



Class Marshals: All Men, Again

By Katrina Randolph

The Class of 1996, like its immediate predecessor, will see only men leading its school-year-long pep rally.

Eulas Boyd '96, Dave Aronberg '96, Scott Goodreau '96 and Tim Elliott '96 have emerged as victors in the class marshal elections. They were elected from a pool of 14 candidates for the positions. Five of the 14 were women.

"I ran because I think so many of our class members have sort of a down attitude about life here," said Boyd. "And I wanted my last year as a student to reflect my appreciation of student life."

Boyd, with 111 votes, has been named first marshal. The others — Aronberg (101 votes), Goodreau (94 votes) and Elliott (80 votes) — have been named second marshal, third marshal and fourth marshal, respectively. Of the approximately 550 3Ls, 259 voted. That is about one-third fewer than last year's 373 voters.

Class marshals assume several responsibilities during the school year and beyond. They choose the Class Day speaker, plan social and fundraising activities for the year and coordinate graduation events. In addition, they become the alumni representatives upon graduation and help coordinate future alumni events for the class. Usually, the first marshal

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French Nuclear Testing Provokes Wine Boycott at HLS

By Paul Sinclair

An international campaign to boycott French wine in protest of French nuclear weapons testing has provoked action at the Law School.

The boycott at HLS is the brainchild of Prof. Morton Horwitz '67, who said he was inspired by similar campaigns in Japan.

"I was in Japan during the three weeks leading up to the Hiroshima anniversary," he said. "The French announced the tests oblivious to the 50th anniversary. Their decision led to lots of coverage in Japan which I followed. I came to the conclusion that [French nuclear testing] was totally unjustifiable. The boycott is a sacrifice — I am a passionate



Raquel Aldana '97 (far left) peruses the WLA's guide to law firms in anticipation of buying a copy from Wendy Harlan '96 (center) and Sasha Smith '96 (right).

WLA Guide Reflects Women's Views on Firms

By Tara Dawood

Despite an attorney response rate of 15 percent and broken promises for funds, "Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms," sold out on its first day of sale.

"The fact that we sold out the first day reflects a lack of information on these issues and reflects a great student interest in gathering this information," said Lisa Westfall '96, who co-edited the guide with Suzanne Nossel '96. "It shows that students have a strong interest in knowing what life is like for women at these law firms. It shows this information is otherwise unavailable from other

sources such as 'The Insider's Guide to Law Firms' or 'The Employer Directory,'" Westfall said.

"Presumed Equal," published by the HLS Women's Law Association, went on sale Oct. 5. It summarizes the results of two-page surveys sent out to female attorneys in early July requesting their opinions on matters ranging from advancement to balancing work and family. It features comments from attorneys at 57 firms. Approximately 500 of 3,500 surveys were returned.

"I can't guarantee accuracy, but this is what women reported to us," said Nossel. "Readers should filter the information contained in this publication

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Budget Cuts Force Review of Legal Services Programs

By Josh Strathman

In the face of anticipated congressional budget cuts to the Legal Services Corp., area legal services centers are developing strategies to maintain their programs, while HLS clinical programs are evaluating the impact upon their course offerings.

Although the cuts to the Legal Services Corp., the federal agency that funds legal aid clinics serving the poor, will be about 24 percent, the reductions hitting various regional aid centers will vary considerably. Robert Sable, executive director of Greater Boston Legal Services, predicts that the funding his office receives from the Legal Services Corp. will shrink by 42 percent. He also foresees a cut of about 55 percent for Cambridge and Somerville Legal Services, Inc.

Jeanne Charn, acting director of clinical programs at the Law School, explained that HLS's only direct link to the proposed cuts is a contract with Greater Boston Legal Services, under which the latter provides financial support to the Hale and Dorr Legal Services Center. Because the amount of support provided under the contract varies with changes in Greater Boston Legal Services' major funding sources, clinical programs at that site are "going to feel the effect," Charn said.

However, because "the program values the services provided by Harvard Law School students," Charn said, Greater Boston Legal Services is cooperating in an effort to maintain its support of students' clinical work. Charn noted that because the

clinical programs "get a lot of support from the Law School," the moderate funding cuts would probably be covered from within the Law School's budget.

Charn explained that while Greater Boston Legal Services contributed roughly \$270,000 to the clinical program, the funding from within the Law School amounted to approximately \$1.5 million. Because of this, she said, there is "no crisis facing the clinical programs right now," despite significant cuts to Legal Services. Both Charn and Sable noted that, ironically, the students in clinicals may benefit from the reductions.

"To the extent that the students provide basic first line representation, the desire to have them will be greater than it has been," said Sable.

Charn noted that the cuts could lead to a shortage in services out of some centers, but viewed this as an opportunity for the clinical programs to "step up and see if we can do more to meet the need."

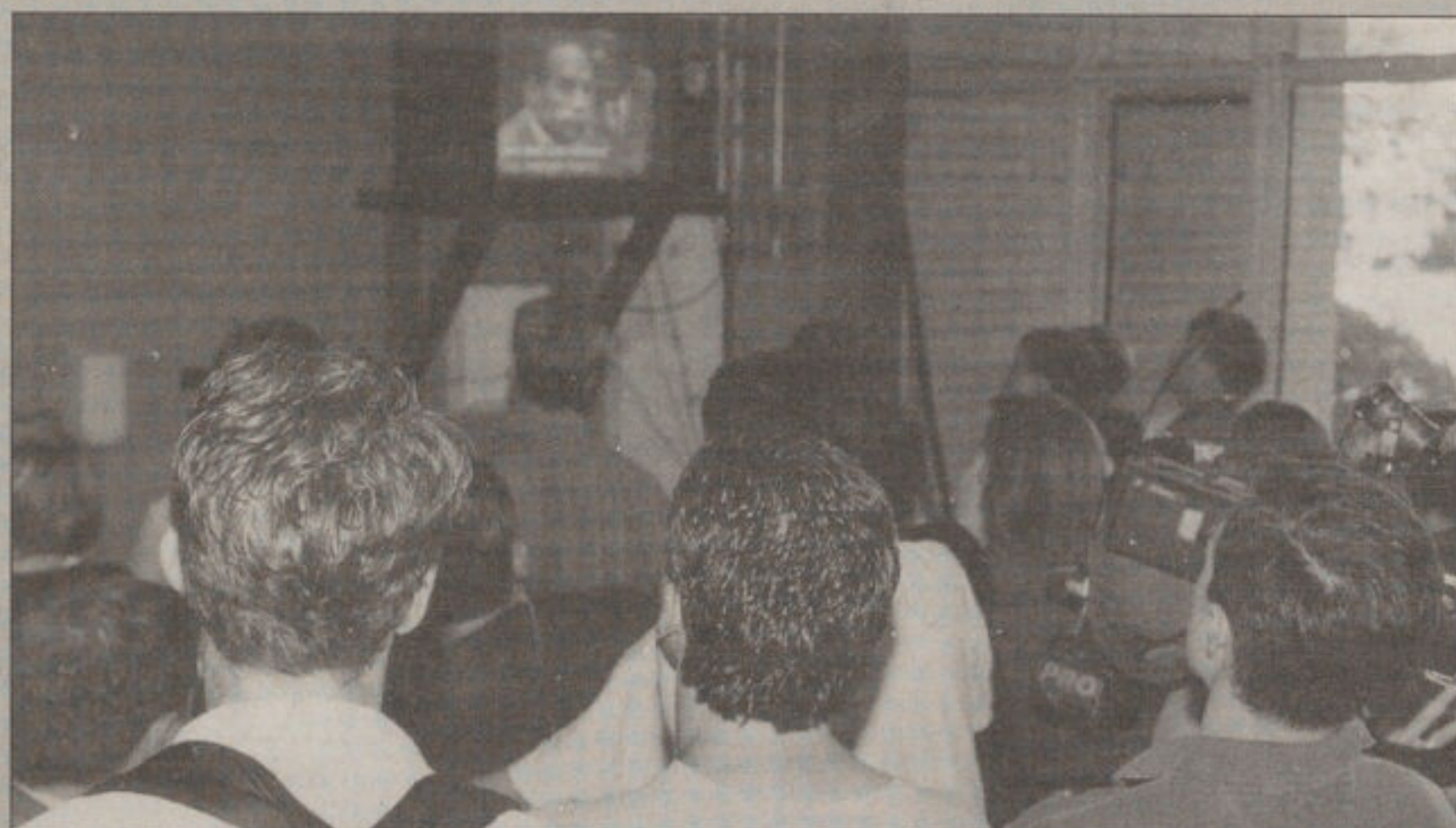
Sable also said he doubts that the funding cuts will be detrimental to students' supervision and training for clinical work, as this is largely provided by the Law School and thus does not rely on the financial support of his office.

The group that will suffer as a result of the cuts, Sable said, will be the poor who depend on such programs for access to legal representation.

Victoria Read, a clinical instructor at the Hale and Dorr Legal Services Center, said some of the clinical programs in the

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All Eyes on O.J.



As hundreds of Law School students packed the Hark to hear the verdict in the Simpson trial, television cameras from local stations were on hand to capture their reactions. Students' views on the verdict were mixed, with some cheering the acquittal and others decrying the jury's decision. HLS had been connected to the trial from the beginning, as members of the Class of 1997 submitted memos to Judge Lance Ito and Prof. Alan Dershowitz served on Simpson's "Dream Team." For a discussion with Prof. Dershowitz about his previous plans to appeal a guilty verdict, see story on page 3.



Prof. Spak received his master of laws degree from Northwestern University School of Law, where he was a Ford Foundation Fellow, and his bachelor's and law degrees from DePaul University, where he served as associate editor of the *DePaul Law Review*. He was professor of law at DePaul University from 1969 to 1974 and joined Chicago-Kent as a professor in 1974. He has been a national lecturer for BAR/BRI for more than 20 years.

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Dershowitz Describes Back-up Simpson Appeal Plans

By Justin Weiss

You're bored by bloody gloves, fed up with Fuhrman, and jaded by juror interviews. But for Harvard Law Prof. Alan Dershowitz, the Simpson trial still hasn't lost its appeal.

Dershowitz, perhaps the nation's foremost criminal appellate lawyer and a member of O.J.'s legal "Dream Team," has monitored the case closely since last June. In an interview with the Harvard Law RECORD, he discussed the trial, his contributions to the defense, and, specifically, the avenues of appeal he had been ready to pursue.

Q. As an appellate lawyer, what effect did you have on the trial?

A. The first thing we did in the case, which may have been the single most important legal victory, was I suggested that we immediately move to dismiss the indictment, the grand jury, which is secret and favorable to the prosecution. We wanted to go by way of preliminary hearing. And so we prepared a motion to dismiss the grand jury.

But you are an appellate lawyer.

I'm both an appellate lawyer and a trial strategist. And the two relate, one to the other. Because a lot of the issues of trial strategy, if we lose, eventually are appellate issues.

You're laying the foundation for appeal?

Laying the foundation for appeal, but also trying to help at the trial. I was hired in this case to be the constitutional strategist and also the appellate strategist. In a case like this, I much prefer to get involved in cases at the earliest stage. In fact, I don't think I've ever lost a case that I've been involved in from day one. Because if you can help shape the litigation strategy and help frame the appeal issues from the very beginning, then you really have some control over the situation. Normally I'm brought into a case after the conviction, and I have no control.

Avenues of Appeal

At the time the verdict was read, how many avenues of appeal had you laid out and considered?

Oh, about 25. But that's not the way appellate briefs are written. You start out with 25, and then you cull them down, and figure out how to relate one to another, and you come up with a couple of big, broad themes. And I would say the big, broad themes in the case come down to the following:

Search and Seizure

I guess we start with the search and

seizure. Here you have a situation where the two judges believed — and I put "believed" in quotation marks — believed the testimony of police officers that they never suspected Simpson, even after learning that he had been previously arrested. As Vannatter put it, "I no more suspected Simpson of these murders than I did Bob Shapiro." That doesn't pass the giggle test. That's plainly perjurious. And we were gonna focus hard on the illegality of the search and seizure, of the climbing over the fence.

No exigent circumstances?

