



Taiwan's Deputy Secretary-General of the Straits Exchange Foundation Lee Ching-ping (right) discusses the current tensions between Taiwan and mainland China to Harvard Asia Law Society President Albert Lee '97. Several HLS students recently visited Taiwan to observe the island's presidential elections. See page 15 for more pictures.

Law Review Rejects Gender-Based Affirmative Action

By Jaclyn Liu

In a move partially responding to its gender task force study, the Harvard Law Review voted 37-25 with three abstentions to implement proposals that will de-emphasize grades in the selection process.

The Review will reduce the number of people selected according to their grades and performance on the writing competition, and instead accept more editors based solely on the writing competition.

It will now select 20, instead of 16, editors based on the competition, and choose 12 editors based on a ratio of 70 percent grades and 30 percent writing competition. The total number of editors chosen will still remain at 32.

The Review also voted to eliminate a number of 3Ls chosen exclusively according to grades, and instead elected to add two editors chosen from the writing competition.

However, the Review failed to pass any proposals to include women in its affirmative action policy. Race-based affirmative action policies may continue to weigh in the consideration of seven to nine discretionary slots.

"All three proposals for gender-based affirmative action failed," said John Pottow '97, the Review's treasurer who kept minutes for the March 18 and April 2 meetings. "First, there was the proposal to keep the number of discretionary slots constant but add women to the affirmative action policy. That was voted down, 22-35, with eight abstentions.

"Second, there was the proposal to keep the number of editors constant but increase the number of discretionary slots. That was voted down, 21-35, with

nine abstentions. Finally, there was the proposal to increase the number of editors and make the additional slots discretionary. That was the closest vote — 22-31, with eight abstentions," said Pottow.

For the first 94 years of the Review's history (1887-1981), editors were selected almost exclusively according to grade point average. In 1981, the Review passed a resolution to reserve four affirmative action slots for the highest ranking minority in each section or the highest ranking women in that group, should the slots remain vacant.

This proposal was rescinded after intense opposition from the HLS faculty and some Review editors. In a compromise, the present affirmative action policy, which does not include gender as a factor, was implemented in 1982.

"There are two reasons why all the affirmative action alternatives failed [at the last two meetings]," said Law Review President David Pantan '97. "Some people opposed affirmative action on its principle. Others felt that the problem with women was not so great as to require such a drastic measure. They wanted to wait and see the results of our new proposals that passed."

"The vast majority of people were in support of getting more women onto Law Review," he said. "Most people who opposed the proposals were opposed to tinkering with the selection process."

David Friedman '96, former Law Review president who created the gender task force, explained: "Affirmative action has a permanent flavor — once instituted, it's hard to repeal. Since some editors are not com-

please see **REVIEW**, page 8

Course Offerings Decline

by Rob Friedman

1L and 2Ls registering this week are finding it harder to schedule the classes of their choice after course offerings dropped seven percent over the past year and 17 percent from two years ago, Law School Council (LSC) officers said.

"I am very frustrated at the prospect of not getting the basic courses I need to take the upper-level courses I want my third year," said Lori Solomon '98.

LSC president Chip Nierlich '97 and vice president Rob Jancu '98 said they decided to count the number of course offerings after receiving numerous complaints from students. They said initial

complaints came from 1Ls who worried about the decline in tax and corporation classes, two second-year basic courses. This year, HLS plans on offering three of each instead of the usual four.

"It's really a mess," said Justin Anand '98. "What I want to take in the spring is dependent on what I take in the fall, and it seems the computer is the one making the decisions."

Shuffling of second-year basics has caused problems for winter courses. Because Prof. David Charny '82 will pick up a section of corporations left vacant by Prof. Reinier Kraakman, Charny will not be offering his winter course, Contract and Economic Organization. "With Nesson not teaching evidence in

the winter, this has had a severe impact on winter offerings," added Nierlich.

He also noted that a course section of professional responsibility usually taught by Wilkins has been canceled. "And that's a requirement [to graduate]," he said. At press time Wednesday, Associate Dean Todd Rakoff '75 said he was actively seeking a professor to teach that section of professional responsibility.

The sparse course offerings will also have an impact on students in clinical programs because one less evidence class will be offered.

"Student who need evidence [to fulfill a prerequisite for clinical

please see **COURSES**, page 17

Turner to Give Class Day Keynote Speech

By Hope Yen

Telecommunications giant Ted Turner, the billionaire founder of the global news channel CNN, owner of the Atlanta Braves and Time magazine's 1991 Man of the Year, will speak to HLS graduates at this year's Class Day on June 5.

Turner was the pick of the class marshals and their planning committee after considering the input of classmates, who said they preferred a speaker from outside the legal community who could bring a fresh perspective to commencement. He was one of 10 potential speakers on the marshals' "short list."

"I think he's a nice fit for someone outside the legal com-

munity," said Class Marshal Scott Goodreau '96. "We look forward to his insights into the communications media" given the increasing interplay expected between it and the law in the future, he added.

"He's the type of person who says what's on his mind. I think he will give a speech that's not your typical commencement speech, so beware," he said.

Turner has often found himself in the media spotlight — from actions as seemingly minor as the Braves' controversial "tomahawk chop" to concepts as sweeping as his bold idea in the 1970s to create a 24-hour news network called CNN.

One criterion in choosing

please see **TURNER**, page 17

HLS to the Highest Bidder

Is the Price We Pay for Money Worth It?

By Rob Friedman

This is the third in a four-part series on employee relations, student services and internal decision-making at HLS.

The engraving of the name "Hauser" in the gray stone arch above the doorway to the former Holmes Field Building last spring was celebrated by many as opening a new chapter in the life of Harvard Law School. With the American flag waving atop HLS' first new building in nearly half a century, Dean Clark '72 dedicated the scarlet-brick tower to the Hausers' generous donation.

"This is a seminal gift for Harvard Law School and for legal education," Clark said in announcing the donation.

The \$13 million donated by Gustave Hauser '53 and Rita Hauser '56-'57 enabled the Law School to pay off millions in debt it owed on the building. The gift is the largest ever to HLS, and it stamped the excla-

The Corporation

Inside Harvard's Administration

mation point on a capital campaign that raised more than \$175 million. The money raised during the campaign puts HLS' endowment at nearly \$346 million, according to the fall 1995 Harvard Law Bulletin. The money has allowed the Law School to hire 20 new professors, increase public interest funding and improve classroom,

library and computing facilities.

While the money raised by the Capital Campaign will undoubtedly bring enormous material benefit to the school, many members of the HLS community — including students, staff and a handful of professors — are quietly wondering what price the school will have to pay. No one wants to crash the fundraising party, but there are latent rumblings that suggest the HLS real estate auction marks a curious, and potentially perilous stage in the school's history.

Historically, Harvard Law School has left the mark of its great leaders and contributors on its buildings. Deans

please see **HARVARD**, page 5

As Civil Rights Litigator, Reed Finds Value

By David Liu

This is the third in an occasional series.

Seven years after graduating from HLS, Kevin Reed '89 still rents his house. But despite the fact many of his classmates earn six-digit salaries in private firms, Reed isn't upset.

Reed is a litigator with the NAACP Legal Defense and Educational Fund — the civil rights law firm created by late Supreme Court Justice Thurgood Marshall — which has appeared before the Supreme Court more often than any other organization except for the Justice Department. The managing attorney of the Fund's five-lawyer Western Regional Office in Los Angeles, Reed deals with issues of police misconduct, equality in health care, housing discrimination, transportation equality and criminal justice.

Among his current cases is a class action challenge to L.A. County Probation Department's method of allocating resources. "By concentrating resources in terms of probation officers and crime prevention programs in outlying suburban areas and giving less attention and resources to kids served by inner city field offices, they have a system which in purpose and effect discriminates against the interests of Latino and black youth," Reed said.

Another case concerns housing discrimination. "This involves a landlord who owns and manages over 6,000 units of rental housing in Southern California," he said. "Here there is a systematic pattern of refusing to rent to racial and ethnic minorities and families with children."

On a day-to-day basis, however, Reed does not spend much time in court. "Most of what impact litigation entails writing," he said. "I spend a good deal of time doing legal research and writing and settlement negotiations. I also spend a good deal of time supervising students that are volunteering with us or are with us for the summer."

"Right now," Reed added, "I'm a visiting professor of law at Florida State."

After graduating from HLS, Reed spent one year clerking in the Supreme Court of Michigan. At the end of that year, he won the Skadden Fellowship, which funded his first two years with LDF. The Fund subsequently hired him as a staff attorney.

Asked what drew him into the public interest sector, Reed related the story of one of his first cases with the Fund. He represented the small community of Indio, lying 120 miles east of LA in the desert, as it faced demolition because of a nearby city's effort to expand a shopping mall.

"This was a very meaningful case to me because I got to represent individuals who had worked very hard all their lives," Reed said. "These were folks who had picked cotton and beans in Texas and Oklahoma. Now many of them owned property free and clear — not much

in the grand scheme of wealth, but of tremendous significance to them."

"It was very powerful to work with them as they fought to hold on to what was theirs," he said.

Reed negotiated a settlement for many of Indio's citizens. His homeowner clients received brand-new homes in a cul-de-sac where they are still neighbors. And the community's churches were guaranteed protection from forced removal.

For Reed, however, the true impact of his actions became clear this past January, when one of his clients died.

"[He was] 78 years old, a retired railroad worker, a World War II veteran, the pastor of a tiny Pentecostal church, a devoted husband — a beautiful man. It was a very powerful experience recognizing what I learned from him about strength, about faith," Reed said.

Reed's client was handicapped because of a spinal injury, but "the effort he expended to put on his shoes

was more than I would muster the entire day," said Reed. "And the last several years of his life were more physically comfortable and less spiritually troubling because I had negotiated for him a new house with central airconditioning and a microwave."

Reed summed up working at the Fund as being extremely rewarding.

"My colleagues are terrific people to work with. My clients are people I truly like and respect and learn from," he said. "I get to spend my working hours being who I am, thinking what I think, believing what I believe and working for what I believe in."

"In that I find tremendous personal and professional satisfaction," Reed said.

Reed also encouraged current students not to give up on careers in public interest.

"I recognize that public interest jobs can be extra-

ordinarily difficult to get," he said. "You don't hear back from [public interest organizations] for months. It's irritating, and you feel that you don't have the energy to look for [public interest] work when you can go to Career Services and just drop off your resume."

"At HLS, there is a culture that defines a norm of success as Skadden, Fried Frank, Paul Weiss, etc.," Reed continued. "The only real decision [many students face] is which office to practice in."

Reed noted, however, that many interesting alter-

natives to the firm were available to HLS students. "Harvard is a good place for finding opportunities," he said.

Reed concluded, "You should continue to hold on to the ideas you had about why you went to law school. Don't bow to the easier or more common or more popular route."

Alumni in Action

A look at the legal profession

"You should continue to hold on to the ideas you had about why you went to law school. Don't bow to the easier or more common or more popular route," said Reed.

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Tribe to Take Texas Affirmative Action Case

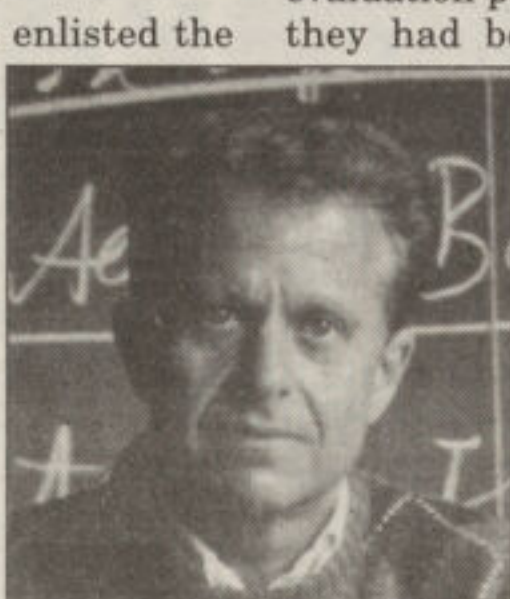
By Maria Green

The State of Texas has enlisted the help of Prof. Laurence Tribe '66 in its dramatic battle to protect the future of race-based affirmative action in its university admissions procedures.

Texas has recruited Tribe to appeal a recent ruling by the Fifth Circuit Court of Appeals that bars the University of Texas Law School from using race or ethnic background as a factor in its admissions procedures.

"I decided to take it because I think that the Fifth Circuit was grievously wrong both procedurally and substantively in taking it upon itself essentially to overrule the Supreme Court's Bakke decision and to do so in a way that raises serious questions under Article III and the Eleventh Amendment," said Tribe, referring to the landmark Supreme Court case *Regents of the University of California v. Bakke*.

The Fifth Circuit case, *Hopwood v. State of Texas et al*, was brought by four



Prof. Larry Tribe '66

white students who had been denied admission under a no longer existing evaluation policy. The four claimed that they had been discriminated against because they were rejected in favor of otherwise less qualified members of minority groups. Under the Hopwood decision, the law school is prospectively barred from taking notice of ethnic background in any manner whatsoever. The school had previously changed its system to one that uses race as one factor among many to be considered.

