



Fried to Take Seat on SJC

By David Weiss

Ending four months of speculation and, at times, acrimonious debate, the Governor's Council narrowly confirmed HLS Prof. Charles Fried's appointment as the newest justice on the Massachusetts Supreme Judicial Court on August 30.

"I think it's a wonderful appointment for the Supreme Judicial Court," said Dean Clark '72. "I think that when people write the history of the court, they will think of this as a great moment for the Court."

The confirmation, which required Lt. Gov. A. Paul Cellucci to cast the deciding vote when the eight-person council divided equally on the issue, concluded a process that began in April with Fried's inclusion by the judicial nominating committee as one of four candidates for the governor to consider for the bench. The governor ultimately selected his former law school professor and Department of Justice colleague, leading to a series of confirmation hearings at which Fried was alternately praised and attacked by witnesses.

Fried refused to answer questions on any aspect of his confirmation, saying in a RECORD interview, "I'm not giving another interview as long as I live. ... I'm just not talking to the press. As a judge, that's the way it's got to be."

After being sworn in on Sept. 27, Fried will step down as

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Justice Stephen G. Breyer '64 related his freshman year experiences on the Supreme Court at the Victory Celebration.

Breyer Reflects on First Year

By Josh Strathman

Justice Stephen G. Breyer '64 took time during the Capital Campaign Victory Celebration to talk about some of his experiences during his first year on the Supreme Court.

His speech Saturday afternoon was attended by nearly 450 students and alumni.

Breyer said that because the daily work of any judge "is uninteresting to describe," he would try to focus on areas of greater interest by speaking on the questions typically asked of him in the last year and a half.

The most frequently asked questions, said Breyer, dealt with his confirmation process. He was frequently asked whether he found the Senate confirmation hearings overly intrusive. The hearings were often criticized for their political aspects. But to criticize the questions senators asked, Breyer

said, would miss the point that they are opening "a window for people to look at a person who they otherwise would not be able to elect."

"Senators are asking what they are asking because they believe that some segment of the people and perhaps quite a few — those who elect them — would like them to ask them." This process, Breyer commented, "keeps a democratic element in an otherwise insulated office."

He said he had strong reactions when he looked out into the courtroom from behind the bench.

"Think of the history embodied in that courtroom or in the body now presiding. Think of the famous cases heard there. It produces something of a sense of responsibility."

Following this vein he noted *Cooper v. Aaron* as a particularly telling case. (This case arose

please see **BREYER**, page 2

Campaign Raises \$175 Million for Law School

More Public Interest Funding Urged

By Hope Yen

More than 600 HLS alumni, faculty and guests celebrated the close of a five-year fund drive last weekend that raised \$175 million, a figure that Dean Clark '72 said would help ensure the Law School's continued excellence as it heads into the 21st century.

The Capital Campaign Fund, created in 1989 by then-Dean James Vorenberg '51, surpassed its original \$150 million goal. It will be used to boost the legal curriculum with library renovations, an increased faculty size, and building improvements, among others. The campaign goal was three times larger than any law school fundraising campaign ever completed.

"The success of the campaign means that Harvard Law School will enter the next quarter century of legal education and scholarship in a wonderfully strong position, instead of with constant worries on whether we can meet the challenges," Clark said.

The three-day festivities were a time for alumni — some of whom graduated as early as the 1920s — to celebrate the HLS tradition with current faculty and to toast the future together as the Law School prepares for new challenges in preparing its students for the rapidly changing legal profession.

Panel discussions, for example, focused on the implications of practicing law amid the digital revolution; probed into what was in store for legal education in the next century; discussed challenges in human rights work; and examined the current national debate over affirmative action.

"The completion of the campaign is not the end, but merely the beginning," said Finn Caspersen '66, who chaired the weekend victory celebration, "as Harvard lights the world of not only legal education but also higher education" for future generations.

A group of 20 HLS students, however, was less optimistic as it staged a "90s style demonstration" during the events to highlight the need for greater public interest funding. Decked out in interview suits, the students passed out literature urging that the extra \$25 million raised above the campaign goal be dedicated to public interest.

Alumni donors were politely greeted by members of the group — an ad hoc coalition of students concerned about public interest funding — and were asked to press Clark to dedicate the \$25 million toward Harvard's public interest program as legal services for the poor nationwide endure a 24 percent cutback in funding.

"Amid devastating cutbacks for federally funded legal aid organizations, law schools — and Harvard Law School in particular because it has the resources — have a moral obligation to compensate as much as possible for this decreased funding by at least making it possible for students wanting to pursue public interest to be able to pursue that option," said Shannon Liss '96, who organized the effort.

She was referring to budget cuts by Congress that have led many legal aid programs for the poor to lay off lawyers, even as demand for their services appears

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U.S. and U.K. Jurists Trade Views on Legal Education

By Debbie Solomon

Jurists from the United States and United Kingdom's highest courts came to HLS Monday to reflect upon and forecast the future of American and British legal education.

U.S. Supreme Court justices Stephen Breyer '64, Anthony Kennedy '61, and Sandra Day O'Connor met with judges from the highest courts in England as well as other prominent British and American lawyers.

Justice Kennedy described the program as a way to "learn about what sort of new prob-

lems we're going to face, even if we find no solutions to the old ones" in areas such as "the nature of our profession, the problems we have with lawyers and the deteriorating problems of civility and trial publicity."

The Anglo-American legal exchange program included discussions of trial publicity with Prof. Arthur Miller '58 and constitutional law with Profs. Charles Fried and Laurence Tribe '66. It also included a discussion of American legal education with Dean Kronman of Yale Law

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White to Bring Expertise in Poverty Law to HLS

By Hope Yen

Poverty law specialist Lucie White '81 has accepted a tenured position on the HLS faculty and said she hopes to take advantage of the vast resources here to push community-focused, change-oriented work.

"I'm interested in helping students develop a capacity to work creatively on issues of economic justice and equality," said White, who formerly was a professor at the University of California at Los Angeles. "I think the resources for creatively engaging people on issues of poverty are unlimited here, so I'm really excited to be a part of the Law School for that reason. I'm certainly looking forward to working with the staff and par-

ticularly the Legal Services Center to help develop the curriculum."

White accepted the offer last May after teaching here as a visiting professor from 1993-95. The courses she has taught include Civil Procedure, Community-Based Advocacy, and Social Welfare Law: Politics, Policy, and Practice. She is currently teaching Civil Procedure this fall.

"Lucie White brings unique expertise and a commitment to poverty law," said Dean Clark '72. "Her teaching and scholarship in that area really makes her a leader among legal scholars. She's really com-

mitted, so we're lucky to have her."

Clark also said that he hopes White will help boost the clinical program. "She's on the clinical committee, and we hope to get her more heavily involved as we go," he said.

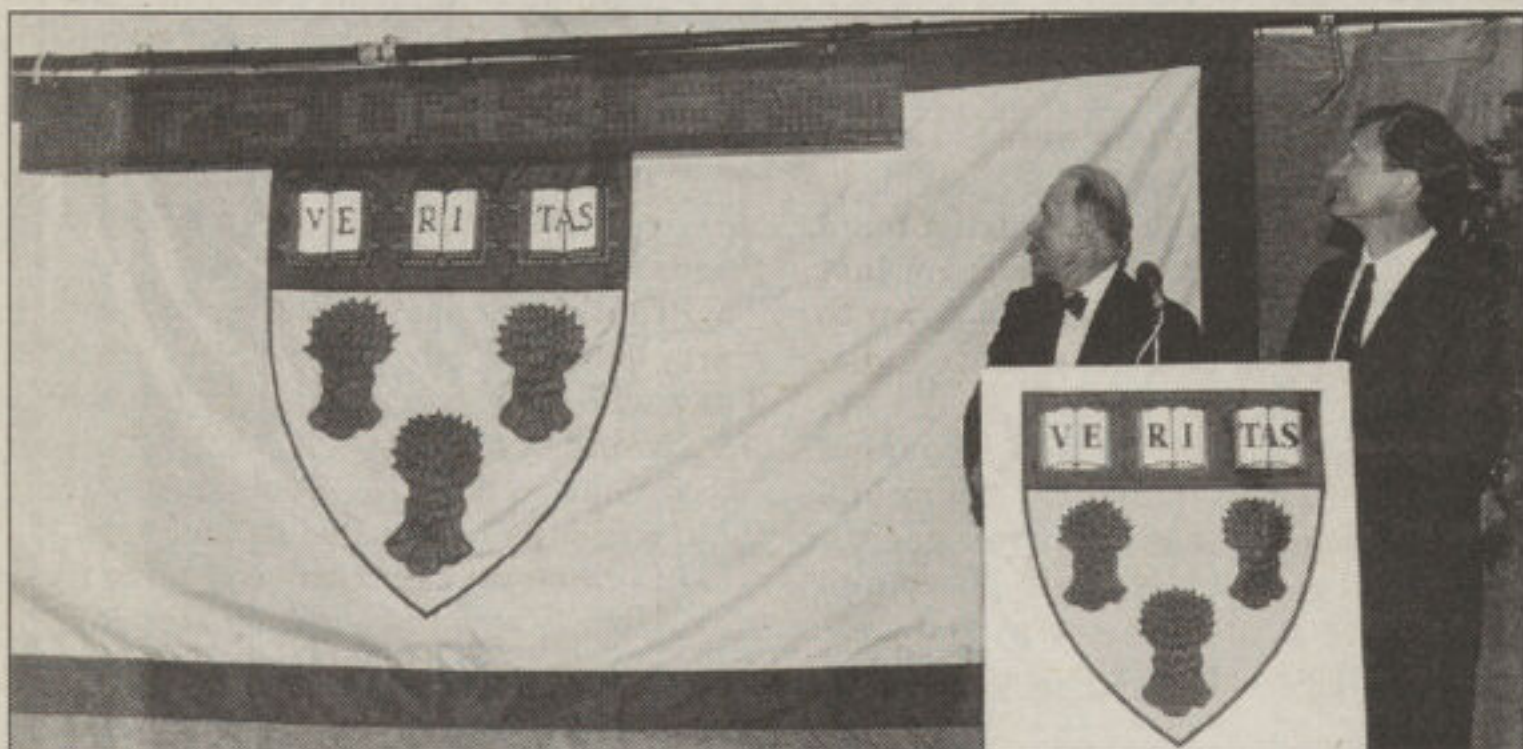
White, who was a member of the Harvard Law Review and clerked for Judge James McMillan of the U.S. District Court for the Western District of North Carolina, has been a staff attorney for Legal Services in Charlotte. She also has served as supervising attor-

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Prof. Lucie White

Harvard Law School Celebrates Success of Five-Year Capital Campaign



At lunch on Saturday, Dean Clark (pictured right) revealed that the Capital Campaign raised \$175,043,675.

Breyer Muses on Confirmation and the Court

continued from **BREYER**, page 1

from the Arkansas state government's defiance of federal school desegregation orders and President Eisenhower's deployment of the National Guard to Little Rock to enforce them.)

Breyer remarked on the court's position as the ultimate authority on federal law but one without enforcement powers: "We are just nine people. It isn't that we say things and cause them to happen." Eisenhower, he said, did not send in the troops "because the president is law abiding, but because there are 200 years of American history and over that 200 years confidence has been built into the system."

Breyer said the decision-making process on the court has been portrayed fairly accurately in most civics courses.

What is most interesting, he said, is the case opinion. "The opinion speaks for itself — that's certainly not the case for statutes, not true for executive decisions. That's where 90 percent of the interest lies and that's where it ought to lie."

He noted that the greatest difference between his present work and that while on the 1st Circuit Court of Appeals is the increase in the number of controversial issues he faced. He took this as a welcome change.

"It's an interesting job, and I'm finding it absolutely fascinating," he said.

Student Public Interest Group Questions Where Campaign Excess Proceeds Will Go

continued from **CAMPAIGN**, page 1

to be growing.

In a luncheon speech to alumni and guests, Clark touted the planned use of funding, some of which he indicated would be used to strengthen the Low Income Protection Plan (LIPP), Harvard's loan forgiveness program which supports students planning to pursue public interest law.

"Some public interest programs that seem to be in jeopardy have been strengthened by expanded funding of LIPP," Clark told the group. He said in an interview later that about \$6 million was raised for public interest, including a commitment from the family of Morris Wasserstein to establish a faculty chair in public interest law.

"It's not up for grabs," Clark said in the interview, explaining that the campaign funding has already been earmarked. "Everything has got a purpose already." The additional \$25 million, he said, is not being reserved for a particular area but will be "spread around" the areas already receiving funding.