There were no exigent circumstances that would have justified [a search], and they didn't claim exigent circumstances. You can't after the fact impose a new theory to justify [a search]. They didn't claim exigent circumstances. If they had claimed exigent circumstances, they would have had to justify why they didn't call EMTs, why they didn't call backup. They claimed beneficent purposes. Just to notify. And they needed four cops to come and notify him, including one who was taken off the case, Fuhrman.

there's no chain of custody? The judge allowed the prosecution not to call Peratis in the case in chief, and Peratis was healthy and well, and could have been called as a live witness subject to cross-examination. So the defense said, if the prosecution won't call him, we'll call him. By the time it came to the defense to call him, he was sick. He was unavailable. So, we instead put on his cross-examination, under oath, preliminary hearing testimony, in which he said 8 cc's. The prosecution, in their rebuttal case, instead of calling Peratis, did the following: they just went to his home, with a video camera. Without putting him under oath. Without notifying the defense. Without giving us an opportunity to subject him to cross-examination. And they, quote, schmoozed with him. They just schmoozed with him on videotape. And they said, "Did you really take 8 cc's," and he said, "Well, now that I think about it, it could've been 6.5." And that testimony, unsworn, un-cross-examined, was allowed in! The judge said it wasn't allowed in for its truth. It was allowed in

Americans. And I thought it was an extremely paternalistic ruling. He didn't believe the jury had the capacity to separate out the relevance from prejudice. And I think the jurors were misled, and the jurors afterwards essentially confirmed that they were misled. First of all, the issue came in largely not on racism, but largely on two other points: one, perjury. That is, if he says, "I haven't used the 'N word' in 10 years," and you admit two excerpts that are relatively neutral — it could have been Richard Pryor in a comedy routine — seven years ago, the jury could easily say to itself, "Gee, if that's what he said seven years ago, he might have forgotten when he was asked. The jury might come to the conclusion he was wrong, but not committing perjury."

That's why the judge was wrong about that. Number one, the judge didn't let in very relevant excerpts dealing with what his attitude was toward the oath, that he thought it was important for police to commit perjury, that he berated a partner of his who wouldn't lie for him and wouldn't cover up, and that he had previously tampered with evidence.

Fuhrman's Fifth

Now, we move to a separate issue. We wanted to continue the cross-examination. He pleads the Fifth. There are several things wrong with that. First of all, he may have waived his [right to plead the] Fifth if he testified, so it may have been an improper invocation of the Fifth. If it was a proper invocation of the Fifth, the previous incriminating testimony against O.J. should have been struck under the Sixth Amendment since we had no opportunity to confront him.

Number two, even if he didn't waive it, taking the Fifth on a question relevant to cross-examination generally results in a striking of the direct testimony given on that subject. [But] the judge refused to strike. The judge let him take the Fifth. And he let him take the Fifth out of the presence of the jury. Now this was the most serious misconception. In a civil case, that fact [of taking the Fifth] could be used against him. The only time you can't use the Fifth against somebody is when he is a defendant in a criminal case. When a person takes the Fifth, the United States Supreme Court has said that's relevant. And a fortiori, if a witness takes the Fifth after testifying, it's relevant for the jury to know that. And the jury should have known that he took the Fifth; the jury should have known that he didn't complete his cross-exami-

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And the jury should have known that [Mark Fuhrman] took the Fifth; the jury should have known that he didn't complete his cross-examination; and in this case, we got nothing.

Previously taken off the case. And then, the failure of the judge to reconsider that decision on the basis of the Fuhrman tapes, after Fuhrman disclosed on the tapes that he had perjured himself previously, that he believed in perjury.

The Peratis Videotape

Another big issue was the Thano Peratis videotape. Thano Peratis is the police nurse. He testified in the preliminary hearing that he took 8 cc's [cubic centiliters] of blood from O.J. Simpson. That becomes a crucial link in the defense case, that he took 8 cc's and he could only account for 6.5. And the other 1.5 could be accounted for if it were later, much later, put on the fence and put on the gate and put on the socks. So the fact that he took 8 cc's was crucial.

The defense asked the prosecution, demanded that the prosecution call him as a witness in the chain of custody. Otherwise, how do you explain blood, if

only to rebut the previous testimony, under oath. First day law school, that's not proper. I mean, if a student wrote that on his exam for me, I'd tell him he's probably in the wrong profession.

What was Judge Ito thinking?

That begs the question. Was Judge Ito thinking? I don't see how you could be thinking and allow that to come in. So that was a big appellate issue, and I can't imagine any appellate court not agreeing with us on that one. They conceivably could have found harmless error, but you just had to agree with us on that one. There's just no way you can allow in a schmoozing videotape of that kind.

The Fuhrman Tapes

Next, the entire manner by which Judge Ito dealt with the Fuhrman tapes. Number one, allowing in two neutral, the least inflammatory excerpts, which were uncharacteristic. They were not typical of the way he spoke about African

HLS Students to Attend "Million Man March"

By Hope Yen

Several HLS students plan to join hundreds of thousands others converging on Washington, D.C. for Monday's "Million Man March," a black-men-only rally organized by Nation of Islam leader Louis Farrakhan and former NAACP head Benjamin Chavis for the stated purpose of building black solidarity and self-reliance.

If there is enough interest, the Black Law Students Association will be coordinating a trip to the nation's capital to recognize what Farrakhan called a "day of atonement" for African-American men, said Bob Curry '96, who chairs the BLSA political action committee.

"We only want to organize something if people want to go," he said. "We're also thinking about doing something for the BLSA members on campus who can't make the Million Man March. We may have some program here along the same lines dealing with atonement, and a discussion of the issues surrounding the march."

Curry said any campus activity planned by BLSA will not encourage stu-

dents to skip class for the day. Farrakhan has been calling on those who can't attend the march to take the day off and abstain from labor and commercial activity as a part of the "day of atonement."

BLSA Vice President Joseph Clark '97 said he hopes to attend the event with about a dozen students from the Law School and the Divinity School to help "begin the dialogue" in encouraging self-responsibility.

"As black men, to a large extent we have basically failed to live up to some obligation or commitment to our communities," said Clark, who will not be attending the march as a representative of BLSA. "We see the evidence by virtue of the fact that one-third of all black men every day of the year are under supervision of the criminal justice system, and by the fact that there is a disproportionately small number of black men who are now taking responsibility for their families. The evidence is also present in just the pervasiveness of crime in our community."

Clark was referring to a recent

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Out in Force



Lambda members protest Sidley & Austin outside the Inn at Harvard on Monday. The group opposes Sidley's representation of the State of Colorado in *Romer v. Evans*, a case challenging an amendment to the state constitution which prohibits recognition of sexual orientation as a protected status. Some protesters signed up for interviews with Sidley in order to prevent other students from interviewing with the firm.

RECORD Photo / Cheryl Hudson

BRIEFS



University President Rudenstine Earns Less Than Median Salary for Position

Neil L. Rudenstine, president of Harvard University, earned \$278,297 in pay and benefits in fiscal year 1993-94, a figure below the median salary of \$295,140 for research university presidents and less than half that of Boston University President John R. Silber, whose salary of \$564,020 is the highest university president salary in the nation.

The Chronicle of Higher Education obtained the latest IRS Form 990 for each of 477 private colleges. These forms are required of non-profit groups and are often the only public information available on non-profit organizations' financial affairs.

The pay of college presidents and other executives of non-profit institutions is the subject of several pieces of legislation currently being proposed. Rep. Fortney (Pete) Stark, D-Calif., and Rep. Amo Houghton, R-N.Y., introduced a bill in September that would allow the IRS to impose heavy fines on officials of tax-exempt groups who profit improperly or excessively from their organizations. President Clinton has recently proposed similar measures.

Harvard Professor Captures Nobel Prize In Literature

The Nobel Committee has awarded Irish poet and essayist Seamus Heaney the 1995 Nobel Prize in literature. Heaney, the Boylston Professor of Rhetoric and Oratory at Harvard University, is on leave from Harvard for the fall term and is living in Dublin.

Heaney, 56, has authored more than 20 books of poetry and prose, including "Sweeney's Flight" (1992), "The Government of the Tongue" (1988), "Preoccupations" (1980), and "North" (1975).

Heaney, the first Harvard professor to receive a Nobel Prize in literature, is due to receive the \$1 million Nobel Prize in Stockholm, Sweden in December. Heaney became a visiting professor at Harvard in 1981; in 1984, he was named to the Boylston professorship, a seat John Quincy Adams first held in the early 1800s. Thirty-three Harvard faculty members have captured Noble Prizes in the sciences, economics and peace. The most recent winners were Elias Corey and Joseph Murray, who won in 1990 for chemistry and medicine, respectively.

Business School Alum Donates \$10 Million for Not-For-Profit Programs

New York philanthropist John C. Whitehead is donating \$10 million to the Harvard Business School to establish programs in not-for-profit management. Whitehead, a 1947 graduate of the Business School, is a former chair of Harvard University's Board of Overseers.

The contribution will be used to create the John C. Whitehead Fund for Not-For-Profit Management. The fund will facilitate research and teaching in the areas of not-for-profit management and "social entrepreneurship," Business School Dean Kim Clark said, mentioning Boston's City Year project as a successful example of the latter.

The Kennedy School of Government and the Divinity School, together with the Business School, are exploring ways to study not-for-profit organizations. Kennedy School Lecturer in Public Policy Christine W. Letts said one-third of students at the Kennedy School, which has a not-for-profit management program already in place, accept employment with not-for-profit organizations. The New York Times reported last week that 11 out of 807 1995 graduates of the Business School entered public service.

"The Business School will be looking for ways to help students committed to [not-for-profit] work to not suffer a loss," said Business School Prof. H. Kent Bowen. He said that Whitehead's donation may make that task easier.

Whitehead has served as co-chair of Goldman Sachs & Co., director of the New York Stock Exchange, and as deputy secretary of state.

Erwin N. Griswold Library Established at U.S. Treasury

The Federal Tax Institute of New England, of which former HLS Dean Erwin N. Griswold was president until his death, has donated \$10,000 to the U.S. Treasury to establish the Erwin N. Griswold Library.

The U.S. Treasury has set aside a room in its offices for the library and will use the gift to purchase books. Prof. Bernard Wolfman said the U.S. Treasury previously had no funds to purchase books, imposing a special hardship on the Office of Tax Policy, which deals with tax legislation and major regulatory projects.

Share the Road: University Police Stress Importance of Bicycle Safety

The Harvard University Police Department, in light of the increasing number of students injured in biking accidents, has issued these guidelines for safe bicycling:

- Ride with traffic, not against it
- Stop at red lights and stop signs
- Pass on the left when possible
- Give right of way to pedestrians
- You may ride slowly and carefully on sidewalks except in business districts or where prohibited by a local ordinance
- Give a clear warning when approaching pedestrians or cyclists
- Small children must wear helmets and ride in an approved child seat or trailer
- Use lights after dusk
- One person per seat
- Ride single file

French Wine Protested

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Dolovich, '98, who organized the boycott, said, "I was surprised and a bit disappointed at the lack of response." Horwitz suggested that only a "relatively small number" of students were becoming involved in the campaign on account of considerable "political passivity and cynicism in the land."

Jason Koral, '96, chancellor of the Harvard Food and Wine Society, has organized a counter-campaign. "I think [the French wine boycott] is an absurdity," he said. "We need an intelligent response, not meaningless symbolism based on a cultural stereotype of the French as wine-swilling and effete."

Koral distinguished a boycott of goods from South Africa, where "the economic system [was] being used as an instrument of oppression." "Here," he said, "the government is not supported by the civil society under it. A boycott is not correctly proportioned to deal with the problem —

it causes real harm to real people."

Supporters of the boycott argue that there is no other means of effective protest. "All boycotts hit the innocent, I confess," responded Horwitz. "You can send petitions which they will ignore. It is not easy for ordinary people to have an effect."

Organizers of the boycott distributed 400 leaflets outside three liquor stores over the weekend. "The public was very responsive," said Dolovich. "A couple of guys actually came out of the store and supported us."

According to the manager of Marty's, one of the liquor stores targeted by the campaigners, the campaign has raised awareness of the issues. "I would think a lot of people know what is going on," he said. He said he was unsure, however, whether the campaign had actually had a concrete effect on sales of French wine.

"As of now, we have a California wine sale, so there has been no real change," he said. "But if it was a nothing month with nothing going on, I could see it."

WLA Sells Guide on Law Firms

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along with their other sources."

WLA encountered obstacles with funding for the publication when many backers withdrew their support after the project was well underway. Nossel said the situation was awkward.

"When approached, administrators for the Law School and alumni were very supportive and pledged certain amounts of money which led us to begin to put plans in motion," she said. "Six weeks later, we were told that we wouldn't get money and since the project was already under way, we had to individually ask individual alumnae. It was an odd situation just having to call people. A meeting was held involving alumni and people from the development office at Harvard Law School, and [the] fundraising side of the Law School felt it didn't want to support the project."