Tribe, who was asked to take the case by his former student Texas Attorney General Dan

Morales '81, has assembled a team that includes President of the American Law Institute and UT Law Prof. Charles Alan Wright, the Texas law firm of Vinson and Elkins, and former Tribe students Jonathan Massey '88 and Peter Rubin '88, both of whom clerked for the Supreme Court after leaving HLS. Tribe and the others are all working pro bono.

On Monday, Texas filed an application for a stay of

certiorari to the Supreme Court. If the stay is granted, the law school will resume its most recent admissions procedure; for now it is abiding by the Fifth Circuit's order and is processing applications under procedures that take no account of race. If the Supreme Court agrees to review the case, Tribe will argue as the attorney of record.

It is uncommon but not unheard of for a private lawyer to take such a role, said Texas Special Assistant Attorney General Javier Aguilar '81.

"Attorneys from our office represent the state — that's the norm. But in certain cases it's within the authority of the Attorney General to go out and get someone to help. We wanted one of the best constitutional lawyers around," Aguilar, Morales' HLS roommate, is also one of Tribe's former students.

The effect on affirmative action if the Fifth Circuit decision were to stand would be great, said Tribe. "If this decision becomes law nationwide, it would be the end of all affirmative action in universities and probably [other institutions], at least as far as race or ethnic background is concerned."

"The University of Texas was told that its law school cannot take race into account even to deal with the present effects of official racial discrimination and segregation by the public elementary and

secondary schools and colleges of the state of Texas — and that requirement is inconsistent with Supreme Court precedent and could not be imposed without crippling even the most modest forms of remedial affirmative action," He said.

Although the Fifth Circuit decision is binding in only three states, the effects could be far-reaching. "I think that it would be naive for people to think that they would be safe if the Circuit's decision were to be the last word, because other lawsuits are sure to come up,"

"If this decision becomes law nationwide, it would be the end of all affirmative action in universities and probably [other institutions], at least as far as race or ethnic background is concerned," said Tribe.

said Aguilar.

Harvard Law School is not planning any immediate action in response to the Fifth Circuit decision, said Associate Director of Admissions Todd Morton.

"We don't anticipate that it's going to affect us in the near term," said Morton, who added that he had read both the Bakke and the Hopwood decisions. "We're certainly aware of it. It's hard not to be."

Under the Hopwood decision, the law school is prospectively barred from taking notice of ethnic background in any manner whatsoever.

Cox Urges Students to Push Election Reform

By Hope Yen

Election finance reform is crucial to curb the dangers of unfettered campaign spending, which undermines the democratic process, said former Watergate special prosecutor and HLS professor emeritus Archibald Cox. '37

"I've always thought it extraordinary that representatives and senators staunchly deny they sell their votes or action in Congress but frankly admit that they sell access," said Cox, who has been active in the campaign for election reform. "It's like saying as a lawyer ... to just let the practice exist where the judge hears only my side of the case and never hears the other side."

He added, "I want to talk about what is truly the most important long-range and short-range issue facing the country — campaign financing, which under present methods threatens to destroy any real democracy by destroying public confidence and the spirit of common good."

Cox, a founder of the public interest group Common Cause, talked to a group of about 40 students in a lecture last week on "Meaningful Electoral Reform and the Constitution," but stressing that reform must come from a grass-roots level. His speech was sponsored by the Appleseed Center for

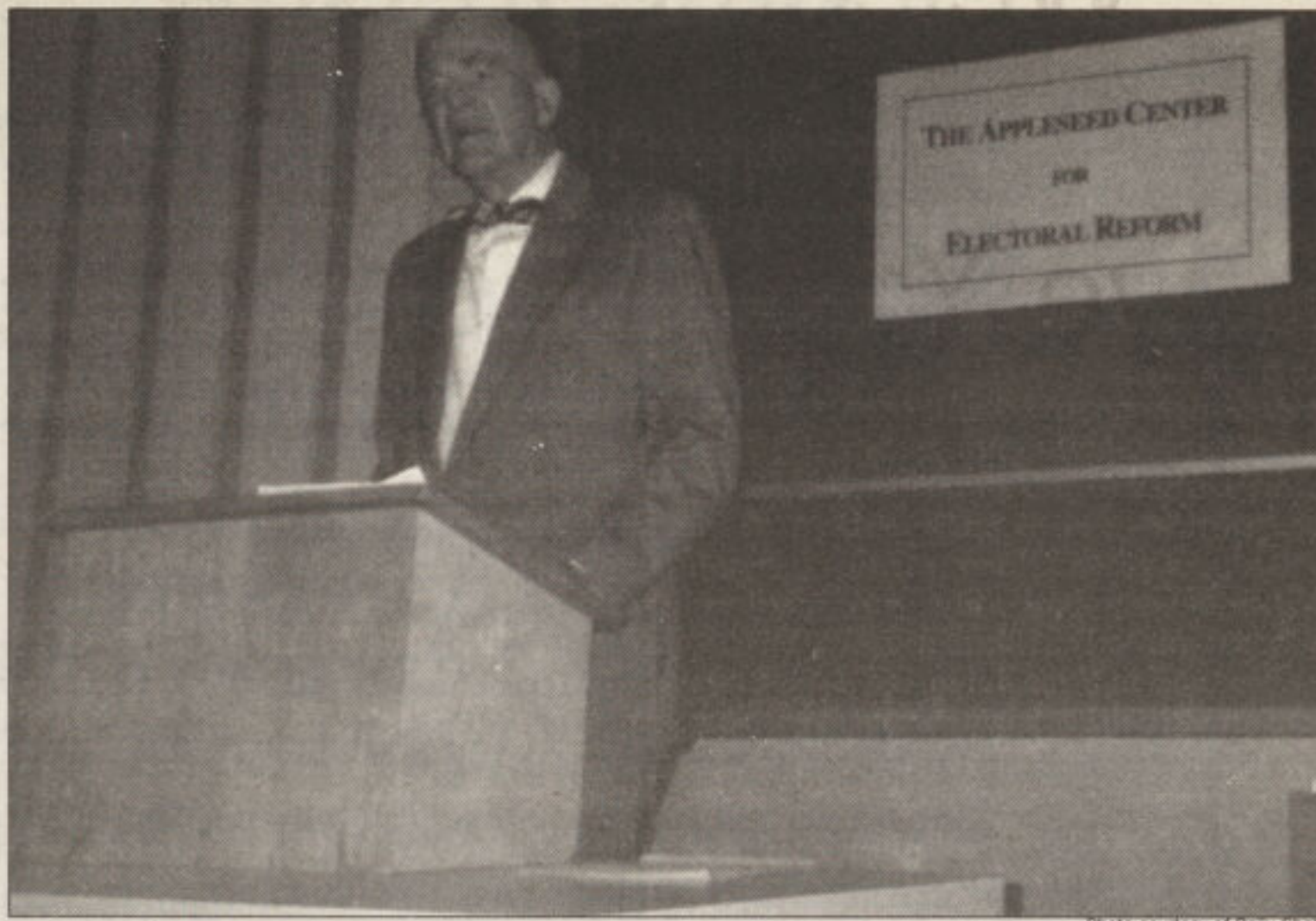
Election Reform, an HLS student group that coordinates student involvement and clinical internships in election reform projects around the nation.

"It's one thing to draw a reform bill that's constitutional; it's another thing to get it enacted," said Cox, who was referring to two bipartisan bills in Congress to reform campaign financing. "It depends on organizations like Common Cause and [Appleseed] and hopefully millions of individuals like us. The polls show that 85 percent of the people want campaign reform, but it does involve a little bit of effort [to mobilize]."

Cox said that since the Watergate era — when the public and Congress became increasingly concerned about the stream of special interest contributions going to political elections — campaign expenditures in the average Senate race have dramatically increased to \$4.5 million, with the winner typically taking in more than a million

dollars in PAC contributions. Running a campaign for a House seat, meanwhile, has increased in cost from about \$87,000 in 1974 to \$530,000 today, he said, putting those candidates with access to huge amounts of money

"There are two forms of corruption of democracy. The first is that lobbyists have replaced representatives as primary political actors. The other is more pernicious — that campaign contributions seem to determine political outcomes more than voting," Cox said.



Former Watergate special prosecutor and HLS professor emeritus Archibald Cox speaks to students about the "pernicious influence" of PAC contributions on political campaigns.

at a disproportionate advantage. PAC contributions often accounted for up to 45 percent of the money taken in by House incumbents, Cox said.

"The result is disillusionment of voters and the public," he said. "There are two forms of corruption of democracy. The first is that lobbyists have replaced representatives as primary political actors. The other is more pernicious — that campaign contributions seem to determine political outcomes more than voting."

Cox said major efforts to reform campaign financing have been deterred by the 1974 Supreme Court decision in *Buckley v. Valeo*, which upheld statutory limitations on campaign contribution but ruled that restrictions on campaign expenditures violated First Amendment free speech protection. But the reform bills presently in Congress seem to get by constitutional questions raised by *Buckley*, said Cox, who as Solicitor General argued that case before the Supreme Court.

Baiju Shah '97, who is director of the Appleseed Center, said Cox's speech was partly designed to promote thinking and dialogue on election reform and the state of democracy in the United States.

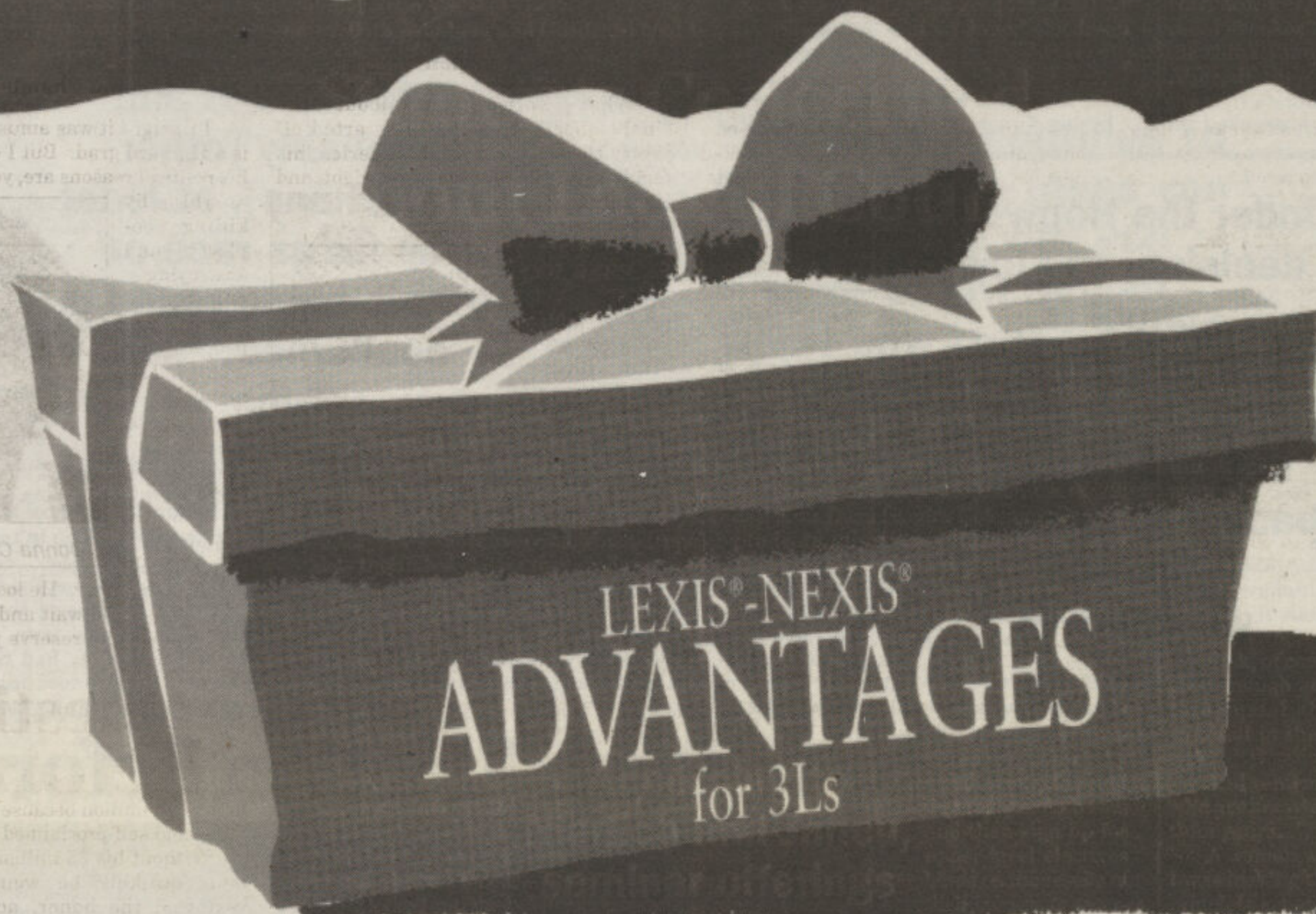
The newly-started Appleseed Center, which is composed of about 25 students, has been working on projects to help challenge the current system of Congressional campaign financing as unconstitutional because "people without money or access to money cannot equally participate in the 'wealth primary.'"

The group has been working to offer new defenses for popularly-enacted campaign reform measures by legislatures and citizen groups in Alaska and other states that have been struck down by courts under *Buckley*, Shah said.

