as "late" with no final score. Well, that's what's happening here with your HLS Final Four and championship games. Simply put, the action will happen after we go to print for the final time this year.

Looking back, however, the "B" League's second round of playoff games was no less interesting than the first. Ultimately, there were no upsets, but there was much pandemonium before the Great Danes, Gooch's Two-Headed Johnson, Stonecutters, and J-Men advanced to the semi-finals. Hanson's Heroes had the disadvantage of making up their first round game a victory over Mo Knows — the same night their second round was played. The result was a heroic but losing effort against the Stonecutters. The J-Men erased a five-point second-half deficit against my Sleestaks, with the always gritty-gutty Dave Becker '95 nailing 15-footers and Dave Post '96 drilling what seemed like 30-footers. The rest of my team played hard and played well, but the night before the game, John Starks came to me in a vision. I wish he hadn't. Meanwhile, the J-Men cleared the glass and the victory. They now go on to face the Great Danes, who had their hands full with the really huge Holmes Boys. Down 10 at half-time, the Danes took some Scooby snacks and came through.

I pause now to take a breath before writing about Gooch's Two-Headed Johnson. What can you say about a team whose last three games, including the first two rounds of the playoffs, were double-overtime victories? One thing you can say is that nobody has beaten them all year, but you say it with a lot less bravado. This time, Spence-Air fell just short; with one more point, they would have stretched the game to triple overtime. In his final game, Spencer "For Hire" Levy '95 was unconscious (but shot well anyway). So the Final Four comes down to the Great Danes against the J-Men, and Gooch against the Stonecutters. No concrete predictions here, but that rumbling could be the Stonecutters gaining momentum.

In the "A" League, I am left to make mere predictions. Objectively speaking, in the purest professional sense, I can honestly say I have no clue who should win this. All I will say is that since En Fuego and Well Hung Jury are obvious frontrunners, let's look for a late surge by 3L. I'll call it the Graduation Factor, although En Fuego's Murph, Mac, and Mark might do a double take at that. Cary Grant once said in "An Affair to Remember" (it's okay; I was watching it with my girlfriend), "I had something to say, and I painted it instead." Applying that to basketball, some teams will have something to say this week, but of course the scoreboard will do all the talking (I was about to make some exception for trash talking, but I can't think of a single player left who woofs all that much. You should all be very proud of yourselves).

At last, I'd like to say farewell and good luck to all the 3L's out there who are graduating to the real world and leaving this wonderland behind. It's been fun, gentle reader, so have a good summer and look for me next year, when 3L apathy and baseball conspire to ruin my third year paper. Take care.

Intramural Basketball Standings as of Sunday, April 30

TEAM NAME	WON-LOST	TEAM NAME	WON-LOST
"A" LEAGUE			
*2. Well Hung Jury	9-2	6. Ball Handlers	6-5
*4. En Fuego	8-4	1. Black Plague	3-6
3. First Time Offenders	5-5	7. All Guards	0-11
5. 3L	7-5		
"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

Food Isn't Everything

By Ted Cohen '95 and Jonathan Goldstein '95
RECORD Restaurant Guys



FOR close to 30 years, we've been here for you. Eating vile food so that you wouldn't have to. Slogging through high crime areas to find that elusive new eatery. Tipping vigorously. Living robustly.

But no more. It's over. We've had our day in the sun. We've devoured our \$4,000 worth of free food; you're on your own now. So what follows are some heady, gin-soaked bits of wisdom designed to help you carry on long after we've become little more than a couple of names on a law school building.

- We know it's hard, but try to enjoy yourselves every once in a while. Get off on the wrong floor at your firm, for instance, or call your secretary "Deirdre" and see if he notices.
- Don't eat soggy take-out food in your underwear in front of the television at 11 p.m. every night. Instead, drink yourself to sleep in the tub.
- If you're working for the government, hey, now's your chance: Spend the summer smoking pot. And killing people.
- Save a little extra every month, dreaming of the big donation you'll be able to make to Harvard Law School one day.
- Never pull an all-nighter for any reason except sex. Nothing else is more important than sleep.
- Tip the guy who carries your bags up to your room at The Plaza — he has a family.
- Don't do your reading. It ruins your eyes, and it's bad form. Instead, go down to the Combat Zone and scope out Danish necro-porn. It's good fun. Then check out that scary Chinese place with the live prawns in the tank. Order them alive.
- Remember who you were when you got to Harvard Law School. Compare that with who you are now. If it's the same, don't worry. If it's different, take a good look in the mirror and ask yourself: "Am I an ass?"
- Take everything with a grain of salt. Even salt.
- Red wine with red meat. White wine with fish. Rosé with Drano.
- When the managing partner at your firm asks you to have a memo on his

For close to 30 years, we've been here for you. Eating vile food so that you wouldn't have to. Slogging through high crime areas to find that elusive new eatery. Tipping vigorously. Living robustly.

desk in the morning, ask him if you can just leave it on his pillow after you sleep with his wife. (To the over-sensitive, ultra-literal reader: reverse genders if applicable.)

- Better learn how to play golf!
- When you're 40 years old and have just paid off your last scrap of Law School debt, there's a 60 percent chance that you'll have just begun to pay alimony and child support.
- Most of the country thinks that your firm gave you a starting bonus of a Mercedes and an interest-free mortgage. Most of the country hates you.
- At least when your relatives ask you how law school is, you won't have to lie, "It's really good." Instead, you can wow them with stories about the hedge fund you're working on.
- If South opens with a weak jump to two spades, don't lead with the obvious no-trump. Go out on a limb: bid five-diamond, ruff in dummy and lead a heart on the next frame. Guard against the king and you'll slam. Sure as anything.
- "The Phoenix," WFNX, and every single bar on Lansdowne Street are owned by ONE corporation. No joke. Be wary.
- For godsakes, use a condom. We learned the hard way, so to speak.
- Read John Grisham. He's a lot better than most people think.
- When people on the outside ask you if law school was really hard, just stare at them and start hyperventilating.
- Avoid Austin Hall; it's built on an Native American burial ground.
- Avoid Arthur Miller; he's built on a Native American burial ground.
- Top Five Night-Before-Finals Movie Rentals: (1) Space Balls (2) The Paper Chase (3) Danish necro-porn (4) Reversal of Fortune (5) Forrest Gump.
- Um, wake up, people! The Law School already HAS tenured a black woman: She's Bernard Wolfman. Have you seen that sister work corporate tax?
- When you're feeling down, just stroll the aisles of the Law Coop and imagine all the things you'll be able to buy with your big salary.
- The best cure for hiccups: Sever your carotid artery.
- It's okay to steal. You've earned it.
- Drinking and driving in moderation is a good way to blow off steam after a hard day.

So that's it. We hope you laughed and/or were offended at least once over the past two years. We hope that you ate well on our recommendation. That's the big picture we want to leave you with: Live well. Be happy. Eat each meal as if it were your last. It just might be.

Harvard Law RECORD

Founded in 1946

Victoria Kuohung
Editor-In-Chief

David Weiss
Publisher

The Good Things

When I ran my U-Haul into a parking garage on the first day of orientation, I knew life at HLS could only get better. And it has. As much as many of us 3Ls might like to deny it, HLS has been a reasonably enriching place to spend three years.

Sure, we can all make long lists of complaints: the holier-than-thou attitude of a few professors, the bureaucratic rules, the secretive faculty appointment process, the tuition.

But when we cut through the culture of cynicism, we should be able to see a school that has provided us with tremendous opportunities. The vast majority of our professors are dedicated, effective teachers. Our classmates are 550 of the smartest people we will ever know. We've had opportunities to hear countless interesting speakers and to take a wealth of exciting courses. If we've failed to find contentment amid all this opportunity, we have only ourselves to blame.

Here's what I'll remember about HLS and the Class of '95. I'll remember Erik Lindseth having enough commitment to his values that he never picked up his grades. I'll remember Laura Putney being interested enough in her classmates that she created a documentary about them. I'll remember my good friends Emily Widmann and Robert McBurney finding one another. I'll remember bonding with my Property study partners as we tried to figure out what the hell Donahue was saying. (The stuffed fox I understood; everything after that is a blur.) I'll remember Kelby Hagar, Clarke Camper, April Rockstead, and Maria Politis saving my butt time and time again at the RECORD.

God knows the school has room for improvement, but, in our last few weeks, we should appreciate the good things about HLS. They're not hard to find.

— Stohr

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This is the last issue of the RECORD for the 1994-95 academic year. The RECORD will resume publication in mid September, 1995. The RECORD would like to wish graduating 3Ls and LL.M.s luck in all their endeavors. We welcome submissions — articles, columns, and letters — from all alumni/ae.