HLS Alumni Association Director Vic Koivumaki said the association's executive committee discussed the project in June and decided that supporting the project would be inappropriate although individual members did make personal commitments to the book's publication.

"Similarly, a request came years earlier for support for 'The Insider's Guide to Law Firms,' and we found that inappropriate because we would have no control over editorial content," said Koivumaki, adding that financially supporting the guide "would mean putting the association behind statements and judgments made by others."

Westfall said WLA originally hoped to give the guide away to law students but could not after funding pledges were withdrawn.

"None of the money raised in Celebration 40 has been spent, nor has any mechanism been created for it to be spent," Nossel added, referring to the Fall 1993 alumnae celebration of the 40th anniversary of women's admission to the Law School.

The guide has elicited mixed responses. Some HLS men have purchased the

guide; however, posters advertising the guide have been defaced.

The results of the survey both surprised and disappointed Nossel and Westfall.

"What is amazing to me about what we found in these surveys is that women who are supposedly in some of the most powerful positions in this country still report that they experience a variety of forms of discrimination ranging from inequitable mentoring to inequitable distribution of work assignments to more serious forms of discrimination such as sexual harassment," Westfall said.

Westfall said associate classes at major law firms begin with an even male-female ratio, but the ratio becomes imbalanced at the partnership level.

"It appears that women are thwarted by many factors such as being left out of golf games," said Westfall, citing golf games and similar activities as key ways in which lawyers develop relationships with mentors at law firms.

The editors of "Presumed Equal" say they hope the publication will serve as an impetus for positive change at law firms.

"The law is a client-driven business, in which it is really difficult to get pressure to change from the client side," Nossel said. "Therefore, pressure to change is needed from the recruitment side. If law students can become a little more discerning, then firms will really have to respond to that. Changes can be made without sacrificing profit and if we can play a part in that, our project will have been worthwhile."

WLA plans to sell the guide at other law schools.

"Getting the message out to the public. Putting the issue on the map. That's something new," said Nossel. "Hopefully, this year, people will be talking about how firms stack up when it comes to women. This is something people weren't doing last year."

"The information compiled in these results is subjective, but still they can have a powerful impact on how we view law firms," said Nossel.

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**GROUP RATES
NEGOTIABLE**

GYM RAT

Buying the Drama

By David Koontz '96
Sports Editor



THE sports world has been fairly busy lately. The baseball playoffs are in full swing (no pun intended); the San Francisco 49ers and the Dallas Cowboys each lost a game; Dennis Rodman went to the Chicago Bulls for the immortal and invaluable Will "No I do not sell chickens" Perdue; the season is over for both the Red Sox and the Patriots; and Orenthal James Simpson is a free man.

Because I intend this column to be more a diversion from law school than an extension of it, this space has been mostly an O.J.-free zone. Within the free marketplace of ideas, I focus on the silliness and escapism of sports in this space while my classmates and colleagues deal with admittedly weightier issues. Any writer who refers to himself as a small rodent in the third person cannot be taken too seriously.

That said, the most stunning aspect of *California v. Simpson* is not anything in particular that happened during the proceedings. What is truly amazing is that a nation could be numbed by the tedium of a horribly drawn-out affair, only to feel honest and deep emotion at its outcome. Whether you were overjoyed, outraged or merely stunned by the suddenness of the verdict and the verdict itself, chances are good that you shook off the cobwebs and stopped what you were doing to watch the verdict or talk about it with somebody.

In the end, depending on your opinion of the verdict, the focus should have been on either the unfairness of detaining an innocent man for so long while a judge bent over backwards for the attorneys and the cameras, or the lengths to which a jury can stretch reasonable doubt to acquit a murderer. Instead it became "The Trial of the Century," a news item for networks as diverse as E! and ESPN, the life vs. life sentence struggle of an American icon for his freedom.

All this over a man who, outside of Buffalo, really had become mostly an afterthought of American culture, not an icon. At some point, the attention-grabbing details of the crime itself and O.J.'s bizarre low-speed chase ceased to be the reason for the trial's popularity. Once the boredom set in, the public was suggestively sold the notion of O.J. himself as the reason for the trial's popularity. And somehow, for some reason I cannot understand, the public bought it.

Although that would be an ideally dramatic way to end the Column of the Century, I would rather shift gears and continue on a less serious note. There are a couple of interesting quirks in this year's baseball playoffs. First, if this year's post-season were being played under the old format, the Indians would be playing the Mariners for the American League championship anyway. Second, all four National League playoff teams are former NL West teams. Even the fifth-place team, the Houston Astros, previously resided in the West. Imagine the fifth-place team in a division coming within one game of a playoff berth. Okay, so imagine it in any sport except hockey.

The Law School flag football league has only one division, but the teams themselves keep changing their names. The team which was originally given the name "Young Turks" by a cold and unfeeling commissioner (there I go with the third person again) shall forevermore be known as the Tortfeasors. Rich Cundiff, Go-Long Guy has been unceremoniously dumped in favor of the catchy Rush to Judgment (named in honor of the O.J. verdict). The previously unprintable name of Todd "Hold" Stillerman '97's team has been changed to Great Danes, proving that everything old is new again.

True to traditional form, the Learned Hands and Chicano Bears are the only remaining undefeated teams. Another "Hands" biography: Mike "In" Blume '96 (who must be the one who likes all of Nirvana's pretty songs), is a deceptively quiet man who has been known to let loose with the occasional outburst, say, every two-and-a-half seasons or so. Somewhat in the same mold, Patrick "Hot" Rodriguez '97 of the Bears throws a mean kickoff into the wind and runs an even meaner deep route.

There appears to be little doubt that the entire league, top to bottom, is very competitive. Very few games are blowouts, which allows me to say without hyperbole that teams such as Rush to Judgment and Black Plague are the best 1-5 teams in the history of football. Kenny the Greek and Illegal Motion still have a shot at the playoffs, and if they don't make it, they have the looks of playoff spoilers. To quote Motion captain Alan "Wait and" Tse '97: "Grrrr."

The Dissenters, led in the clubhouse by the fearless Mike "Air" Johnson '96, follow close behind the undefeated teams at 5-1. The Dissenters' Mike "Intangibles" Bennett '96 provides spirited leadership from the sidelines. When told he was going into the game after missing the previous two weekends, Bennett responded, "What?"

Intramural Football Standings as of Sunday, October 8



TEAM NAME	WON-LOST
2. Learned Hands	6-0
7. Chicano Bears	5-0
10. Dissenters	5-1
1. Tortfeasors	3-1
13. Great Danes	4-2
17. Well Hung Jury	4-2
12. Death Judicata	3-2
16. Grad Guys	3-2
4. Locus Poenitentiae	3-3
14. Six Feet Under	3-3
5. Freshies	2-2
11. Levitt's Too Sexy ...	2-3
9. J.J.'s Golden Rotunda	2-4
3. Wolverines	1-3
18. Black Plague	1-5
8. Rush to Judgment	1-5
15. Kenny the Greek	0-4
6. Illegal Motion	0-6

Compiled by David Koontz

THE VERDICT

Two Good Ways to Spend a Night

By Michael Bennett '98
Movie Reviewer



"Dead Presidents"

SURPRISE, surprise! After creating the outstanding and critically acclaimed "Menace II Society," the Hughes brothers are back again with a new flick called "Dead Presidents."

Larenz Tate, who co-starred as O-Dog in "Menace," returns with the dynamic duo. Instead of playing the young, ultra-violent punk, this time Tate takes on the role of the hardworking young man. As the movie begins, we find Tate's character, Anthony, working as a milk deliverer who's just about to graduate from high school. When Anthony decides to join the Marine Corps and "do something different" just as his father and his mentor, Kirby (Keith David), have done, all hell breaks loose.

Serving in the reconnaissance division alongside his good friend Skip (Chris Tucker), the insane head hunter Cleon, and a few other comrades, Anthony is transformed from an innocent into an efficient killing machine.

The return to the States is no easier for Anthony than for many of the Vietnam vets. He finds nothing but drugs, despair, and disintegration in his neighborhood.

When an opportunity arises that offers the possibility of serious financial gain, Anthony puts together a small commando team and attempts to grab it, despite its illegality.

The movie's uniqueness and beauty stem from the depths of its characters, both primaries and secondaries. Watch for Cutty the Pimp (Clifton Powell) and his profound insights. Pimps are still pimps here, but they're also child advocates. Even Skip's raunchy humor is tempered by many thought-provoking exchanges with several of the other characters.

The dialogue between Anthony and his girlfriend, Juanita (Rose Jackson) is especially well done. Both characters have hints of good and evil which make it very tough to champion either side in their arguments. Their relationship's tension drips off the screen.

The musical score of the film is an extra bonus. The music swings from Danny Elfman (of "Batman" fame) to some new songs by Isaac Hayes, to a number of great renditions from the '60s and '70s.

The great music serves simply to further push this work into the very good movie zone. It's definitely one not to be missed.

Rating:

"Belle de Jour"

FROM a seemingly different universe comes Luis Brunel's "Belle de Jour." The pristine format of this film, which has been out of circulation for almost 20 years, combined with the numerical deficiency of good French movies appearing in the United States, is reason enough for most to see this work. But, if you need more, see it to get a good look at Catherine Deneuve in her most radiant state captured on film.

Here, Deneuve reaches the zenith of her career as the bored and sexually repressed housewife turned daytime prostitute, Renee.

Her relationship with her husband, Pierre (Michel Piccoli), is so bad that they don't even sleep in the same bed together. Their bedroom contains two small single-sized beds.

After being rather easily persuaded to visit the Madame Anais' brothel, Renee is initially disgusted with the concept. But by working from 2 p.m. until 5 p.m. each

Despite a simple plot, the nature of this movie is very disturbing.

weekday, so as to keep her husband from finding out about her new career, Renee slowly, yet surely, makes the transition to "belle de jour," or day lady, a play on the term "belle de nuit," which means prostitute.

Belle's first customer is the savage candyman, a short, dumpy, violent fellow whose grotesqueness contrasts nicely with the radiant beauty of Deneuve. Her attempt to satisfy the role-playing professor is extremely amusing, despite her utter failure. But the turning point comes when Belle meets up with her Asian client. She's totally transformed afterwards.

Besides her husband starting to notice changes in her behavior and attitude, Renee's daytime job goes just fine until she meets up with the juvenile, yet passionate, Marcel. He refuses to share his Belle with her husband and decides to take matters into his own hands, ultimately paralyzing him. Watch for his amusing exiting scene.

Everything comes to a head when Husson, the same man that persuaded Belle to go to the brothel in the first place, decides to tell Pierre what's really going on. Pierre is literally destroyed by the news, and Renee is freed to be Belle.

Despite a simple plot, the nature of this movie is very disturbing. Renee slips in and out of fantasies and flashbacks, all of which are extremely bizarre. We learn much more through these mental pictures about the character than from her actual real-life actions.

Brunel's fluid camera movements from reality to fantasy to flashback make the movie difficult to follow at times but not so much as to make it incomprehensible. His camera work is nicely shown off in the moving carriage scenes near the beginning and end of the movie.

Warning: rumor has it that a remake of this classic is in the works and that Sharon Stone will play the lead role. If you move quickly, you might be able to view the original before it's bastardized.

Rating:

Rating System: Movies are rated on a 1-5 gavel scale, with 5 being a must-see.

Harvard Law RECORD

Founded in 1946

Katrina Randolph
Editor-In-Chief

David Weiss
Publisher

Putting HLS in Perspective

Ms. Chen twisted her hands as the attorney for whom I was translating leafed through the papers Chen had to prove her case. This was her first visit to the clinic and she had questions about numerous problems: claiming that she had repeatedly violated rules at the factory, that her employer had fired her and was withholding a month's worth of pay. A single mother with two young children to raise, Chen now eked out each month on \$300 as a part-time cook and faced eviction proceedings because she was behind in her rent.

Her story was not familiar in its particulars, but it shared the same refrains dominating the lives of other people whom I met through that clinic. Like her, they teetered on the economic brink; like her, they found very few places to which to turn for help. As I sat and listened to their stories, acting simply as a translator, I became ashamed; although I nodded in sympathy, the magnitude of their problems were of a weight that I grasped only intellectually.

I returned to campus after this summer's internship, and immediately became overwhelmed with the various pursuits of class and extracurriculars that characterize this campus. Daily, my problems seemed to loom larger as classmates asked me what I was going to do after graduation and I could only answer, "I don't know."

Yet in the silent spaces of the day, when I pause to take a breath, I remember the stories of clients who passed through the doors of the clinic this summer. I wonder whether Ms. Chen has won back her wages, and think about what she would have to do if she lost. And during my musings, my troubles begin to shrink in magnitude.