The HLS students supporting public interest, however, remained skeptical. They said that students inquiring in late August at the Baker House, which coordinated the fundraising drive, were told that the money had not been specifically

reserved, but roughly allocated among several different areas, including public interest.

"That's ridiculous," said Liss, referring to the \$6 million that will go toward public interest. "NYU, a smaller school with much less resources, last year provided \$10 million to provide students pursuing public interest with virtually free educations. Harvard is much larger and has \$25 million to spend, and it can only provide \$6 million for public interest?"

"It's not a question of whether the public interest programs are getting funded, but whether they are adequately funded," Liss added, pointing to the fact that while half the admitted HLS students express a desire to pursue public interest law, only 10 percent end up doing so after they graduate. In addition, more than 500 students last year signed a petition calling for a substantial financial boost to the public interest program.

Liss said students plan to continue "Campaign 25," as the lobbying effort is called, in hopes of getting more funds allocated for public interest. She said the alumni were very receptive when approached during the weekend festivities, and many were eager to hear more about the student concerns.

The student body is also being asked to drop off notes with the number 25 writ-

ten on it at the dean's office or in boxes in the Hark to show their desire that extra funds go toward the public interest program.

According to literature distributed to alumni at the weekend celebration, the biggest chunk of the campaign funding — about \$33 million — will go toward Langdell Library renovations, which are set to begin next summer. Another \$25-30 million will be allocated to expand and diversify the faculty.

In addition, about \$30-35 million will be used to develop research and clinical programs, while \$15-20 million are going to cover the costs of building Hauser Hall and purchasing North Hall dormitory. An additional \$30-35 million will help balance the regular operating budget, while \$15-20 million will be reserved for financial aid, including LIPP.

With the campaign funding, the Law School has also:

- Appointed 20 professors and assistant professors, half of whom are women and minorities;
- Established research programs in international financial systems, European law, Korean legal studies, and Islamic legal studies;
- Strengthened programs on negotiation, human rights, and the legal profession; and

• Acquired and renovated the Hale and Dorr Legal Services Center, a new legal clinic headquarters.

Clark emphasized that the intense fundraising efforts for Harvard Law School will continue.

"The fact we don't have a campaign doesn't mean we'll stop fundraising," he said. "It will be less formal and all out, but more targeted. We always need fundraising to balance the budget every year."

As a part of the festivities, attendees feasted and sipped fine wine as they toasted the past and future success of Harvard Law School under tents on Holmes Field, as a bevy of campus police and security casually stood nearby. Harvard police reported no trouble during the weekend, although Officer J. Leahy did complain that his "feet hurt."

Meanwhile, an army of food servers bustled under the tents, carting dishes in and out for the distinguished guests.

One of the servers, Alice Brown, said she was unfazed by the fact she was attending to some of the richest and powerful people in the country.

"It's just like serving food to anyone else," said Brown, who works in the HLS Faculty Dining Services, and thus perhaps had become somewhat desensitized by the experience. "If you treat them just like people, they'll treat you the same way."

Expert Panels Discuss Affirmative Action, Human Rights, Technology and Transnational Economy

RECORD Staff

As part of the Victory Celebration, students faculty and alumni gathered Friday and Saturday to explore current developments in four areas of the law.

Affirmative Action Debated

Americans and their government should assume some of the moral costs associated with past discrimination by instituting temporary affirmative action programs, said an HLS professor and former White House special counsel.

"Programs should not be institutionalized in such a way that they are required to be permanent," said Prof. Christopher Edley '78. "When the goal is achieved, the program should be eliminated."

Edley debated Boston University economics Prof. Glenn Loury, a self-described critic of affirmative action, about affirmative action policy and politics Saturday morning. More than 100 students and Victory Celebration participants attended the debate. Prof. Charles Fried moderated.

Affirmative action carries with it a political cost of negative reactions by the "Joe Six-Packs" of America, Loury suggested in a question to Edley.

"Joe Six-Pack is a friend of mine, and Joe Six-Pack is pissed," Edley responded. However, he said, it is important to understand why Joe Six-Pack feels the way he does. One reason is there is so much misinformation and demagoguery surrounding the issue, said Edley.

"Many people think affirmative action means quotas," he said.

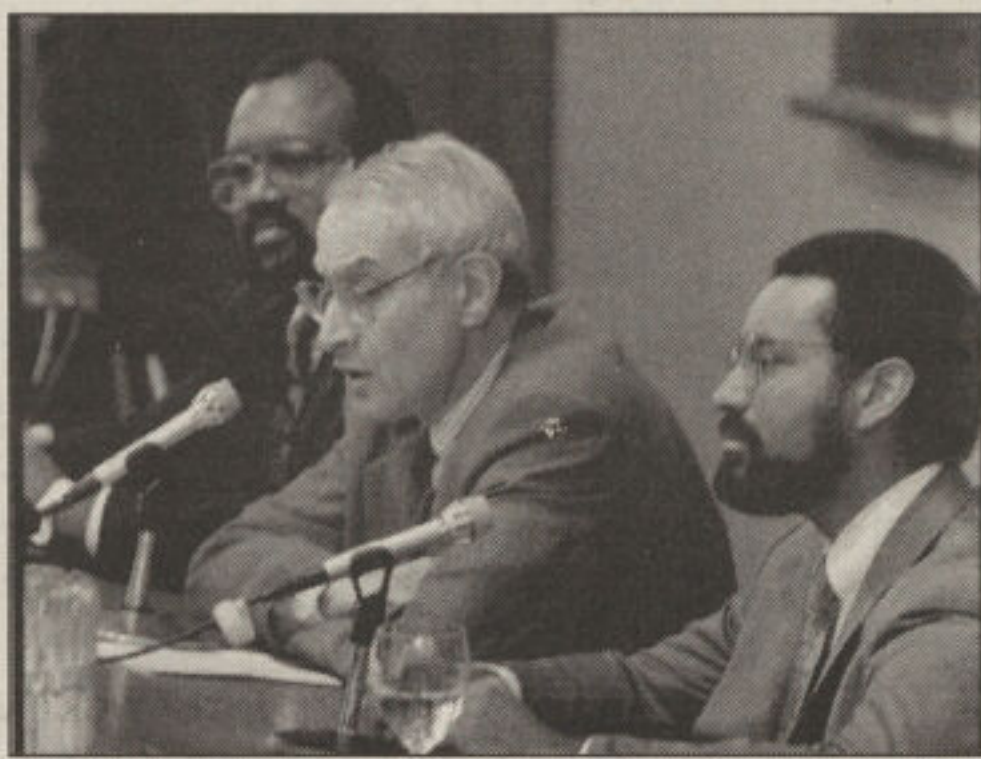
Loury retorted, "Joe Six-Pack is not dumb. He is not confused." Democrats, Loury said, are becoming the minority party in part because they continue to believe that so-called "angry white males" have a false consciousness.

Although the debate

focused on more general issues of affirmative action, the HLS Coalition for Civil Rights sought to bring the dialogue closer to home. Outside Austin North, CCR representatives passed out leaflets saying that "HLS still lags behind in the diversity of its faculty."

"We want to let the alumni know that, while they're celebrating the huge victory fund, that there's still a lot to be done to improve faculty diversity," said CCR co-chairwoman Lina Han '97. "Hopefully, they'll all hear our concerns and pressure the administration about it. Money talks, after all."

CCR member Hannah Kilson '97 said after the discussion that she was disappointed that the affirmative action dialogue continues to focus on blacks and whites



Panelists (l. to r.) Profs. Glenn Loury, Prof. Charles Fried, and Christopher Edley '78 debated affirmative action issues at one of the panels held Saturday.

only, instead of including other groups. Organizers' choice of a white moderator and black panelists was evidence of this narrow focus, she said.

Human Rights Discussed

Ethnic conflicts, women's rights and democratization were the

focal points of a Victory Celebration panel on human rights.

Panelists met on Saturday to discuss major challenges facing the human rights movement in the next century. Prof. Henry J. Steiner '55, Director of the Human Rights Program at HLS, moderated the program.

Neelan Tiruchelvam '73 opened the discussions by holding out ethnic conflicts and ethnic violence as "accounting for the greatest violations of human rights" in the modern world.

The challenge posed by this strife, said Tiruchelvam, is to form structural arrangements where communities and ethnic groups can cooperate. The typical solutions have been devolutions of power under federalist or other sovereignty sharing

arrangements, he said.

The difficulty, noted Tiruchelvam, is that "a shifting balance of power among ethnic groups makes such arrangements transient." For a more effective solution, "recognition of group rights is needed in international rights law and domestic constitutional practice," he said.

Jessica Neuwirth '85 continued the discussion with a presentation on what she said are the shortcomings of the international human rights movement's espousal of women's rights issues.

Neuwirth criticized the international human rights movement for establishing a hierarchy of human rights under which international organizations are frequently "reluctant to recognize wrongs against women as falling within the scope of the human rights protection."

Citing justifications relying on public-private distinctions or relegating the treatment of women to the realm of cultural affairs, Neuwirth described the current state in the human rights field as one in which women had no effective legal recourse for such recurring abuses as domestic violence or the sale of brides.

Neuwirth said the "systematic nonresponsiveness of governments to domestic violence" properly render it a legitimate human rights issue.

Neuwirth said that a recent swing towards greater recognition of women's rights issues is encouraging. But she warned against distraction from the significant challenges of integrating the women's rights movement into the human rights

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Technology Update

HLS Plugs into LAN

By David Weiss

Taking the next step toward entering the world of cyberspace, HLS has nearly completed installation of a communications infrastructure that will increase the speed and capabilities of the computer network at the Law School.

The new Local Area Network, or LAN, involves the wiring of all of the Law School buildings — including classrooms, faculty offices and dorm rooms — with fiber optic wires which will increase the system's communications capacity over the telephone lines previously being used.

LAN had an installation cost of approximately \$1 million and an anticipated yearly operating cost of \$500,000. The installation process began over the summer; currently, two-thirds of the faculty are hooked up and Ethernet connections to the student dormitories are expected by December.

Once the hardware installation is completed, several new computer software packages will be purchased and installed on the network, joining the new e-mail program and software links with the Internet which are already on the network.

In addition, according to Ken Dueker '97, who was one of two people responsible for writing the installer program that allows the network to interface with both Windows and Macintosh programs, the VAX computer (HULAW1) currently supporting the network will be replaced next year.

"I love it," said Dean Clark '72, one of 17 people in a test group who were hooked up to the network over the summer. "It is so much better, so much faster, than my old set-up. It makes me want to teach a

seminar course just to use the gadgets."

The improved intra-school communication capabilities is expected to enable professors to communicate more easily with each other and with their students. According to Dueker, students and professors will be able to use "threaded conferencing tools" to post and answer messages and ideas on a computer bulletin board. In addition, it is expected that the administration will eventually be able to post syllabi, course information, copies of past tests and other curriculum information on the network.

Besides improving internal communications, the LAN will enable students and faculty to access the World-Wide Web (WWW), an interconnected system of computer servers on the Internet. New L.L.M.s and S.J.D.s and 1Ls all received Serial Line Internet Protocol (SLIP) account numbers and software which will enable them to access the Internet through their computer modems without being directly linked to the network over the LAN.

SLIP accounts will be offered to 2Ls, 3Ls, and other students beginning in October. Once the dorms are hardwired to the LAN, students will be able to connect directly into the network through data jacks in their rooms, rather than through using their SLIP accounts over their modem and phone lines.

In order to use these data jacks, students will have to purchase Ethernet cards for their computers. Information Services plans to inform the HLS community later in the semester regarding what types of cards will be needed.

"We can't do everyone at once," said Clark. "If this is to support academics, it makes sense to put the faculty on first, the students on in waves, and the admin-

And Then There Were Three ...

By Katrina C. Randolph

The Lone Dissenters were too smart for their own good.

The Ames Moot Court finalist team was set with its 6-member team last spring. But now the team is down to three members, and the final round is in November.

David Friedman '96 and Kandance Weems '96, who joined the team last spring when the Dissenters reached the semi-final round, have quit. They quit after being elected president and treasurer, respectively, of the Harvard Law Review.

Mark Yablonovich '96, an original member of the Dissenters, also resigned this fall. He said he was too busy to be on the team.

"It's very difficult to manage your time when you have two or more large commitments, plus classes," said team captain Jay Prabhu '96. Moot court, he said, is "a lot more work than people think."

istration last."

"If we tried to put everyone on at the same moment, it would be a major disaster," Clark said.

The system had some growth pains over the past few weeks, as the introduction of the new system combined with a change of personnel in the Computer Support Center to result in some slow-downs in service and technical problems. For example, when the SLIP passwords were distributed, they were printed in a typeface that did not distinguish between

Friedman said the Law Review presidency and his recent engagement to a Harvard Medical School student were the reasons he left the team.