Editorial/Letters Policy

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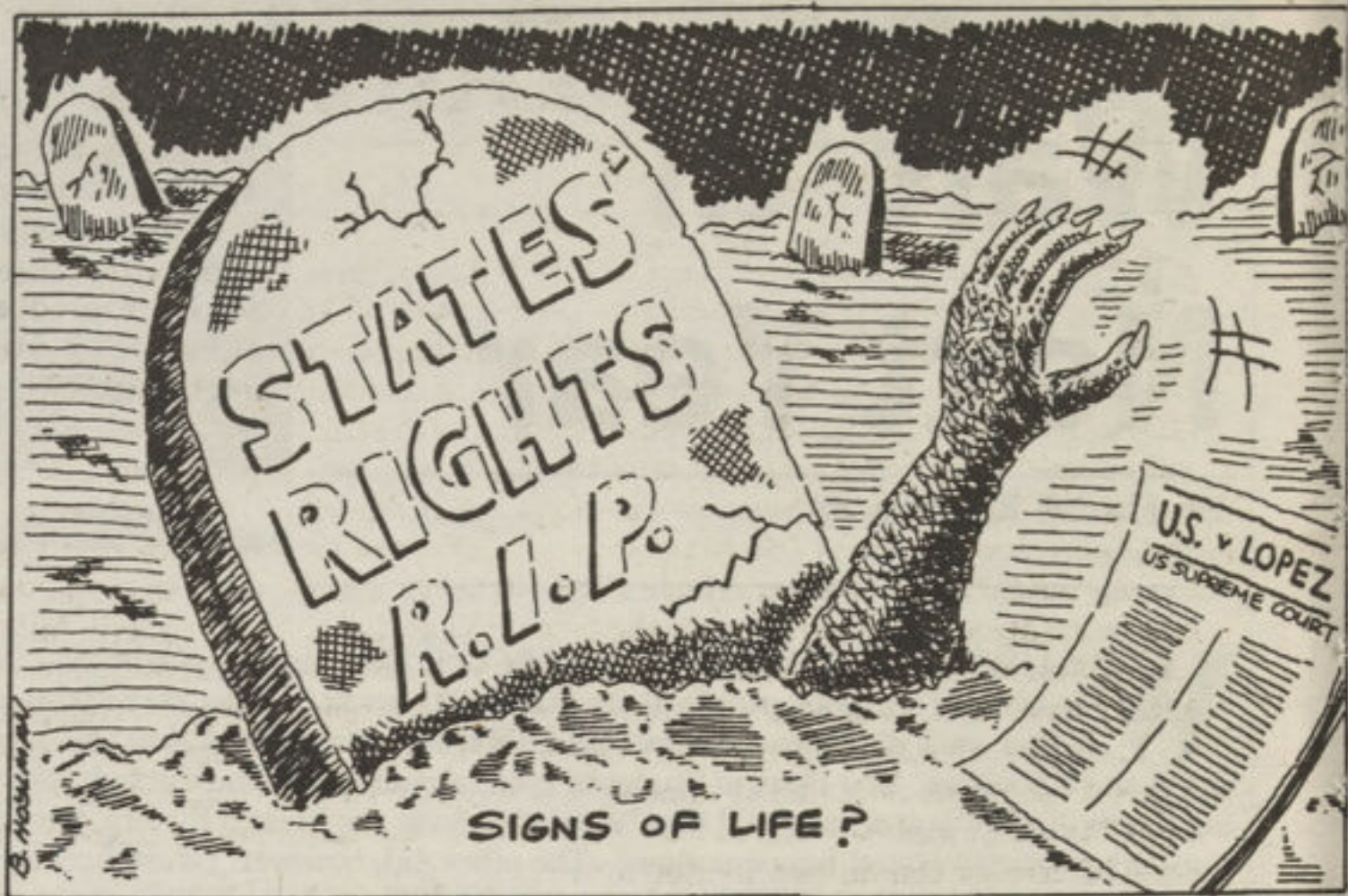
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"Congress shall make no law...abridging the freedom of speech, or of the press;..."

—First Amendment, US Constitution



• Letters •

Renovate the Harkness Commons

The controversy surrounding the planned renovation of Langdell Library has been an eye-opening experience for all concerned parties. The Langdell Renovation Committee, which formulated and announced the 1996-'97 project, was clearly taken aback by the uproar which its pre-registration memo created. Dean Clark was unexpectedly deluged with a stream of petitions, letters, and verbal complaints about both the renovation plan and the administration's treatment of student concerns in general. I was pleasantly surprised to learn that the legendary Harvard Law School student apathy is, in fact, a myth. There are many important decisions being made by the administration in which students can and must have a voice, and the Law School Council is prepared to serve as a conduit.

In many ways, this semester's controversy has created a golden opportunity for the administration to demonstrate the depth of its concern about student needs. With the possible loss of an important student facility for an entire academic year, this is an ideal time for Dean

Clark to address long-standing deficiencies in other areas of student interest. The dean recognized this opportunity in his letter to the Class of 1997 regarding the renovation when he promised to "consider ways in which we can further improve the quality of student life in the months to come." I applaud this initiative.

I would like to suggest a sure-fire way to meet this goal which Dean Clark has set for his administration. To improve student life, improve the student center. Let the tidal wave of renovation sweep north across campus to bring about, as Dean Clark put it, a "reconfiguration of Harkness Commons." The time has come to fix the Hark.

Unlike the massive undertaking at Langdell, renovation of the Harkness Commons can be accomplished over the summer. The project's cost would be minuscule compared to the Langdell estimate. The Hark has been on the administration's hit list for some time. A plan has been devised, only to be put on the back burner for the same financial reasons which prevent any devi-

ation from the current library schedule.

We should supplement the study space which will be lost at Langdell with a restructured Hark. We should create a viable social center for those displaced from the reading room. We should construct a functional area to be utilized while Ropes-Gray is filled with statutes and Hollis terminals. A renovated Hark seems to fit perfectly into the scheme of this campus, especially when seen in the light of the current Langdell plans.

I'm sure that Dean Clark has been troubled by charges that his administration treats student concerns as an externality, to be addressed only during short outbursts of mass dissatisfaction. While imposing the external cost of library renovation on current members of the HLS community, I urge the dean to bestow a benefit to students of today and tomorrow. Dust off the blueprints, drum up the capital, and renovate the Hark.

Rob Simmelkjaer '97
President, LSC
May 2, 1995

HLS Needs Conservative Faculty

There has been much talk on campus about faculty diversity. Yet, it is seldom noted that the most glaring example of lack of diversity is the virtual absence of conservative professors. While there is a large community of active conservatives among the student body — one need look no further than the Federalist Society — there are few among the faculty who are sympathetic to their viewpoint.

The likely departure of Professor Fried will only make the situation worse.

Though he is not as conservative as he is caricatured to be (he is avowedly pro-choice, for example) his departure would be devastating to the conservative students. To begin with, both the Federalists and the Republicans would be left without a faculty advisor. More importantly, students would be deprived of the chance to balance their legal education. We should all have the opportunity to be exposed to professors representing diverse points of view.

There is no lack of qualified conservative professors who could be invited to join the faculty. Professor McConnell of University of Chicago is a good example. The addition of more conservative faculty would do much to make life more bearable for students, bring the Law School closer to the rest of the world, and, most likely, even help with recruiting.

Patrick Lannon '96
Jennifer Bonar '96
May 2, 1995

• Letters are continued on pages 7 and 10 •

Corrections

The article "Groups Go to Asia Over Break" [the RECORD, April 28, 1995] incorrectly credited Gene Rhough for the accompanying photo. The picture was

actually taken by Yumi Kakuta LL.M '95. The RECORD apologizes for any inconvenience or confusion this may have caused.

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"Balkans Butcher" Now the "Peacemaker"

By Kemal Kurspahic

THE American public, thanks to CNN's Larry King Live, had an rare opportunity to listen first-hand to the "Serbian side of the story" on the bloodshed in the Balkans. The guest was Serbian President Slobodan Milosevic. In an hour-long discussion, the leader of the crusade aimed at the creation of "greater Serbia" — who was named by the American press as the "Balkans Butcher" and by former Secretary of State Lawrence Eagleburger as the top candidate for the war crimes trials — tried to share blame for atrocities committed in the former Yugoslavia among "all sides in the conflict." "There are no innocent sides there," and, "I don't think that Larry Eagleburger still believes what he said then," Milosevic said. But the CIA's most recent classified document, leaked to the New York Times, blames Serbs for at least 90 percent of crimes committed in Bosnia and points to the responsibility of those in the highest positions.

Counting on international weakness in dealing with the Bosnian tragedy, whereby the lack of leadership and resolve to stop and punish genocide has led to the promotion of the one most responsible for that tragedy — Milosevic himself — to the role of the "peacemaker," the Serbian president seized the television opportunity to try to wash his hands and to put the blame on everyone else. Americans, he said, have a "distorted picture" of the war in the Balkans. "You don't know that since the beginning Serbia was for the peace," Milosevic stated.

He tried to manipulate the American public in the same way he has manipulated the Serbian public for almost a decade now. In fact, Serbian television was the most powerful tool in his propaganda campaign to produce suspicions and hatred against non-Serbs in former Yugoslavia. For years, before the war broke out, he used television and other media to convince Serbs that there was a world-wide conspiracy against them — beginning with those Croat "ustashas" and Muslim "fundamentalists" in the immediate neighborhood who were supported by the Vatican (Catholicism vs. orthodoxy) and "western imperialism" (mostly referring to Germany and the United States) — so they had to unite behind him in "protecting

Kemal Kurspahic was the editor-in-chief of the Bosnian daily newspaper Oslobođenje during the first two years of the siege of Sarajevo. He is now a Nieman fellow at Harvard.

Serbian national interests." These interests, however, were not threatened in any way.

Beside the general demagoguery, which could hardly impress the viewers of American television, which extensively covered atrocities committed by forces under Milosevic's control, some of his statements can help us understand Milosevic's personality and the basis on which he justifies his role, his goals, and even genocidal crimes perpetrated in the quest for "greater Serbia."

"This war was provoked by a nationalism which doesn't have anything to do with the end of 20th century," he said, as if that nationalism was someone else's sin. But it was exactly Milosevic who was brought to the top of the Serbian Communist Party to execute the "greater Serbia" project developed by the Academy of Arts and Sciences in Belgrade. It was he who, under the excuse of the "protection of national interests," changed the 1974 Yugoslav fed-

He tried to manipulate the American public in the same way he has manipulated the Serbian public for almost a decade now.

eral constitution to deprive Kosovo and Vojvodina (former autonomous provinces of Yugoslavia) of autonomy within Serbia and, by force, put his proxies in power in Montenegro. With these acts, he obtained four seats out of eight in the federal presidency, paralyzing its work and making life in former Yugoslavia less and less tolerable for everyone else. And it was he who, on June 28, 1989 — the 600th anniversary of Serbia's defeat by the Ottoman Turks at Kosovo in 1389, threatened that "even armed battles are not excluded" in the realization of Serbian national interests as defined by him.