The work, he said, offers a different type of clinical experience that is less client-oriented and more geared toward strategic lawyering for change on an institutional level.

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Speak Out!

What is your reaction to the Unabomber and his message concerning the de-personalization of our high-tech society?

Larissa Shamraj '98

I feel a kinship with [the Unabomber] because the Boston Globe described him as a brilliant misfit, and that is how I would like to be seen. Seriously, I do think it's ironic that people think it's a big deal when a criminal is from Harvard and they act like there is something special or spectacular about it when there are criminals and criminal minds everywhere — including Harvard. When that woman killed her roommate last year, people were talking about academic stress because it was hard to see that someone who had so much going for her was also a murderer.

Everyone thought it was sad to see a woman with such potential be a murderer. It's ironic that the press looks at it this way, that they believe the people involved had a greater value because they were both Harvard students. Joe Blow from Roxbury kills someone, and the media



Larissa Shamraj '98

doesn't care. But now they're intrigued. But students don't get in here by passing an ethics test. Being brilliant and ethical are not mutually exclusive. And I think some people like it when a Harvard person is a murderer, because they didn't make it into Harvard but at least they go to church every Sunday and are upstanding citizens.

Elaine Weiss '98

I think he's totally right about de-personalization, but I don't think he picked the best means to address the issue. People won't take his message seriously, because he chose to blow up people. Although I don't agree with his violent reaction, I agree that society is becoming de-personalized, and it's not a healthy thing. I just finished reading "Fahrenheit 451" by Ray Bradbury, and it was uncomfortably close to reality — very frightening. It's about a world where people



Elaine Weiss '98

decide they don't want the complications and pains of life, so they burn all books. And I think in real life people are going crazy, but no one wants to deal with the fact that lack of normal interaction has made people insane and that television and everything in society is just fake, plastic.

Neal Kaplan '98

What worries me about the Unabomber is that his life started off pretty traditional, middle America, his family is very supportive, very bright, and I think that he's not very different than a lot of students here and a lot of people in general. So, I think you have to look pretty closely at what he has done and try to figure out why. You can understand how an intellectual can get frustrated with the explosion of technology in every facet of our lives. I have to wonder why my high school guidance



Neal Kaplan '98

counselor could write out my course schedule while Harvard Law has to figure out an algorithm to prevent me from getting the tax class I want. I'm the last person to support Kaczynski's message, and I'd love to be the one who pulls the switch, but if we ignore the larger problem of de-humanization, then views that now seem extreme will become mainstream.

Donna Chambers '97

I thought it was amusing the suspect is a Harvard grad. But I don't care what his political reasons are, you can't achieve anything by killing people and destroying property. There are people who died. His manifesto means nothing if he uses violence to carry it out. But I'm also not sure that the suspect is the Unabomber. He looks nothing like him. We should wait and see if he is the Unabomber and reserve judgment until we know more.



Donna Chambers '97

Large Donations to Capital Campaign Raise Questions

continued from HARVARD, page 1

Griswold and Pound each led HLS for 20 years. Dean Langdell served for a quarter century. In addition to serving as dean of the Law School, all three men taught at the school and spent the majority of their lives contributing their energies to its community.

The idea of naming buildings after financial benefactors is certainly nothing new. In 1832, Dane Hall, Harvard Law School's first building, was named for a Boston attorney who put up \$10,000 to fund its construction.

But for those who are dissatisfied with the process, the issue appears to be the influence of money at HLS. As one staff member who wished to remain anonymous put it, "There was a time when things were named after people who made important contributions to this place aside from money."

Corporate Leadership

Before the Capital Campaign began in 1991, the largest donation given to HLS by a living, private donor was \$300,000, according to Jack Cogan '52, chairman of the Campaign. In the last five years, 57 people and organizations gave \$1 million or more. Called "Leadership Donors," this group includes corporations such as Boeing and McDonnell Douglas. It also includes 10 law firms, including corporate specialists Cravath and Cleary Gottlieb.

The late Dean Erwin Griswold, who served as the honorary chairman of the Capital Campaign said of the fundraising drive, "My heart's at the Harvard Law School. It's a great institution. I want it to grow, to develop, and evolve as it needs to, so that it may continue to be the greatest law school in the country, and the world."

What people are worried about is the direction in which HLS is growing. While it is unclear what the millions donated by Boeing and McDonnell Douglas will buy them, it is clear from other donations that the course of the school can be guided by a single donation.

For example, in 1993, Saudi Arabia's

King Faud gave HLS \$5 million for the creation of a Center for Islamic Legal Studies. The money also paid for the creation of a new professorship.

Originally entitled "The Servitor of the Two Holy Places" professorship, the professorship in Islamic law is now called, "The Custodian of the Two Holy Mosques" professorship.

The Harvard Law Bulletin wrote of the new Center, "Islamic shariah has evolved over 14 centuries and is the law of one-fifth of the world's population, yet it remains poorly understood in this country." It seems unlikely to many people, however, that HLS would have created the Center on its own without funding from King Faud. It is further unclear how the gift was solicited, or if the "most extensive U.S. program in Islamic law" had a strategic place in HLS's long-term educational mission.

When the school was in need for financing for a Holmes Field Building, Clark actively solicited gifts from alumni.

"In the beginning, we knew we wanted to do something, but we weren't sure what. He [Dean Clark] sort of planted the seed," Rita Hauser told the RECORD last year. Clark entertained the Hausers for weeks in an effort to persuade them to

"adopt" the new building. He even gave the Hausers a sketch of the building with the Hauser name engraved in the front, just to give them a sense of how it would look.

The donation by the Hausers, and by Reginald Lewis '68, who gave \$3 million to the school for international studies and had the International Law Center named after him, show the influence of HLS

By giving preference to donors with deep pockets, instead of those with a deep love for the school, many fear HLS may be treading dangerous water.

alumni who abandoned the legal community only to amass great fortunes in private industry. Gustave Hauser is chairman and CEO of Hauser Communications, a cable television and satellite communications corporation. Lewis was the CEO of TLC Beatrice International, a conglomerate

with large holdings in food and other consumer products.

And then HLS renamed Langdell West Areeda Hall in honor of late Prof. Phillip Areeda '54, a man who had taught at HLS for nearly 35 years and contributed greatly to the HLS community and the greater legal community through his scholarship in the field of anti-trust.

It is nearly impossible for a professor who has shown allegiance to HLS for so long to amass a multi-million dollar estate

to leave behind. Indeed, Areeda was able to save \$5 million because of his book royalties and self-proclaimed "frugality."

Without his \$5 million gift, however, it is unlikely he would have been bestowed the honor, according to an anonymous source close to the "dealings" that went on between Areeda and Clark last year.

While Clark courted the Hausers for their \$13 million, he made no commitment to rename Langdell West. It was only after "extensive negotiations" in which the late professor let it be known to Clark that he wished Langdell West to be renamed in his honor that Clark acquiesced.

"There was never any doubt what [Areeda] wanted, that he wanted the building he had called home to be named after him. But it took a while [to negotiate the deal]," said the source.

By giving preference to donors with deep pockets, instead of those with a deep love for the school, many fear HLS may be treading dangerous water. No one wants a repeat of what happened in 1979 at the Kennedy School, where student protests embarrassed the school for attempting to name its library in honor of donor Charles Engelhard, a businessman who made his fortune from the gold mines of apartheid South Africa.

But to many at HLS, however, most pressing for the future of Harvard Law School is the role outsiders with deep pockets will play in its future and whether HLS will determine its academic route by following the streets paved with gold.

Both Clark and Scott Nichols, dean for development, were unavailable for comment.

How Much is That Doggie in the Window?

Here's What It Costs to Purchase a Piece of HLS

Item	Purchased by	Price
New building	Gustave and Rita Hauser	\$13 million
Renaming of Old Building	Reginald Lewis	\$3 million
Wing of Old Building	Phillip Areeda	\$5 million
Creation of Legal Study Cntr	King Faud	\$5 million
Named Professorship	Several - Kirkland & Ellis is latest	\$1 million



Find out just how much fun the road ahead of you can be. If there's anything more fun than driving a Volkswagen, it's driving one with a bike on top. Our new Jetta comes with a 21-speed, customized Trek performance mountain bike securely fastened with an all-purpose roof rack.

It's the limited edition Jetta Trek. 5 on the floor. 21 on the roof. Just one of the Volkswagen models designed to help you connect back to the world. Like the Jetta Trek, our Golf hatchback, Cabrio convertible, and Passat are all German engineered. So everything about driving them feels different.

And now Volkswagen has affordable lease and finance options for graduating seniors and recent grads. In fact, a Jetta Trek lease starts as low as \$0 down/\$225 a month.*

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Volkswagen Protection Plus: 10-year/100,000-mile limited warranty on the powertrain for the original owner; 2-year/24,000-mile "bumper-to-bumper" limited warranty that covers any unlikely defects in material or workmanship; tires are warranted by their manufacturer. Please use your seatbelt in the car and helmet on the bike, and observe the general laws of safety and physics when riding about. \$224.86 first month's payment, \$0 down payment, \$225 refundable security deposit, and \$450 acquisition fee due at lease inception. Monthly payments total \$1,793.28. Manufacturer's Suggested Retail Price of \$16,420.00 for a 1996 Jetta Trek Limited Edition with 5-speed manual transmission, air conditioning, AM/FM stereo cassette, and emissions equipment. 48-month closed-end lease offered to qualified customers by VW Credit, Inc. through participating dealers. Supplies limited; must take retail delivery by 6/30/96. Requires dealer discount of \$700 which could affect final negotiated transaction. Price includes all costs to be paid by a consumer except for other options, dealer charges, financing costs, registration fees, and taxes. Lessee responsible for insurance. At lease end, lessee responsible for \$0.10/mile over 48,000 miles, for damage and excessive wear. Purchase option at lease end for \$23,890. Dealers set actual prices. See dealer for details. Survival optional. Airbags are a Supplemental Restraint System. *Volkswagen, the Volkswagen logo, "Golf", "Jetta", "Jetta Trek", "Cabrio", and "Passat" are registered trademarks of Volkswagen AG. "Drivers Wanted" is a registered trademark of Volkswagen of America, Inc. 1-800-DRIVE-VW. <http://www.vw.com> ©1996 Volkswagen.



Drivers wanted. 

Across the Wire ... Across the Country

DiMati Family Wins Access to Testimony

BOSTON (AP) — The Supreme Judicial Court has ruled that the family of Carol DiMaiti Stuart may use grand jury testimony in its civil suit against Edward F. Kakas & Sons, the furrier that employed Charles Stuart in 1989 and owned the gun he allegedly used to kill his pregnant wife.

In a brief order by Judge Charles Fried, the state's highest court denied a motion last Friday by Suffolk District Attorney Ralph C. Martin II to keep the grand jury proceedings confidential, the Boston Globe reported.

The court's decision would allow lawyers for the DiMaiti estate to examine the grand jury testimony of Matthew

The DiMaitis want to use the Matthew Stuart testimony in their civil suit.

Stuart, who reportedly implicated his brother Charles in the crime.

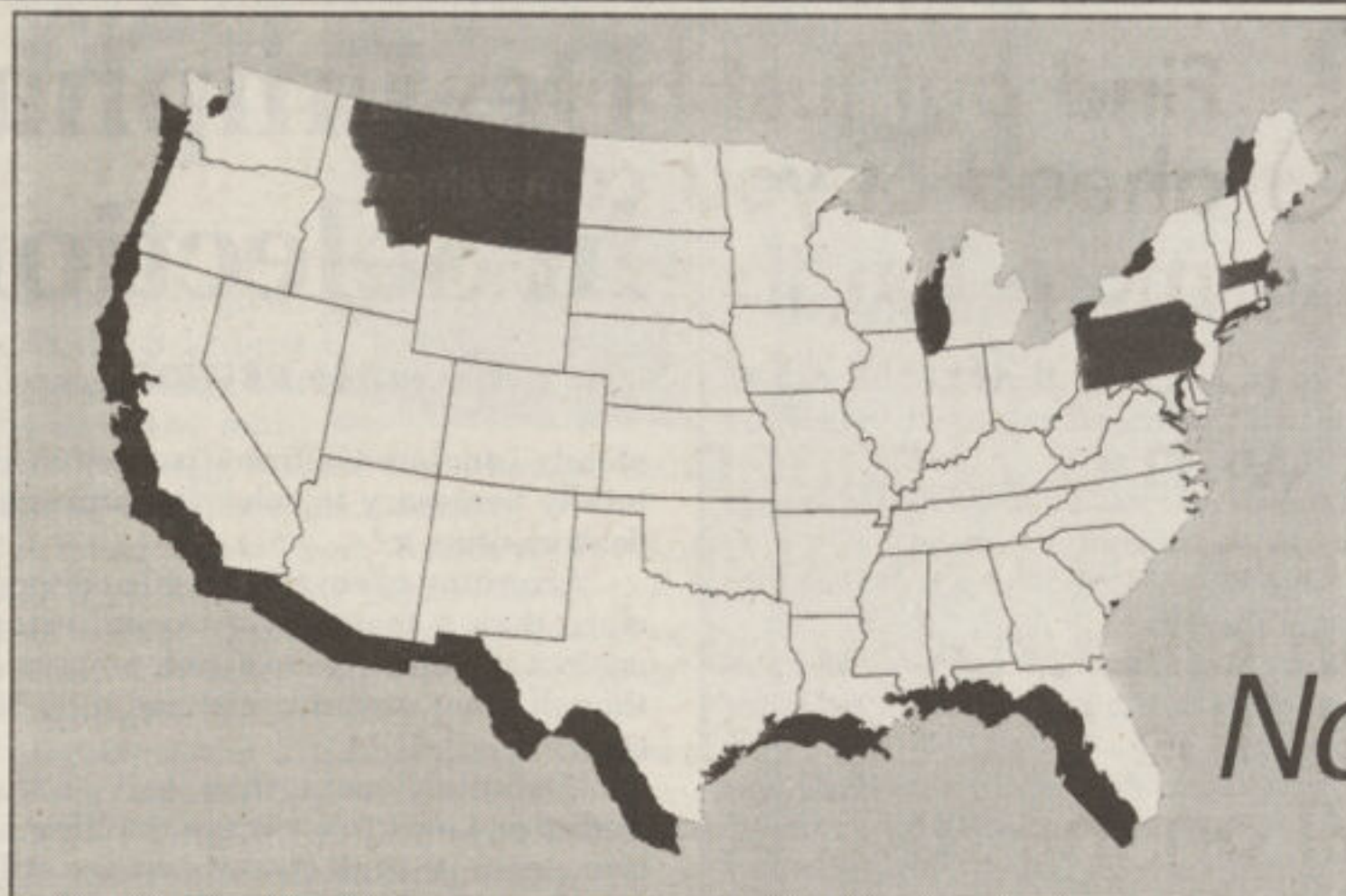
The DiMaitis sued the furrier in 1992, arguing that Kakas was negligent in protecting the weapon.