Becoming enmeshed in the pressures of life at the Law School is natural. Having decided to come to Harvard, we continue the search for excellence as is expected. As 1Ls, we stress about securing a spot on the Law Review. Later, we worry about whether our grades are good enough to land jobs at Wachtell, Cravath, McKinsey. We fret about whether we will secure federal court clerkships in the most desirable cities. But outside of the Law School campus, in light of real-world problems such as Ms. Chen's, those become petty grievances indeed.

Trying to achieve the best for oneself is not wrong. But focusing solely on our personal search for excellence without placing this search in perspective robs us of honest sympathy for others who have far less than we do. The blinders that we wear become like shades on the soul; we lose the ability to understand life beyond the borders of the Law School, to lift our noses from the worrisome details of the day to appreciate all that we do have.

This October morning dawned clear and mild, sunny with that sharp clarity unique to the New England fall. Yet walking across the Law School campus, I wonder how many of us are hard-pressed to appreciate the remarkable beauty of the day. Completing course assignments, running between law firm interviews, and wondering about life after graduation are indeed pressing issues. At the same time, they are small in light of problems with which others grapple. When we place our lives in this context, we not only ease our own strain but also, as lawyers, are better able to appreciate and help those less fortunate than we.

—Kuohung

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

—First Amendment, US Constitution

• Letters •

Faculty Members Support Lambda's Efforts

Although, as members of the faculty, we do not feel it would be appropriate for us to ask any student to forego possible career opportunities, we would like to express our support for Lambda's efforts to raise the issue of Sidley and Austin's representation of the State of Colorado in *Romer v. Evans*.

With our colleagues Larry Tribe, John Ely, Gerry Gunther, Phil Kurland and Kathleen Sullivan, who have filed an amicus brief in the *Romer* case, we believe that Colorado's Amendment 2 "constitutes a *per se* violation of the Equal Protection Clause of the Fourteenth Amendment." We agree with our colleagues Martha Minow and Frank Michelman, who have argued in a separate

brief that Amendment 2 is a clear violation of the Equal Protection Clause. Colorado, of course, has every right to the best possible representation on the other side, and Sidley and Austin has every right to provide that representation.

With Lambda, however, we believe that the *Romer* case, like Amendment 2 itself, has an extremely powerful meaning for many people, including many gay and lesbian people, akin to the meaning many feel is attached to cases like *Plessy v. Ferguson*.

It is difficult, and often painful, to relate various of one's identities, professional and personal identities, one's identity as a lawyer with one's identity as a gay or lesbian person, as a political pro-

gressive, or conservative. We applaud Lambda's efforts to focus attention on these issues, on the conflicts employees might feel as a result of a firm's decision to represent certain clients and on the politics of life as a professional.

Prof. Bill Alford '77
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Prof. Charles Ogletree '78
Prof. Carol Steiker '86
Prof. Lucie White '81
October 2, 1995

Everyone is Entitled to Representation

I am inured to much of the silliness passing for discussion of serious problems that is found in your pages. Truth is, I get a kick out of most of it. But the letter of Scott Wiener et al. in your edition of 9/15/95 is so preposterous that it motivates me to respond.

As I understand the letter, it argues that if an attorney represents an entity or cause with which Mr. Wiener disagrees, no one, at least no one at Harvard, should have anything to do with that firm

(one wonders whether Mr. Wiener would approve of the morality of students at "lesser" schools interviewing at Sidley & Austin). OK, let's see who else that leaves out: the ACLU, which represented the American Nazi party in the *Skokie* case; the Justice Department, which represented the CIA in its fight to discharge a homosexual agent in *Webster v. Doe*; and, of course, any criminal defense attorney who ever represented a party who later confessed.

The point is that everyone, even those with whom one disagrees (perhaps especially those with whom one disagrees), is entitled to be represented. And those who represent them should be free of opprobrium for doing so. And, incidentally, in my opinion the Supreme Court will reverse in *Romer*.

Steven M. Cooper, LL.M. '90
Associate Professor of Law,
Texas Wesleyan University
October 2, 1995

"Might Makes Right" Inapposite in Glendon's Human Rights Rhetoric

The Holy See's decision to choose Prof. Mary Ann Glendon to be its representative at the Beijing women's conference is something that the Harvard community should be proud of without reservation. But one need not be proud of the conference or the views of its participants — including Mary Ann Glendon's recent misuse of human rights rhetoric.

In her op-ed piece, "The Bitter Fruit of the Beijing Conference" (the RECORD, September 29, 1995), Professor Glendon characterizes the rights environment as "a place where nutritious grains are competing with ornamental flowers and opportunistic weeds." And she worries that, "[s]ome of the weeds ... threaten universal human rights, as well as the well-being of women." Though one is hard-pressed to translate this allegory into plain English, it seems to speak to the woeful possibility that rights may be deemed illegitimate because of their misuse. Such a contention — if properly interpreted — is firmly grounded. The "human rights" label is often misused by the well-intentioned and manipulated by the opportunistic: its moral authority is frequently invoked by rights groups because it is an effective tool for gaining acceptance of special interests. As a consequence, the concept regrettably has lost much of its meaning.

Although Glendon seems to recognize this point, she fal-

ters when she says, "[c]learly, universal rights must not be relativized through a 'cultural' exception." It is this contention, in addition to her formulation of rights, that leaves one wondering if she too is a weed in the garden. Before one can attest to the universal applicability of a rights instrument, such as the U.N. Universal Declaration of Human Rights, defects in the right creation (or "discovery") process must be corrected. The deficiencies in the decrees Glendon elevates to support her assertions are nothing less than huge. For instance, most Asian and African countries were precluded from partaking in the creation of the U.N. Universal Declaration of Human Rights. As casualties of colonization, these states were denied membership to the United Nations and, consequently, a voice in the formulation of so-called "universal" rights. When these states were finally admitted to the U.N. and allowed to supplement existing decrees, they were forced to adopt a framework of philosophical assumptions that were enacted during the period in which they were under the control of exogenous forces. This historical inequity is flatly irreconcilable with the U.N. charter, which conditions the legitimacy of U.N. activity upon the "sovereign equality" of states — an unequivocal standard requiring unfettered political participation. Accordingly, a process based upon "sovereign equality" that

limits the participation of interested parties — by interfering with sovereignty — while purporting to create "universal" rules, is an ambitious fiction.

As it stands, Professor Glendon's condemnation of what she calls "relativism" amounts to the assertion that might makes right. And there can be no doubt that if the strongest power were to find itself among the weak tomorrow under a might makes right approach, it would be discontent if a more powerful entity imposed values on it that contradicted its laws or social norms. In other words, if member states of the U.N. invaded the Vatican, denied the Holy See a voice in the formulation of "universal" rights, and required the Pope to begin employing female priests, Professor Glendon would be humming a different tune (undoubtedly the blues).

It should be noted that I not only respect, but also agree with many of Mary Ann Glendon's value choices — it is her jurisprudence that I find troubling. My criticism is not politically partisan: I have also been particularly critical of activists from the left, such as Deborah Anker, whose overreaching in the realm of human rights makes Professor Glendon look coherent. Accordingly, I invite Professor Glendon to respond and also welcome a debate.

Ray Bronner '97
October 10, 1995

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Dear White Colleagues...

By Randall Kennedy

THE most poignant moment I have experienced during the tumultuous days following the acquittal of O.J. Simpson occurred during a telephone conversation with my mother. She mentioned that she had backed out of a luncheon date with one of her closest friends, a white woman with whom she has shared many of the key episodes in her life, from birthdays to weddings to burials. My mother told me that she backed out because she feared that over lunch the subject of the Simpson trial would arise and with it disagreement about the outcome.

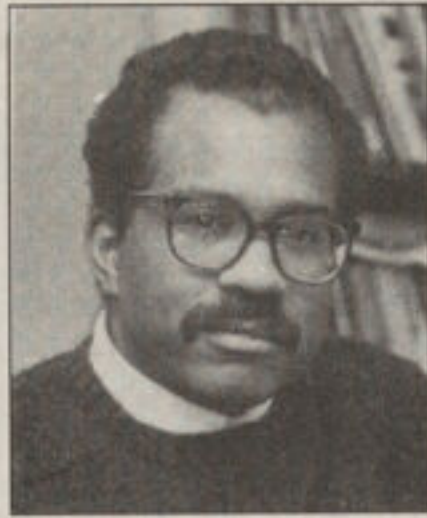
My mother acknowledges that she has been able to have cordial disagreements with her friend about serious subjects in the past. But she viewed the Simpson trial and verdict as something far different than anything she had discussed with her friend before, something far more potentially volatile. So, to avoid a meeting that might give rise to words that could never be forgotten or forgiven, she backed away from her date with her friend and intends to reschedule it only when she is confident that sufficient time has passed to make a discussion of the Simpson verdict unlikely.

My purpose here is the opposite of my mother's. I want not to avoid the powerful emotions that the trial and its conclusion touched but instead to reveal them, or at least to reveal the sentiments that animate many of those who, unlike me, cheered the verdict. I seek to make explicable the welter of sentiments that a great many African-Americans felt and exhibited upon hearing news of the acquittal, and upon being confronted with the opposition to it — sentiments that many white folks fear or misunderstand.

First and foremost, the celebratory mood stemmed from relief that a prosecution as tainted by racism as this one had failed to bring about a conviction. A great fear gripped many blacks that despite the unmasking of Mark Fuhrman's intense racial hatred and despite all of the other evidence that cast a pall over the legality and accuracy of the state's case, the government might still somehow succeed in convicting Simpson and thus sending yet another black man to prison for life.

Contrary to the claims of some observers who have assailed the acquittal as either irrational or a lawless exercise in jury nullification, the conclusion reached by

HLS Prof. Randall Kennedy is completing a book on racial relations and the administration of criminal justice.



Simpson's mostly-black jury was surely reasonable. Perhaps it was incorrect; it seems to me that it was. But even if that is so, it is not grounds to ridicule the decision in the way that it has been widely belittled.

Indeed, the ridicule that has followed the verdict is another reason for the extravagant demonstrativeness with which many blacks have signaled their approval. Knowing that an acquittal would be unpopular with a large segment of the white population, some black celebrants have wanted to show solidarity with the predominantly black jury.

The great majority of blacks also feel and want to show their solidarity and delight with Johnnie Cochran, the person who, in the eyes of most black Americans, leaves the trial with the highest stature. Precious few blacks are prominent heroes outside of a familiar cast of preachers, politicians and entertainers. As a lawyer, Cochran breaks the mold and thus widens aspirations. For this he is widely admired.

Not so long ago, a black superstar charged with a serious crime would almost certainly have been represented solely by white lawyers, partly because of fears regarding the competence of the black lawyers and partly to avoid giving offense to white jurors and judges. But here was Cochran emerging as captain of the "Dream Team," towering over Robert Shapiro and F. Lee Bailey and all the rest, calling the shots in the most closely-watched trial in American history.

For many blacks, it was positively thrilling to see Johnnie Cochran prevail. Moreover, not only did he prevail, but he did so in a way that spoke directly to black people. He put them and their experience front and center. He did not, as my mother would say, "cut his mouth." With respect to the way that police have long mistreated blacks, he insisted on telling it like it is. What he said about police departments, the Mark Fuhrmans of this country and the sad tale of blacks before the bar of justice resonated in the hearts and minds of virtually all black people regardless of class, ideology or anything else.

And it pleased them no end that he voiced his indictment without equivocation in a forum that everyone heard. Yes, he trod on certain sensibilities when he compared Fuhrman to Hitler. But he was fighting for his client's life. In such a setting, shouldn't wide berth be

given to rhetorical excess? Yes, he pointed to racism as a basis for acquitting Simpson. But the fact is that Fuhrman was a rabid racist, lied about his bigotry and might have planted the infamous bloody glove and done other things to sabotage the search for truth. Yes, as a last resort, Cochran did invite jurors to engage in nullification — to acquit for reasons other than the evidence at hand — in order to send a clear, powerful, attention-grabbing message that police misconduct would no longer be tolerated.

But such nullification is not always wrong. People now cheer, or ought to cheer, the jury nullifications that took place 150 years ago when Northern juries, disregarding instructions, refused to convict persons who rebelled against the federal government's savage Fugitive Slave Law, a statute that demanded that citizens help slave owners recapture their runaway human property. Some instances of jury nullification occurred in the context of persons tried for killing slaveholders who sought to enforce that infernal law. There are, of course, large differences between such cases and the trial of O.J. Simpson. The principal point, though, is that nullification is not always wrong, that sometimes in tragic circumstances it is morally right.