Let's analyze just three of Milosevic's claims:

1. "Bosnia was illegally recognized ... after an illegal referendum [on independence]."

The fact is that the European Community, after concluding that former Yugoslavia was a country in dissolution and after granting independence to Slovenia and Croatia (formerly republics of Yugoslavia), offered Bosnia the same recognition if the majority of its citizens, regardless of their ethnic backgrounds, wanted independence. In the resulting referendum, despite the boycott and obstruction by Radovan Karadzic's Serbian Democratic Party, 64 percent of Bosnians voted for independence. The referen-

dum was internationally supervised, and the way it was conducted was highly complimented by all foreign observers including those from the U.S. Congress.

2. "Serbs didn't want to be second-class citizens of the [Bosnian] Muslim state."

The fact is that Serbs had guaranteed equality in the Bosnian constitution and were not discriminated against in Bosnia. In Bosnia's first and only free elections in November 1990, the Serbian political party won one-third of the seats in the Parliament, and the president of the Parliament was Serbian. They had equal representation in the Republic's Government and Presidency and total control in all towns and municipalities with a Serbian majority. And they had more than a fair share of all important public positions. The problem wasn't the concern for equality, but greed for territories in order to create "greater Serbia."

3. "The other side didn't want the problem to be solved peacefully, they started the war which was imposed on us!"

The fact is that no Bosnian — or Croatian — soldier in this whole war ever crossed Serbia's border. The whole terror was conducted in Bosnian territory. The war was indeed imported and "imposed" — but it was imposed on Bosnia. First, by the "greater Serbia" project, which was developed in Belgrade. Second, by the presence, deeds and weapons of the Yugoslav Army, which was headquartered in Belgrade. Third, by the presence of and crimes committed by Serbian paramilitary units who came to Bosnia and conducted some of the worst atrocities in the genocidal "ethnic cleansing." And fourth, by the fact that even most of those who organized terror within Bosnia itself, such as Karadzic and some of his closest associates, came from elsewhere and didn't belong to the centuries-old Bosnian tradition and culture of the tolerance.

As for Milosevic's statement that "there are no innocent sides" in Bosnia, the best response to that has been offered in the Final report of the U.N.'s Commission of Experts on the war crimes in former Yugoslavia (Security Council's document S/1994/1674) which says, first, that "the practice of 'ethnic cleansing' is carried out in strategic areas linking Serbia proper with Serb-inhabited areas in Bosnia and Croatia" and, second, "it is clear that there is no factual basis for arguing that there is a 'moral equivalence' between the warring factions." Except in the statements of the person who bears the most responsibility for the tragedy in the Balkans.

• Letters (cont.) •

LIPP Still the Best Assistance Plan

I read with great interest the pieces published in the RECORD addressing the need for more public interest funding at Harvard Law School. While I support the need for such funding, I feel compelled to clarify some points about the Low Income Protection Plan (LIPP) which were either misconstrued or omitted.

LIPP has been the leader of loan repayment programs nationwide. The first such program, LIPP was established in 1979 and has been the model both for other schools and the federal government's Income Contingency Program. LIPP is an "enabling" financial aid program which seeks to protect freedom of job choice within the legal profession. Although not formally an incentive program, LIPP narrows the gap for financially needy graduates between private sector employment and public interest opportunities by assisting them in the repayment of their loans.

Financial aid at Harvard Law School is determined solely on need. We strongly believe this to be the most equitable way of distributing limited funds and of preserving access to a legal education regardless of a family's financial strength. Merit scholarships would not only represent a radical change in our financial aid policies, but present many difficult choices given the extraordinary strengths and backgrounds of our students.

Last year, LIPP provided close to \$1.2 million to 213 of our graduates.

Harvard's support of LIPP over the last five years is close to \$5 million and far surpasses that of any other law school. Our graduates receiving assistance come from classes going back to 1984 and include participants who entered the program after having held higher paying law firm jobs.

Overall, LIPP provides

LIPP is an "enabling" financial aid program which seeks to protect freedom of job choice within the legal profession.

more features than does any other law school's loan repayment program. In order to compare LIPP accurately to any other program, it is essential that the full extent of the programs be examined. While on the surface, some programs may look more generous, an actual comparison will probably prove otherwise. Given that the recent attention has

focused on NYU's programs, we have compared a graduate with average indebtedness taking a \$35,000 job under both loan repayment programs. Since LIPP allows for undergraduate debt and provides an additional 25 percent as a tax allowance for grant assistance, this graduate would receive \$8,500 in LIPP funding, compared to \$6,000 from NYU.

While we had anticipated many discussions with prospective students regarding the newly established NYU public interest program, we, in fact, have not had those conversations. Our experience, on the contrary, has been that students interested in pursuing careers in public interest law actually prefer the type of assistance and flexibility that LIPP provides over financial offers they have received from other law schools. The Admissions Office has not experienced a change from years past in the responses of prospective students; these students are telling us that the options and opportunities available to them at Harvard Law School, financial and otherwise, are what makes them choose Harvard.

Any student with concerns about the LIPP program should be sure to see me in the Financial Aid Office to discuss individual financial circumstances. I appreciate the opportunity to clarify certain aspects of our LIPP program.

Mary L. Magnuson
Director of LIPP
May 2, 1995

Boycott Sidley & Austin

If you had been a student at Harvard Law School in 1954, would you have supported a student (and career services) boycott of Davis, Polk & Wardwell? John W. Davis, a "name" partner at Davis, Polk, was then representing the state of South Carolina before the Supreme Court in its appeal of one of the cases consolidated under the name *Brown vs. Board of Education of Topeka*. Davis was recently described in the Harvard Law Review's tribute to the late Dean Griswold as one of the foremost appellate advocates of this century. Because he believed that racial segregation was both right and wise, Davis decided in 1954 to lend his unique, irreplaceable talents to the cause of upholding that institution. But perhaps Davis and his firm would not have made the same thoroughly political, morally reprehensible choice had they known that it would cost them the next generation of Harvard talent. Does that deterrent (and punitive) effect seem sufficient justification for a boycott? If your answer is yes, then you should refuse to interview with the law firm of Sidley & Austin, and support a request to the Office of Career Services that Sidley be prohibited from participating in on-campus recruiting at Harvard in the fall of 1995.

You see, a partner in Sidley's Washington office has enthusiastically sought out the chance to represent the state of Colorado in its appeal on the federal constitutionality of Amendment 2 to the Colorado constitution. Amendment 2 forbids local governments throughout the state from passing laws that prohibit discrimination on the basis of sexual orientation. If you think it is morally repugnant expressly

to relegate a class of people to second-class citizenship on the basis of an ascriptive characteristic — like skin color or sexual orientation — and that firms should be deterred from, and punished for, attempting to vindicate such policies, then you should support this boycott.

This is not a criminal case, in which the vast resources of the state are arrayed against a lone defendant, where, for the presumption of innocence to be meaningful, the defendant must have competent representation. Here, the quite substantial resources of the State of Colorado are being used to vindicate an ordinance that strips a hated minority of its civil rights.

As for the argument that both sides of the case deserve their day in court, there are two responses. One is the standard Crit contention that law is simply politics, inevitably indeterminate and manipulable, and that therefore success in litigation will be correlated not with the transcendental legal or factual "truth" of one's arguments, but rather with the cleverness of one's lawyers, the level of resources one can spend to produce evidence, and the political sympathies of the judge(s) (or justices). Although I don't disagree with that view, I believe the far stronger argument in this instance is simply that we all have a moral duty not to make evil, oppressive law.

Even if you believe in the constitutional merit of Colorado's appeal, you, as the hypothetical Sidley & Austin partner, should decline the representation because it is immoral to support an immoral law when not to do so would violate no other legal or ethical duty. That is, even if

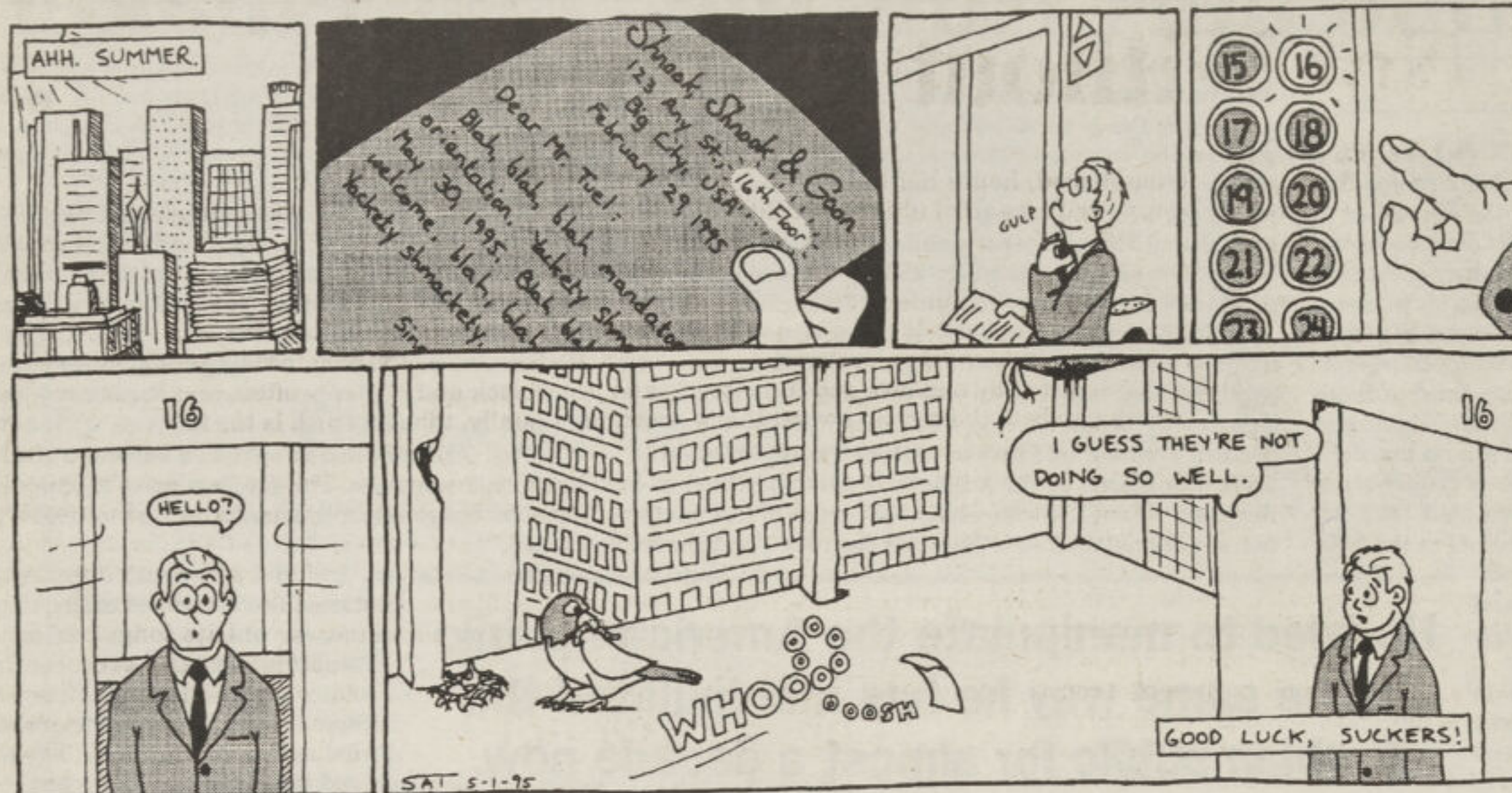
you assume that civil disobedience is morally problematic because respect for democratically enacted laws is itself a moral imperative regardless of the content of those laws (a ridiculous position, in my view), this is not a difficult case. No lawyer is ethically obligated to take on a particular client, especially if the client is neither indigent nor unable to obtain alternative representation. And remember, Colorado is plenty rich, and has its own lawyers.