George Kakas Jr., one of the owners of the Newbury Street store, said he had forgotten about the gun, which had been kept in a safe for a decade.

Carol DiMaiti Stuart and her unborn son were killed Oct. 23, 1989. Charles Stuart drowned Jan. 4, 1990, after apparently jumping off the Tobin Bridge. Officials said he killed DiMaiti Stuart.

The DiMaitis want to use the Matthew Stuart testimony in their civil suit. Although grand jury testimony is traditionally secret, the SJC has said it can be used in civil cases if the material has been previously public.

Fried's ruling will let the DiMaiti lawyers see the material, and then return to court to argue whether it can be used in the case.



*This Week,
Reports
From the
Northern U.S.*

Students Boycott Pepsi to Protest Human Rights Violations

STATE COLLEGE, Pa. (AP) — Snacking on Pizza Hut or Doritos chips may be the norm for many college students around the country.

But a growing group of collegians are following in the footsteps of their baby boomer parents and protesting corporations for their operations in Burma, calling for the military regime in this southeast Asian nation to step aside and allow the elected government to take over.

From Harvard to Virginia Tech to the University of Washington, students are avoiding Unocal gas stations and PepsiCo Inc. products, including Pizza Hut, Taco Bell and KFC restaurants and Doritos and Lays chips.

"We can draw a relationship between our behavior here at Penn State and a situation on the other side of the world," said Andrew Miller, a Penn State senior majoring in political science.

"A lot of people think the situation is very distant and has nothing to do with us. But our behavior here has ramifications everywhere."

Burma's military government staged an election in 1990 that the National League for Democracy, led by 1991 Nobel Peace Prize winner Aung San Suu Kyi, won by a landslide.

Instead of turning over power, the military said the vote had been to elect delegates to a constitutional convention. Suu Kyi's party boycotted the convention saying

delegates are only allowed to rubber-stamp measures proposed by the military.

Refugees who have fled to Thailand report that the military is forcing civilians, especially ethnic minorities, to work for pennies a day on government projects.

"It's not like we're asking people to stop drinking soda," said Zar Ni, a graduate student at the University of Wisconsin who fled Burma in 1988, when the current junta seized power and killed several thousands of pro-democracy protesters. "There are a zillion alternatives in this country."

A similar campaign was waged against companies who invested in South Africa before apartheid was lifted.

"What finally killed apartheid was selective purchasing," said Douglas Steele, a Georgetown law student. "It became more profitable for companies to do business in this country than to do business in South Africa."

Many companies have already bowed to pressure and abandoned Burma, including Amoco, Levi Strauss, Liz Claiborne, Eddie Bauer and Reebok International.

And last week, Harvard canceled its plans to switch from Coca-Cola to Pepsi in dining halls.

"Symbolically, it was very important," Harvard junior Marco Simons said. "It's helpful to the dining services and trustees of other schools because no one wants to act in a vacuum."

Students at Penn State have taken a

dig at Pepsi's own slogan with a banner on campus that reads: "Pepsi/ The Choice of a New Genocide."

Despite the human-rights violations, Miller knows that Penn State would never break its exclusive \$14-million contract with Pepsi to support democracy in Burma. Pepsi provides all soft drinks at university events and on campus.

"We're not asking for Penn State to break its contract or sell its Pepsi stock," he said. "What we're asking Penn State to do is come out with a statement against investment in Burma and use its stock in Pepsi to support a shareholders' resolution for a human rights code of conduct."

That resolution, which would force the company to take human-rights violations into consideration when investing in a country, will be voted on during a stockholders meeting on May 1.

Daniel Sieminski, Penn State's director for finance and business, said the school has not taken a position on Pepsi's investment in Burma and has not decided how to vote at the shareholders meeting.

Pepsi, which makes about \$8 million a year in Burma, has insisted that the company can do more good by doing business in the nation than it would by leaving.

"We do not support repressive governments," Pepsi spokesman Richard Detwiler said. "If the U.S. government says its OK to do business in a country, we generally look to that as our guideline."

Unabomber Trail Leads Across the Country

HELENA, Montana (AP) — Federal investigators have placed Unabomber suspect Theodore Kaczynski in Northern California on dates when bombs were mailed from the region, a law enforcement source said this week.

The last four bombs from the Unabomber were mailed from Northern California, including two postmarked in Sacramento.

The source, who spoke on condition of anonymity, cautioned that investigators were still going through records.

In Sacramento, Burger King manager Mike Singh said he had seen Kaczynski a few times in recent years at the restaurant, which is next to the downtown bus depot.

"He looked like one of those bums who come in in the morning and have a sandwich and cup of coffee and walk out," Singh said.

Frank Hensley, a desk clerk at the nearby Royal Hotel, told the Associated Press he saw Kaczynski in the neighborhood near the bus depot. He said Kaczynski stayed at the hotel two or three times over the past five years, usually in the late spring or summer.

"If it wasn't for all this, I'd be expecting to see him about now," Hensley said, referring to Kaczynski's arrest last week.

Ronald Henry, manager and part-own-

er of the Royal and several other hotels near the bus station, said FBI agents showed up at the hotels simultaneously one morning last month and took registration cards for June 17, 1993, through June 24, 1993.

On June 22, 1993, a geneticist at the University of California at Sacramento was injured by a Unabomber bomb mailed from Sacramento. Another bomb mailed from Sacramento wounded a Yale University computer scientist on June 24, 1993.

A bomb mailed from San Francisco in 1994 killed a New Jersey advertising executive. And a fourth bomb postmarked in Oakland, California, exploded April 24, 1995, killing a timber industry lobbyist in Sacramento.

The source also said FBI agents are checking hotels near bus depots in Oakland and San Francisco, where other devices and letters attributed to the Unabomber were mailed.

In Washington Monday, the lawyer who told the FBI of the Kaczynski family's suspicions said they never sought assurances that the government would waive the death penalty.

Kaczynski's mother wasn't told of the suspicions until about two weeks ago, said Tony Bisceglie, lawyer for Kaczynski's brother, David.

"She expressed her sincere belief that Ted could not be the Unabomber, but if it was, he must be stopped," Bisceglie told reporters.

David Kaczynski tipped authorities after noticing his brother's old writings were similar to the Unabomber's anti-technology manifestos, the lawyer said.

"There were similarities in ideology, phraseology and the spelling of certain words," Bisceglie said.

"I think that David is in shock. I think that David thinks that his brother was involved."

He said the family didn't know about the government's \$1 million reward.

Investigators building a case against Kaczynski are searching the country for evidence that the reclusive former math professor left his tar-paper shack to mail or leave bombs in other states.

Agents searching the Montana cabin have found evidence directly linking him to one of the bombings, the Los Angeles Times reported, quoting sources who would not provide any specifics.

A federal official told the Associated Press investigators defused a live bomb that was found in the cabin, where they also found bomb-making chemicals and components, and notes on making bombs.

The Los Angeles newspaper said the device not only was completed, but had

batteries attached. The newspaper's sources would not say if they had evidence that Kaczynski was preparing to deliver that bomb.

Federal prosecutors from California, New Jersey, Montana, Connecticut, Illinois and Utah met in Washington Monday to discuss how to proceed with the case, including choosing a coordinator for the investigation.

Kaczynski, 53, was taken into custody at his cabin near Lincoln, Montana, on April 3 and is being held without bail in Helena. He has been charged in federal court with possession of bomb-making materials.

The charge is intended to keep Kaczynski in custody while investigators build a case against him for the bombings that killed three people and injured 23 in nine states over the past 18 years.

A typewriter found in the cabin appears to be the one the Unabomber used to type the manifesto and letters.

Agents found anti-technology writings in the cabin that could be early drafts of the Unabomber's 35,000-word manifesto, the San Francisco Chronicle reported Monday.

A source close to the case said the writings "echo in style and tone" the treatise published last year by the New York Times and the Washington Post.

BRIEFS



\$2.1B University Campaign Passes Midpoint

The University recently announced that it has raised more than \$1.1 billion in its \$2.1 billion capital campaign, bringing Harvard's fundraising effort more than halfway to completion.

Vice President for Development and Alumni Affairs Fred Gimp '50 said although the campaign is slightly ahead of schedule, he expects tough times ahead.

"When you reach the halfway point, you've already contacted the people closest to the University," he said. "The first part is always the easiest."

The current campaign marks the University's first effort to coordinate fundraising efforts among all its schools. Earlier this school year, the Law School raised more than \$175 million as a part of its Capital Campaign.

Gimp said the University hopes to raise money for construction, undergraduate financial aid and inter-faculty administration. Funding has been secured for many of the University's high-profile construction efforts, such as Loker Commons and Annenberg Hall, he said.

— from the *Crimson*

Rudenstine Letter Defends Affirmative Action

Harvard President Neil L. Rudenstine defended affirmative action in an open letter to the community after the recent federal appeals court ruling that the University of Texas may not use race as a factor in its law school admissions.

"I do not believe we can solve the persistent dilemma of race or ethnicity in American life simply by stating that we live — or ought to live — in a society where these characteristics have ceased to be significant," Rudenstine wrote.

"A person's race or ethnicity may be considered as a potential 'plus' factor among many considerations," he added.

The U.S. Court of Appeals for the Fifth Circuit ruled in *Hopwood v. Texas* that despite the university's interest in promoting student diversity, it could not consider the race or ethnicity of applicants in its admissions decisions.

The ruling only affects schools in the Fifth Circuit, which includes Texas, Mississippi and Louisiana.

— from the *Crimson*

Business School to Require GMAT

The Business School recently announced that it will incorporate standardized testing into its admissions criteria, beginning with those seeking admission in September 1997.

Dean of the Business School Kim B. Clark said he decided to require the Graduate Management Admissions Test (GMAT) after its recent overhaul of standards.

Harvard Business School had been the only major MBA program to exclude standardized testing from its admissions portfolio.

"If they hadn't changed the test, we would not have changed the standards," Clark said.

The Graduate Management Admissions Council recently announced that as of October 1997, the GMAT will no longer be a written exam. Instead, the test will appear in a computer format available year round by appointment. In addition, the council recently added a writing skills section to gauge candidates' analytic expression.

Students at the Business School said they welcome the changes.

Matt Marumo, a second-year student at the Business School, said the new GMAT requirement is fair, particularly since he believes that few people in his classes have "a keen sense in numbers."

— from the *Crimson*

Harvard's Admissions Rate Lowest in History

Harvard College has accepted 1,985 secondary students out of a pool of 18,190 applicants, making this year's admissions rate of 10.9 percent the lowest in the school's history, officials said.

Dean of Admissions and Financial Aid William R. Fitzsimmons '67 praised the admitted class, which will be the first to graduate in the next millennium.

"This is a very, very impressive class in every way," he said. "Personal qualities of the group seem very strong."

Out of the group, women compose 45.4 percent, which is the third largest percentage of women admitted in school history. In addition, the incoming class is 16.4 percent Asian American; 9.4 percent African American; 8.5 percent Hispanic; and 0.8 percent Native American.

Fitzsimmons said he expects an increase in the number of accepted students who ultimately decide to enroll at Harvard because of new admissions policies at Yale, Princeton and Stanford.

— from the *Crimson*

Yale Students Arrested After Protest

Yale University police have arrested 31 students after a two-hour sit-in at the president's office.