"You have to make sacrifices, and this was the right one for me," said Friedman.

Prabhu, Sam Liccardo '96 and Harry Chernoff '96 remain on the team. They will choose a new name for the final round.

Weems, who is a J.D./M.B.A. student, could not be reached for comment.

Prabhu said the team will have to choose three new members by Monday. They have interviewed several students, including some from teams who participated in the semi-final rounds, he said.

"We didn't want to lose anyone in the process. I think if we choose carefully it shouldn't affect things too badly," said Prabhu.

He acknowledged that the team will probably experience some "growing pains" with the new members, but added, "I think we can deal with it."

"1" and "l," creating problems for students trying to access the network.

"I think that any time you try and do something that affects 2,000 people during the first week of school, there are going to be some hang-ups," said Lecturer Virginia Wise, who teaches Advanced Legal Research and has been involved in training students on the new system.

"It's going to be great when it's all done," she added, "because we will be able to access a lot of things collectively that everyone now has to do on his own PC."

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BRIEFS



Areeda Gets Justice Dep't. Award

Prof. Phillip Areeda '54 has received a U.S. Justice Department award for his work in antitrust law.

"Phil Areeda has been a steadfast guardian of competition," said Anne Bingaman, assistant attorney general for the Antitrust Division of the department.

The award, the John Sherman Award, was created in 1994. It is named in recognition of the Sherman Act and its author, John Sherman, a former senator and Treasury secretary. The Sherman Act outlaws all contracts, combinations and conspiracies that unreasonably restrain interstate trade or monopolize any part of interstate commerce.

Katz Dies at 87

HLS Professor Emeritus Milton Katz '31 died recently of a heart attack. He was 87.

Katz is perhaps best known for being the director of the Marshall Plan to rebuild Europe after World War II. His career at HLS spans 56 years, during which time he helped shape the school's international legal studies program.

"Milton Katz was the single most important professor that I had during my three years at Harvard Law School," said Prof. Charles Ogletree '78. "His extraordinary experience in devising the Marshall Plan, his broad range of experiences in constitutional law, and his familiarity with the nuances of tort law made him an exceptional professor for first-year law students."

Katz died Aug. 9 in Brookline.

And the Winners Are...

If it's you, then you already know. But if you didn't know by now, the winners of the 1995 Sears Prize are (drumroll)

Class of 1997: Lisa Anne Grow and Jennifer Martinez

Class of 1996: Dennis Devine and Adam Marcus Samaha

The Sears Prize is awarded to the 1Ls and 2Ls with the highest grade point averages in their class.

B-School Selects New Dean

Harvard Business School Prof. Kim Clark has been appointed the eighth dean of the school.

Clark currently is chairman of HBS's Technology and Operations Management Area and heads the MBA program's elective curriculum.

"Professor Clark has a deep commitment to excellent teaching, a great skill in bridging scholarship and practice, an uncommon capacity to inspire collaborative effort, and a strong regard for the importance of both continuity and innovation at a time when the business environment is obviously changing very rapidly," said Harvard University President Neil Rudenstine.

"He appreciates the international dimensions of modern business, and the ways in which new technologies are reshaping how we live, work, and learn," Rudenstine said.

Clark graduated in 1974 from Harvard College and earned a doctorate in economics from Harvard in 1978. Since 1978, he has served on the faculty at the business school.

Clark's research has been primarily in technological innovation, productivity, product development and operations strategy.

He begins his new job on Oct. 1, succeeding John H. McArthur.

Higginbotham Awarded Presidential Medal of Freedom

Judge Leon Higginbotham, an HLS lecturer and Kennedy School professor, has received the nation's highest civil honor for his work in civil rights.

President Clinton will present the Presidential Medal of Freedom to Higginbotham and 11 other recipients at a White House ceremony on Sept. 28. He can add it to his cache of national and international awards, as well as 60 honorary degrees, including degrees from Amherst, Boston College, Dartmouth, Northeastern and Yale.

Higginbotham said he was both surprised and pleased to receive the award, but has never sought public commendation for his work.

Last year, he served as an international mediator during the South African elections. Currently he is chief counsel for Rep. Cleo Fields (D-La.) in the Louisiana redistricting case, *Louisiana v. Hays*.

RECORD Wins Journalism Award

For the 15th year in a row, the Harvard Law Record won first place in the American Bar Association Law Student Division's Newspaper Contest for the best overall newspaper in 1994-1995. The competition is held annually and judges law school newspapers from across the country.

Questions About Your Bar Exam About the Multistate? About the MPRE?

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Presentation

by

STANLEY D. CHESS

Chairman & CEO of the West Bar Review

Mr. Chess will discuss the structure of the exam, recent change on the exam, proposed changes on the exam, the MBE, the new MEI the MPRE, study skills, how to take two or more bar exam simultaneously, and a comparison of the West bar review course with all other courses.

DATE:

TUES., Sept 19

TIME:

6:30 - 7pm

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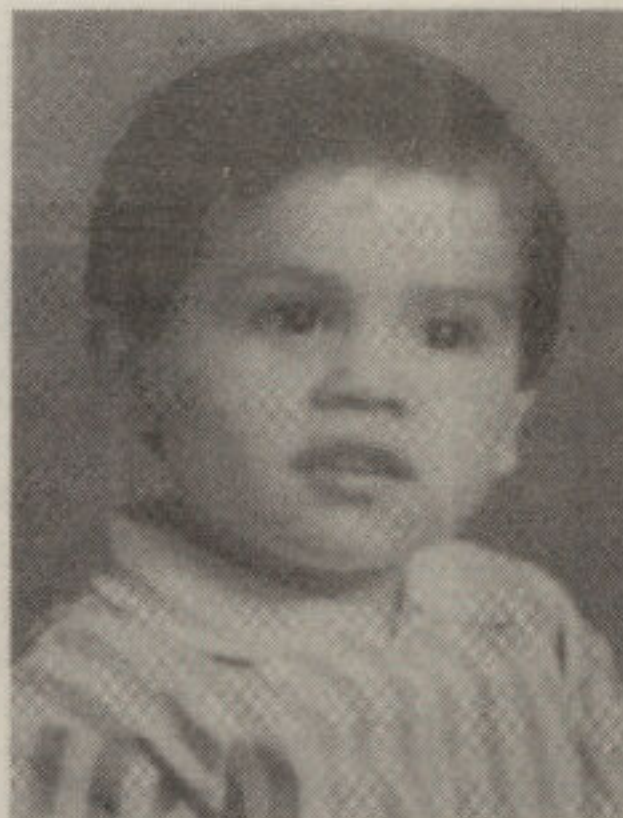
Hark Pub

Free refreshments will be served

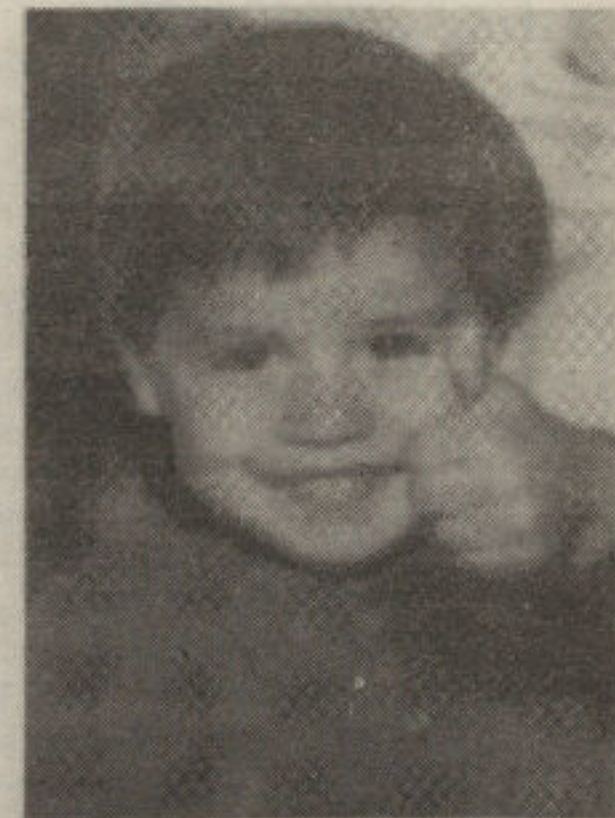
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PIZZA



2 weeks old, 1989



1 year old, 1991



2 years old, 1992

Stevie Ace Flores.

Killed by a drunk driver on March 23, 1993,
on Pacific Coast Highway in Wilmington, Calif.

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

FRIENDS DON'T LET FRIENDS DRIVE DRUNK.



U.S. Department of Transportation

White Decides to Accept Tenure

continued from WHITE, page 1

ney for the University of North Carolina Law School.

Her current research includes a book examining the role of parent involvement in the Head Start program. "I'm interested in social welfare policy, particularly the intersection of child care responsibilities and work for low-income people," said White, who will take a year-long academic leave in January to concentrate on her work.

The faculty appointments of White and tax law Prof. Daniel Halperin (see sidebar) bring the number of faculty up to 72. Clark has said he wants to have a core group of 78 by the year 2000, prompting many student organizations to continue their push for faculty diversity.

Clark has pledged to improve "diversity on all fronts," acknowledging in particular the need for more women professors. There are currently 11 women professors, who comprise 15 percent of the faculty, compared to a national average of 28.5 percent.

The HLS faculty, however, has never had representation from women of color, Latinos, Asian Pacific Americans, Native Americans, or persons who are disabled or openly gay.

"It is a really good move for the faculty because Lucie White's concerns deal a lot with class and gender issues," said Hilary Ware '97, who co-chairs the Coalition for Civil Rights, the organization leading the push for faculty diversity. "Without a doubt, each woman hired at Harvard Law School is great.

"But the fact remains that not a sin-

gle woman of color has been tenured. It is a very frustrating situation and it remains embarrassing for Harvard Law School," she said.

Ware also said CCR was encouraged by plans for University of Pennsylvania Law Prof. Lani Gunnier to teach here as a visiting professor this winter. Gunnier, an African American woman, has been widely rumored to be considering seriously a tenured position on the HLS faculty.

"We hope Harvard doesn't stop at that," said Ware. "We understand that having one woman of color is better than having none. But that doesn't put Harvard in the cutting edge. The whole point of diversity is that a single woman of color doesn't represent the experiences of all women of color, and she shouldn't have to."

Tax Law Specialist To Join Faculty

A tax law professor at Georgetown University Law Center has been appointed to the HLS faculty, and will begin teaching classes here next fall.

Daniel Halperin '61, a former Deputy Assistant Secretary of the U.S. Treasury during the Carter Administration, said he is eager to become a part of the HLS community.

"I have devoted my research and writing to thinking about tax theory and policy and I would like the opportunity to pass on what I learned to the next generation of tax teachers and policymakers," said Halperin, who was a visiting professor here in 1993-94. "Harvard also has a great tax faculty and I look forward to having a lot of interaction with my colleagues."

Dean Clark '72 said Halperin's expertise will be a real asset to the Law School.

"Dan Halperin brings perfecting touches to our tax group," he said. "He has very rich Washington experience, which will add a lot of wisdom in deliberations and teaching in the tax area."

Halperin, who will be the Law School's first Stanley S. Surrey Professor of Law, is a board member of the Pension Rights Center in Washington, D.C. In 1994-95 he was a member of a panel advising the Advisory Council on Social Security on retirement trends and was chairman of the tax section of the Association of American Law Schools.

New Faces Added to Hiring Committees

By Hope Yen

Five new professors - two of whom are women - have been selected by Dean Clark '72 to sit on the faculty appointments committees, groups whose say will shape the hiring process for the coming year.

Clark said he plans to meet soon with the two appointments committees to help set targets for hiring additional faculty. Clark has said he hopes to have a core faculty of 78 professors by the year 2000. Currently there are 72 professors.

"We hope to strengthen

the basic subjects, such as the corporate law area," he said. "We need to add more in administrative law and major regulatory areas, such as environmental law. And we need some to teach courses on women in the law. But right now those are just a preliminary set of thoughts; we're still trying to redefine our goals."

The Laterals and Promotions committee, which screens candidates for tenured positions on the faculty, has been enlarged to seat five members, instead of last year's four.

Chairing the committee again this year will be Prof.

William "Terry" Fisher '82. He will be joined by Clark and Prof. Hal Scott, who were committee members last year. Two new members, Profs. Martha Field and Robert Mnookin '68 will also sit on the committee.

The Entry Level committee, which oversees hiring of assistant professors, will be chaired this year by Prof. Martha Minow, who was a member last year. Two other members, Clark and Prof. Daniel Meltzer '75, will also be returning. They will be joined by three new faces, Profs. Howell Jackson '82, Reinier Kraakman and Anne-Marie Slaughter '85.