Let me conclude by illustrating the point with a hypothetical scenario (I make no claim for the historical accuracy of this hypo). Imagine that you are a gifted appellate attorney in antebellum Virginia. State officials recently discovered that, contrary to Virginia law, one Richard D., whom they would classify as black, was receiving an education, and they brought an enforcement action against the private school in which he was enrolled. Unfortunately for Virginia, the school successfully argued at trial that, based on the number of his white and black great-great-grandparents, Richard D. is white in the eyes of Virginia law, and should be permitted to continue his studies. The state has approached you and asked you to represent them in their appeal to the Supreme Court of Virginia, where you would argue that, properly construed, Virginia law does classify Richard D. as black and therefore prohibited from receiving an education. Would you agree to represent Virginia? Would you work for the lawyer who did? If your answer to those questions is no, then please support the coming boycott of Sidley & Austin.

Ken Halpern '95
May 2, 1995

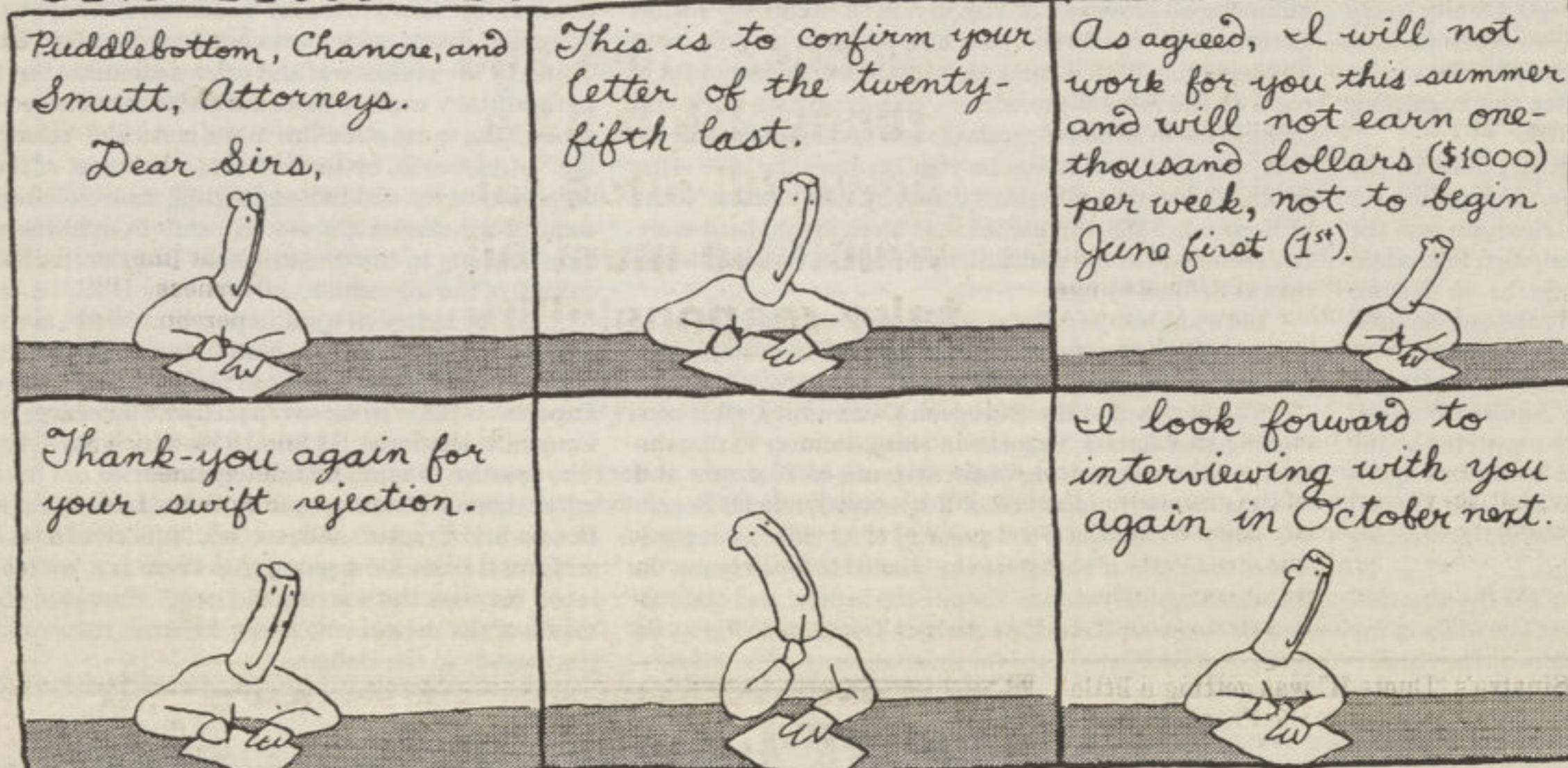
Temporary Insanity

By Sheila Tuller



Civil Procedure

M.J. Kelly © 1995



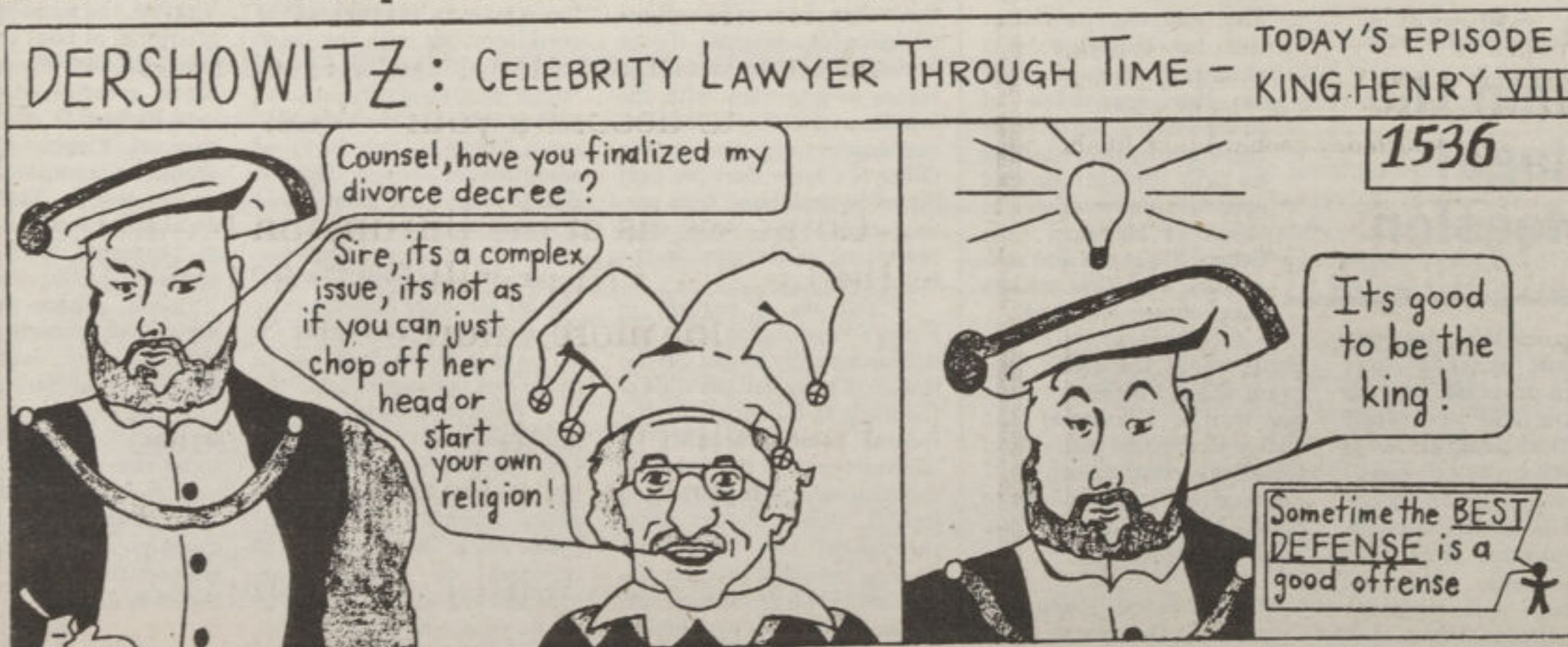
Backbench

By Brian Cheng



The Comic Strip f.k.a. Prince

By Stuart Rees and Bill Zimmerman



CALENDAR

Birth. School. Work. Death: Halfway Home

By Jeff Bucholtz

Since it's another slow week in the clubs, I'll put the little time I have left to its most efficient use: propaganda.