The Student Labor Action Coalition, which supports the campus workers' unions Locals 34 and 35, refused to leave the office of Yale president Richard C. Levin after he unexpectedly canceled a meeting with the group.

"I think this just shows the Yale administration's refusal to deal with the issue of the strike in any constructive manner," said coalition spokesperson Francis Engler, a junior at Yale.

"The administration has embarked on a mission to break its unions and it is willing to pay any cost, including the arrest of their own students."

The students were taken to the Yale University Police Department to be booked for trespassing and obstructing free passage, according to the coalition's news release.

At a rally and press conference preceding the arrest, the coalition announced plans to encourage students to withhold fall tuition payments if the ongoing difficulties with striking labor unions are not resolved in the near future.

— from the *Crimson*

Law Review Votes to De-Emphasize Grades in Selection Process

continued from *REVIEW*, page 1

pletely convinced affirmative action is totally necessary to solve the problem, don't institute it."

According to several female editors, more than a majority of women voted against the affirmative action proposals though other accounts claimed a 50-50 split.

"Definitely more than half of the women on Law Review is against affirmative action, though the women are still very divided," said Suzanne Irving '96 who herself voted against the proposals. "I counted at the second meeting that 14 women were against affirmative action though two did not show up. These two voted against affirmative action at the third meeting."

Panton claimed that though he did not make a head count, he "wouldn't be surprised" that more women opposed than supported affirmative action.

A persistent rationale expressed by women opposed to gender-based affirmative action was the stigma they perceive will result should women's selection be attached to an affirmative action policy. They fear that women's selection onto the Review will no longer be viewed as merit-based.

"The stigma makes life a little more difficult," said Dawn Pieper '97. "Individuals need to prove their merit. I don't want a helping hand. I deserve a feeling of pride for getting on Law Review. I don't want to be stripped of that — it's unfair. I'd rather have no solution than affirmative action."

"I think there are reasons for race-based affirmative action that do not exist in the gender-based context," said Lisa Grow '97 in explaining her reasoning in opposing affirmative action.

"There is no deep seated societal discrimination that led to this result," she said. "The [task force] study showed that the reason for the gender disparity is grades — maybe there is something about law school or this particular institution that causes the disparity, but this is not a broad social problem that affirmative action is designed to correct."

Many of these women would rather eliminate consideration of grades from the selection process should the choice come down to this or affirmative action.

"I am against affirmative action strongly," said Audrey Price '97. "If the

number of women on Law Review doesn't change much next year, we can do more along the lines we have done this year — maybe even eliminate grades. But I will still be against affirmative action."

However, women in favor of affirmative action expressed very different sentiments.

"I felt we didn't need to wait and see," said Kimberly Parker '97. "Given the fact that the proposal to abolish grades did not pass, this was the only policy that will go far enough to address the long standing gender disparity."

"I found it problematic that some women implied at the last meeting that women of color should feel stigmatized if [gender-based] affirmative action passed," said Laura Rosenbury '97.

"Law Review is not the most comfortable place for women to be. It's interesting when I hear some women questioning how

they got on. It is a possibility that they have chosen to vote against affirmative action because they feel insecure about their status on Law Review," said a female Review editor who did not want to be identified in her speculation of why many women were opposed to affirmative action proposals.

Though Jenny Martinez '97, Managing Editor, claimed that measures were taken to eliminate "strategic vot-

ing," a few Review editors claimed that "strategic voting" did take place. A small bloc of editors voted against affirmative action using the argument that grades are what accounts for women's under-representation on the Review; therefore the Review should change the selection process, not add women to the affirmative action category. Yet the same people at a prior meeting voted against elimination of grades for the selection process.

"There is a small block of people, including some men and few women, who are vehemently opposed to any change," said Seana Shiffrin '96, chair of the task force. "They advocated for one solution and switched to another position when the first solution came up for vote."

Ultimately, according to Shiffrin, affirmative action proposals failed because Law Review is a "conservative organization" where it is hard to change things and that many editors were "insufficiently committed to making the increase of women on the Law Review a priority."

[Opponents] fear that women's selection onto the Review will no longer be viewed as merit-based

Intramural Basketball Standings as of Sunday, April 7

TEAM NAME	WON-LOST	TEAM NAME	WON-LOST
"A" LEAGUE			
4. Black Plague	6-1	2. One and Gun	3-4
5. Caution: Flammable	6-1	6. The Associates	1-7
1. Well Hung Jury	5-2	3. Court Marshals	1-7
"B" LEAGUE EAST			
7. The Great Danes	7-0	1. Gooch's Last Stand	7-0
10. Stormin' Mormons	6-0	12. Bye	5-0
3. United Nations	4-1	8. Last Call	5-0
1. Short Guys	4-2	5. General Gao	6-1
9. Port Isabel Holmes	4-2	9. Flagrate Delicto	3-2
2. TCB in a Flash	4-2	7. Off-White Slammers	3-4
11. Sweathogs 2	4-3	4. Free Exercise	2-3
6. LLMagic	3-3	2. Soulbucket	2-3
12. Asphyxiation	1-3	13. The Quick Shooters	2-4
4. Sleestaks	1-6	11. The Grizzers	1-4
13. Double Trouble	0-5	10. Dude Looks Like a Levitt	1-4
8. The Dissenters	0-6	6. Just For Laughs	0-6
5. Reversed & Remanded	0-6	3. The Real Killers	0-7
"B" LEAGUE WEST			

GYM RAT

Best in the West

By David Koontz '96

Sports Columnist



THE one HLS intramural basketball division given the least attention this season is the B League West. The A League might have some really tall people, and the B League East might have the more studly, attractive folks (at least on the Sleestaks), but the West has got some crazy, nutty, wild cats running around and deserving some mention.

Probably the nuttiest of all of them is David "Boom Boom" Aronberg '96 ("And to all the people responsible for parodying me on my way out the door—thank YOU!"), who is really not that quiet and reserved in real life. Among Aronberg's teammates is the sharpshooting Dave "Low" Post '96, who has helped propel General Gao near the top of the West standings.

The aptly named Bye has still not played a game, and thus is still undefeated at 0-0. No, wait a minute—I was reading from the first week's results. Okay, Bye is still doing pretty well, up near the top of the West also, but what do we know about these guys? The Gym Rat's spies are trying to scout this team out before the playoff preview spectacular, which is coming soon.

Flagrante Delicto has a couple of losses, but sources tell me that this is a team to watch out for. Delicto lost by only a point to General Gao, and has played the toughest schedule this side of the Sleestaks (I never used to mention my guys; I'm just making up for lost time before it's too late). A West player, who prefers to remain anonymous (even when I'm not quoting him) said, "I really like Flagrante Delicto's team. They've played some tough games, and they might be tested and ready for the playoffs." Now that this is out in the open, Delicto can only be glad that there isn't enough money in the league budget to provide bulletin boards to all of the teams.

Last Call, which was the B League runner-up Stonecutters a year ago, is jamming along at the top of the standings as well. Dave "I'll meet you on the Love Boat when it docks in A-" Caputo '96 is guiding his guys steadily to another

In this instance, a player took the opening tap and ran the wrong way. Even more amazingly, an opposing player also ran with him and blocked his shot.

chance at the playoff finals. Any team standing in their way, especially those who aren't fond of getting back on defense especially quickly, should take notice.

Depending on whom you talk to, Gooch's Last Stand is either overlooked or the most talked-about team in the West. Some people just don't seem to know about them, while others seem to talk about them the same way criminals talk about Kaiser Soze. In Gooch's last regular season game last year, they won in double overtime. Then they won their first two playoff games in double overtime before losing in the semifinals. Either they're incredibly lucky or they're pretty tough, and I think I'd choose the latter if I were suiting up against them.

Teams have a habit of hanging with Gooch's Last Stand for about a half, then suddenly finding themselves down by 20 before they can catch their breath in the second half. Gooch is undefeated this year, and is riding a 19-game regular season undefeated streak straight towards the playoffs.

From the commissioner's desk comes an anecdote that had me tossing and turning all night, and it will probably have you folks scratching your heads and talking around the water cooler (or keg, or bottle of Chardonnay) this weekend. Commissioner Lang "Three" Wiseman '96 refereed a game last week and had an experience that I've never heard of or seen on any highlight reel. Some people get confused when they line up to jump ball at the beginning of the game, forgetting that they are supposed to run towards the basket which they used in pre-game warm-ups. In this instance, a player took the opening tap and ran the wrong way. Even more amazingly, an opposing player also ran with him and blocked his shot.

Now here's the question for all you legally-minded folks out there. The opposing player actually fouled the heck out of the shooter. The referees and players were too busy laughing to really bother to call anything at the time, and it didn't exactly affect the outcome of the game at all anyway. Lang, however, got to thinking later: what should he have called if he was going to call a foul? A shooting foul, or a non-shooting foul? And if it was a shooting foul, the player was at the wrong end of the court and thus technically behind his own three-point line—so was it a three shot foul?

For those of you who haven't taken the bar yet, let me try to convince you, without hyperbole, that there are at least 190 questions on the multistate bar exam that are a million times worse than this one.

* * *

The women's basketball team got its first ever taste of March Madness this season, but Harvard came up short by a 100-83 score in its first-round game against Vanderbilt in Nashville. The Crimson led 41-40 at the half, on the strength of an NCAA tournament-record eight three-pointers. Vanderbilt took a lead it would not relinquish with 17 minutes remaining.

The men's hockey team surprised many people by reaching the finals of the ECAC Tournament. An automatic bid to the NCAA tournament was at stake in the championship game, which Cornell won 2-1.

In the semifinals, Harvard shocked regular-season champion Vermont 4-3. Ethan Philpott's goal at 6:35 of the third period shattered a 3-3 tie. In the final stanza, Harvard held Vermont, which is led by the highest-scoring line in college hockey, to three shots on net.

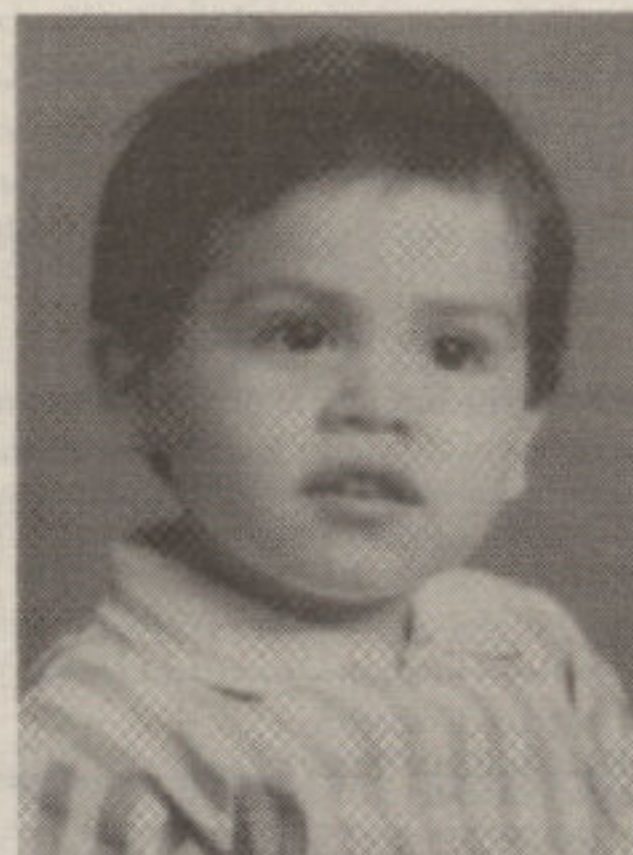
But the shoe was on the other foot in the finals. Although Tommy Holmes scored on the game's first shift, Harvard could not put another puck past Cornell goaltender Jason Elliott. The stifling Big Red defense permitted only three Crimson shots in the third period.

The RECORD
cordially invites all
members of the
Law School
Community to a
panel discussion
entitled "Shaping
the Law Under
Media Scrutiny"

Saturday, April 13
at 2 p.m.
in Pound 102.



2 weeks old, 1989



1 year old, 1991



2 years old, 1992

Stevie Ace Flores.

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

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

FRIENDS DON'T LET FRIENDS DRIVE DRUNK.



U.S. Department of Transportation

Harvard Law RECORD

Founded in 1946

Hope Yen
Editor-In-Chief

Here We Go Again

Every generation has its political battle with censorship. Every decade or so, certain factions of our society must fight to maintain their right to be heard. Today, our battle is in cyberspace against an overzealous Congress trying to buy political votes.

The sneaky cloth that Congress has tried to hide behind is only a paper-thin veil we have all seen before. Congress' rationale seems to be that by merely labeling a subject "pornography" or "obscene," they somehow aren't limiting speech or expression but rather are just protecting citizens. Regardless of political persuasion, the mere word "abortion" is not obscene. The current restrictions on the Internet aren't protection; they're thought control. Maybe if we don't see the word, we won't discuss the issue and it will magically go away. The trick is determining which way it will go? What will our policy be if we don't talk about it? Who will make the decisions if we cannot use the word?

George Orwell warned us of the dangers of restricting speech, and yet year after year we refuse to listen. Congress wants to protect our children by eliminating a certain set of ideas and images from the Internet community. Granted, there are many ideas from which we, as adults, would like to shelter our children. Explicit pictures of sexual intercourse are not what a young child should see on a school computer, but a less restrictive answer would be to insist on pay-per-view pages rather than picking and choosing what ideas are "appropriate."