Patience Singleton '96, president of the Black Law Students Association, said she is hopeful that the coming year of appointments will bring added diversity to the faculty. Her organization has expressed a desire to see more women and people of color on the hiring committees. Only one committee last year had a woman member.

It's a start," Singleton said of the committee appointments. "But we're still waiting for him to appoint women of color to the faculty. We have women, but that's only half right."

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GYM RAT

Sports: Wonderful and Stupid



By David Koontz '96

Sports Editor

WELL, here we are again, or for some of us, here we are again for the first time. Over the summer, the Gym Rat failed to get that job writing sports for the Globe, or as Prof. Rosenberg (who has little time to watch things like the Electric Company) calls it, "The Glob." Fine newspaper, but I challenge you to find a single article in its sports section that uses two words in a row that have less than three syllables.

Example: "Wakefield's magical flutterings mystify and mesmerize ethereally umpteen ridiculous similes." I could not bring myself even to peek at the Globe the day after Cal Ripken, Jr.'s amazing feat.

Speaking of Cal, I think I speak for everyone when I say that it would be very frustrating to get cable just in time for the big game, set up the VCR, and leave said VCR on the wrong channel, so that someday one could show his or her grandchildren six hours of a blue screen. It will be difficult to explain to future generations the thrill of thousands of flashbulbs reflecting off Cal's helmet as he sent one deep into the stands. No doubt, by the way, that someone in the outfield seats got a very close-up picture of a baseball coming directly at him or her. Just imagine: "Well, grandchildren, this is the photo album in which all the Cal Ripken, Jr. pictures would be if he hadn't broken my camera."

And from the utterly wonderful to the utterly stupid: If you missed that guy on Monday Night Football jumping over the railing from about twenty feet up to catch an extra point, well, it was truly a sight to behold. After Lynn Swann caught up with him for an interview, he screamed at the top of his lungs that he was from the South Side of Chicago and he played offense and defense in high school. Then he stopped for a second and screamed it again. Sensing that the moment was over, Lynn sent it back to Al, Frank, and Dan.

But that's just football for you. Some of us, who consider ourselves pretty sane really, end up playing or watching side by side with people we'd rather not know. Tackle football is biting, spitting, grunting, hitting, dirty, nasty, hateful, and hurtful. And that's just among the college alumni.

Among the fans, you still get that occasional friend whom you thought you knew well, but who can't let a concert pass by without yelling "Freebird!" and who always "jokes" about renting "Deliverance" a little too often. Now that it's September, this same friend (especially if he's a Giants, Jets, or — like me — a Falcons fan) suddenly gets the urge about 20 or 30 times a game (ironically, as many times as the quarterback throws the ball, you'll notice) to call up the quarterback's mother and make her feel bad for having a son. For those people, I have a message: Don't bother calling. His mother is probably watching too, and if she is, she already feels bad and doesn't need any help from you.

Of course, there is a football alternative to college AND professional action, and that is the HLS Flag Football League. You can come and play. You can come and watch. You can sign up a team with too many people and think you're going to come and play, and end up just watching.

The league is very close to filling up, and the Gym Rat will transform himself into the Field Mouse for a few weeks to be the Commissioner (see the Adviser or call me at 493-9345 with any questions). The best thing about being Commissioner is that you can give yourself self-aggrandizing titles like "Commissioner." I'm going to give the Bat Signal early this year and say that someone MUST step up and become Commissioner for next year, or all will be lost.

It will be difficult to explain to future generations the thrill of thousands of flashbulbs reflecting off Cal's helmet as he sent one deep into the stands.

This year, however, all is guaranteed to run as smooth as butter. The games will be on Sundays from 9 a.m. until 5 p.m. beginning Sept. 24 and running through Oct. 22, with the playoffs scheduled for Nov. 12. The league plays on the fields across the river and behind the football stadium, so come on out and watch if you get tired of seeing ad nauseum the NFL's staple running play, Two Yards and Everybody Fall Down. Flag football captains, do not panic; we will have a captain's meeting where we discuss the rules and "draft" players who are still free agents. I realize one cannot draft a free agent, but that is what makes this league so special.

Some miscellaneous ramblings... Enough with the questions about Pete Sampras' lack of emotion on the court. The Jensen brothers are entertaining, but I'm reminded of the scene in Raiders of the Lost Ark where Harrison Ford witnesses a dazzling display of swordpersonship and then just calmly shoots his foe. Ho hum. Go get 'em Pete.... Okay, so Deion Sanders is a Cowboy now. Last year the Falcons said, "We can't justify paying that much to a part-time player," while the 49ers brass looked on smugly. As a Falcons fan, I couldn't help but chuckle this past week as I heard 49ers president Carmen Policy say, "We can't justify paying that much to a part-time player." Of course they still managed to win the battle of the Teams Jilted by Deion 41-10 (and I managed not to call Jeff George's mother)... Subliminal message: Come to the TGIFs (beer, soda, food, open mike at the Hark Pub on Friday afternoons) this year and relax after a hard week — you deserve it...

Finally, I would like to congratulate Well Hung Jury and the Great Danes, last spring's champions in the HLS basketball A League and B League, respectively. Unfortunately, you'll have to wait until the beginning of basketball season for a real Sports Illustrated-type article, along with a preview of the upcoming season and a huge caption reading, "Can They Do It Again?"

FOOD - O - RAMA

Welcome (Back) to Cambridge

By Heather Friedman '97 and Betsey Nevins '97

Restaurant Reviewers

FOR those recent arrivals too shy to venture outside of the Square (and for 2Ls and 3Ls who've been too studious or too lazy in the past), we bring you this public service message: **a world of culinary delights awaits you beyond the Hark and the Tasty.**

You're unlikely to stumble upon the **Sazarac Grove Bar and Grill** (unless you've been to the nearby Garment District hunting for the vintage '40s feather boa of your dreams). For years, One Kendall Square in East Cambridge (a 5-10 minute walk from the Kendall Square T-stop) has been an address of some importance to foodies in the know — it's home to The Blue Room, Cambridge Brewing Co., as well as several lesser-known establishments. Take it from us, the six-month-old Sazarac is yet another reason to get acquainted with this corner of Cambridge.

A sprawling restaurant/bar featuring a glassed-in porch, outdoor patio dining, multiple interior bars, and even a pool table, Sazarac seems designed to please the tastes and pocketbooks of the 20-40-year-old set. We couldn't agree whether it was primarily a bar (with good food) or a restaurant (with a good bar). The food quality suggested the latter, but the comportment of our waitress — who was seen snogging in the corner before bringing the first course — might indicate otherwise. Though most of the tables were empty at 8 p.m. on a recent Sunday, the music was booming, and heavy crowds reportedly gather here later in the week.

The menu offers light fare — sandwiches, pizzas, salads and soups — reflecting a pleasing, not-overly-exotic hybrid of Italian, Tex-Mex and regional American cuisine. We liked the food: the ingredients were fresh and tasty, the portions generous, and the presentation attractive. Prices are moderate to inexpensive — \$15 will get you two courses and your choice of beer (10 on tap and 20 bottled, with many from microbreweries).

Next Thursday night, instead of watching "Friends," grab yours and head for East Cambridge.

We started out with a cup of the seasonal soup (\$2.50) and the tantalizing-sounding Grilled Shrimp And Black Bean Cakes With House Salsa (\$5.75). The soup was a chunky and refreshing version of the potato and leek classic, Vichyssoise. We had expected the second appetizer to highlight the shrimp and/or the bean cakes to contain shrimp. Instead, the bean cakes (made of a smooth, richly flavored refried bean mixture) were the center of the dish, surrounded by an impressively fresh-tasting salsa and topped with sour-cream and chopped scallions. The shrimp were lightly grilled and delicious, but were really more a garnish than an integral component of the dish. Despite our slight disappointment at having to squabble over the five shrimp on the plate, we found the dish enjoyable and, ultimately, satisfying as well.

For our second course, we sampled selections from the pizza, sandwich, and grill entrees. The pizzas come in two sizes (6" for \$5.75, and 8" for about \$8.75) and boast a delightful wood-oven burnt crust. The menu offers five specialty pizzas, or you can create your own. It is hard to imagine who would want humus on their pizza, but there are plenty of other toppings to choose from. We ordered the Grilled Vegetable Pizza for one, which sported grilled zucchini, eggplant, and garlic and was crowned by a generous helping of goat cheese. The flavors were fresh and admirably distinct. The smoky grilled eggplant perfectly complemented the bite of the cheese.

The Jerk Turkey Burger (\$5.95) made our vegetarian taster rave. Much better than the usual grill offering, this patty was moist and seasoned with an impressive blend of spices, though the chef might have been a bit heavy-handed with the cumin. Also worthy of note were the accompaniments. No mere burger bun, the French roll was good enough to enjoy on its own; the garnishes were unusually fresh-looking; and the sweet potato salad with a mustard seed dressing was a surprise — it might make fans of even long-time yam-aphobes.

The least exceptional dish we tried was the Peppered Roast Beef Sandwich (\$5.95) served with roasted seasoned potatoes and tortilla chips. The sandwich's signature balsamic vinaigrette and marinated peppers were too subtle, and the roast beef gave no hint of peppery spiciness. This sandwich could have used a sharper-flavored condiment; we had to make do with Dijon mustard from a jar. We also wouldn't have minded a bit more zing in the potatoes (really fries in disguise), and we could have done without the chips entirely.

Did we forget to mention that the servings are generous? Fear not, despite our indulgence in the above-mentioned treats, we were determined to bring you a complete report. So, of course, we ordered (and ate) dessert.

The dessert choices were somewhat limited, mostly ice cream concoctions. (Note, though, the featured Toscanini's ice cream — homemade in Central Square — is something special.) We skipped the sundae (and the accompanying chance to comment on their homemade brownies) and elected to try the unusual-sounding plum sorbet (\$3.95) and a frozen yogurt version of mud pie (\$3.95). Served with an assortment of fresh fruit, the sorbet was good, though the dominance of cinnamon and fruity tartness made us think less of plums than of baked apples (or even Apple Jacks). We also like the mud pie, though we were baffled by the "coffee" yogurt which tasted unmistakably like chocolate. With a thick Oreo crust and chocolate sauce drizzled on top, the pie should only be ordered by true chocolate lovers. Both desserts were more than ample; they were humongous.

In sum, Sazarac is worth investing in a map of Cambridge (or a cab ride) to help you get there. Next Thursday night, instead of watching "Friends," grab yours and head for East Cambridge. (For real addicts, do not fear: They do have a TV at the bar.)

Sazarac is just a quick (5-10 minute) walk from the Kendall Square T-stop (that's the red line). To make reservations (not required, but a good idea on Thursday nights and for large groups) or to get directions or additional information, call 577-7850. Sazarac is open from 11:30 a.m. to 1 a.m. daily and offers free parking at the One Kendall Square Garage.

Harvard Law RECORD

Founded in 1946

Katrina Randolph
Editor-In-Chief

David Weiss
Publisher

A Capital Campaign

"It's not up for grabs. Everything has got a purpose already." — Dean Clark, commenting also that the additional \$25 million raised by HLS will be allocated to areas already receiving funding.

Ironically, at the same time that HLS has raised \$175 million for its \$150 million Capital Campaign, a mid-sized college in Hampton, Va., is struggling to raise \$25 million over five years. Hampton University — a school with 6,000 students — wants to raise the excess amount that HLS — a school with 1750 students — has raised.

Everything, we remind you, is relative.

So what will happen to that "excess" \$25 million? Where will it go? Who will it benefit?

In case the \$150 million allocations have not been etched in stone, we propose that a portion of it be reserved for financial aid. Tuition isn't getting any lower, and certain members of the 104th Congress would like to slash those student loans many of us rely on so much. The student grant fund could use the cash.

Assuming for the moment that the \$150 million already has mouths to feed, here's a proposal for the other \$25 million:

As was just mentioned, set it aside for financial aid.

Improve the Low Income Protection Plan even more than HLS is planning. One mark of a good law school is not only the impact its graduates make on the corporate world — which admittedly is one good indicator — but also the changes its alumni bring to inner cities, to poor rural settlements, to families afflicted by domestic violence. And encouraging this work in the public interest — thus raising the Law School's moral standing (which is just as important as the U.S. News and World Report rankings) — means making the choice to enter public interest work after graduation a real option for students burdened with loans.

How about a million or two for improvements to student organization offices? The offices for the old and new organizations and the journals need to be expanded and renovated. Faculty have been awarded Hauser Hall and moved out of the deep, dark stacks of Langdell. Students also should be able to realize some of the comforts these donations can bring as well. Giving new student organizations real office space would help them get established, thus adding to the range of activities that energetic students can get involved in.