Perhaps, ultimately, the Simpson case should not be perceived as one of those times. But many blacks insist, and rightly so, that it is wrong to assume that this matter is an easy question, with only one rational response.

There are, of course, a whole set of other sentiments that help to explain why some blacks cheered the acquittal. These are quite

painful to acknowledge. They include lack of empathy for the victims and their families; a spirit of revenge; a desire merely to flout "the Man" and "stick it" to the onlooking white audience; an unshakable, virtually religious faith that Simpson was not only not guilty, but also innocent. These sentiments are present because blacks are human, and the human family, as history teaches, is full of all sorts.

Given the circumstances that we have inherited, it should come as no surprise that an event like the Simpson trial would provoke the entire panoply of human reactions and that these would, to a large extent, take on racial colorations. We can only understand one another better and more appreciatively, however, if we talk, and talk honestly and carefully, and with a disciplined commitment to see the best, as well as the worst, in what others are saying — especially others with whom we disagree.

For many blacks, it was positively thrilling to see Johnnie Cochran prevail.

• Letters (cont.) •

Dearth of Conservative Views on HLS Faculty

In her recent column "Human Responsibility," the RECORD, Sept. 29, Carla Halpern explains that Harvard Law School has a reputation as "one of the most conservative law schools in the country." I doubt that an institution best known to the outside world for professors like Laurence Tribe could ever be mistaken for conservative. If the Law School does have this reputation, however, it certainly does not deserve it.

Ms. Halpern states that there is "one Charles Fried here for every Gerry Frug." If this is taken to mean that there is one conservative professor here for every liberal professor, Ms. Halpern is sadly mistaken. Granted that Fried is not liberal (he seems more moderate than conservative), and Professor Scott is said to be a Republican. Whom else on the faculty is Ms. Halpern referring to? Conservative students would love to take their classes, if they existed. They do not.

The problem is that Ms. Halpern is mistakenly categorizing students and profes-

sors who show interest in corporate law as "conservative." She points out Dean Clark as an example of a conservative. Is the Dean Pro-Life? Is he against affirmative action? Has he come out in favor of family values or gun control? Does he support "originalism" as the best theory of interpreting the constitution? Unless I have missed some recent events, neither Dean Clark nor the great majority of the faculty have supported these or other conservative causes.

Ms. Halpern points out that she has heard many conservative students in class. This is just the point: why so many conservative students and so few conservative professors? Those conservative students brave enough to speak in the face of open hostility of the "liberal" students are at a great disadvantage because the professors have usually ignored the relevant facts and arguments which would support their position. This would not matter if most professors were even-handed, or if conservative students did not fear that their

comments would provoke unwarranted and untrue slurs about their character. Unfortunately, most professors allow their bias to determine which materials to teach and which arguments to make, and conservative students are right to fear lasting reputational damage at the hands of their liberal classmates.

Ms. Halpern does a further disservice to conservative students by implying that they become "corporate robots." There are plenty of liberals in big-firm corporate practice and a fair share of conservatives in public interest.

Finally, a definitional quibble: While the division of Americans into those that are "real" and "hyphenated" may be offensive, it is certainly not racist. Hyphenation is used not only by "African-Americans" and "Indian-Americans," but by "Irish-Americans" and "Italian-Americans." The division offends all ethnic Americans equally.

Patrick Lannon '96
October 10, 1995

Critique of Video Misses Point, Students' Views

It was with a mixture of interest and bewilderment that I read Markus Hartmann's recent column about my video "Still Life," which he has never seen. Mr. Hartmann appears to have adopted the Emanuel's approach to journalism, which allows him to dispense with the tricky business of consulting primary materials. It was also interesting for me to learn that Mr. Hartmann considers me a "sniveling little Yuppie larva," an "embarrassment" and a "repugnant Generation X whiner." I wonder if my table manners are suitable. Far more troubling, however, is Mr. Hartmann's intolerance for views that differ from his own.

The central thesis of the video is that learning to be a lawyer leads many students to disengage, intellectually, from the subject matter of the law. As we learn civil procedure, we lose some of our passion for civil rights.

Some students noted a devaluation of creativity that can be harmful to the students, the school, and ultimately the profession. Many of the students interviewed faulted Harvard's evaluation process,

which rewards quick on-the-spot answers at the expense of dialogue and deep thought. An evaluation system based on one "issue spotter" exam, coupled with class discussion in the Socratic or panel format, encourages students to think about the law only sporadically and in a cursory way and reduces the contact between students and professors to an absolute minimum. The perception that grades are random is a major disincentive to the serious study of law.

The legal profession itself was disappointing to some interviewees. Saddled with \$90,000 of debt, many students felt confined to one career option — working for a private law firm. Some interviewees criticized HLS students for not being proactive in their job search, but instead yielding to the easiest path.

I agree with Mr. Hartmann that it is "lamentable" that many students enter law school eager to learn the law but leave feeling "compelled" to be lawyers. I do not, however, attribute this shift to a failure to "notice the centrality of the word 'law' in the HLS name. I have searched

for a somewhat deeper reason. Part of the problem is that at law school, students are bombarded with horror stories about the experiences of young lawyers in large firms who put in 90-hour weeks of tedious, mind-numbing work. The good news is that this is not always the case. My own experience thus far in law school has shown me that not all firms are the same and that the practice of law produces many fulfilled and happy attorneys.

Surely Mr. Hartmann does not believe that just because students are fortunate to be at Harvard they must refrain from reflecting on their choices in life. By complaining so insistently about the feelings of his fellow students, Mr. Hartmann comes off as the most noisome whiner of all, an irony that was apparently lost on him. At the very least, I wish that Mr. Hartmann had inquired about the video before commenting on its "central thesis." It is fortunate that Markus Hartmann wants to be a lawyer. If he wanted to be a journalist, we'd all be in trouble.

Laura Putney '95
October 8, 1995

Protest Against French Nuclear Testing Takes Aim at the Wrong Target

It was with considerable distress that we observed a forest of large green posters throughout the Law School last Tuesday. This senseless slaughter of innocent trees and gross use of chemical dyes apparently occurred in the name of furthering a boycott against French wines in protest of the Chirac government's nuclear testing policy. Such a protest is gravely mis-

directed.

We concede that French nuclear policy is an obnoxious example of neo-colonial arrogance and implicates environmental concerns. The choice of the French wine industry as a protest target, although appealing to American stereotypes of France as well as a certain mob populism, displays total ignorance of basic facts.

For example, the region

of Bordeaux is heavily reliant on exports of its magnificent wines for its economic prosperity. Bordeaux also happens to be a Socialist stronghold which staunchly opposed Chirac in the recent elections. President Chirac must be laughing in the Elysée Palace as his political opponents are punished for his own personal misdeeds.

Moreover, the protest overlooks the close relation

between French-style wine production and the environmental ethic. Unlike the industrial production techniques utilized by some large New World producers, traditional French wine production is based on a long-term intimate connection to the land. The term "terroir," signifying "taste of the earth," is used to describe the unique characteristics of French regional wines.

The long history of wine production in France, stretching back to nearly 2,000 years of continuous growing on some sites, is an unparalleled example of real-life sustainable agriculture.

Surely one would not suggest that a boycott of contributions to the Paris office of Greenpeace International would be an appropriate way to protest French nuclear poli-

cy. Yet the boycott of French wines is roughly equivalent. Even law students should know that in the realm of environmental policy, ignorance of the facts is no excuse.

Jason M. Koral '96,
Chancellor
Joseph M. Dittkoff '96,
Secretary-Treasurer
The Harvard Food & Wine Society

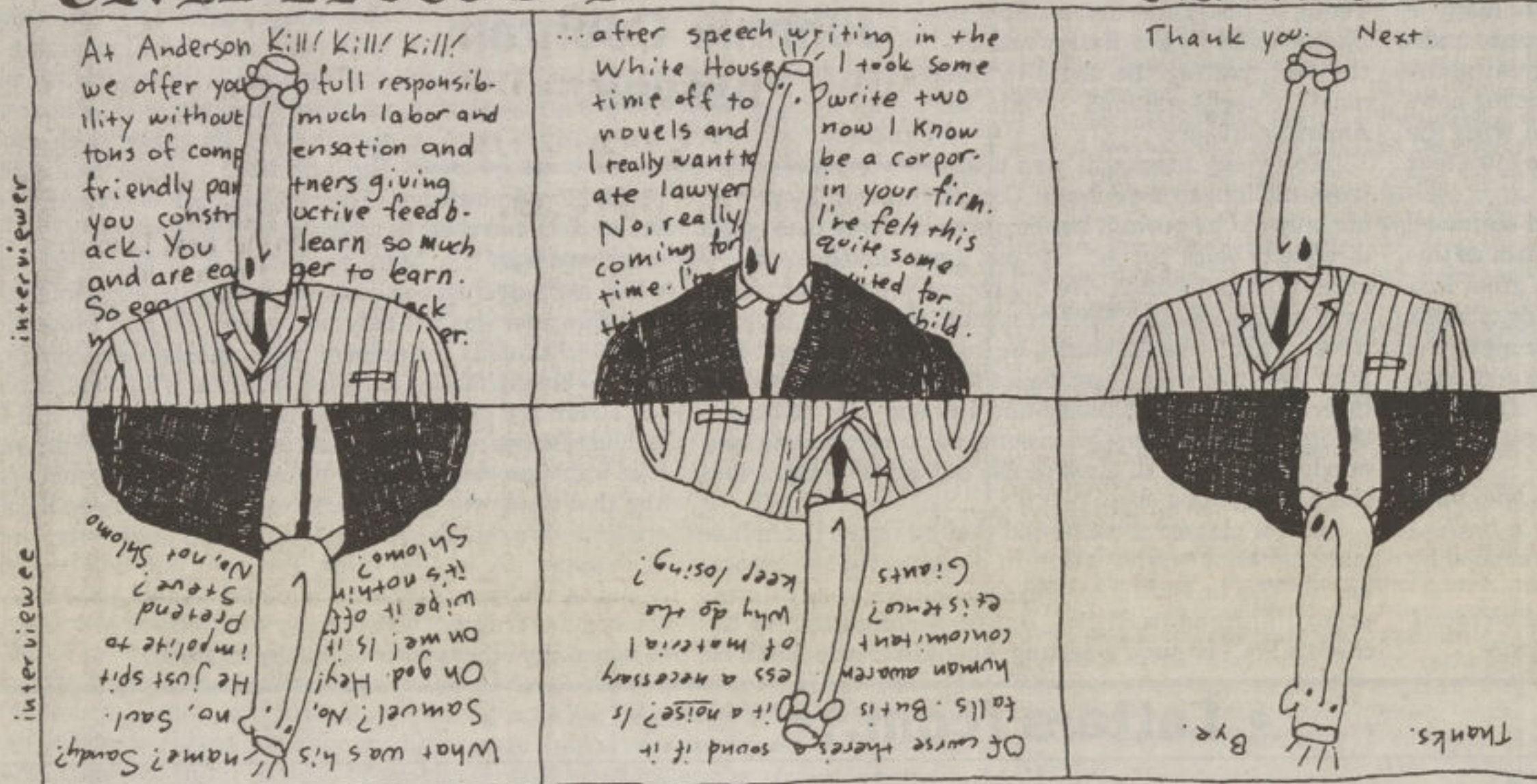
Temporary Insanity

By Sheila Tuller



Civil Procedure

M.J. Kelly



Backbench

By Brian Cheng



Phantom of the Law School

By Stuart Rees and Bill Zimmerman



CALENDAR

Less Talk.
More Music
By Colin Meeder

Good week for shows, not a lot of space, so you don't need to hear me prattle on.

Which brings me to the **Blue Man Group**, who have just begun an indefinite stay at the Charles Playhouse (931-2787). Oh, sure, the notion of accessible performance art for mom, dad, and the kids seems harmless enough, but a little of this stuff goes a long, long way, and soon you want to strike the blue boys over the head with their Chapman Sticks and stuff them headfirst into their PVC tubing. I'm sure **Diamanda Galas** would agree with me. She shrieks, coos, growls, whispers, and plays the hell out of the piano in a way that is often unpleasant and disturbing, but always worthwhile. Run out of the Hark immediately after watching *Seinfeld* (10/12) and see her at *Mama Kin* (351-2525).

You know, the Charles Hotel is about much more than humiliating yourself at some megadeath megafirm's expense. There's some great blues piano to be heard there this week (10/12 - 10/14) courtesy of **Charles Brown** at the *Regattabar* (kinda sounds like "Regrettable" — 876-7777).