With *Enchantments*, Cleopatra has compiled hard-hitting tracks by Front Line Assembly, Die Krupps, Laibach, and 13 other top industrial groups onto one absolutely indispensable disc. All 75 minutes percolate with brutal beats and machine-enhanced fury — perfect tunes for studying for finals!

The black-clad hordes have been heeding Cubanate's call to the dance-floor for a while already in Europe, and the domestic release of *Antimatter* should make this British foursome a staple of the U.S. electro scene. Heavier on the rhythms and lighter on the metallic guitars, Cubanate play unabashed electronic body music, rather than the industrial metal or crossover techno that have become fashionable of late. "Body Burn" would fit in perfectly between Nine-Inch Nails and KMFDM.

Designed more for the mosh pit than the dancefloor is Holy Gang's debut, *Free Tyson Free*. Featuring Richard 23 (ex-Front 242), this Gang are sure to stir up some most unholy trouble with their politically incorrect lyrics: "Free Tyson Free" is a paean to the recently-released boxer, and does to Desiree Washington what David Brock did to Anita Hill. Holy Gang sound nothing like Front 242, but should sate Ministry fans' appetite for electro hardcore until that band's long-delayed new album comes out.

Jim Thirlwell has been making iconoclastic and challenging music for 15 years, but you can finally buy his discs at Sam Goody now, thanks to Sony's inexplicable signing of Foetus, his principal project. Classical string arrangements and grinding industrial percussion have always coexisted uneasily in Foetus' music, and Null is none the tamer for its Sony imprint. It's no coincidence that Null's bar code reads 66666.

The Fair Sex are the lighter, more danceable alter ego of Testify, Germany's ministers of electromagnetic noise, and *Machine Bites*, a compilation of their European singles, provides a good introduction to this promising new entrant.

Planet Earth continues its techno winning streak with *Global Virus*, the fourth chapter in the saga of Harthouse, Frankfurt's pioneering hard-trance label. Harthouse's artists merge insistent electronic melodies with pounding acid-tinged rhythms to infiltrate both brain and body.

Equally entrancing but less aggressive is *Logic Trance 2*, featuring the Orb, Underworld, and a dozen more of the best trance artists around. Hamburg's The E truly do take you out of body on "The Experience of Taking a Trip Into Someone Else's Dream," just one of the many outstanding tracks on this compilation.

For power and psychedelia without electronics, *Monster Magnet's Dopes to Infinity* gets the call. Heavy without quite being metal, the title track and "Negasonic Teenage Warhead" are pure masterpieces that avoid the drugged-out, drawn-out meanderings that afflict some of the longer tracks.

Oh — and another thing: Thanks for listening, and have fun! We all bitch about this place, but it sure beats the real world.

Not Without a Fight

By Debra Dickerson

DERRICK Bell often recounts the story from his civil rights days of a black, uneducated grandmother in rural Mississippi. Her activism kept her life in constant danger, got her house firebombed, and made her entire family unemployable. When asked why she did it, she simply responded, "I lives to harass white folks."

Whenever I'm asked, "Why law?", that's my answer. I then explain that "white folks" means "the powers that be." (The latter phrase, while politically correct, lacks the pizzazz of the former.)

I have always needed a direct sense of connection to the world around me, a sense that I was working for the common good and not just getting paid. In short, a reason to get up in the morning that transcends car payments or simply ensuring that my own belly is full. So when I left the military, I left in search of a new calling, not just another job. I knew I needed socially relevant work, but beyond that, I was clueless. Medicine, teaching, social work, politics — nothing felt right. Thirty-two and I still didn't know what I wanted to be when I grew up. And then I stumbled upon a profile of Thurgood Marshall and found my new calling.

Lawyers, I realized, function in every segment of society, so I just trusted my instincts to lead me to the area of law that would suit me best. I think I've found it (entrepreneurial development and remedial education among the disadvantaged) as well as a new calling: writing.

Also reminiscent of Derrick Bell, however, I am ultimately pessimistic about race relations, class conflict, and social justice in general. I have little faith in human institutions; history shows that we cannot be trusted with each other's welfare or even to simply leave each other in peace. Perhaps just a few bad apples foist injustice on the rest of society, but they nonetheless require a morally complicit majority to acquiesce and do nothing. So, while that grandmother performed a useful and heroic function, even she implicitly acknowledged the limits of what could be



accomplished, hence her use of the word "harass" with its air of ultimate futility.

I chose law not through any sense of its magnificence but because I fear and recognize it as a powerful force for which we must all take responsibility. Law, the basic organizing principle of any society, is a system constructed by humans, and therefore is laced with both the best and worst that's inside us. Our biggest mistake would be to bow down humbly before it; it must constantly be questioned and put to public scrutiny. As glorious an achievement as is our Constitution, Thurgood Marshall said, "the government [the founders] devised was defective from the start, requiring several amendments, a civil war, and momentous

social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights we hold as fundamental today." Slavery was legal; now it's illegal. Women used to "die" legally at marriage; now they don't. What are we doing today that will shame us tomorrow?

I sometimes visualize the law as a speeding freight train which only stops at selected stations. At other times, it seems to me a sledgehammer: Either you're going upside my head with it, I'm going upside yours, or — the best we humans can hope for — we're holding them at our sides. I thought law school would give me more of a sense of the grandeur of the law, but it's only made me alternate between a bittersweet pride at the nobility of our immature efforts and distaste for the naked power struggles it encapsulates.

Someone once observed that "people locked in com-

bat cannot be expected to have the same truth" and that this is what makes societal struggle so difficult. Can there be "justice", "peace", or "love" when few could agree on what those words mean practically? During my clinical and law firm work, I saw that sometimes there is no relevant "truth" but merely a dispute to be resolved; filtering everything through the prism of rich and poor, black and white, is often a needless complication. Usually, though, truth is the key.

Truth is the invisible man. Not because we lack the capacity to reason, but because we lack the capacity to see that which stares us in the eye. How else to explain rape cases wherein the court remarks, "after he struck her, she consented," or black jurors who base their judgments on the defendant's race? Truth continually flips us off and sticks out its tongue at us.

Unseeing, we trip over it, we land face-first in the mud, but still we cannot acknowledge its presence. The self-blinded run the political gamut: liberals for whom every poor person is a sainted victim, anti-Semitic blacks, women who can't take a simple joke. Or consider the self-described "white, male conservative[s]" disdainful dismissal of me wherein he observes that when I "finally realize that the world ... does not care enough about [me] to justify such bitterness, [I'll] be a happier person." At last, some "truth" we can agree on. Take heart, white male con-

servatives: I have always known exactly how unimportant I am, and I have always known exactly why. But it doesn't make me happy, just determined.

So, like that valiant grandmother, I intend to spend the rest of my life harassing "white folks". In the courtroom, on the op-ed pages, and over cocktails: No justice (as I see it), no peace. I don't expect to win, but neither do I intend to lose without a fight.

I chose law not through any sense of its magnificence but because I fear and recognize it as a powerful force for which we must all take responsibility.



Fenno was at a loss. Finals were almost upon him, and he didn't even remember what classes he was in.

As he wandered through the Hark, looking for an outlet for his blender, Fenno thought about going to the registrar's office to find out what finals he was supposed to take, but decided against it. His previous run-ins with Annie Bombard had left him scarred, both emotionally and physically — Ms. Bombard kept a Swiss Army Knife in her desk, and wasn't afraid to use it on students who rudely disrupted her sleep.

Instead, Fenno decided, he would simply study for all the courses. That way he'd be prepared for whatever exam he wandered into. Relieved that he wouldn't have to go near Ms. Bombard, he drained his margarita breakfast, wiped the blender out with some public interest flyers he pulled from 1L Harkboxes, and headed over to the Coop to get some study guides.

Fenno was a firm believer in outlining. He felt everyone should make their own outline for each class. Of course, some people went overboard and actually outlined their casebooks. Fenno preferred to outline Emmanuel's. Gilbert's would do in a pinch, but Nutshells were simply useless.

Once he had loaded up on study guides, flowcharts, case notes, flashcards, and computer programs (thank heavens the Coop will give a credit card to any penniless vagrant with a college ID, he mused), he went back to his room to begin his preparation.

Fenno detested the silence of studying, which is why he always cracked the books to the strains of his favorite music. That had been a problem until recently, though, since Fenno was too broke to pay cash for music, but not stupid enough to charge at the Coop and pay their felonious prices. His one CD, Frank

Sinatra's "Duets II" was getting a little too familiar, though the Frank Sinatra-Jimmy Buffet version of "Mac the Knife" could never tire the cultured ear.

Then, one day last fall, a strange package arrived in the mail. Fenno of course had not ordered anything, but on the theory that all packages that come unbidden to his luxury pad at Perry Terrace are gifts from an anonymous admirer, Fenno opened the package. It was Frank Sinatra's new compact disk, "Duets III."

The next week another package arrived, this one containing Ronco's "Best of the Disco Era" series. Fenno wondered if these were really gifts from some anonymous, and slightly perverse, admirer, or if the post office had erred and some innocent consumer were anxiously awaiting his disco anthology. Deciding the former was more likely, Fenno added the CD's to his meager collection.