And for all the hype about computerizing the Law School in order to bring it into the 21st century, what about the crowded conditions in the Hauser Hall computing center? Certainly many of us have personal computers, and a few of us have laser printers, but those of us who have neither find themselves in an even bigger mess when they try to use the understaffed, poorly administered computing center.

Sure, some improvements have already been made. Gropius dwellers can boast about brand-new three-pronged electrical outlets. Hark boxes have been moved to the main thruway in Harkness Commons (that probably cost about \$50 in labor). The Hark is getting revamped so that students can reach the food better (if they want). And we don't have to worry about asbestos droppings when we go to the bathrooms. (Asbestos removal is still going on — in 1995?)

We laud the administration, faculty, and staff for surpassing the Campaign goal. And we appreciate the improvements made so far, as well as those that are on the way. But even more changes are needed to make Harvard Law School truly responsive to the concerns of students who, in a few short years, become alumni whose attitudes toward giving in the next Capital Campaign may be shaped by the quality of their experiences on campus.

— Kuohung and Randolph

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

—First Amendment, US Constitution

• Letters •

Do Not Interview With Sidley & Austin

On October 9, Sidley & Austin, a Chicago-based firm with offices in New York, Los Angeles and Washington, will interview at Harvard Law School. We are urging our fellow students to boycott Sidley & Austin because of its representation of the state of Colorado in the litigation surrounding Amendment 2, an anti-gay initiative.

In 1992, Colorado voters approved Amendment 2 at the behest of the religious right. Amendment 2 would institutionalize discrimination against gays, lesbians and bisexuals by prohibiting all governmental units in Colorado from taking action to combat discrimination on the basis of sexual orientation. In effect, Amendment 2 would convert gays, lesbians, and bisexuals into second-class citizens.

Under it, the government would be forbidden from protecting gays, lesbians and bisexuals from discrimination in employment, housing and credit, and government agencies would be prohibited from implementing policies guaranteeing safe workplaces for their gay, lesbian and bisexual employees. Moreover, gays, lesbians and bisexuals would effectively be excluded from the political process. They would be rendered politically impotent by the constitutionalization of discrimination and would have no incentive to participate in the government that they support as taxpayers.

The Supreme Court of Colorado struck down Amendment 2 as a violation of the Equal Protection Clause, and the U.S. Supreme Court granted certiorari. Sidley & Austin has agreed to represent Colorado on a paying basis in its defense of Amendment 2 in the U.S. Supreme Court.

We believe that Sidley & Austin's choice to advocate on behalf of Amendment 2 is reprehensible. Although Colorado, like all other parties, deserves legal representation, Sidley & Austin is under absolutely no obligation to provide that representation. Colorado, with its substantial resources, has its own attorney general's office, and there are doubtless other attorneys willing to take the case.

Sidley & Austin, however, has determined that it will

profit at the expense of gays, lesbians and bisexuals in Colorado and throughout the nation. By doing so, it has become an accomplice in Colorado's denial of equal rights to its gay, lesbian and bisexual citizens.

Sidley & Austin has taken very seriously its role in disparaging the civil rights of gays, lesbians, and bisexuals. For example, it has argued that Amendment 2 should be sustained because it "enhances individual freedoms" by permitting people not to associate with gays, lesbians and bisexuals. Of course, racists made precisely the same arguments in opposition to the Civil Rights Act of 1964. Sidley & Austin has simply borrowed the rhetoric of the segregationists of the 1960s.

If Sidley & Austin does its job well and wins the Amendment 2 case, it will help set a precedent on the magnitude of *Plessy v. Ferguson* and *Korematsu v. United States*. In these well-known cases, the government was allowed to classify African Americans and Japanese Americans as less than full citizens — as "others." They were institutionally cordoned off and treated as if they were something less than human.

Amendment 2 has the same significance for gays, lesbians and bisexuals as "separate but equal" had for African Americans and as World War II concentration camps had for Japanese Americans. If Amendment 2 goes into effect, gay, lesbian and bisexual Coloradans will effectively be stripped of their citizenship. And Supreme Court validation will no doubt spawn attempts in many other states to duplicate Amendment 2. There are already initiatives pending in more than a dozen states.

Although we cannot prevent Sidley & Austin from recruiting at HLS, we strongly encourage our fellow students to join us in rejecting the firm for its participation in the undermining of a fundamental right of gay, lesbian, and bisexual Americans — the right to be treated equally by the government and by the law. Because of Sidley & Austin, gay people, including gay HLS graduates, will be unable to work or to live in places like Colorado with any peace of mind. After all,

who in his or her right mind would take the risk of making a life in a state where discrimination on the basis of sexual orientation is fully protected and endorsed by the law? In fact, if the Supreme Court, at Sidley & Austin's behest, validates Amendment 2, there may soon be a day when no state is safe for gays, lesbians and bisexuals. If this should happen, Sidley & Austin will bear a good part of the blame.

HLS students should not assume that they are immune from the acts of hatred that are becoming more and more common in the United States. The hatred and violence that Amendment 2 represents are the same hatred and violence so often directed at racial minorities, women, Jews and other groups that have experienced institutionalized discrimination. The only difference here is that Sidley & Austin has lent its (formerly) respectable name and legal talent to the effort to legitimize discrimination.

As attorneys, we will at times be called on to represent individuals and groups with which we disagree. This does not mean, however, that it is acceptable to take on any client, especially when that client has ample legal and financial resources. While Sidley & Austin has every right to represent Colorado, it has crossed the line by doing so. Its representation of Colorado is a slap in the face to every gay, lesbian and bisexual person at HLS and across the nation.

We therefore ask that all HLS students boycott Sidley & Austin when it interviews at HLS on October 9. In addition, we urge all students to write a letter to Sidley & Austin explaining why they have chosen not to interview with it.

Scott Wiener '96
Greg Gibson '97
Kevin Reuther '96
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Michael Diehl '97
Eric Kurtz '96
Brian Wong '96
Brad Hoylman '96
Andy Jackson '97
Eric Dupre '96
Martina Stewart '97
Carla Halpern '97
David Campos '96
Philip Hwang '96
September 11, 1995

Boycott an Inappropriate Response

I applaud those students who have questioned Sidley & Austin's refusal to prohibit one of its partners from defending the constitutionality of Colorado's "Amendment 2" in the Supreme Court. They raise the important issues of whether a law firm should prevent individual partners from taking certain cases and whether students should boycott firms that refuse to do so. As a recent summer associate at Sidley's Chicago office, I find these issues to be compelling.

These issues are not, however, capable of easy resolution. Inasmuch as "Amendment 2" is deeply abhorrent to our democratic values, a law firm arguably should not muzzle its partners

on the basis of their political beliefs. And for as much as Sidley's attorneys grieve the firm's association with such a perfidious case, they may be grateful for the corresponding freedom to pursue their own interests without threat of censorship.

While a firm should not bar a partner from taking a case because of its moral and political implications, this ought not to chill vociferous dissent. Students in particular have an obligation to draw attention to the moral abominations that parade under the guise of law. Arguably, however, such criticism should not take the form of a boycott because the firm as an institution should not bear the cost for political choices

over which, for respectable reasons, it has declined to exercise control.

Had I known of Sidley's involvement in the "Amendment 2" litigation last fall, I might not have accepted my offer to join the firm for the summer. Now, however, having observed Sidley's partners engage in serious, principled reflection on the issue, I am convinced that a boycott is an unnecessary—if not ineffective—response to the problem. Sidley offers an extraordinarily sophisticated, friendly, and progressive setting within which to practice law; students would be remiss to bypass the firm.

Christopher E. Humber '96
September 13, 1995

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The Harvard Law RECORD cordially invites you to its introductory meeting of the year:

**Monday, September 18, 1995 at 7:00 p.m. at the
Backbench Pub in the Harkness Commons.**

The RECORD is looking for people to fill several positions at the paper, including:

News writers
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Training will be provided for those with little or no journalism experience, and opportunities for advancement to upper editorial positions are available.

Pizza and other refreshments will be served at the meeting.