The Internet is, to some, merely a plaything. Foresight tell us, however, that it will soon be much more. Soon, electronic communication through the World Wide Web will be the number one form of remote interaction in the world. What will we do when we can publish a word in a newspaper but not on a public web page? How will we function when Europeans may type the word in a chat-room, but Americans may not? How will the government protect the nation's children in an international community? Will we someday be forbidden to use e-mail at all?

Of course, many of these ideas seem absurd, but they stem from the same root of censorship. Surely, we believe, the Supreme Court will not let this stand. The government that created this legislation, however, is not an amorphous body of rules somewhere away from us. Congress is made of men and women of this nation whose opinions are no more likely to be right than any one of ours. Given that we the voters have put them there, why do we then grant them the power to tell us what to think? Our great failing would be to stand by and hope the Court will redeem our liberties while we say nothing.

As a nation, we have the power to silence those among us who disagree. But we must not do so, under fear that we may be the next victims. Judge Alex Kozinsky of the Ninth Circuit warns against "wielding the ax of censorship" for it can return to strike us as well. We must be ever vigilant for even the slightest encroachment in this arena, for the next step we make will then be that much easier to justify.

If we truly are a nation of freedom, where an opinion is still a precious piece of individuality, sacred and inviolable by government, then we cannot fear communicated words, be they electronically transmitted, typed or spoken aloud. What we need to fear are the words that remain unsaid, festering into violence and retribution. Censorship will never breed safety, only revolution. To combat any danger, first we must know it exists.

— Kysilka

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

—First Amendment, US Constitution

• Letters •

S.J.D. Students Question Kennedy's Dismissal

This is an open letter to Dean Clark '72:

Although no formal word has been forthcoming, we understand that you have mandated a radical change in the administration of the Graduate Program. On March 4, 1996, you terminated Prof. David Kennedy '80 as the chair of the program. The decision was sudden and unilateral. There followed interventions by other faculty members and weeks of negotiation. The Friday before spring break, agreement on a transitional arrangement was reached in which the current administration and programming will continue one more year.

The doctoral students have found this a very disturbing process, coming as it does on the heels of four increasingly successful years of diverse programming and scholarship in a revitalized Graduate Program. We write first to register our surprise and objection to the fact that you saw fit to make such a major change to the Graduate Program without consulting either the program staff, the Graduate Committee or the students who call the program their intellectual home. We understand the virtues of rotation. However, it is only through

transparency in decision-making that anyone could be in a position to assess whether the interests of the program are furthered through such changes. From where we stand, you have acted in undue haste and with lack of notice to and concern for the parties involved.

While we are unfamiliar with your vision of the Graduate Program, we have serious concerns that you may be equally unfamiliar with ours. The pursuit of advanced studies involves a serious commitment of time and money. Individually and collectively we have a major stake in the content and the direction of the particular program in which we have chosen to continue our work. The growing interest in the S.J.D. is directly related to the increased faculty involvement, diversity of academic interests and opportunities for scholarship and dialogue that have been developed in the last few years. A change in the administration obviously places in question both the general vision that has been developed and specific programs that have been initiated.

We look forward to a year of extraordinary things in the Graduate Program and

trust that we have conveyed both the procedural and substantive concerns that are at issues in this decision.

Larissa Behrendt
S.J.D. '99
Robert Chu
S.J.D. '97
Rangita de Silva De Alwis
S.J.D. '98
Lisa Fishbayn
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'99
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S.J.D. '97
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S.J.D. '99
Kate Sutherland
S.J.D. '99
Kerry Rittich
S.J.D. '98
Stella Rozawski
S.J.D. '98
Jean Thomas
S.J.D. '99
Dalia Tsuk
S.J.D. '98

April 9, 1996

Kennedy's Dismissal Perplexing

This is an open letter to Dean Clark '72:

I want to make sense of your recent dismissal of Prof. David Kennedy '80 as the chair of the Graduate Program. It's not easy, I must confess. I am not familiar with your vision of the Graduate Program. I am not privy to prior understandings by which you are bound. Moreover, I just might fail to appreciate the virtuosity of effective law school management, or the proper idiom of authority. So, I don't want to speak in haste.

One might protest in the name of procedural fairness. Arriving without consultation with the Faculty Graduate Committee or students in the Graduate Program or the interested party himself, the termination of Prof. Kennedy suggests that due process safe-

guards hold little currency at the Law School. Administrative posts and directorships, it would appear, are distributed as spoils at the dean's caprice.

Or one might try persuading you of the correct incentive structure. Not only is the dismissal procedurally suspect; its substantive effects are potentially perverse. Over the past four years, Prof. Kennedy has been responsible for articulating a mission for the Graduate Program, for rethinking the purpose and curricula for the LL.M. and S.J.D. degrees, for aggressively promoting LL.M. and S.J.D. candidates on the teaching market, and for encouraging a rich scholarly conversation across disciplinary and ideological borders. For his troubles, Prof. Kennedy gets the boot.

Yet, Kantian this, Skinnerian that, the academic vernacular sounds a bit hollow here. Make the procedures fair, get the incentives right — I suspect you've surpassed such (self-reassuring) injunctions. The task at hand is too practical for righteousness: Your job these days, after all, is to run the Law School. After faith, after science, after doctrine, authority is what remains; it's what cuts through social graces above and self-dealing below. Power without guilt, decision without compromise, action without ceremony. It feels good to be Dean, doesn't it?

Like others in the Graduate Program, I look forward to a year of extraordinary things. Still perplexed, I just hope it won't be the last.

Robert Chu '93, S.J.D. '96
April 9, 1996

Law Review's Silence Disturbing

I was disappointed to learn in the March 15 RECORD that the Law Review had "declined" to disclose the process by which they use affirmative action to allocate 20 percent of their membership slots.

Their race-based selection policies are questionable to begin with, given that the minority population in question has already benefited from affirmative action in both employment and admissions to law school, college and, in many cases, prep school. We are not talking about prisoners of the inner city who have never been given a break in life. If the privileged minority students of Harvard Law School cannot compete on a level playing field, which minority members can? Does the Law Review really want to be sending the racist message that no matter how many

advantages minorities are given, they're not capable of competing with whites?

While the majority of Law Review members apparently don't agree with me on this point, I would have expected them proudly to defend their affirmative action program, rather than hiding it behind a veil of secrecy. What do they fear will happen if the truth comes out? Perhaps they fear that students not on Law Review lack the requisite brain power to comprehend the wisdom of the Review's affirmative action process. Perhaps, instead, they worry that high-achievement minority groups excluded from their affirmative action program will not understand why they are being punished for their success. Or maybe what they fear is that revelation of the lower standards applied to

some minorities will eat away at the résumé value of everyone's Law Review membership. Or perhaps, more benevolently, they are concerned that increased awareness of their affirmative action policy will stigmatize the minority members of the Law Review. Unfortunately, regardless of benevolent intentions, the Law Review's refusal to discuss the emperor's lack of clothes does not make him any less naked.

People of good intentions can differ about the wisdom of affirmative action. However, it is hard to justify the Law Review's arrogance in assuming that the rest of the Law School community needs to be shielded from the truth about the Review's affirmative action policy.

Curt Levey '97
March 18, 1996

Write to the RECORD



Judge Baer's Judicial Capitulation

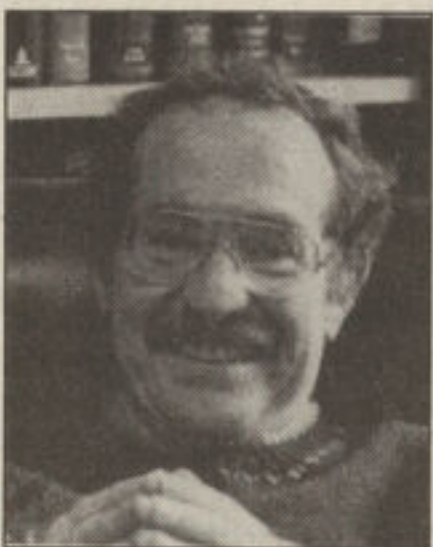
By Prof. Alan Dershowitz

Federal Judge Harold Baer Jr.'s apparent capitulation to political pressure and his reversal of his controversial decision suppressing a questionable police search does grave damage to the independence of the judiciary. You will recall that Judge Baer made headlines back in January when he suppressed 80 pounds of cocaine seized from the trunk of a car driven by a woman who subsequently confessed to being a drug courier. Now he has again raised eyebrows for reversing himself in the face of threats and pressure.

Judge Baer's original decision was based on his conclusion that the arresting officer did not tell the truth regarding the circumstances of the search and that on the basis of what Judge Baer believed to be the facts, the search violated the Fourth Amendment. That was the holding of his decision — the binding legal conclusion. He also added a bit of dictum — which he subsequently characterized as "hyperbole" — to the effect that it was not necessarily suspicious for innocent people in certain parts of New York City to run from the police.

This combination of factors — freeing an apparently guilty drug defendant on the basis of a constitutional violation and opining about the lack of trust some even innocent New Yorkers have in police — led to a firestorm of criticism. But that is precisely why federal judges have life tenure — to permit them to resist criticism and stick to their constitutional rulings, no

Alan Dershowitz is a professor at Harvard Law School



Prof. Alan Dershowitz

matter how unpopular.

Judge Baer did not measure up to this responsibility. Between the two decisions, President Clinton's press secretary issued an entirely inappropriate threat against Judge Baer. He suggested that if the judge did not reverse his original decision, the President — who appointed Baer and has the power to promote him — might ask for his resignation. Republican presidential candidate Robert Dole went even further. He said that if Judge Baer did not resign, he should be impeached — thus demonstrating ignorance of the constitutional criteria for impeachment.

Upon hearing of these and other threats, Judge Baer caved in. He reversed his earlier ruling, citing new evidence which he said persuaded him that the police officer was telling the truth. What was this new evidence? The testimony of another police officer who allegedly corroborated the first one. But as the New York Times pointed out in an editorial critical of this pressured reversal, "The problem is that the second police officer's new testimony has inconsistencies when compared with a written account the same officer filled out just hours after the arrest took place." This kind of convenient corroboration by one policeman of another policeman's lies is all too typical of police "testilying" — a phenomenon of which Judge Baer is intimately aware, since he served on the Mollen Commission, which concluded that police testilying in precisely these kinds of cases is common in certain New York City precincts.

It is extraordinarily unusual for a judge to reconsider a ruling of this kind and then to reverse himself,

especially on an issue of credibility. The second police officer could have been called as a witness for the prosecution at the first hearing. The entire matter smacks of a contrivance, calculated to give the judge an out from under the barrage of threats and criticism. The original police officer is no more credible today than he was when he first testified. The only change is that Judge Baer no longer has the courage to call it as he sees it.

Judge Baer has now himself become part of the problem of police testilying. Indeed, he went out of his way to apologize to "the dedicated men and women in blue who patrol the streets of our great city." This sounds more like a politician pandering to public opinion than a judge sworn to uphold the Constitution.

The bottom line message of this judicial fiasco is that judges like Harold Baer will continue to tolerate police testilying as long as politicians continue to keep the pressure on them to do so. An even more dangerous message is that presidents and politicians can influence judicial decision by their threats. This will encourage opportunistic politicians to run against judges who take the Constitution seriously, thus further politicizing the judiciary.

Judge Baer has committed the cardinal sin of a federal judge: capitulating to political pressure. At the very least, he has created the appearance of capitulation. In my view, he has also fallen victim to the reality of capitulation. Judges must not be willing to tolerate police testilying because politicians don't care about the constitutional rights of suspected drug dealers. Judge Baer has made it harder for judges to enforce the Constitution against testilying police officers.

Judge Baer has now himself become part of the problem of police testilying.

Judge's Flip-Flop is Bad News For Justice

By Prof. Charles J. Ogletree Jr., '78

and Abbe Smith

The frightening thing about Judge Harold Baer's reversal in the Carol Bayless case is that almost everybody is happy about it. The prosecution is happy. The police are happy. Politicians from both parties are happy — except for some members of the Republican Party who thought they'd found the perfect stand-in for Willie Horton in the upcoming presidential election.

But, the American public should not be happy. Political expediency — and intimidation — have won out over principle. The war on drugs has taken another chunk out of the Fourth Amendment. A judge who had the guts to tell the truth about law enforcement in our nation's inner cities now derides his previous assertion of routine police excess as "hyperbole" and apologizes to the "dedicated men and women in blue who patrol the streets of our great city" for suggesting otherwise.

Making political hay of criminal cases — especially if they involve the much-maligned exclusionary rule — is hardly a new trend. In this era of record-breaking incarceration of our nation's residents,

Charles J. Ogletree Jr. is director and Abbe Smith is deputy director of the Criminal Justice Institute at Harvard Law School. This piece was originally printed in the Boston Globe.



Prof. Ogletree '78

Political expediency — and intimidation — have won out over principle.

throws out 80 pounds of cocaine and heroin. Sadly, what we have learned here is that no self-respecting judge will stand up for the rights of a drug courier facing life in prison — or the rest of us — no matter what the police do.