The strange packages continued to arrive over the year, and by the time finals had rolled around, Fenno had over 600 CDs, which greatly relieved the tedium of outlining his outlines. The disks stopped arriving in April, though, and Fenno had no explanation. He blamed it on the fickle nature of his secret admirer; obviously Fenno had been abandoned for another love interest.

"Oh well," Fenno thought, as he pulled out Wayne Newton's latest disk, "I've never been lucky in love, but at least I have my music ... and The Law."

"Now which day should I take finals on?"

Quote of the Week

"Forget all of that Constitutional Law stuff."

— Prof. John Mansfield '56, speaking to his Evidence class.

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• Letters (cont.) •

Does "Superiority" Justify Cruelty?

In last week's letter section, Ryan Schwarz '95 criticized my column which protested the use of animals in household products testing. He responded to my statements about the unnecessary cruelties of products testing on animals with a complex argument about why animals are needed in medical research. His only explanation for confounding the two issues was found in his concluding remark: That because most people think of humans as "superior" to other animals, we should be able to "conscientiously use animals to improve human lives" in whatever ways we deem "wise." By claiming that my descriptions of actual product tests made my column an anti-intellectual appeal against such notions of human superiority, and by generally conflating all kinds of animal research and exploitation, Schwarz made it clear that he equates the "conscientious" and "wise use" of animals with any use that improves even our most trivial conveniences and enjoyments.

It is difficult to choose where to begin addressing these arguments. Although I did not previously write about medical research, Schwarz's piece inspires me to offer some insights on the matter gleaned from doctors and researchers who argue scientifically against the use of animals in that arena: that medical advances do occur using non-animal-related research (two-thirds of all Nobel awards in medical fields have relied at least significantly on other kinds of research); that results of research on animals are frequently misleading for humans; that researchers usually choose the animals cheapest and easiest to obtain (most often mice, rats, and guinea

pigs), not animals with similar organs to humans; and that most progress in human health and longevity occurs through spending resources on providing people with sanitary living conditions, a clean environment, and a good diet. I should also note that the "mainstream" AMA, opposed to alternatives to animal research and elevated by Schwarz, has also opposed Medicaid, Medi-care, anti-smoking campaigns, and new technologies like electrocardiographs and MRIs.

But whether medical research on animals is the best way to save human lives is a separate inquiry from the ethical question of whether or how much we should make animals suffer for our own interests. Schwarz's argument about a "superiority" which inherently licenses us to use "inferior" others for our benefit without regard to their interests or their suffering is flawed, both ethically and logically. Believing in one's own "superiority" does not itself justify causing others to suffer for convenience and "improvement" in one's life. People have used such logic, of course, to justify every kind of violent oppression from slavery to genocide. Even when we agree with particular valuations of "superiority" and "inferiority," such as those based on levels of mental development, test scores, or creative ability, do we ever allow people to act with cruelty towards others who are deemed "inferior" in these regards? If we could agree that one culture seemed more or less civilized, could we ethically engage in genocide in order to gain territory or to achieve "ethnic cleansing"? If we understood IQ scores to signify that one race was less intelligent than others, or if we still accepted the opinions of cran-

iometrists who equated differing skull sizes with racial and gender inequality, would this then allow us to justify slavery or rape? Does the fact that dogs, monkeys, pigs, horses, and mice cannot do calculus or build cities really justify our torturing them daily in any way that benefits us, from the development of new shampoo ingredients to assembly-line meat production? And if we take declarations in Genesis about human domination over other animals to sanctify our exploitation of them, do we then take the Biblical passages about men's domination over women to justify the same?

Mr. Schwarz basically declares that until the "animal liberation crowd" convinces the rest of the human world that ideas of human superiority are wrong, we will be unable to convince people to reassess the ways that we make animals suffer profoundly for even the most trivial aspects of our lives. I believe, however, that it is less a task of disproving some valuation of human "superiority" than of getting people to recognize simply that animals have valid interests in their lives and well-being and that harm results both to them and to us when we embrace an ethic which allows for the careless negation of those interests. The task is to show the cruelties associated with particular practices and to ask people to assess carefully the value of each practice before choosing to continue it. I maintain that it is always ethically desirable, and not anti-intellectual, for us to see past our own desires and take others' pain seriously into account when making decisions about how to act in this world.

Michelle Lerner '97
May 2, 1995

Terrorism Strikes Every Day

In the wake of the Oklahoma City bombing, in almost all interviews and editorials, people expressed great shock that terrorists could strike here in America, especially in a "small town" in the "heartland." The larger goal of a terrorist campaign seemed to have been achieved: People all across the country felt less safe in their own cities. They realized that they could become the victims of senseless violence, at any time, without warning, fueled by (first) religious fundamentalism, or (now) the extreme right. An editorial cartoon captured this sentiment by portraying the death of America's child-like innocence.

What I would like to say to this is, "WAKE UP!" Welcome to the real America. Every day, millions of Americans are terrorized by the actions of the radical right and religious extremists. Gays and lesbians are constantly being murdered, assaulted, harassed, kicked out of housing, denied credit, denied equal marriage rights, called criminals for having sex, and fired from

their jobs. Much of this is done in the name of religion (their interpretation, not mine) and religious freedom. I can't even walk down the street holding my boyfriend's hand without constantly looking out for gay-bashers. We are denied freedom of speech in the military

gay youth would go to their school counselors, only to be told that they are unhealthy. We are castigated again and again, and if we complain, we are smacked in the face with the First Amendment.

I find it extremely ironic that the bombing happened in Oklahoma, where U.S. Senator James Inhofe was elected on a platform of "God, guns, and gays." Timothy McVeigh simply replaced "gays" with "government." I doubt if Inhofe enjoyed a taste of his own medicine.

P.S. Regarding Markus Hartmann's column, if he really wants to protect future unborn homosexuals, he should stop working to promote homophobia. Hopefully, by the year 2045, homosexuality will be no more frightening for a mother than left-handedness. A necessary component of this general acceptance will be full enjoyment by all homosexuals of every right and privilege, including that of serving in the military.

Michael R. Diehl '97
April 30, 1995

Hopefully, by the year 2045, homosexuality will be no more frightening for a mother than left-handedness.

because of "morale." We are called fags to our faces, even in the United States Congress. Our children are stripped away. We are subjected to initiatives that equate our love with bestiality and pedophilia. If the initiative-backers had their way, possibly suicidal

Dershowitz's Comments Out of Line

The recent allegations by Prof. Alan Dershowitz regarding police perjury has further damaged the already sullied reputation of the so-called "dream team." As frustrating as it is to have an unshakable witness, his accusations that police officers are trained how to lie in police academies defy logic. If Prof. Dershowitz has any knowledge of this training, he should immediately make that information available to the appropriate prosecutorial agency.

I trained newly hired

officers for the New York City Police Department for several years. The training regarding courtroom testimony emphasized the importance of honesty and the consequences of perjury. But we also taught the officers to be cool and professional during cross-examination. Prof. Dershowitz's emotional reaction is in direct contrast to the calm professionalism demonstrated by Det. Furman.

The attempt by the defense team to shift the focus of the trial from the defendant

to the police is a clever tactic. But Prof. Dershowitz's attempt to blame law enforcement for his client's predicament will surely fail in the court of public opinion. Indeed, it is the legal profession, not law enforcement, that is "on trial" here. The excesses of both sides could well lead to long overdue reforms.

John B. Gorman
April 27, 1995

The writer is a student at the Kennedy School and a N.Y.P.D. lieutenant.

Dissent Filed in "Futuristic" Case

In response to the challenge posed in Markus Hartmann '96's column in the April 28, 1995 issue of the RECORD, I have prepared to the following dissent to his "majority opinion" in the hypothetical, futuristic case.

JUSTITIA, J., dissenting:

How tragic that, back in the late twentieth century, the Supreme Court failed to foresee the ultimate consequence of the Casey decision: state-sanctioned genocide.

Planned Parenthood now argues that a ban on testing a fetus for gender or sexual orientation would constitute "undue interference from the state" in the "right of a woman to decide whether or not to terminate her pregnancy." Yet Planned Parenthood cites no decision holding that a woman is entitled to information about her fetus. Under the flawed Casey decision, each woman may decide whether or not to abort. But she may not base this decision on illegitimate criteria. The states which choose to ban access to information about a fetus's sex or sexual orientation are not interfering with the "right" to the abortion itself; they merely limit the information that may be used to make this decision, just as employers are limited in the type of information they may consult before hiring someone (for example, they may seek information about a person's educational qualifications but not about her marital status).

But the error of the majority goes far beyond a refusal to allow states to prohibit certain rationales for abortion. The majority errs in placing a "right of privacy" above all others. The Constitution provides citizens with many rights, none of which may exclusively trump the others. The right to free speech is limited: One may not shout, "Fire!" in a crowded theater. The right to religious expression is limited: Believers in polygamy may not engage in that practice in this country (except through "serial monogamy").

The "right of privacy" must be limited, like any other right. No one may rape another person, even in private. No one may steal, even in private. Companies may not engage in racial discrimination, even behind closed corporate doors. Through our laws - the expression of our common understanding of morality - we have decided that such actions are *wrong* and, there-

fore, cannot be protected by any "right," "penumbra," or "emanation" found in the Constitution. In the present case, justice requires that a woman's "right to privacy" must be limited by the states' "right" to protect the fetus.

Casey recognized the weakness of the privacy justification for abortion, and attempted to reground the abortion decision in a liberty or freedom right - a right of each person to decide issues of fundamental morality. But a "liberty" right is subject to the same restrictions recited above.

Though the majority agrees that deciding to abort based on the gender of the fetus is "violative of natural law" and "morally repugnant," it seeks to escape responsibility for its decision to allow the choice by appealing to the Supreme Court's discovery in Roe (a "fundamental right" of privacy) or its replacement in Casey (a "right" of each person

doomed. A society that did not enact laws protecting people against arbitrary slaughter based on immutable personal characteristics, or one whose judges refused to uphold such laws, would be unacceptable.