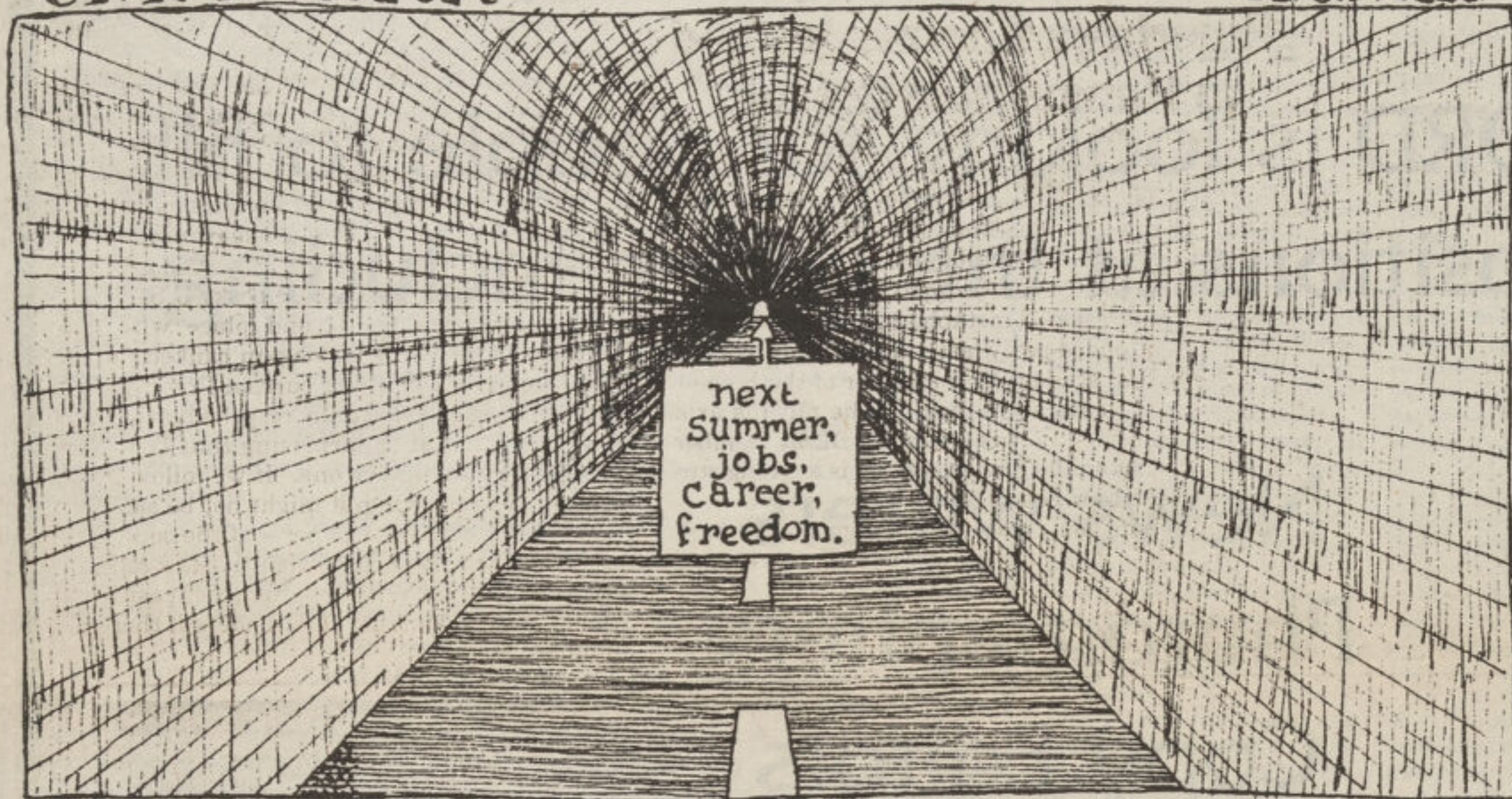
Temporary Insanity

By Sheila Tuller



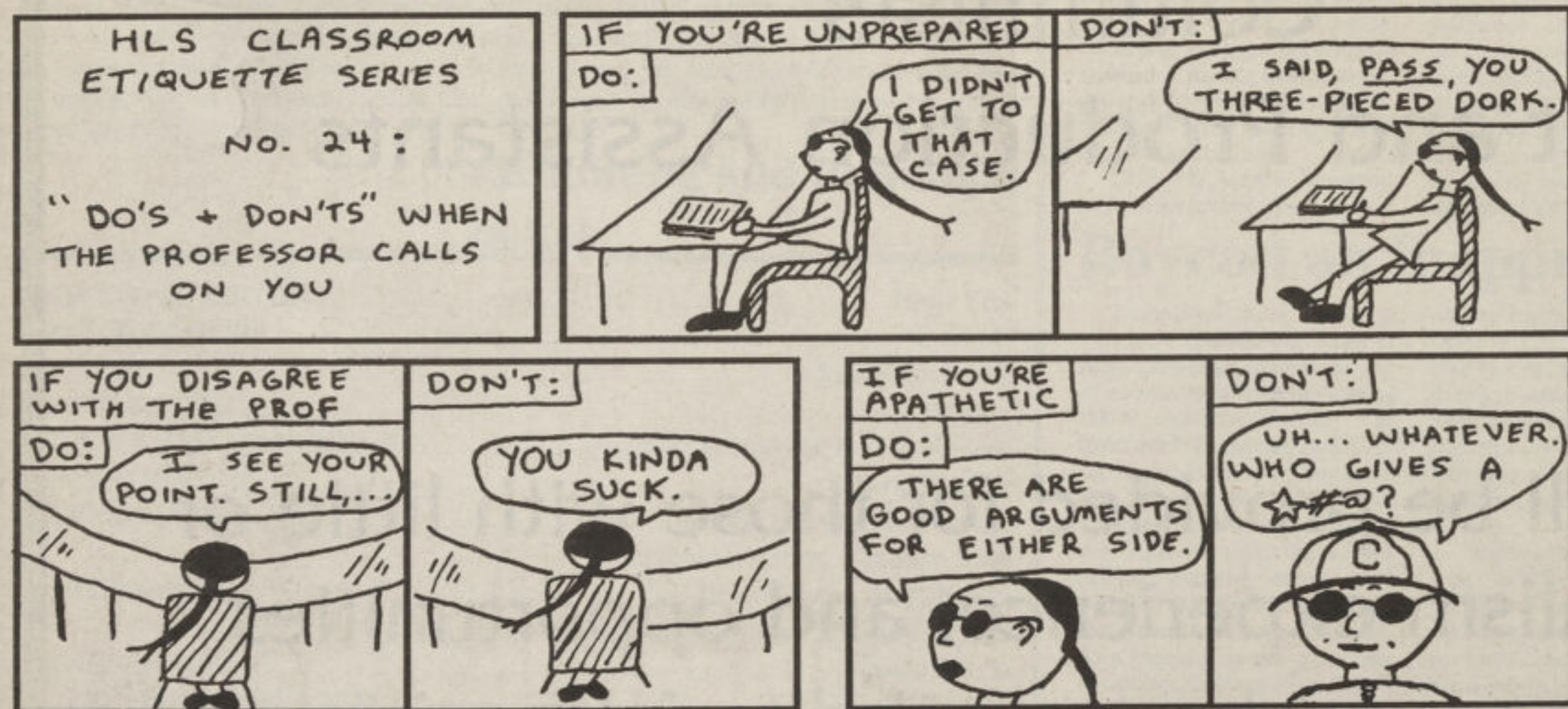
Civil Procedure

M.J. Kelly



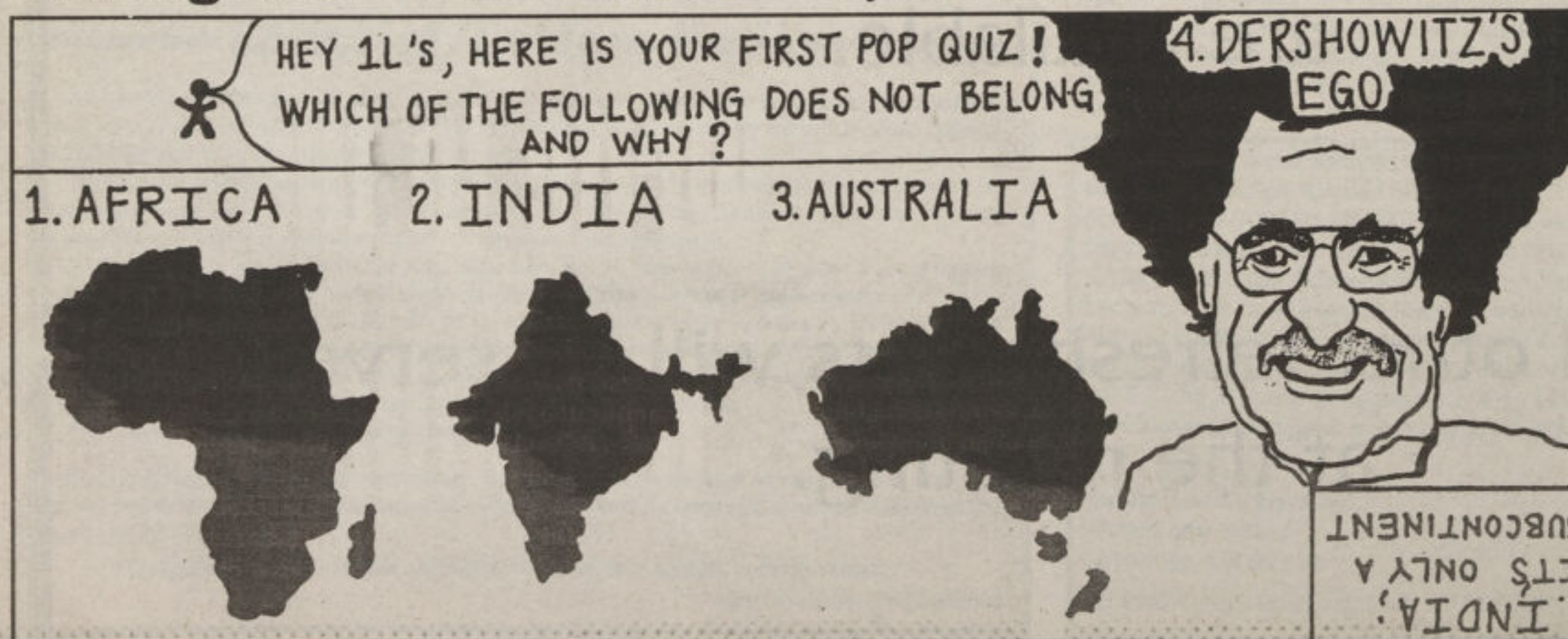
Backbench

By Brian Cheng



Thinking About Dershowitz

By Stuart Rees and Bill Zimmerman



CALENDAR

Shows You'll Never See

By Colin Meeder

It's a whole new year, and a whole 'nother chance to read about concerts you'd go to see if you weren't so wrapped up in the undying fascination that is the Harvard Law School experience! Case in point: Tonight, while you suck down healthy gobs of law and economics, you could be experiencing the trip-hop brilliance of **Tricky**. Bjork's boyfriend, having left the influential **Massive Attack**, is now leading the so-called "post-rock" movement quite nicely on his own, thank you very much. Opening is **Laika** (lots of guitars and samples) at the Paradise (351-2526).

Also on Thursday, alto great **Frank Morgan** appears at the fabulously expensive Regattabar (876-7777). But noooo, you'll probably be at Bar Review throwing back overpriced draft beer with your pals.

If you were lucky enough this summer to be in a city with one of those charming commercial alternative radio stations (and weren't we all), you probably heard **Tripping Daisy's** ode to benevolent misogyny, "I Got A Girl", ad nauseam. Now you can pay far too much to see them do the cool punk rock thing and save it for the encore whilst being trampled by a sea of undergraduates wearing thrift shop clothes that set them back three figures or so. Opening is **Eve's Plum**, whom Beavis and Butthead once declared "cool," at the Paradise (9/16). Myself, I yearn for 1984.

What to expect from **David Bowie**, also on Saturday at Greatwoods with **Nine Inch Nails** opening? Well, he's got Reeves Gabrels of Tin Machine on guitar, and he's promised to play none of the hits featured on the "Sound + Vision" tour a few years back. It may very well be interesting, but we'll never know, 'cos the show's been sold out for millenia.

Jon Stewart's show has been canceled, but he's probably still good for a few yucks. See him Saturday (or Friday, for that matter — he's there 9/15 and 9/16) at the Comedy Connection in Faneuil Hall (248-9700).

Morphine will be playing on your choice of street corners on Saturday. You can see them for free in Central Square along with scads of other bands playing an enormous variety of musics from all over the place as part of the Central Square World's Fair, or you can bring your student i.d. and \$5 down to Lansdowne Street to see them play with the usual alternarock suspects, including **Mike Watt** and **Shudder to Think**. It's a tough call, but I think you're more likely to see Eddie Vedder at Lansdowne. See you at Central Square.

Tuesday's going to be a rocking night. At the Axis (262-2437), **Guru's Jazzmatazz** will be appearing. Although this particular fusion of hip hop and hard bop doesn't always work, it's still worth a listen. Not worth a bucket of warm spit are **The Mentors**, the band that made Ira Glasser question his belief in freedom of speech and Rush Limbaugh wonder if maybe hate speech laws aren't such a bad idea. See them perform such hits as — well, I can't tell you the song titles, but you know 'em. Sickie Wifebeater, El Duce, and the whole gang will be at Bill's (421-9595). Bring a date, leave alone!

The Harvard Mumble

By Markus U. Hartmann

THERE are many different versions, but the exchange usually goes something like this:

"So, what are you planning to do with your life?" asks the normal happy person.

"I'm going to law school," comes the reply from the Harvard law student.

"Where?"

"North America."

"What country?"

"The United States."

"What state?"

"Massachusetts."

"What city?"

"Boston."

"Which law school?"

There it is, the direct question. More often than not it is responded to with the softspoken Harvard mumble: Hrrrrd. This usually causes the unsuspecting inquisitor to say, "What?" At this point there is no avoiding it, you must tell them.

"I'm going to Harvard Law School."

The most interesting response I have heard occurred in California. One of my more humble Harvard friends dreads telling strangers where he is going to law school. Why? When once forced to disclose his HLS status at a party in Irvine, the person who asked just walked away after learning the answer. That lesson was not lost on my friend. There is something just a little uncomfortable about the answer.

Unfortunately, the mumble is not always used by the humble. It can also be a device to bludgeon the unsuspecting. For those in the mood to impress, this exchange has been called "Dropping the H-Bomb." The medical school has seen fit to provide the most accurate description for this Harvard-wide dilemma: Preparation H. I will leave the reason for its accuracy to the reader's imagination.

Humility, being a virtue, should be encouraged. Thanks to opportunistic politicians like Pete Wilson, the country is debating the merits of the meritocracy. Often HLS, with its attendant affirmative action program, is used as an example of that meritocracy. As a

result, one could be fooled into believing that he or she "deserved" to be here. Wilson's tactics have also fooled some folks into believing that some people don't deserve to be here.

What many students here instinctively know is that luck was of great assistance in gaining admission to the Law School. The humble mumble is an acknowledgment of that irrefutable fact. From the luck of the cradle to the luck of the LSAT, the most that can be said about the student body is that we are fortunate to be here. Aside from the ugliness of the Gropius complex and the fact that Oliver Wendell Holmes has gone cable, this isn't the worst place to spend three years studying law.

Humility is usually in abundance for the 1Ls until the first semester grades come out. Then the grand

As we dine on sumptuous desserts we must remember how tasty the gingerbread house looked to Hansel and Gretel.

sorting of the law school begins. The year ends with the Law Review competition. Most people on the Review and HLS in general are humble-mumblers, but every once in a while, you'll cross the type of person who gives rise to the Preparation-H metaphor.

At a well attended party last year, I was introduced to a Yale Medical student by a member of the Review who was seven years my junior. As he put his arm around me he said, "This is my fellow BLSA member Markus, he's not on the Review, but he is a strong student here at the Law School."

Up until that time, I was under the impression that what I had been doing for the last seven years of my post-college life stood for a little more than that, but no matter. I share my pain for one purpose: Don't let this happen to you. We all have the ability to be humble

mumblers. We should get the fact that we should be

Between the resume and the interviews, we get so busy selling ourselves that we forget some of the more basic fundamentals like humility. Before you know it, the 1Ls will find themselves dining on the firm tab, eating at Chez-Too-Expensive and being treated like royalty. The 2Ls and 3Ls have come to expect it. But the fact that the cycle repeats itself, doesn't mean that we in any way deserve it. The dance has nothing to do with our actual worth as human beings. As we dine on sumptuous desserts we must remember how tasty the gingerbread house looked to Hansel and Gretel.

Royalty once held that their place in society was ordained by God. Prince Charles and all the fallible royals who preceded him, have disabused the world of that notion. The Episcopacy once rode roughshod over American politics and commerce. That era is thankfully coming to an end. If we were to go back in history and ask the members of any royal family or America's Episcopacy if they believed that they deserved their wealth and status, they would barely hesitate before answering in the affirmative. There isn't much good to be said about the French Revolution, but those French sure knew how to handle such arrogant rulers. Cake anyone?