Baer acted well within his authority when he initially ruled that the police stop and search ran afoul of the Fourth Amendment. As a fact-finder at a suppression hearing, it is Baer's obligation to make thoughtful judgments about the

testimony of witnesses, including police witnesses. It is unfortunate that "corroboration" by the partner of a police witness and submission of a police report would serve to unravel his prior judgment about police credibility.

It is worth noting that Baer's change of heart occurred on the same day that law enforcement agents

in southern California were videotaped beating an unarmed man and woman suspected of being illegal immigrants. Just a few weeks before, another video camera captured police officers in South Carolina severely beating an unarmed African American woman.



Abbe Smith

What is at stake here is the independence of the judiciary and the sanctity of the Constitution.

Baer does not need a videotape to tell him how commonplace this sort of conduct is. He sat on New York's Mollen Commission. He has seen the evidence of widespread police brutality, corruption and perjury. This understanding of police misconduct and its effect on how some citizens regard the police helped to inform his initial ruling.

What is at stake here is the independence of the judiciary and the sanctity of the Constitution. It is fine for those in the other branches of government to criticize judicial decisions, but not to encroach on the separation of powers.

We are as wary of President Clinton's threat to seek a judge's resignation when the judge displeases him (and whether or not he backed down from that threat, it apparently had the desired effect) as we are of Pat Buchanan's call for "the people" to overrule Supreme Court opinions it doesn't like. Judicial decisions that protect fundamental rights do not have to be popular.

Judge Baer is a judge with life tenure. The purpose of life tenure is to insulate the judiciary from public outcry when a ruling is unpopular and to free judges from having to respond to the political calculations of the moment.

Still, even with a lifetime appointment, Baer could not withstand the intense political pressure.

First, he agreed to rehear the case, and then he issued not merely a reversal but a statement of remorse. One can only wonder what impact this will have on other federal judges.

• Letters Continued •

Heymann, Brownsberger Op-Ed Neglects Real Sources of Crime

Harvard lawyers have a reputation for persuading lesser mortals of irrationalities that sometime become law. But the distortion of Philip Heymann '60 and William N. Brownsberger '83 in "Monitoring Crime Neighborhood by Neighborhood" (see RECORD, March 15, 1996, p. 9) reaches a new level of arrogance. The push beyond the envelope is the statement, "Yet most of the serious crime is concentrated in high-poverty neighborhoods where a host of other social

pathologies are rampant."

Have the authors never heard of Congress? Or 1600 Pennsylvania Avenue, or courthouses? The greatest quantity of criminal activity in history ever recorded takes place in those neighborhoods. The other "social pathologies are rampant" there too. Relaxed ideas of moral rectitude are especially plentiful in those same neighborhoods. The aggregate of the population in economically depressed neighborhoods could not commit the number of thefts and prepon-

derance of crimes that are committed in the hallowed halls of government. It is typical of the improper focus that allows such distorted proselytizing, and compares favorably with most studies of violence which focus on the poor and uneducated members of society but omit any mention of institutional violence conducted with the force of government behind it.

Roy Bercaw
Cambridge, MA
March 15, 1996

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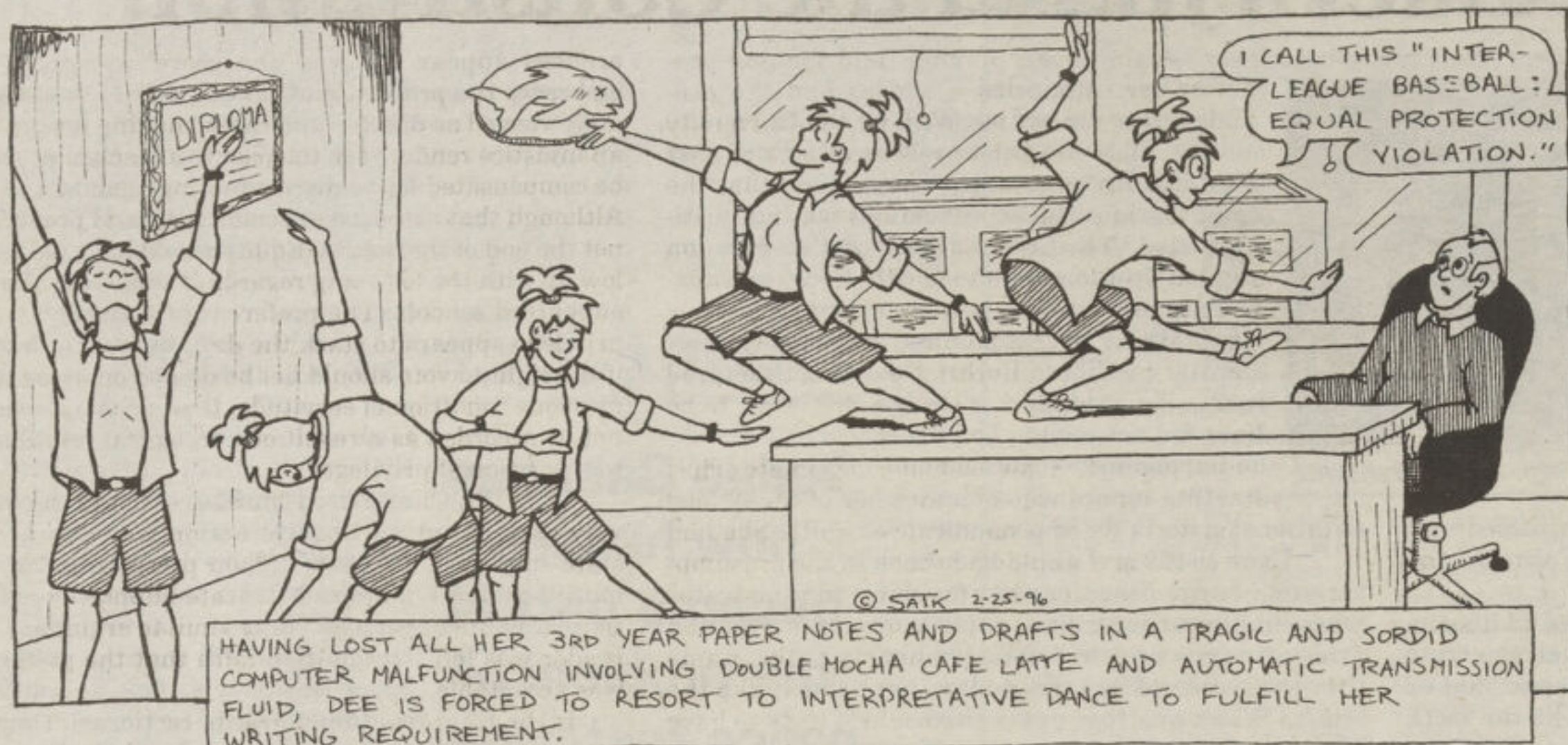
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Temporary Insanity

By Sheila Tuller

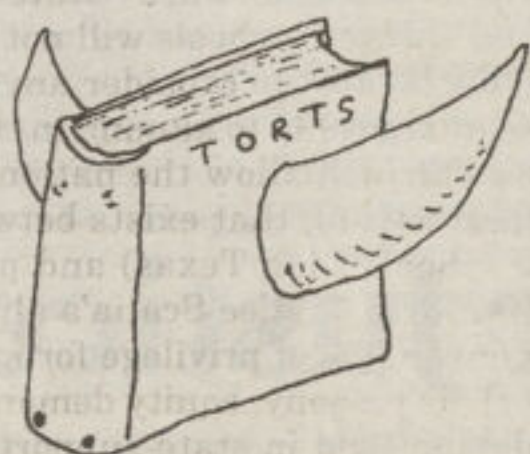


HAVING LOST ALL HER 3RD YEAR PAPER NOTES AND DRAFTS IN A TRAGIC AND SORDID COMPUTER MALFUNCTION INVOLVING DOUBLE MOCHA CAFE LATTE AND AUTOMATIC TRANSMISSION FLUID, DEE IS FORCED TO RESORT TO INTERPRETATIVE DANCE TO FULFILL HER WRITING REQUIREMENT.

Civil Procedure

M.J. Kelly

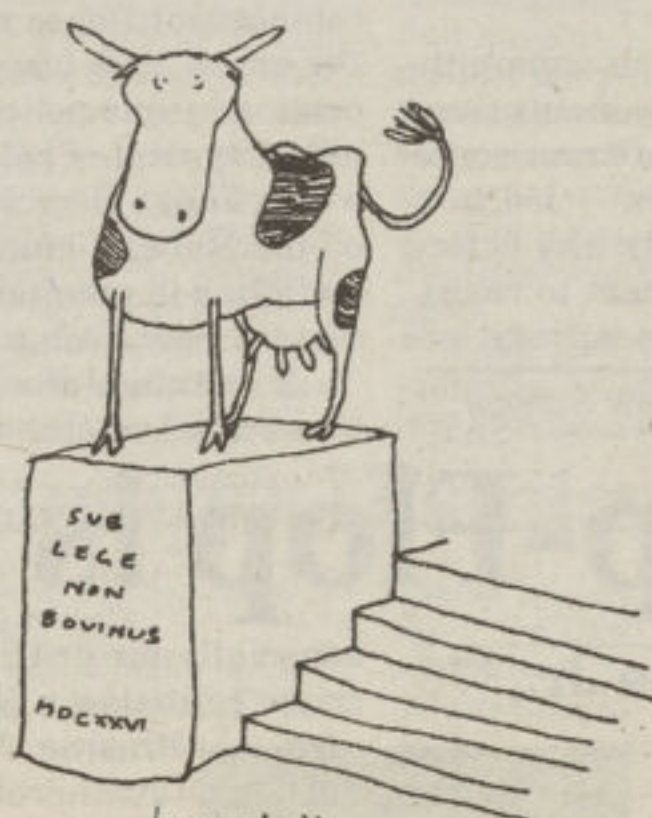
1001 Uses for Dead Cows



hornbooks



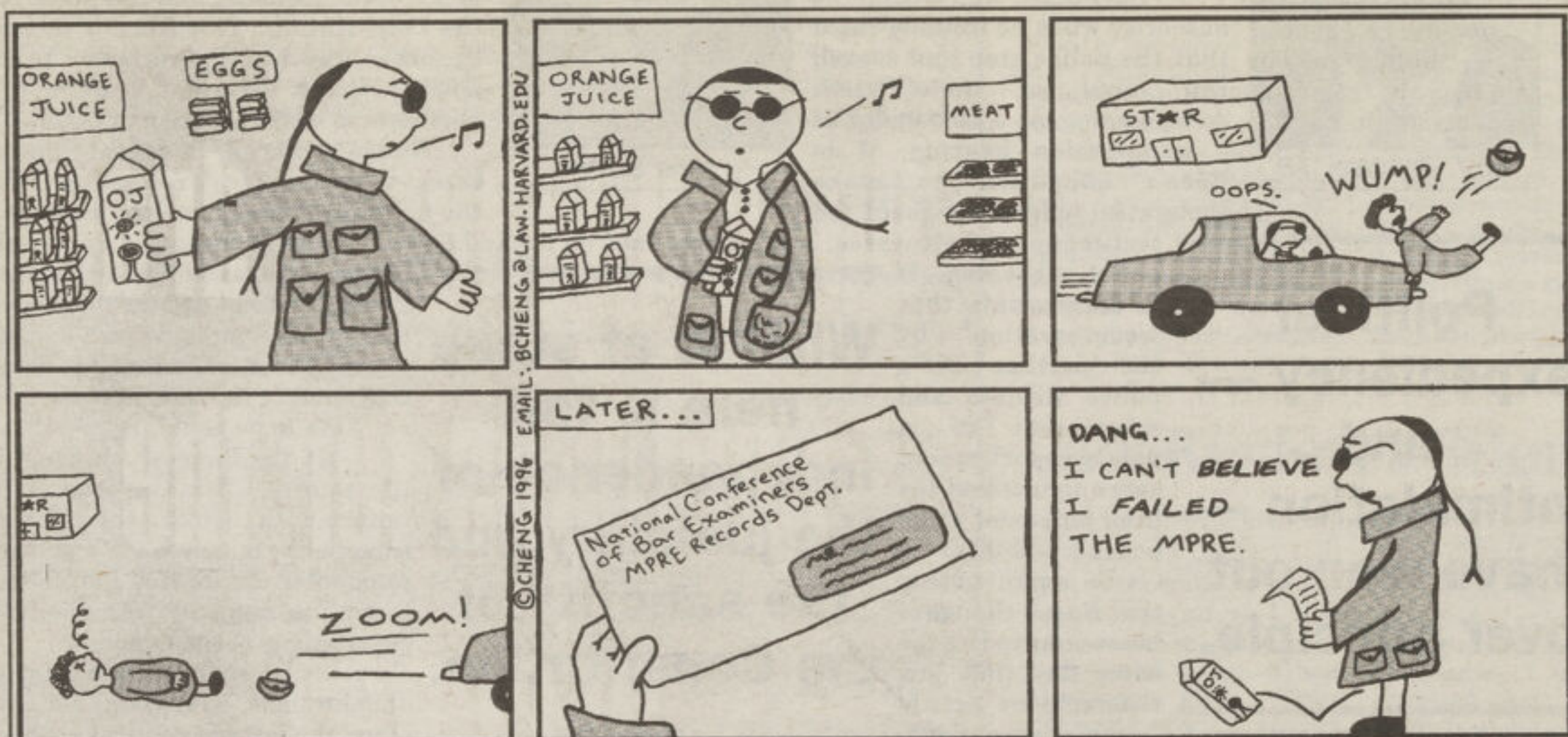
paper weight



Langdell monument

Backbench

By Brian Cheng



Ad Hominem

By Stuart Rees and Bill Zimmerman

THE POLITICAL RIFT IS EVIDENT
IN HLS COURSE SELECTION



FALL SCHEDULE:

- WOMYN & THE LAW - WITH MACKINNON, C.J.
- ENVIRONMENTAL LOVE - WITH T.R.E. HUGGER
- ALTERNATIVE DISPUTE RESOLUTION FOR POSTAL EMPLOYEES - CLINICAL



FALL SCHEDULE:

- CON. LAW - WITH KASNER (THINK ABOUT IT)
- CORPORATE TAX AVOIDANCE - WITH HELMSLEY AND LEFRAK
- THINKING ABOUT DERSHOWITZ - STARRING DERSHOWITZ
- COPYRIGHT - WITH MILLER TAPES (OCCASSIONAL GUEST LECTURE BY THE MAN HIMSELF)

CALENDAR

By Colin Meeder

Well, as far as I can tell, "Nor'easter" must be some charming Yankee expression for "sh*tstorm." This filth falling from the sky is simply disgusting. Spring teases us, promising us vernal joys and delights, convincing us to put away our snow boots and winter scowls. And just when we begin to believe again, to learn once more to trust in joy and the rebirth of life, Goddess Spring unleashes another dose of moist hell upon us. Damn her green hide!