What's even cooler than starting your very own underground nation? Why, starting one and then utterly abandoning and repudiating it, of course! Check out the *Cocktail Nation* hating *Cocktails* at *TT the Bear's* (492-BEAR) this Saturday (10/14).

He sings, he acts, he scares children, and he's awful sensitive to boot: see **Henry Rollins** do the spoken word thing at the *Berklee Performance Center* this Sunday (10/15). Of course, watching a heavily tattooed no-neck get in touch with his inner punk rocker isn't for everyone, so you might prefer attending a concert and dance party at the *Roxy* featuring the legendary **Maceo Parker**. And unlike a lot of legends, Maceo still has what it takes. Call *Ticketron* (931-2000).

Imagine **Trent Reznor** with a sense of humor and a thick German accent. Can't tell the difference either, huh? Then you'll just love **KMFDM** (No Sympathy for the Majority, *auf englisch*) at the *Avalon* (262-2424). Opening will be the soothing sounds of *Life of Agony* and *God Lives Underwater*. I predict outrageous costumes, mock-fascist posturing, and overwhelming bombast — and the bands will probably be pretty kookie, too. The show is Tuesday (10/17).

Upcoming: **Green Day**, **Jane Siberry**, **Wynton Marsalis**. Go out some time.

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Entering the Fray

By Markus Hartmann

THE O.J. verdict got you down? You may be tempted to blame the verdict on race or money or celebrity. Chances are, the subsequent polarization of the nation would not have been so pronounced had it not been for the fact that the trial was televised. In the Oct. 21, 1994 issue of the RECORD, Prof. Ogletree '78 pointed out that pack journalism and the lawyers were leaking "misleading, unsubstantiated, and damaging evidence to the press." The conclusion he reached was that the press could possibly make "justice impossible by drowning out the voice of truth that the First Amendment itself was designed to overcome [sic]." Presumably it was "drowning" that Prof. Ogletree wants overcome, and not the voice of truth.

We can excuse the press for its excesses. After all, they are driven by ratings, and this O.J. stuff was selling like hotcakes. We can excuse the lawyers; they had a job to do. Unfortunately, we have no excuse for our own role in the early part of the trial. Last year, under the tutelage of our own Pied Piper, 12 1L research memos discussing the camera coverage of the O.J. Simpson trial were sent to Judge Ito. Prof. Ogletree, we have seen the enemies to the voice of truth, and we were among them.

By sending memos out to California, we volunteered to be part of the circus. What purpose did it serve? It allowed Judge Ito to claim to have reviewed the memos before doing his own research. How nice. Now that judges in high-profile cases across the land are refusing to allow cameras in their courtrooms, Ito can claim that it wasn't his fault, some of the "Harvard" 1Ls thought it would be a good idea.

Was it scholarship that drove the decision to send those memos? If you believe it was, consider the vast legal experience that went into the 1L memos. No, unfortunately the decision was driven by a different impulse. In this unfortunate accident on the side of the judicial highway, we just had to slow down and rubberneck to see the gore. The first brake lights we saw came from Prof. Nesson '63, the Pied Piper of ITL.

I first became aware of Prof. Nesson's scholar-



ship/pulp fiction instincts last year in his evidence class. The class was treated to a video (offered as legal scholarship) of stereotypical images of black men involved in various unsavory activities, capped off with footage of a large black penis. The video was the work of a student, and Prof. Nesson was very proud of it. One can only hope the video wasn't included in Judge Ito's mail.

Given that view of scholarship, I guess Prof. Nesson just couldn't help himself. "O.J. The Miniseries" had all the elements of the video minus the penis. So why didn't anybody stop him? Dean Clark '72, Prof. Andrew Kaufman '53 and Prof. David Shapiro '57 were all consulted. They are all co-conspirators in the great scam: O.J. as academic preparation for students who will, for the most part, practice civil litigation and shepherd corporate transactions. The Class of 1997 should demand a partial refund.

As a result, Harvard Law School is institutionally linked to one of the more base and unfortunate aspects of this American experience. O.J. voyeurism was like one of those personal habits that people don't admit doing publicly, but nonetheless do in private. HLS boasted about its O.J. habit. The frenzied activity came to a climax last week when students packed the Hark and gathered around televisions to watch the verdict while the maggots of the media filmed it all. Rumor has it that when the verdict was announced, there was some applause and some serious gnashing of teeth. Both reactions, and the school's part in the whole affair, were inappropriate.

The appropriate response: academic detachment. If you are overly concerned with the verdict or media's reporting of the polarization of the races, consider cross-registering at the Kennedy School. If law is your game,

I submit that there was not much offered by the O.J. thing. Pray that this is the trial of the century, because centuries can endure only a limited number of grotesque spectacles.

Last year, I was called for jury duty. The court did not require my services, but I did get to hear the judge's initial instructions. The case involved two young African-American men who were being tried for murder. There were no witnesses, but there was supposedly a knife. The judge assured the jury that the trial would not last longer than five days. He was wrong. I followed the trial in the Boston Globe, and it lasted seven days. That is how the system usually works. No cameras and rarely any HLS professors. The verdict: guilty.

The ITL students could have benefited from attendance at that trial. Sure, it doesn't have the trendy media impact, but there was much more law and a lot less schlock going on right here in Boston.

By sending in the memos, HLS contributed to the farce. The contribution did not help the cause of truth or justice. It was instead more clutter in an already cluttered media event. Moreover, it is evidence that the ITL program is in need of serious scrutiny. No one can deny that this trial was a major event. It deserved to be studied from an academic distance. There was no legitimate, scholarly reason to artificially intervene in any of the judge's decisions.

When the next Lindbergh-type trial comes along, perhaps there will be a few professors like Alan Dershowitz who will serve as advocates. In that role, they will be individuals who have an attachment to this institution. As such, they will not be representing this institution.

Given the pain and divisions that this trial has caused, it is unfortunate that HLS played even a small part in the outcome. Did we contribute to the drowning out of truth and justice? Well, we certainly did not throw the voice of truth a life-preserver.

By sending in the memos, HLS contributed to the farce. The contribution did not help the cause of truth or justice.



Fenno was wandering around the Hark last week hoping to bum a drink from Dave Weiss, who works in the Cafe, when he stumbled upon a huge crowd of students watching television. At first he thought something important was going on, like the Miss Harvard swimsuit competition, but it turned out to be some trial he hadn't heard about.

"Damn those scrooges in Financial Aid!" he thought. "If they hadn't been such tightwads, I would have enough money to pay my cable bill, and I'd be caught up on Court TV happenings." Fenno wandered over to see what was up.

After elbowing his way through a bunch of lost-looking 1Ls to get to a strategic spot by the electrical socket, Fenno turned around to see what everyone was so fascinated by.

Whatever it was, it was mighty important, because as soon as he plugged in his blender to crush some ice (TV without a 'rita to numb the sensibilities is too much for poor Fenno's delicate constitution), the angry mob turned as one to "shush!" him.

"Party-poopers," he muttered under his breath. Fenno will drink his margaritas on the rocks, but he does not prefer them that way. "Is it time for Oprah yet?"

The crowd glowered malevolently at him, so Fenno retired to a distant corner to nurse his drink and wounded feelings.

Apparently the trial was about over, because a clerk was reading the verdict. As soon as it was read, the crowd in the Hark began to clap, boo, shout and argue. Fenno didn't know what was going on, but he didn't want to feel left out, so he began clapping and booing simultaneously.

"Can you believe that?" a nearby student asked him.

"Absolutely," Fenno said, "but I believe pretty much everything I'm told."

This obviously did not sit well with the fellow, as he gave Fenno a shove and

stormed off. Fortunately, no alcohol was spilled.

"Isn't it great?" another student shouted in his ear. "This is a great victory for justice!"

"I'm not sure justice has been served yet," allowed Fenno. "Have the lawyers all been paid?"

Apparently that was not what the second student wanted to hear, so she kicked him in the shin and left in a huff.

"I've got to work on my pickup lines," mused Fenno. "She was kind of comely. I think I might have had a chance with her."

As the crowd began to thin out and the television reporters ran off to meet their deadlines, another student came up to Fenno. "Have you heard the one about O.J.'s new e-mail address?"

"No, I can't say that I have," said Fenno.

"It's '\\ESC'," chortled the comedian.

"I don't get it," admitted Fenno, somewhat sheepishly.

"Slash, slash, backslash, escape!" the fellow howled, bending over in mirth.

"Ho ho, that is a good one!" Fenno said, joining in the laughter.

"One question, though: Who's O.J.?"

Quote of the Week

"We won't have a monster truck rally or tobacco spitting parties."

— David Aronberg '96, describing how the newly-elected class marshals will try to overcome the lack of a female class marshal.

Creativity being stifled? Want to put some of your computer hacker skills to use? Be a production assistant at the RECORD! Call David at 3-9573 for details.

Lowell

By Matthew Huggins '96

RECORD Columnist



LOWELL, Mass. Lowell was once a bustling center of industry. Jack Kerouac, before he went On The Road, was born in Lowell. Lowell is the terminus of the Lowell Connector, a little stretch of expressway which connects the rest of Massachusetts with Lowell via Routes 3 and 495. Or maybe the other way around. But Jack Kerouac left, as did most of the industry in town (it isn't clear which departure was first). What remains is a cute little downtown area, surrounded by a not-so-cute rest of Lowell. And standing on the fringe of the not-so-cute rest of Lowell stands a beautiful old gray stone courthouse, surrounded by a wrought iron fence. It is this courthouse which was the focal point of my visit to Lowell.

Lowell, you see, is in Middlesex County. As is Cambridge. When I began law school, I made a point of registering to vote here, because I figured a law student should at least pretend to participate in the political process. It was through this tiny, little voter registration form that I filled out two years ago that I was tracked down and called to perform my civic duty. Yup, jury duty. In Lowell.

I showed up as requested at 8 a.m. one Wednesday morning. Along with about 65 others, I filed into the courthouse, went through an airport-style metal-detector, and then sat in a room and watched an inspirational videotape about jury service. It was narrated by a Supreme Judicial Court justice, and dealt mostly with convincing us why we shouldn't try to get out of jury duty. I think I was the only one who was actively (if surreptitiously) trying to get out of jury duty.

Voir-dire for this civil trial consisted of filling out a questionnaire, on which I listed my occupation as "student." Did they ask me what kind of student? Nope. Not my fault that they didn't ask. Then, after a rough outline of what the case would entail, and reading a list of the parties, witnesses, and attorneys, the judge asked the entire jury pool a series of general questions; "Do you know any of the parties?" (a few hands) "Have you ever been involved in a similar litigation?" (a few hands) "Is there any rea-

Me? I was just trying to do my best. Up there in Lowell.

son you cannot be an impartial juror?" (a few hands) "Is there any special reason you cannot serve today?" (64 hands) He never asked: "Do you go to Harvard Law School?" So I didn't raise my hand.

As the judge and the attorneys spoke with the jurors who had raised their hands, we could hear some of the excuses. "I work at the hospital where the parties were treated." "I am an insurance adjuster who deals with these cases all the time." And my personal favorite: "I have a contagious skin disease." (yikes!) So, after some jurors were excused and some were peremptorily (mostly on the basis of the questionnaire) challenged, I was the last juror picked, and the trial began.

The facts of the case turned out to be a typical first-year torts hypo. Party A has an as-yet undiagnosed brain tumor. While driving his wife's car, he has a seizure, sails through a red light, and smashes into the car of party B, who was not wearing her seat-belt. Party B is injured. Party A eventually dies from the brain tumor. B is suing A because A should have known not to get in the car and drive in his condition (Brian Confoy, where are you?). B is suing A's wife because she shouldn't have let him drive in his condition. So the whole trial turned on what A and A's wife knew about A's condition. All we, the jury, had to go on were the testimony of A's wife and grown sons, a co-worker, and some medical records. Co-worker testified that A had not been himself shortly before the crash. A week before the accident, A went to the doctor, complaining he was not feeling well. Doctor (no testimony, no records of this visit) gave A a clean bill of health. But, because A's wife is in the examining room with him, there is some question of how truthful A was with Doctor. Perhaps A was trying to hide how he felt from his wife. The medical records made at the hospital the day of the accident indicated that "patient has not felt well for four to six weeks, and has experienced questionable periods of syncope." Syncope (that's sin-co-pee) is fainting, as we found out after several unsuccessful attempts at pronunciation by both attorneys. Questionable periods.