That being said, welcome and welcome back to the Law School. The myth that this experience changes a person is perpetuated by people who allow themselves to be changed by this institution. We are all prone to use the mumble for good, but often times we can use the mumble maliciously. Let us endeavor to mumble with humility.

Besides, according to those pesky U.S. News people, we are now tied for second place with Stanford. Needless to say, Yale was again ranked number one. Yale Law has given us the current President and First Lady. Having been partially responsible for the current Administration, it is surprising that U.S. News still considers Yale number one. If we follow Sen. Strom Thurmond's reasoning, it might not be safe for people from Yale to visit certain parts of the country. It certainly isn't safe for them to visit this law school, where many students secretly lust after their position at Yale. Thanks to the Clintons, one wonders if there is a Yale mumble.



One-third of you have never read Fenno before. One-third of you have no idea who, or what, Fenno is. Pray, let me enlighten you:

Have you ever heard the unmistakable sound of a frozen margarita being blended in the very back row of your Torts section? That was Fenno.

Have you ever smelled the rank odor of a cheap cigar wafting down from the peanut gallery seats in Contracts? That was Fenno.

Have you ever seen Martha Minow sit on a whoopee cushion? That was Arthur Miller, but Fenno liked the idea. Fenno is Every Student. He is a perpetual 1.5L. He says and does what others only dream of saying and doing in public. Most students in his place would have been expelled for such brazenness decades ago — but most students don't have photos of certain tenured faculty members dressed up like Barney the Dinosaur, dancing in the lobby of a Motel 6 in Tuskegee, Alabama.

Fenno is not above a little blackmail. How do you think he got here in the first place?

Fenno hates no one, but pities everyone, because everyone else treats this loony bin as if it were all about law and politics. Fenno knows Harvard Law School is much more important than those things: Harvard is about The Good Life.

Harvard is about negotiating some middle road between the tree-hugging, snail darter-kissing liberals who feel guilty for being alive and the right-wing brownshirts who can't sleep at night because they have a lurking suspicion that somewhere, somehow, someone is having fun without them.

Fenno's motto is "Politics in moderation; vice in excess!"

Harvard is about playing strip pok-

er with students from the divinity school, drinking tequila shooters when the margarita mix runs out, skipping class, outlining from Emanuel's, and taking the puffed-up professors who hold court around here down a few notches.

Harvard is about knowing you'll eventually get a lousy job but be very, very rich — if you can just finish that third-year paper on time.

Fenno has seen new classes come and go for years, now. As much as the Admissions Office tries to "diversify" the classes, Fenno thinks they all look alike in one respect: They are always bright-eyed, ambitious, somewhat anal, but dedicated and intent on changing the world. Fenno is the token sluggard at HLS. If the school really wanted diversity, it would admit a few more bleary-eyed, flatulent, unfocused and apathetic ne'er-do-wells. Being the only one here for years has been quite a burden on Fenno.

So next time Larry Tribe is droning on about why he should be on the Supreme Court instead of Nino Scalia, and you hear the distinct clinking of a game of quarters going on behind you, consider turning around and joining the game; Fenno could use some company around here.

Quote of the Week

"I'm not giving another interview as long as I live. ... I'm just not talking to the press. As a judge, that's the way it's got to be."

— Prof. Charles Fried



Happy?

Upset?

Bored in Class?

Write to the
RECORD!!

Beware

By Calvin Gladney '97
RECORD Columnist



An open letter to the 1L's... remember these words as you grapple with your first year.

Dear 1L's,

Beware. Be sure. Believe.

BEWARE of those who tell you that everyone gets B's... Not only does that type of thinking limit your aspirations, it is simply untrue

BE SURE, however, to consider a B a possibility... Unless you're the next Nesson (you're not) transcripts bespectacled with all A's will become a memory

Nevertheless, BELIEVE, that you can receive A's... For regardless of whether you believe you can or believe you can't —

you're right

BEWARE, first year people of color, of those who doubt you and assume that you are an unqualified beneficiary of "affirmative action"... If negative stigmas don't apply to those helped by their parents' alumni status or financial contributions then they don't apply to you

BE SURE, however, to seek out friendships and alliances with people of all races at HLS... Understanding different opinions on everything from police stops to class outlining is critical to your success

Nevertheless, BELIEVE, that your perspective, uniquely composed of your experiences, has as much validity as anyone's... Your voice is sorely needed and its absence would be missed by all

1L's...

Remember to beware,

Make sure you're sure

and always believe

I wish you the best,

Calvin

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Experts Hash Over Issues

continued from PANELS, page 2

movement which still lies ahead.

Makau wa Mutua '87 rounded out the panel with a discussion of the promises of, and difficulties with, democratization for human rights. Mutua said the "liberal democracy is the model most suited to the realization of human rights ideals."

A corollary of this, he felt, was that for human rights to be effective, states must remain coherent and viable as political entities. This necessity, Mutua claimed, presents the greatest challenge for human rights in Africa.

"The states we see in Africa are not nations but rather collections of nations with no single national consciousness." Without such unification, Mutua said, ruling elites find it difficult to articulate human rights positions with broad support and face derailment by internal national groups pursuing their own interests.

In such situations, Mutua continued, the determinate factor would be whether the sub-groups would allow a greater national consciousness to develop and sustain a viable state capable of protecting human rights.

Saying that "people cannot be forced to live together, they must choose to live together," Mutua said the challenge for the future of human rights in Africa is convincing different groups to trust each other and accept unity.

Technology Creates New Conflicts

Predictions about the transformative power of the Internet in the law butted heads with warnings about the limitations of cyberspace at the panel, "Law and Lawyers in a Digital World."

As part of the Capital Campaign Victory Celebration, University of Massachusetts at Amherst Prof. Ethan Katsh; Samuel Butler '54, presiding partner at Cravath, Swaine & Moore; and Prof. Howell Jackson '82 debated the merits of using the Internet in the legal practice.

Katsh, who is the author of "Law in a Digital World," noted the transformations in law that the computer has already brought.

"Technology is on everyone's agenda not simply because of economic costs but because there is a sense that a computer is not just a toaster with pictures," said Katsh. "The established patterns of how we work is being shaken."

An increasingly computerized world changes "who we will be linked to and the kind of informational tasks" lawyers handle, he said.

"We need to ask what kinds of new working relationships will be formed when distance is removed as a constraining factor."

In addition, the fluidity of information creates new conflicts that lawyers need to understand, said Katsh. "What conflicts will arise when new professional contacts are made, and how do we maintain the value of physical spaces while those spaces are being made obsolete?"

"As lawyers, we have experience in working with conflict and disputes, and increased digitalization represents an opportunity for the profession."

However, Butler warned against embracing the Internet into the legal profession as quickly. In addition to the unreliability of research on the Internet, "we are extremely concerned with security, confidentiality, and privilege," Butler said.

"I disagree with Katsh's proposal that law is an information-based profession," he said. "My practice of large-scale mergers and acquisitions is not information-based. You have information, but it's what you do with it that matters."

"For most of both national and international Wall Street legal practice, it's not clear that getting information is what drives our practice," said Butler. "Given the scope of information that we handle, the skills that our lawyers need is not going to be provided by cyberspace. What we bring to that information is judgment and experience in applying skills of negotiating, understanding client's goals and needs as well as those on the other side. Precedents, experience, body English, and talking face-

to-face — these qualities a computer cannot give you."

Jackson noted that increasing use of the Internet could not change fundamental dynamics of teaching law in the classroom. "The global classroom is not very plausible because our business is training students in a personal way. Our message gets diluted if it is just broadcast all over the Net," said Jackson.

"But the relationship of the Law School with the outside world can be improved through the Internet. A critical problem right now is the gap between the legal practice and the academic realm, which is what the Internet can help solve."

About 100 people attended the panel last Friday.

Law and the International Scene

Reliance on the law and international authority to solve all international problems may be misplaced, according to panelists at a program entitled "Regulating the Transnational Economy: Competition, Cooperation, and Litigation" held on Saturday in Hauser Hall.

"To be effective lawyers [in dealing with international intellectual property disputes] is not to know how to use the law but when to use it and when to combine it with other social forces," said panelist Prof. William P. Alford '77, who heads the East Asian Legal Studies Program at the Law School and is a leading expert on Chinese law.

The panel, attended by approximately 60 students and alumni, addressed the current state of regulation of intellectual property, antitrust, and environmental issues within the international community. The program was moderated by Anne-Marie Slaughter '85.

According to panelist and 7th Circuit Court of Appeals Judge Diane Wood, who formerly served as the U.S. deputy attorney general for antitrust, there are pros and cons to taking the U.S. approach of regulating "competition law," as antitrust is termed in international circles, on a national level. Among the benefits she listed were the fact that only 53 countries have any form of antitrust law, that each country has different cultural norms regarding whether competition is a desirable goal, and that each country may have different views as to how to achieve economic prosperity.

On the other hand, she noted that regulation on a purely national level would increase transaction and diplomatic costs, increase the risk of creating uneven playing fields for international trade, and increase the potential of protection of national cartels.

Richard Stewart '66, a former HLS professor currently teaching at NYU, echoed the tension between dealing with potentially international issues nationally rather than internationally, recognized that while many environmental problems are not global ones, they are bound with international concerns. "What one nation does affects all," he said. "If there are no assurances that other countries will take similar steps [to prevent or solve environmental problems], then no one will act, and we will have the tragedy of the commons."

Stewart stated, however, that reliance on legal avenues to address the environmental problems of the future may be a mistake. "As the U.S. interacts with the international community," he said, "we will have to rethink our legalistic approach."

Alford followed Stewart's lead and suggested that in dealing with intellectual property disputes in the post-Cold War world, the U.S. should not adhere to its belief that wholesale adoption of its laws in this field is a panacea. Rather, he challenged the United States' tendency to act unilaterally and not embrace the "new world order," recommending that it set a better example by looking to settle disputes through international legal mechanisms. "We have to remember that what is in our benefit is not necessarily in the benefit of others," he said.

Slaughter noted, however, that U.S. courts have recently attempted to apply U.S. laws, especially in the environmental sector, equally to U.S.-based and foreign companies.

Dear First Year Student:

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After Work

By Matthew Huggins '96

RECORD Columnist



So, a whole summer gone, and I'm still searching for the perfect law-school metaphor. Hmm. Seeing all the 1Ls has got me all nostalgic, and has made me think back to a morning during first year...

It was September of 1993, I was sitting at a table in the Hark at 7:45 a.m., listening to Prof. Rosenberg as he held court, er, office hours before torts class. That was back when upstairs at the Hark had good muffins. So I was eating a muffin, listening to Professor Rosenberg's Joycean stream-of-consciousness monologue about net unequal beneficiaries (those would be local losers to you and me), punctuated with an occasional mantra-like chant of 24-hours-a-day! 24-hours-a-day! Hmm, I thought. When would I get to eat my muffin?

So, this summer, people at the law firm where I was working would say, "Hey" (they always started with "Hey"). "Hey, do you want to go running after work?" Hmm, I'd think. What does this phrase "after work" mean, in the context of working at a big law firm? Does it mean at 6 p.m.? Give me a break. Does it mean "after I finish everything I have to do?" Why, then "after work" might mean "never." Hmm. Sounds kind of like 24-hours-a-day.

And then one day ... it struck me how life in the law is just what Rosenberg said it is – 24-hours-a-day. You're never done, you never finish, there is no "after work." It's always there, waiting for you. It's like riding: when you're tired, you take a little pause, have a drink of water, and keep going.

So, I was riding my bike, which is the other thing I did this summer when I wasn't working or running after work, whatever that means. (Is it just me, or is "whatever that means" Justice Scalia's favorite phrase? Or does he just use it when he wants to make fun of whichever five justices happen to be on the other side on a given day?) I rode up hills and down hills, and I rode east, and I rode west. When I got tired and sweaty, I drank some water and kept riding. After a while, I had this rhythm. I just rode and rode and rode and rode and rode. I just worked and worked and worked and worked and ran. And worked and ran and rode. And worked and ran and rode. And so on.

And then one day, as I was chugging up that little hill that leads up from the reflecting pool to the Washington Monument, which isn't really much of a hill at all but sometimes seems bigger than it is, depending on how far you've run and how tired you are, it struck me how life in the law is just what Rosenberg said it is – 24-hours-a-day. You're never done, you never finish, there is no "after work." It's always there, waiting for you. It's like riding: when you're tired, you take a little pause, have a drink of water, and keep going. (Unless you're Sen. Packwood, in which case it seems you have a drink of gin, assault one of your secretaries, and then keep going). It's like running "after work," when you know that the phrase is meaningless. So you go running anyway, because it's clear that since work is not the limiting factor (it will be there whether you run or not), then the setting sun is, so you'd better go before it gets dark.