The majority should take note of a ruling of the Canadian Supreme Court (Sept. 30, 1993), which said in regard to euthanasia, "To accept killing as a private matter for individual choice is to diminish respect for human life, to dull our conscience, and to dehumanize society." No society can survive if it grants to each person an absolute right to determine morality - who is worthy of life and who is not - for then it has no way to argue against those who oppose equal rights for people of certain races, religions, or genders.

Every society must recognize moral limits on its citizens, limits which are not within the competence of individual citizens to change. A

society that does not protect fundamental human rights - "rights inherent in every person and prior to any constitution" - cannot claim obedience. Judges, therefore, have a responsibility not just to prevent idiosyncratic interpretations of the Constitution, but, especially, to strike down interpretations which deny the validity of fundamental human rights. The dignity of each human person - expressed in our belief in equal protection of the laws - requires nothing less.

Thus, an interpretation of the Constitution that does not protect the pre-born from arbitrary death sentences cannot be justified. Neither a "right to privacy," nor a "freedom" right to determine one's ultimate destiny, nor any other "right" may supersede each person's fundamental right to life. As Pope John Paul II wrote in *Evangelium Vitae*, "To claim a right to abortion ... and to recognize this right in law, means to attribute to human freedom a perverse and evil significance: that of an absolute power over others and against others." No Constitution or judge has the power to grant individuals this right, and any society that denies this truth is ultimately doomed. Such a society is already morally dead; it is simply a matter of time before the external structure, devoid of internal support, also crumbles.

A. Louisa Oliver '97
May 2, 1995

The "right of privacy" must be limited, like any other right.

to decide on issues of fundamental morality). But there can be no such simple escape.

Laws have force only because they enact principles of natural law and morality (or because they serve an administrative purpose and are morally neutral). Therefore "laws" which mandate immorality are not law; they are by nature unjust and cannot in conscience be obeyed. So, for example, a law mandating the killing of children who happened to be first-born male Jews could not be obeyed, and its existence would justify revolution.

While laws may sometimes tolerate certain minor immoralities because it is impractical or unwise to try to punish them, this tolerance cannot be too far extended. A society that permits gross immorality to exist unpunished is itself immoral and begins to lose its claim on the allegiance of its citizenry. To continue the above example, a society that merely allowed each citizen to choose whether to kill those children who were first-born male Jews would also be unjust and ultimately

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Serbian LL.M. Observed Build-up to War

continued from BAKIC, page 2

Bakic describes this politico-economic process as one of constant trade-offs. "It was like smuggling," she said.

For instance, assets would be transferred from wealthy republics like Slovenia to poorer regions like Kosovo. However, she said, "Such decisions were made arbitrarily, without any explanation or sufficient obligation imposed on Kosovo to use this capital rationally and economically."

"That is why by the end of 1980's Yugoslavia's economy was entirely devastated."

"People turned to violence," Bakic said, partially because "it was obvious that the economy was falling down. A violent nationalist conflict does not happen in an economically stable society. It's like Germany in the 1930s and Russia today," she said.

Milosevic channeled economic desperation into ethnic hatred. Nationalist politics were an effective tool, Bakic said, since, in large part, nationalism had been oppressed under Communism. Thus, she said, after Tito died, nationalism was seen as the opposite of Communism, and therefore a positive and progressive alternative.

Milosevic's and Tudjman's Use of Propaganda

Under Tito, Bakic said, the oppression of nationalism meant that Yugoslavia's history had been denied and ignored. During World War II, hundreds of thousands of Serbs and Jews were killed in Croatian concentration camps.

"The horrifying pictures of World War II," Bakic said, "still live in people's minds. However, the Communist regime was never willing to face it. Instead, it was placed under the rug."

Ironically, Milosevic was among the first to begin talking about World War II atrocities. But his aim was to open old wounds, not heal them. To stay in power, Bakic said, he distracted the public from the failing economy and focused their anger on other scapegoats.

Bakic described the methods employed.

"Starting in 1988, government-controlled television systematically broadcasted images and documentaries from the Croatian World War II concentration camps in which Serbs were shown being killed and tortured," she said. "These programs were not only broadcasted at prime time for months, but were materials which

the public had never seen before. Almost all such documentaries were banned under the communist regime.

"To ensure such programs were taken seriously by the audience, they were always followed by studio commentators who would warn the audience that 'Serbian lives are in danger again.'"

A similar propaganda campaign arose in Croatia as then-presidential candidate Tudjman responded to Milosevic with anti-Serb propaganda and discrimination against Croatian Serbs. Bakic explained, "It took Milosevic and Tudjman three years of brainwashing to turn people against each other."

"There are so many unbelievable coincidences which played a crucial role in starting the war," Bakic said, "that maybe someday, someone will prove Tudjman and Milosevic planned these things together, both benefiting from it. They both stayed in power. These events could not have happened spontaneously."

In fact, Tudjman and Milosevic met a number of times before the war in Croatia. No one knows what they discussed, but

it is widely rumored that they agreed to carve up Bosnia between them.

"I'm not going to say who to blame," Bakic said. "But this war would not have happened unless Milosevic wanted it. Tudjman, on the other hand, should build a monument for Milosevic in the middle of Zagreb, as his whole political identity was in being counter to Milosevic."

The flood of propaganda created an atmosphere of paranoia, Bakic said. Worse, fabricated atrocities described on television became real as one side "took revenge" by performing the described brutalities on members of the other side.

But propaganda is not the only explanation for the sickening levels of brutality in this war, Bakic said. For instance, there have been reports that in both Croatia and Serbia inmates were systematically released from prisons and mental hospitals and sent to fight at the front.

Bakic said, "I personally heard an example of this phenomenon at a panel meeting in Belgrade where one psychiatrist told a story about opening a paper one day and recognizing two of his patients getting married in the middle of the battlefields of Croatia."

"Those who are killing and raping in this war are sick people — they are not normal individuals. These are the people who have nothing to lose by fighting."

"Those who are killing and raping in this war are sick people — they are not normal individuals," Bakic said.

The Forsaken War

By Calvin Gladney '97

Guest Columnist



It was time to get ready. I looked at myself intently in the mirror. A grim warrior returned my glare. Mentally, I went over the advice I had received from veterans who had gone through similar battles.

"Train harder than you've ever trained," they warned.

Someone was out there right now training and preparing his mind for the battle ahead. I would not be underprepared. I began to read *The Economist* and *Time*. I substituted the splash of color so inviting in *USA Today* for the bland gray hues of *The Wall Street Journal*. I would know the issues, understand the arguments, and have an opinion. I was to be intellectually versatile, a virtual chameleon in discussion.

"Stick and move," they urged.

I was never to allow anyone to pigeonhole me into a position or a particular political bent. I was trained to be hard to categorize and impossible to predict. Would Calvin answer the next query from a conservative perspective? Or liberal? Or libertarian? I was to be intellectually elusive, a virtual cheetah in debate.

"Take no prisoners, and eat the wounded," they commanded.

To be the hunter was to be the hunted. I would never let a racist remark go unnoticed or unquestioned. I would challenge their assumptions, attack their ideologies, and rebut their premises. I was one of my people's representatives to this intellectual Congress they called Harvard Law School, and I could not, would not, fail them in my self-created duties. I was to be intellectually their match, virtually the slayer and the vulture.

It is with this mindset I arrived at Harvard Law School; I was prepared to discuss and learn from the best and brightest from around the world. We would debate the issues of the day with earnest and intellect. Perspectives contrary to my own would be espoused in a way such that I could not simply rebut them with quickly constructed verbal gymnastics; I would have to think and revise, stand tall, and sometimes stand corrected. But the point was that Harvard Law would be an intellectual battleground overrun with new and conflicting ideas and perspectives which would come together in our classrooms, in our hallways, and in our cafeterias. Discussions would run rampant, and debates would spread like wildfire. Argument would be the norm; silent disagreement would be an anomaly.

Sadly, I find little true discourse left in my class. Arguments rarely fly across the wooden desks at the behest of the teacher, and spirited rebuttals are few and far between. Hands do not raise high anymore, questioning the last comment or asserting an opposite perspective. We seem to all sit back looking for the "right" answer as opposed to coming to new conclusions based on diverse perspectives. Rarely does someone speak up with a viewpoint that they know will be maligned; rarely does someone speak out against the prevailing "politically correct" view of the moment.

I guess I want someone to get up and support some criminal procedure rule that seems racist on its face and in its application. I suppose I'm looking for people to disagree and say, "Maybe women don't deserve to get half of what their husband earned while they were at home taking care of the house and kids." And maybe it would be good if someone would question why we should try to stop a landlord from not renting to Blacks. And it is not because I agree or disagree with the positions; rather, it is because we should all get a chance to learn from each other's perspectives, agree to disagree, and sometimes change our conclusions after hearing someone else's position and rationales on an issue. Right now, I only hear the complacent echoes of people bobbing their heads to the politically correct tunes here at Harvard Law School. This is a tragedy which will outpace the impact of the construction on Langdell and overshadow the lack of diversity in the faculty. If we students don't take the initiative to argue and debate, discuss and explore, then we will have wasted Harvard Law School's greatest resource: the differing perspectives within its intellectually diverse student body.



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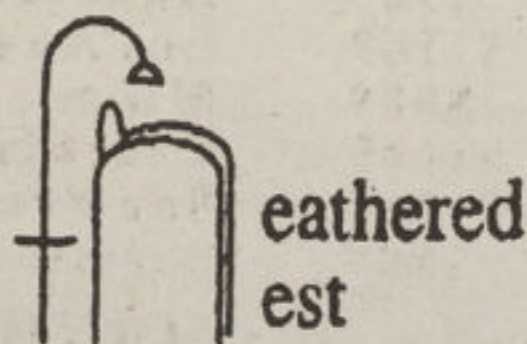
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My Losing Speech

By Terri Gerstein '95
RECORD Columnist



THE speeches at my college graduation were dumb. They told us to follow our hearts, find our own paths, do our own thing, and 57 variations on that theme.