So the trial was over, and a guy in a court uniform led us up to the jury room to deliberate. We could only communicate with the outside via a little bell. Our first question via this little bell was when did we get lunch? (I had the cheesesteak sandwich. And a lemonade.) Now, I haven't taken Evidence yet, so maybe there were nuances that I missed. But I was really fascinated, sitting in that jury room, with how we really had no idea what had really happened. We knew there had been an accident. We knew there was a brain tumor. But we had no idea how A had been feeling before the accident. The deliberations began in absolute chaos, with 14 people (12 plus two alternates) talking at once, mostly nonsense. My one contribution to the process was to get people to agree on what the questions were. Oh yeah. Duty-Breach-Causation-Damages? Forget it, we didn't even give it a second thought. People were very good at zeroing in on the real question. It was clear from the testimony that the wife had no clue as to what was going on inside her husband's head. But how reliable was the report taken from a patient with a brain tumor after a car accident about how he had been feeling? And what did they mean by "questionable"? The real question then became, given what we knew about what A knew about his condition, was he negligent? After a few more rounds of cacophony, we came to our conclusion: Nope.

So, we rang the little bell after we were done with our lunch, and we filed back into the courtroom. And all the time, there was something bothering me. Transaction costs, a little voice whispered in my ear. Transaction costs. The plaintiff, B, was a very sympathetic character, an elderly lady who would never quite have full motion in one shoulder again. A's wife was also a sympathetic character. No one wanted to make her pay for an accident which we all felt could befall any one of us. Transaction costs, the little voice whispered. Nobody litigates traffic accidents like this. What's wrong with this picture? After we gave the verdict, we met with the judge in his chambers. He gave us the skinny on the case. The attorneys on both sides had been hired by the respective insurance companies, who were arguing over who had to pay for the costs from the accident. I felt like a pawn in a big chess game. Now, don't get me wrong. It is not that automobile insurance is not something extremely important that prevents society from otherwise grinding to a halt. It just seemed a little inefficient to take 14 people out of work for two days to determine a bit of liability which a judge could have determined just as well. But people write third-year papers on issues like juries in civil trials and all the law and economics implications of auto insurance. Me? I was just trying to do my best. Up there in Lowell.

A Brief Respite from Political Correctness

By Curt Levey '97

Guest Columnist



THIS Monday, as Sidley & Austin interviewed our classmates inside the Inn at Harvard, Lambda members and their supporters protested outside, decrying Sidley's representation of the state of Colorado in *Romer v. Evans*. That's the case in which the U.S. Supreme Court will rule on the constitutionality of Colorado's Amendment 2, a voter-approved initiative that bans the state and its municipalities from making homosexuals a legally protected class. Lambda's posters around campus, as well as its Sept. 17 letter to students, equate Amendment 2 with support for "hatred and discrimination." I believe this is an inaccurate characterization of Amendment 2 and is particularly unfair to Sidley & Austin, which is merely representing, not advocating, Colorado's position.

In order for you to better understand my contention, you should know that I am a libertarian — in the philosophical sense, not the party sense. I believe that government interference in our lives, both economically and socially, should be kept to an absolute minimum, because our nation was founded on the ideal of individual freedom. As a consequence, I believe that when government proposes to restrict our freedom of association — by telling us what traits we may or may not use in selecting employees and tenants — the advocates of government intervention bear the burden of proving that it is absolutely necessary. Consider the case of the government telling an employer, whose religious beliefs say that homosexuality is immoral, that he must hire a gay or a lesbian. The employer's belief is ridiculous in my mind, but as a libertarian, I don't feel that I have the right to impose my judgment on that employer.

Furthermore, I believe that the free market is more powerful and fair than government regulation can ever be. Those whose narrow-mindedness lead them to base hiring and other decisions on race, gender, sexual orientation, and other irrelevant factors will find it difficult to compete in this increasingly diverse country. They will be punished by market forces in far greater numbers than can ever be done by courts. With my underlying philosophy revealed, let me now explain why I believe that reasonable people can come down on either side of the Amendment 2 debate.

We all go through life facing biases and discrimination. As we interview with law firms this fall, some of us will face discrimination because we are not as physically attractive as our classmates. Others will have to deal with the negative stereotypes associated with a southern accent. Still others will be denied callbacks because they're quiet and shy, regardless of how competent they may be. Did these people ask to be unattractive, to be shy, or to have an unpopular accent? Of course not — they no more chose those traits than does a gay person choose his sexual orientation. And yet, reasonable people can disagree about whether those traits should form the bases for legally protected classes. So too can reasonable people disagree over whether sexual orientation is deserving of protected status.

It's one thing to provide legal protection for traits like race and gender which are completely genetically determined and over which people have absolutely no control. It's quite another thing to say that the government should create a protected class for every trait which has a genetic component, such as sexual orientation, physical attractiveness, or even personality. Of course, nobody really contends that there should be legislation for every such trait; we all realize that government must choose, somewhat arbitrarily, which traits to protect. Consequently, most people would agree that a state should be free to protect sexual orientation, while choosing not to protect, say, physical attractiveness. By the same logic, shouldn't a state be equally free to choose, as a matter of policy, not to protect sexual orientation?

When I mentioned to a lawyer friend of mine that I was interested in finding out about a particular Atlanta firm, she said "Don't bother; they don't hire anyone with a New York accent." That didn't make me very happy, but I didn't demand corrective legislation. Nor would I protest if Georgia voters approved a referendum to ban "New Yorker's rights" legislation on the grounds that such legislation goes beyond the proper role of government. My acceptance of the Georgia referendum would not mean that I hate New Yorkers or that I hate myself. By the same token, acceptance of the will of

... one need not be evil or filled with hate to represent or support the voters of Colorado.

Colorado's voters, as expressed through Amendment 2, does not mean that one hates gays and lesbians. Thus a reasonable, fair-minded person can support Colorado's position in *Romer v. Evans*.

Needless to say, Lambda does not view the Amendment 2 issue as having two defensible sides. Instead, Lambda claims, in its letter, that "Sidley & Austin will argue that we don't deserve the same basic rights as non-gay people." Nothing could be further from the truth. If Amendment 2 is upheld, gays and lesbians will still have exactly the same rights as everyone else, including the right to be free from the violence they fear in the wake of the Supreme Court's decision. No right in either the U.S. or Colorado constitutions was repealed by Amendment 2. The only thing gay people will be denied, if Colorado prevails, is a special right, the right to be a protected class. That's a right we straight white males don't have; when we're denied a job by our favorite law firm, no civil rights suit can help us. Thus there is no basis for Lambda's claim that Amendment 2 "relegates us to the status of second-class citizens." To fully comprehend that, imagine your reaction if bald men claimed that they were second-class citizens because some state had a policy of not passing "bald men's rights" legislation.

Once you realize that Colorado's position is a reasonable one, it is not surprising to find out that Sidley & Austin's representation of the state coexists with a history of respect for gays and lesbians. For example, Sidley & Austin gives gay and lesbian couples the same insurance benefits as heterosexual couples. Furthermore, the firm has provided pro bono representation for numerous gay causes, as well as hosting, in its Chicago office, a fund-raiser for a gay rights group. And Sidley contributes financially to the AIDS Legal Council of Chicago, in addition to providing free legal services to AIDS victims. How can you reconcile these activities with Lambda's contention that Sidley is supporting "hatred and discrimination?" You can't.

As Sidley's activities demonstrate, one need not be evil or filled with hate to represent or support the voters of Colorado. One need only realize that there's a difference between thinking something is wrong and thinking there should be a law against it.

"Million Man March" To Draw HLS Students

continued from MARCH, page 3

report by the Sentencing Project, a group critical of strict sentencing, that found 32.2 percent of black males age 20-29 are either in jail, prison, on probation or parole. The report blamed the nation's "get-tough" drug policies and stricter sentencing guidelines for disproportionately affecting minority communities.

"This march is providing us an opportunity to see our numbers, our strengths, and be with people who share our same collective struggles every day," Clark said.

The rally's goal of drawing 1 million attendees to Washington is raising some comparisons to Martin Luther King's "I Have a Dream" speech in 1963 that attracted more than 200,000 people. The Million Man March's message of political strength — which is being stressed by prominent supporters and attendees, who will include the Rev. Jesse Jackson and the Congressional Black Caucus, and may include Johnnie Cochran and O.J. Simpson — may also be overshadowing the controversial organizers of the event, Farrakhan and Chavis.

Farrakhan, a black nationalist, is considered by many to be strongly anti-Semitic. Chavis was forced to resign his NAACP position amid accusations of misusing the group's funds to settle a sexual harassment complaint. These organizers' tainted backgrounds have

raised questions of whether the march will be more divisive than cohesive because of its failure to welcome women and other races.

Opponents of the march, for example, include the NAACP and the National Baptist Convention, who protest Farrakhan's ideological connection with Muslims as well as the event's exclusion of women. But apparently as a concession to women, organizers agreed to invite civil rights pioneer Rosa Parks and poet Maya Angelou as speakers.



Joseph Clark '97

"The overwhelming thing in my mind is that I am rather bothered by [the march]," said HLS Prof. Randall Kennedy, who is teaching a course this fall on race relations and the law. "It's one thing to be for racial justice and elevation of historically disadvantaged groups. But the racial and gender exclusion give me tremendous pause, as does the leadership of the march, in particular Minister Farrakhan and Ben Chavis."

"So I won't be participating, and I think it has a tremendous amount of potential for mischief," he said.

Clark said he will be attending with a different view.

"It will be a travesty to allow race to overshadow the principles of the march without looking at what brought us together in the first place, which are problems affecting the community," he said. "Race and gender are not why the men have been called to come together."

Race: Whose Issue Is It, Anyway?

By Frances Louise Cudjoe '96

Guest Columnist



A WESTRUCK faces, dropped jaws and angry eyes filled the lounge in Harkness Commons. The room, filled to capacity with Harvard lawyers-to-be, stood silent and still with the words of the verdict reverberating throughout the newly-chilled air. NOT GUILTY. The words hung over the crowd like the invocation proceeding the eulogy. The few yelps of adulation, relief and victory that had escaped from the mouths of a handful of students whose backs were pressed against the glass partition of the Harkbox Cafe, soon evaporated into the cool, thick numbness. Soon it would begin: the murmurings and speculation, the disappointment and outrage, but most disturbing of all — the accusations and stereotyping.

The faces in the Hark that day were mostly those of white students. I was among the very few black students present. Due to my aversion to media circuses and overhyped courtroom drama, I did not follow the O.J. Simpson case very closely. My last clear recollection of being directly involved in a conversation regarding the case was last summer as a summer associate at a major Boston firm.

We were at lunch at what had been an all-white, all-male club. Although the rules had formally changed, the one other summer associate of color and I could not help noticing that we were the only people of color in the dining room. And the two white women present joined me in the frustration that the ladies' room was squeezed onto the third floor since it had only recently been added. During the course of the lunch, several months before the jury had been chosen and only days after the white Bronco chase had occurred, one of the female associates offered her assessment of the case. She commented that it was clear that if the jury chosen consisted of "minorities," O.J. probably would be found innocent. She knew this because an article in the Boston Globe had done a survey the day before that had indicated as much. I offered that I thought such a generalization might be misleading since I was a "minority" and had not reached a verdict. Moreover, I knew many other "minorities" who had varying opinions on the likelihood of O.J.'s innocence or guilt. She agreed that I might have a different take on the matter. Then the attorney proceeded to explain, with no knowledge of who I was or where I came from, that the survey was probably done with "inner-city blacks."

With that, the other members of our dining party nodded their heads and went on with lunch. The general consensus was that O.J. was guilty. This amazed me given the fact that, at that point, no evidence had been presented, no arguments had been made and no glove had been found. In fact, all anyone knew was that O.J. had been accused. Yet, they all assumed that he was guilty. I could not help asking myself on what basis these attorneys reached their jurisprudential conclusion at that point. It was striking to me that they saw nothing wrong with predetermining O.J.'s guilt without a shred of evidence while simultaneously being disturbed by the idea that a "minority" jury would be swayed by race and, as a result, find O.J. Simpson innocent.

Now, one year later, the verdict has been announced. I am searching around the room, expressionless and not knowing how to react because, quite frankly, I do not know whether O.J. Simpson is guilty or innocent. I simply have not paid close enough attention to the evidence to make such a determination. Yes, I expected to hear my classmates speculate about his innocence or — at HLS — his guilt. I expected there to be some disappointment over the final verdict. I even assumed there would be heartfelt contempt and venom spewed over the final pronouncement in the case. Yet, what was so troubling was the attitude that seemed to pervade the crowd in the Hark and the campus discussions throughout the rest of the day and in days following.