Now, there are two ways to look at this phenomenon of law going on 24-hours-a-day. One is that the glass is half-empty, and one is that the glass is half-full. The half-empty glass is the one that's full of terror about having gotten ourselves into a profession where we only have hard work to look forward to, where an evening off will seem like a week's vacation, and we won't have any friends who aren't lawyers, because lawyers will be the only people we ever see. The half-full glass is the one that's full of a Zen-like peace, because we have found a profession that is interesting, intellectually challenging, constantly developing, and one from which we can take a break confidently and happily, because the work will always be there when we get back.

As if to confirm everything I thought about working and cycling and running "after work," I saw the most perfect thing Monday morning as I was walking to class. I swear I am not making this up. Rosenberg was running, maybe even sprinting, full speed across Holmes Field at about 8:25, grasping notes in one hand, his tie flapping furiously about his corduroy suit. Wow. If he can run after work, even if that happens to be first thing in the morning, then so can we.

So, next time someone asks you if you want to run after work, you can say "Who do you think I am, Prof. Rosenberg? Anyway, I just bought a muffin..."

Lewis '68 Recognized at Dedication of ILS



Gus Friedman/Photo Courtesy of HLS Communications Department

A portrait of Reginald Lewis '68 was unveiled at the Lewis International Legal Studies building on Friday afternoon as part of the Campaign for Harvard Law School victory celebrations. "The dedication of the ILS building and the unveiling of his portrait is like the culmination of [Lewis'] dream," said Loida Lewis, widow of Reginald Lewis and current CEO of Beatrice International. "He had reached an economic height and fulfilled the most he could in his professional life. To be recognized in this way at a premier university in the United States is to be recognized by the whole world," she said.

Where do you find the time to...

*run to the prof's office,
dash to study group,
dig through the library,
assemble quotes,
annotate class material,
search & research,
get that note to prof,
brief cases,
find cites,
see if Susan knows,
outline it,
write it, print it,
cut and paste,
copy, collate, assemble...*

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Fried Appointed to SJC

continued from **FRIED**, page 1

professor at the Law School but will continue to teach his fall Constitutional Law course as a lecturer. In light of the time constraints of his new position, the course has been rescheduled from its usual morning time block to evenings on Monday, Tuesday and Wednesday. Fried has also decided that he will not offer his seminar in Advanced Constitutional Law in the spring, though Clark said that he and the associate deans would be meeting soon to find a professor to teach the course in his stead.

Clark expects that Fried will continue to teach at the Law School as a lecturer in future semesters. "I don't intend to sever the relationship," Clark said. "We've talked about [Fried continuing to teach] at great length, and I think we can work it out."

Clark added that while "we have a good line-up of constitutional law professors — the best in the world," he may look into hiring a new constitutional law professor in order to build up the Law School's offerings in advanced constitutional law.

An Arduous Process

Fried's confirmation became a politically-charged issue when a number of advocates of civil rights, poor, and tenants groups, came out in opposition to Fried's serving on the SJC. Twenty witnesses appeared before the council either as individuals or as representatives of various organizations to testify against Fried regarding his temperament, his

views on civil rights and abortion rights, and other issues.

"On the merits of the question of whether this nominee should be on the SJC, they [the Weld administration] were losing," said John Bonifaz '92, who was among those opposing Fried's confirmation. Bonifaz testified at the hearings regarding Fried's reactions to a student sit-in in his office protesting the lack of faculty diversity at HLS. Bonifaz said he also testified that there were tenured HLS professors who did not support Fried's confirmation but were not expressing their views publicly out of deference to their colleague.

Many members of Harvard's faculty and administration did openly support Fried's candidacy, including Harvard University President Neil Rudenstine and HLS Profs. Randall Kennedy and Phillip Heymann '60, who appeared as witnesses on Fried's behalf at the hearings.

"I testified in favor of him," said Heymann. "I think he is a very brilliant lawyer, and he will write extremely distinguished opinions. He's obviously conservative, but I think he's somewhere in the middle range, sort of moderately conservative the way you can be moderately liberal."

Heymann said Fried believes courts should be restrained in judging cases, and would apply that principle across the board.

Critics have also condemned Weld for nominating a white male to a court which has had no people of color and only one woman in its 303-year history.

Legal Educations Criticized

continued from **JUSTICES**, page 1

School and Dean Clark '72. The program was sponsored by the American College of Trial Lawyers.

Kennedy noted that past exchanges inspired the institution of more than 150 American Inns of Court patterned on the English model. Established during the past 15 years, these organizations are designed to promote excellence in trial practice and mentorship of young lawyers by more experienced attorneys.

"This has been one of the most exciting, positive developments in the legal profession in the last 20 years, and it came out of this exchange," Kennedy said.

The Right Honourable Sir Thomas Bingham, Master of the Rolls at London's Royal Courts of Justice and chairman of the United Kingdom delegation, said English legal education is "distinctly different" from the American system.

"We do not, as you do, treat legal education as a post-graduate thing," said Bingham. "It can be done as a first degree, and we make it possible for people to do a first degree in a subject other than law and then take a crash course and qualify as lawyers."

Despite the different structures of American and English education, Bingham said, similar changes have affected both countries' legal education and practice. England, however, lags five to 10 years behind U.S. trends, he said.

"The downside is that, as in the United States, law has become much more commercial [in England]," said Bingham. "People are much more worried about costs per hour and billing the client for as much as they need to keep the firm afloat because it's all got more expensive and the economic pressures have got very intense."

Clark listed other new developments which have dramatically changed both British and American legal education over the past 35 years. First, he said, "a vast increase in applications" resulted in "top-end selectivity at the most popular schools."

Second, law schools now offer a greater range of courses than in the past, he said.

Third, Clark said, the weight now given to scholarship and legal theory means that "no longer can a professor just know the rules and be able to argue from them. This shift in emphasis has brought great scholars, but not necessarily great teachers, onto law school faculties."

Clinical studies have blossomed, as well as the number of international and comparative law studies, Clark also said.

Finally, Clark said, the post-World War II generation has subtly shifted career paths. Clark noted, for example, that in 1970, 20 percent of American law school graduates took government jobs. Now, only 5 percent choose this route, he said.

Kennedy and Bingham said ethics was not taught when they were in law school. Instead, they said, young attorneys were expected to learn ethics from their colleagues "by osmosis."

"We were asking the dean about teaching ethics," Kennedy said. "But it's hard to teach ethics if you're not sure what your ethic is." He said HLS chose not to provide a course in ethics when he studied here because "they were concerned it might become a course in how close you could come to the line."

"But there are some rudimentary principles," Kennedy said, "such as the idea of civility, decorous conduct, decent behavior, and tolerance of views that may be an anathema to you, that have a root and a morality which underlies the whole idea of the rule of law."

Kennedy added that American legal education and practice has become more inclusive over the past 40 years. "When I was at this school," he said, "there were five women in my class. We were an old boy network, which actually had certain systemic advantages — the profession could discipline itself in a way."

"But," he said, "the ethic was self-serving, and it had to change to become a more open profession, more of a meritocracy and more tolerant."

"When *Brown v. Board of Education* was decided in 1954," Kennedy said, "we thought discrimination was over. Well, we simply happened to forget about women. And we also overemphasized how easy it would be to incorporate racial minorities in our profession."

THE REASONABLE WOMAN

Affirmative Action is A Women's Issue

By Shannon Liss '96

RECORD Columnist



IN the passion of the debate over affirmative action in this country today, many people gloss over the fact that the purpose of this institution is intended to help people of color and women of all races gain a leg up in the workplace. Affirmative action has become such a racially charged issue that discussion of it is essentially a code symbol for arguments about race.

But if affirmative action goes down, women as a group also have much to lose. The current campaign against affirmative action is of course a backlash against the gains of the civil rights movement. Yet what often gets lost is the issue's impact on women. It is striking that last week's panel discussion at the Harvard Capital Campaign Celebration on the subject of affirmative action was made up of three men. (Of course, if there were a larger batch of women professors at the law school to draw from, maybe this would not have been a problem).

The backlash against people of color is a backlash against all historically oppressed groups. And the fact is, according to a report issued this summer by the Fund for the Feminist Majority, that women have benefited most from affirmative action programs over the last two decades. If affirmative action is eliminated, women of color are doubly hurt.

The separation between equal protection analysis for people of color and women has created a strange legal twist. After the *Adarand* setback this summer, affirmative action on the basis of race, even for federal programs, is now subject to the same standard of review as all other distinctions based on race, strict scrutiny. Yet gender distinctions, in the Supreme Court's wisdom, are only subject to a lower, "intermediate" standard of scrutiny. Check out *Associated General Contractors v. San Francisco*, a 9th Circuit opinion which said that the reverse of invidious discrimination for women, affirmative action, should also get only intermediate scrutiny. This holding means, ironically, that even though women as a group are less deserving of special constitutional protection than are people of color, it will be easier, under the law, to justify maintaining affirmative action programs to help women than to help people of color.

Of course this makes no sense. But what is the reality? This fluky doctrinal development does not mean that women are going to be able to hold on to affirmative action programs designed especially for them just because it will be easier to justify them in court than it will be for programs designed especially for people of color. When affirmative action programs for people of color go, all affirmative action programs go. Developers of these programs are not going to hold onto them out of the goodness of their hearts, just because the courts say they can. And they should not. Politically, that would be a mistake. It would be unfair. One group's loss is not, and should not be, another's gain.

In order to even things out a bit for analysis of distinctions based on color and distinctions based on sex, another court has gone the other way. Strangely enough, in *Conlin v. Blanchard*, the 6th Circuit has said, sure you women only get intermediate scrutiny when it's a question of invidious discrimination. But since racial minorities get strict scrutiny, we'll also give you strict scrutiny when it comes to "reverse discrimination" (affirmative action) suits. In other words, this court has made it easy to justify discriminating against women, but hard to justify giving women a leg up when needed to remedy past discrimination.

Neither decision seems right. The problem is with *Adarand* and its precursor, *Croson*. There would be no disparity to rectify between the categories of "people of color" and "women" if affirmative action were simply not subject to strict scrutiny.

From the silver lining department, affirmative action is exactly the kind of issue that could reinvigorate the women's movement by bringing women of color and white women together. It is an ideal issue to bring women from different races together because here it should be obvious how our struggle is interconnected. I was glad to be working this summer for a multi-cultural women's rights organization that recognized this fact. Equal Rights Advocates put much of its other work on hold this summer to deal with the affirmative action fiasco in California. In part because of my work for ERA, I was in the room when the U.C. Regents began to take their infamous vote this summer to abolish affirmative action throughout the University of California. I am proud to say I was one of the protesters who, temporarily at least, shut the meeting down.

Here's what happened. At one particularly tense moment during the debate, one woman in the back of the room began shouting, "You're voting for racism!" Instead of trying to quiet her down, or remove her from the room, one regent asked that the meeting hall be cleared. The audience instinctively cried out, "No!" Jesse Jackson and others stood up in silent defiance and raised their fists. At this point, Wilson and his cronies raced out of the room. For a moment, most of the 100 or so of us sat there, stunned. Then a few at a time, we began to rise, and after most of the regents had already left the room, we joined hands and began to sing "We Shall Overcome." The regents reconvened upstairs. The student representative on the board of regents reported that the regents' legal counsel said loudly, standing just a few feet away from Wilson, that the board would not be in compliance with the law if they continued their meeting there. Ignoring his advice, Wilson announced that he wanted to take that vote now.

I digress not just to fill you in on "what I did over my summer vacation," but to let you know something you may not have gotten from the news reports: Pete Wilson may have broken the law when he ended affirmative action in the U.C. system. By running out of the room and continuing the vote upstairs, without anyone first trying to bring the room to order or even make an announcement warning us that the meeting was going to be moved, he may have violated the open meeting law governing the Board of Regents.

The debate on affirmative action must be open and must include women. Yes, there are different questions that need to be asked when considering affirmative action for women as a group and for people of color. For example, women must be wary of being placed on a pedestal, which throughout history has locked us out of opportunities. In contrast, no one has ever argued that exclusion of and discrimination against people of color was for their own good.

Although the arguments may differ in some ways, we must not forget that affirmative action is one of the most fundamental issues affecting women right now. At least the debate over affirmative action has stirred some thoughtful dialogue on the state of unequal opportunity for disadvantaged groups in this country. Let's make sure women are included in the discussion.

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