My personal philosophy is that I'd rather regret doing things than not doing things, so I had to try out to be the graduate speaker at the HLS commencement. I was in third-year paper trauma, though, and could spare only 40 minutes (which was okay, since the speech's time limit was five minutes). So I gathered my old RECORD columns, cut and pasted, and lickety-split, I had a speech.

My hopes were not high for my five-minute masterpiece, since I'd never in my life given a speech (except to my friends about what they should do with their lives). To my surprise, I was a finalist! (Apparently, though, the judges found me "wooden." I have been accused of being many things — but "wooden" has never been one of them.)

I tried to be emotional (usually not a problem). I tried to be un-wooden. But, alas, as this column's title suggests, I'll keep waiting for my five minutes of fame.

So now I have this speech all written — all dressed up with no place to go. And the reason I tried out in the first place was because (for a change) I thought I had something transcendental and important to say. So here it is: my losing speech. Avid fans (or should that be fan?) of my RECORD column can refer to past issues (fun for hours). Goodbye and good luck!

Packing my bags to leave Cambridge, I realized that I have only two prized possessions. One is a brass-plated pen. Unlike all the Bic pens I've owned in my life, this pen I'll never lose. The other is a greeting card. It's homemade, with a colorful sketch and a message in shaky handwriting: "You are my friend."

The pen was a gift from a family law client. She hugged me good-bye and thanked me for my help on her divorce.

The greeting card was from another client, a so-called criminal. She was homeless and dying, with months left to live. Her alleged crime was shoplifting food from a grocery store. Thanks to dedicated doctors and a compassionate judge, she will spend her last months in a hospital, not on the streets or in jail.

I treasure this pen and this card more than any trophy, title, or prize — more than the Harvard Law degree I'm about to receive (although I still want the degree). This pen and card tell me who I am more than a diploma ever could.

It's easy, though, to let our new diplomas tell us who we are. After all, if we're from Harvard, we think we're destined for Greatness — and I'm no exception. I began my first would-be Pulitzer Prize-winner at age eight, a saga about 8-year-old Maria and her family crossing the border from Mexico. It was based on my own extensive experience with border crossings, having grown up in suburban Connecticut. And at 10, I considered my career options and selected president. Not surprisingly, I turned up right here for college, and again for law school. (Lawyers call this recidivism.)

That Harvard mentality starts young. From the first day of kindergarten, when we played better than the other 5-year-olds, our parents, teachers, and inner voices predicted that someday we would be Important. Hence, our plans to be Head of State, or in a worst-case scenario, Nobel Prize winner.

Some of us are on the way. A few of my college friends have already been anointed by magazine articles as up-and-coming leaders of Generation X.

But I'm not sure about the logistics. How will we all get a turn being Head of State? Truth is, maybe five or 10 of us will get there. So what about the rest of us? What about the majority of us who won't win the Nobel prize? We went to Harvard after all; how can we survive if we are not Important?

This is a commencement speech, so I have an answer. To contribute fully to this world and maintain our sanity, we must redefine greatness and importance.

At Harvard, my definition of these words has changed. In college, I worked with girls from a housing project a mile away from this yard. On the ground where they played double dutch, they often found used syringes. At first, my hubris intact, I pictured myself as their savior. But then my human education began, with 12-year-old girls as my teachers.

More recently, as a bumbling, overeager student lawyer, I've learned from my clients' stories. Elyse, a Haitian refugee, gestured as she spoke. Her tiny hands outlined a large table, her hiding place the night the police disappeared with her brother. Fearful, yet determined, she escaped to this country. I have been inspired by my clients' courage.

These years of Harvard transformed me.

Now, I feel I am great when I fight the idea that some people are dispensable. I am great when I fight for the dignity of all people, especially the scapegoats of the moment — immigrants, teenage mothers, prisoners, gays and lesbians.

And I am important when I call upon the resources that have been poured into my saturated brain to make someone else's life better. I am important when I teach someone about his rights. I am important when I help someone stand up without me and fight for herself.

I ask you to share my vision of greatness. Together, we can struggle for a world that is just. What better use is there for a Harvard education?

Every place is the right place, and every time is the right time for this kind of greatness. You don't have to network to meet the key players, because the key players are the people no one sees. And the prizes are invaluable: a pen you may never lose and perhaps a homemade card. Symbols of our shared humanity.

The Curve, The Court, The Doc, and The Deb

By Jim Lank '96
RECORD Columnist



I'VE got a lot of ground to cover here and not much space, so pardon the quick pace. I have several items that I would like to cover.

Item 1: "The Bell Curve." Debra Dickerson took some potshots at me and Patrick Lannon in her column a while back, and I never bothered to respond to her (unfair, in my opinion) interpretation of my editorial on this infamous book. (I did commiserate with Patrick about being Debra's targets *du jour*. He replied ruefully, "I got called a racist. She just accused you of poor research." It is an open question, though, as to which is the more heinous crime around here.)

I won't rehash old arguments, but anyone interested in seeing how balanced the press on this topic has been can do a LEXIS search: "Bell Curve" & "racist." If you are still interested in the subject, I commend to you "The Bell Curve Wars," a compilation of critical responses to "The Bell Curve," and Charles Murray's response to his critics in the latest issue of Commentary. None of which should be read, of course, until you've read the book itself.

You might wonder why I'm still harping on this subject, since I've admitted I am unconvinced by the book and don't think IQ is as important as other character traits. I worry that if Richard Herrnstein and Charles Murray can be labeled racist for what they published, then as a society we really don't know how to talk about provocative aspects of human nature in any useful manner. Right or wrong, "The Bell Curve" is serious scholarship. It deserves serious responses, not recycled race rhetoric.

Item 2: The *Lopez* decision. I remember, during the Clarence Thomas confirmation hearings, scoffing at the idea that a law student in the early 70's could have been unaware of the *Roe v. Wade* decision. Then I came to law school myself, and I have to confess that I'm so out of touch that, for all I know, *Roe v. Wade* was overruled last year.

Nevertheless, the *Lopez* decision handed down last week is worthy of notice, even by law students. I won't brief the case for you, but suffice it to say that I think it's a good decision. If possession of a handgun within 1000 feet of a school is interstate commerce, then the Commerce Clause truly vests the federal government with unlimited police power. While I respect Justice Souter's dissent that this restrictive reading of the Commerce Clause is really conservative judicial activism, I think turning a blind eye to government expansionism that destroys the protections of federalism built into the Constitution is no less activist — one can sin by omission as well as commission.

And what hubris on the part of Congress and the president! Forty states have their own laws restricting gun possession near schools. Education policy and gun control are areas where the states have much more power and legitimate interest to regulate than the federal government. Yet in the rush to "do something" about this problem, President Clinton has vowed to find a way to circumvent the Supreme Court's ruling and substitute executive fiat for state legislative deliberation.

Frankly, this is not an issue on which he speaks convincingly. The president can't keep people from shooting at his own house these days — it should come as no surprise if the states prefer to police their own schoolyards.

Item 3: Dr. Henry Foster. I can't say I feel strongly one way or another about poor Dr. Foster, President Clinton's nominee for Surgeon General. There's no way he could be as embarrassing to the president as Joycelyn Elders, though, and that is a good argument against him, in my opinion. (Note to Leon Panetta: If you can find a way to claim masturbation is actually interstate commerce, you can pass a law requiring states to teach it. Look into that.)

I am sick and tired, however, of reading Ellen Goodman, David Nyhan, and President Clinton complain about the Republican politicization of this nomination. Quick reality check: Who was it that made "Bork" a verb? The truth is that nominations have always had a political aspect, but it was Democrats who stripped the veneer of deference from the Senate's role in the process. Remember John Tower?

I can't blame Sens. Dole and Graham for taking a hard line on this issue, either. The president's miserable record of abandoning his nominees at the first hint of trouble has created an open invitation for his opposition to contest every future nominee. Maybe if Bill "Discretion is the better part of valor" Clinton had shown some backbone earlier in his administration, he wouldn't have such problems now.

Lastly, Item 4: So long, Deb. The RECORD is losing Debra Dickerson to the real world. I've been editing and reading Debra's work for two years now, and I have to say I'll miss her sharp tongue and unerring sense of sarcastic humor, despite the fact that it was generally directed at my own sacred cows of conservatism.

Debra and I have actually lived oddly similar lives to this point. We both served in the Air Force. In the Air Force we both went to the Defense Language Institute and studied Russian. Then we both worked in military intelligence (Spare us the jokes, please, we've heard them all.). Now, here we are at HLS. Heck, if I wasn't a white guy from Kansas, you'd think we were twins, leading parallel lives.

Of course, we aren't similar in some other ways. I went into the Air Force decidedly non-ideological, but came out a committed conservative/libertarian. I saw so much government bumbling, ineptitude, and FWA (that's Fraud, Waste, and Abuse, to you civilians), that I lost all faith in Big Government as the answer to anyone's problems.

Debra didn't wise up soon enough and actually stayed in the Air Force long enough to get a commission, but apparently she suffered no permanent ill effects: At last year's RECORD party, neither one of us could remember the words to the Air Force Song.

Debra's own politics are well-known to all of us, of course. So why do I enjoy her writing so much? I take it as a challenge; if I can read her with an open mind every week and still justify my naive beliefs that Big Government is inherently wasteful, bureaucratic, and dehumanizing, and that people have rights because they are people, not members of a group, then I can have the courage of my convictions knowing they've been tested thoroughly.

When Socrates was facing death, he said that Athens should reward him for being a gadfly that stung the sleepy horse of the state into action. Athens made him drink hemlock instead. We're much more lenient with our gadflies today. Now we give them Skadden fellowships and send them out into the real world to do good.

Well, good luck, Debra. Aim High.

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