O.J.'s guilt or innocence was not the question of the day. People did not question the prosecution's poorly executed strategy, the LAPD's sloppy investigative procedures or the unsavory character of the key witness. Rather, the theme of the discussion was something like the following: "I knew a black jury would acquit," or, "Of course they let him go. It was a black jury." Somehow the fact that there were non-blacks on the jury delivering the unanimous verdict was ignored. This kind of commentary was not to be found at Harvard alone. On CNN, NBC, CBS and ABC, network commentators made a point of explaining that the "intellectual choice" was, of course, guilty. However, the "emotional response" was not guilty. This "expert" position is both insulting and deeply offensive. These commentators conveniently overlooked the principles of law that say that the jury must be sure, beyond a reasonable doubt, in order to convict and that the prosecution bears the burden of proof; these same pundits failed to consider that maybe, just maybe, the prosecution did not meet its burden of proof.

What happened to "proof beyond a shadow of a reasonable doubt"? What happened to the belief that our judicial system prohibits determination of an accused person's guilt based on subjective intuitions of right and wrong and limits such deliberation to consideration of what can be proven? What happened to the attitude that many whites voiced following the acquittal of the LAPD officers who beat Rodney King — "We may not like the legal system, but we have to live with it"? What happened to the abiding faith in the judicial system that remains intact in spite of mountains of documentation that black defendants are convicted at a much higher rate by juries than whites and routinely receive much harsher sentences than whites for similar crimes, and that blacks are much more likely to receive the death penalty than whites? No one questions the legitimacy of the judicial system on those grounds. No righteous indignation from HLS students there. No one saying that white juries cannot be trusted to come to fair verdicts because of the race of the defendant.

As I gazed around the Harkness lounge, I was transported to that firm luncheon, back into that box of scrutiny, as white observers debated what all African Americans would do and how we all think. Last June, the public debate centered on the belief that African Americans thought that O.J. was innocent because he is black. This month, the public discussion takes as its point of departure the conclusion that the (not-quite) all-black jury acquitted O.J. because he is black. Enough already!

It is time that Anglo Americans realize that people of color do have the ability to deliberate and reason beyond an emotional response rooted in their ethnic identity or cultural consciousness. Black people have the capacity to decipher information on levels above skin color. Just as an all-white jury can acquit a white defendant of a crime that involves race, so, too, can a black jury reach a not guilty verdict, with sound reasoning on the evidence available, in a case involving a black defendant.

Again, I am not debating whether O.J. Simpson is innocent or guilty; I was not a juror, and I did not have first-hand access to the evidence presented. But, the very fact that so many white students are so sure that the jury acquitted O.J. because of race and not because they believed there was a reasonable doubt is proof that race was the operative issue in this trial. Yet, all evidence in the verdict's aftermath seems to point to the fact that race was even more so the issue in the white American imagination.

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IS PLEASED TO ANNOUNCE THAT

ELISA M. MACIA
DOUGLAS E. MCWILLIAM
AND
MARK C. RODRIGUEZ

FROM THE LAW SCHOOL'S 1995 CLASS
WILL JOIN THE FIRM,
CONTINUING A LONG TRADITION
OF HARVARD ATTORNEYS AT V&E.

THE FIRM WILL CONDUCT INTERVIEWS
AT THE LAW SCHOOL ON
WEDNESDAY, OCTOBER 25
AND INVITES INTERESTED STUDENTS
TO SIGN UP.

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LONDON
MOSCOW
MEXICO CITY
SINGAPORE

ATTORNEYS AT LAW

Legal Services Faces Cuts

continued from SERVICES, page 1

outplacement centers would be "radically affected" — possibly to the point of extinction — by staff layoffs. However, she said, she is optimistic that "the people responsible would make every effort to be sure that there are enough clinical placements for those who want them."

William Talley, a clinical instructor at the Criminal Justice Institute, said the budget cuts present only indirect difficulties for the CJI. "I don't see the two as being connected," he said, because Legal Services provides funds primarily for civil legal work.

Talley said the effect of the budget cuts might be felt more in the form of a decline in student interest in the programs than an immediate reduction in course offerings. He said that the cuts would result in a contraction in the availability of public interest jobs and that, sensing this, students might well decide to pursue areas with more hopeful employment prospects.

Even given this decision, Talley said, students should not forsake the Law School's clinical offerings. On the contrary, clinical programs offer an experience valuable in itself and "applicable to other practice environments," he said.

While the cuts may pose problems for the clinical courses, the legal services centers are more concerned about the immediate danger such cuts would present to the maintenance of basic legal services, said Sable.

Dersh Recounts Planned Appeal

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nation; and in this case, we got nothing.

Spousal Abuse Evidence

The other important issue was the extent of evidence that came in for the first months of the trial about the relationship between O.J. and his former wife. The fact that they allowed a dream to come in. The fact that they allowed a joke to come in. The fact that they allowed an episode in a bar to come in.

Why shouldn't that be allowed in?

Because, again, they're very prejudicial.

More prejudicial than Mark Fuhrman's tapes?

The standard is not the same. The standard of prejudice to a defendant is much different than the standard of prejudice to a witness or the prosecution. So it's not supposed to be a level playing field. This was tried as a spousal abuse case. This was tried on the theory that a man who has been involved in spousal abuse must necessarily be the killer, and we know that only one-tenth of 1 percent of people who hit their wives end up killing them.

That sounds low.

It's not. There's about 5 million cases of spousal abuse a year, and less than a thousand cases of spousal murder a year.

Reported spousal murder?

No, no, no. Murders are all reported and almost all solved. See, your insight goes exactly the opposite way. There are probably many more spousal abuses; spousal abuse is not reported. So the numerator of this equation is much, much higher. The abuse is not reported. There may be as many as 10 million spousal abuses [a year]. But we know there are at least 3 or 4 or 5 or 6 million spousal abuse cases. We know exactly how many murders there are. And almost all murders are solved. This is a very rare case. Almost all murders are solved. Murder has the highest rate of clearance. I think it's over 85 percent.

So we have a very good handle on the number of spousal murders a year. We did a whole memo on this. Even if you could argue that the one incident where he pleaded guilty to hitting his wife was relevant, it's hard to know how it's relevant that he, at a bar, said, "That's where my babies come from; that belongs to me," when he touched her crotch. I mean, how does that relate to whether he killed her

Like the size of the cuts themselves, their actual impact on the legal services of any given center will vary.

"Though we will take a really hard hit, there are other offices that will fare much worse," said Shelly McPhail of Greater Boston Legal Services. She explained that of the office's annual budget of approximately \$6.5 million, only about \$2.1 million was from funding from Legal Services. "We have one of the most diversified funding bases for legal services in the nation," McPhail noted.

The upshot of this, according to Sable, is that Greater Boston Legal Services will have a better chance of covering its funding reductions with increased contributions from other sources. The office has already received increased contributions from a number of large, local law firms and is also seeking an increase in state funding, he said.

Nevertheless, Greater Boston Legal Services will have to implement some program and staff reductions to cope with the budget cuts, Sable remarked. He said he expects the current staff of 100 would be downsized by 25 — most likely six attorneys and nine paralegals, with the remainder coming out of secretarial and support staff.

How these cutbacks would be allocated between the centers' various units, such as housing, family law, employment and welfare, and immigration, had yet to be decided, Sable said.

or not? So that was an issue on appeal. That was not an issue I was convinced we would win, I think. It's a politically incorrect issue, and would be a difficult one for a court of appeals to reverse on. But that's an issue we were certainly going to raise, and we filed a long brief on it.

Cross-Examination

Then, I think, the disparate way in which he [Ito] allowed cross-examination of witnesses. To give you an example, we had a witness, an expert, who testified. And they allowed him to be extensively cross-examined on the basis of another unrelated case that he had done, in which he may have made a mistake on, they claim; we don't think he made a mistake. But they allowed extensive cross-examination of him on an unrelated case in which he allegedly made a mistake. Then, we had one of their witnesses, from the FBI, Martz, and we wanted to do exactly the same cross-examination. We had a witness who said that Martz cooked the books in the World Trade Center bombing. And that he came to the wrong conclusion, that he deliberately manipulated the information to come out under the prosecution's theory. The judge refused to allow us to do exactly the same cross-examination he allowed the defense. Why?

Getting impatient. Too much time. The judge applied a double standard, throughout this case. He allowed the prosecution much more leeway in getting their evidence in than he did the defense. And we were going to prepare a chart of several dozen rulings in which he made one ruling for the prosecution and then a different ruling for the defense.

Closing Arguments

Oh —the closing argument. Marsha Clark vouching for the credibility of her witnesses, when she said, "I quit being a defense attorney and became a prosecutor so that I would have the luxury of never having to put on a witness whom I didn't believe was telling the truth." This is the same woman who put on Vannatter and Fuhrman. So, I think the closing argument might have been an issue in the case. Although California law on closing arguments is not very good. So those are the main ones [avenues of appeal].

Editor's Note: Next week, Prof. Dershowitz talks about why he believes O.J. Simpson was acquitted.

Class of '96 Marshals Elected

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speaks on Class Day, the Law School's graduation celebration.

"I want to pick the wine," joked Elliott, referring to a popular duty of marshals. Elliott admitted, however, that he has no specific wines in mind.

This year's election reflects a pattern of HLS students voting for male class marshals. Four men led the Class of 1995, and three men and one woman led the Class of 1994.

"I can't explain it," said Goodreau of the disparity. "It's really strange."

"I'm actually very surprised that certain people running this year didn't win. I didn't know everyone running, but I did know all of the women," said Boyd.

He linked the higher percentage of males in the student body with the election results.

"I would suggest that that disparity was carried out in the vote," said Boyd. "I guess we'll have to be more diligent about seeking out that [female] viewpoint."

"I'll try to make sure that the parties are not all male-oriented," said

Aronberg. "We won't have a monster truck rally or tobacco spitting parties."

Aronberg said a possible explanation for his and Boyd's elections is that they campaigned.

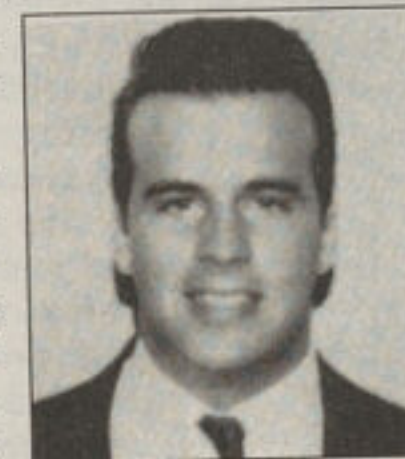
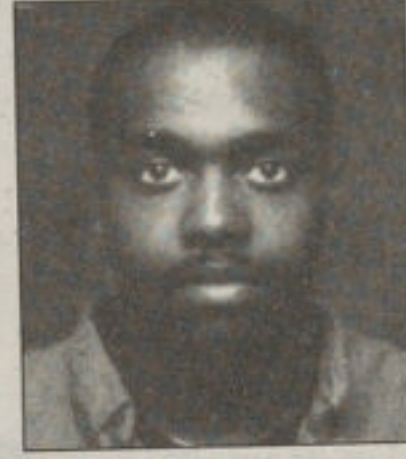
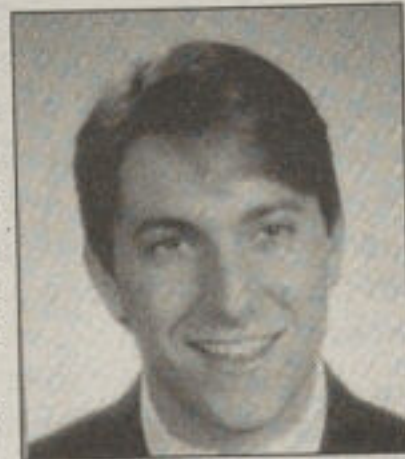
The marshals will have to work overtime to make up for the time they missed due to the late election. Normally, elections are held in the spring preceding the third year.

Law School Council President Rob Simmelkjaer '97 said he was not told until the last week of spring that the LSC was responsible for the marshal elections. The responsibility is not in the LSC's constitution or by-laws, he said.

"The only thing that concerns me at this point is getting a class speaker,"

Goodreau said. Although he had no immediate ideas for speakers, he did have a suggestion for the solicitation of ideas.

"I don't think the thing on the wall saying 'who would you like as class speaker' helps," he said. "You get a lot of really weird responses." Goodreau said stuffing Hark boxes with suggestion forms may work better.



(Clockwise from top left): David Aronberg '96, Eulas Boyd '96, Tim Elliott '96, and Scott Goodreau '96

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...

Here.



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