The concert season seems to be operating in much the same way. Just as it starts to look like a veritable cornucopia of big musical biscuits is about to come rolling our way, we get a week like this one, with only a few blandly interesting vaguely progressive rock-type acts. Ho-hum. Yet there is hope — according to my sweetheart, the weather south of here is apparently rather spring-like, and the next couple of weeks promise much more in the way of both variety and quality in the world of music. 'Course, by then we'll be locked in libraries, studying, unreachable. It would be funny if it weren't so tragic.

Tonight (Thursday, 4/11), all you baseball cap boys will be rushing over to the Orpheum (931-2000) to check out the repetitive, lyrically useless, fake-the-funk sounds of **Primus**. The music isn't well written, the words simply aren't funny, and the band are really unconscionably sloppy in their playing — which I why I curse myself every time I hear them on the radio and crank that sucker up. **The Cows** open. If mediocre-but-damn-catchy progressive rock isn't your scene, check out the mediocre-but-damn-catchy folk-pop of **Shawn Colvin** at the Memorial Auditorium in Lowell (931-2000), along with **Once Blue**.

On Friday (4/12), you might consider going to see the **Pogues** at Avalon (262-2424), but I wouldn't advise it. The band has been but a pale imitation of itself since firing Shane MacGowan. More interesting will be **Reeves Gabrels**, David Bowie's guitarist, who will be playing a solo show at Bill's (421-9678) just down the street.

If God were one of us, He'd probably be just about as sick of that damn tune as you and I are. If you'd like to hear it again, go see **Joan Osborne** at the Orpheum, where you can also hear her sing that song about spider webs in Ray Charles head. What passes for profundity these days.... **Screamin' Cheetah Wheelies** open.

Supergroups with stupid names are back big time. **Golden Smog**, featuring members of Soul Asylum, the Jayhawks, Wilco, Run Westy Run, and the Honeydogs, will be doing their thing at the Paradise (562-8800). **The Geraldine Fibbers**, an astonishingly powerful band who ought to be the headliners, open. **The Mommyheads**, whom a friend once described as "a band like Phish for people who hate bands like Phish," appear the same night upstairs at the Middle East (497-0576).

Apparently, they've won their battle with the INS, for the once-banned-from-the-USA **Black Grape**, featuring some former members of Happy Mondays, will be playing The Orpheum along with Melrose Place-approved **Letters to Cleo** and fake blues guy **G. Love & Special Sauce**.

Upcoming: **Barenaked Ladies**, **Cowboy Junkies**, **Buddy Guy**. I also hear that it may stop snowing one day.

Cellos, Football and the Constitution

ON March 18, 1996, in *Hopwood v. Texas*, 1996 WL 120235, the Fifth Circuit held that the Fourteenth Amendment did not permit a law school to discriminate in favor of minority applicants by giving substantial racial preferences in its admissions program. The Circuit Court found that consideration of race or ethnicity by the University of Texas School of Law was not justified by a compelling interest under the Fourteenth Amendment. Lest the judges be accused of ideological consistency, they did preserve the use of a host of other factors that a state-supported school may consider in making admissions decisions.

After stating that a university may take into account an applicant's ability to play the cello or make a "downfield tackle" in its admissions process, the Circuit Court went on to note that "an admissions process may also consider an applicant's home state or relationship to school alumni." It is reasonable to recruit musicians for the orchestra or athletes for the sports teams; those folks tend to compete against other musicians and athletes on the merits. Home state? (Maybe) Relationship to school alumni? When future students encounter the *Hopwood* decision on law school exams, the holding of the case will be easy to memorize: Affirmative action for minorities-out; affirmative action for the privileged-preserved.

The Fifth Circuit began its analysis by citing the infamous U.S. News & World Report ranking in support of its assertion that admission to the University of Texas School of Law is fiercely competitive. Because of this Hobbesian state of affairs, the court noted that "[n]umbers are therefore paramount for admission." Texas has an index, the so-called Texas Index ("TI"), by which initial admission decisions are made. The formula for students with a three-digit LSAT is: LSAT + (10)(GPA). "In March 1992, for example, the presumptive TI admission score for resident whites and non-preferred minorities was 199. Mexican Americans and blacks need[ed] a TI of only 189 to be presumptively admitted."

Assuming arguendo that LSATs and GPAs are the most objective way of sorting out applicants, and objectivity is a proxy for the fairness envisioned by the Fourteenth Amendment, it is hard to argue that there



was an even playing field for non-preferred minorities, whites and the preferred minorities. Without the University establishing the present effects of past discrimination, the court found that the use of racial classifications was not justified. The implications of the decision would lead one to conclude that admissions decisions at a state-supported law school should be blind to not only race, but also to anything that isn't factored into the TI index. The Fifth Circuit didn't want to be that fair.

Granted, plaintiff Hopwood had a legitimate gripe. She was a 28 year old wife of a member of the Armed Forces who was raising a handicapped child. She had a TI score of 199 and would have been in the presumptively admitted category but for some administrator deciding that her educational background overstated the strength of her GPA. If anything, the name Hopwood should be turned into a verb much like the name Bork was. Hopwood (hop wood) v. -ed. I. to have one's life experiences discounted as a result of administrative convenience. 2. objective candidate subjectively dismissed.

If plaintiff Hopwood had a legitimate beef with the system, neither she nor the courts had to decide that the culprits were the preferred minorities. Hopwood could have just as easily been denied admission because some distinguished alumni made a phone call on behalf of a TI-challenged relative. In 1992, the entering law school class "contained 41 blacks and 55 Mexican Americans, respectively eight percent and ten percent of the class." The Fifth Circuit was strangely silent about the number of students who had mediocre scores but whose parents or other relatives attended the University of Texas Law School.

That silence is what prevents thoughtful people from embracing the political assault on affirmative action. Justice Scalia, in *City of Richmond v. J. Croson Co.*, 488 U.S. 469, 528 (1989), states that "[r]acial pref-

erences appear to 'even the score' ... only if one embraces the proposition that our society is appropriately viewed as divided into races, making it right that an injustice rendered in the past to a black man should be compensated for by discriminating against a white." Although that assessment seems right and proper, it is not the end of the debate. Equity would have judges follow up with the following regarding admission to state-supported schools: The preference for the children of privilege appears to stack the deck in favor of lineage; if the right to vote should not be denied on account of a previous condition of servitude, then privileges should not be accorded as a result of a biological relationship to a position of privilege.

The Fifth Circuit used "numbers" to tell the nation why race-based affirmative action was wrong for a state-supported institution. Their preservation of affirmative action for legacies at state-supported institutions was unsupported by any similar argument. The reader was left to take it on faith that the preference was acceptable.

If the Supreme Court grants certiorari, they can either do what every legal scholar expects them to do, which, given the fact that Justice Thomas may have to recuse himself, may lead to a 4-4 ruling, or they could try something equitable. They could say, in effect, "The Fifth Circuit has a point. From this day forward state-supported schools will not be allowed to consider any non-objective factors, like relationship to alumni, in their admissions decisions. This will allow the nation to see the results of the competition that exists between state-supported law schools (like Texas) and private law schools (like Harvard, Justice Scalia's alma mater). While we lament the loss of privilege for many of our colleagues and their progeny, equity demands that we have a level playing field in state-supported institutions. If the numbers are truly 'paramount,' ultimately the state-supported schools will be able to compete on a level playing field with the private institutions."

Don't hold your breath waiting for that one.

Affirmative action for minorities-out; affirmative action for the privileged-preserved.



Fenno hadn't been this confused since earlier in this week, when he saw Prof. Charles Donahue or a man who looked eerily like him being led away in handcuffs as the accused Unabomber. Fenno was eavesdropping on several Law Review Editors, as was his wont. They were so damned amusing usually, always referring to Supreme Court Justices and Law School faculty members by their first names — Nino this, Reinier that. Fenno thought it was cute.

Today was a bit different, however. They were discussing affirmative action. Fenno always thought that that particular phrase sounded like a slogan on a box of laundry detergent. He imagined the commercial: "Try New Tide! Now with Affirmative Action!"

What had brought about Fenno's confusion was a single uttered phrase, uttered by a female Editor. [Fenno is aware, by the way, of the argument that the adjective "female" ought never to be predicated of human beings, the noun "woman" being preferred. Fenno is in complete agreement with this argument.] She uttered the following dazler: "if affirmative action were to apply to women who apply to the Law Review, the abilities of any Editor who happened to be a woman would immediately be called into question."

Fenno, his keen mind sharpened recently sharpened by the intake of several pints of Woodpecker cider —

We interrupt this week's Fenno to bring you a Fenno Public Service announcement. Several big-time alcoholic beverage companies, the same folks who bring you boxed wine and the sort of fruit-flavored antifreeze that only winos and high school students drink, have recently brought out vaguely sweet-scented alcohol delivery systems that

they are marketing as "cider." Do not be duped — if it's not made from apple juice, it ain't cider. We now return you to this week's Fenno.

— mulled this one over confusedly. He had always assumed that affirmative action, in addition to its ability to remove stains and odors, was primarily concerned with opening doors to previously exclusive organizations, making it easier for some folks to get in.

But this statement carried with it a subtler message. If Law Review editors, who were constantly telling Fenno and anyone else who couldn't get away from them fast enough that they were the smartest damn people around, would question the abilities of an Editor based on the possibility that that Editor might have been admitted as a result of affirmative action, that meant two things — first, that the abilities of those who just plain write on the Law Review are so much greater than those of the rest of us who do not that the latter are deserving of derision; and second, that affirmative action didn't just make it easier for you to get into something — no, apparently it made it way easier for members of a disadvantaged group to hide the fact that they might not know what the hell they're doing, or, what might be worse, make it impossible to prove that they know what the hell they're doing.

Fenno had thought it was easier than that. Fenno had thought that if somebody didn't know what the hell they were doing, you could look at the editing and tell, and if they did, you could look at the editing and tell. But through the eyes of this enlightened Editor, Fenno had seen that affirmative action had the astonishing power to cloud men's minds — Fenno figured it was mostly men's, and not other people's minds so clouded — so that they could not judge anybody's output, and could only question someone's ability based on their skin tone, or the fact that they wear skirts and aren't Scottish. Well, damn it, then it had to be stopped. Right after Fenno quit drinking.

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13th Annual Spring Conference: "Political Equality 100 Years after *Plessy*: Strategies for Empowerment" CONFERENCE SCHEDULE OF EVENTS

Unless otherwise noted, the following BLSA Spring Conference events are free of charge.

Thursday, April 11, 1996

6:30 pm - 7:45 p.m.

Opening Address

(reception immediately following)

8:15 pm - 10:00 p.m.

African-American Film Presentation

"For Us, The Living: The Medgar Evers Story"

Starring Larry Fishburn and Howard Rollins, Jr.

Friday, April 12, 1996

11:00 am - 12:30 p.m.

Legal Seminar: Entering the World of Political Careers

(Hauser Hall, Room 104)

1:30 pm - 3:00 p.m.

Panel Discussion #1: African-American Gains Under Seige

(Hauser Hall, Room 104)

9:00 pm - 11:00 p.m.

An Evening of Entertainment

Doubletree Guest Suites, Boston

Featuring Freddie Jackson; Tickets: \$35.00 per person

Sunday, April 13, 1996

11:00 am - 12:30 p.m.

Panel Discussion #2: Democrats, Republicans, or Third Party: Who Best Represents the African-American Community?

(Ames Courtroom, Austin Hall)

2:30 pm - 4:00 p.m.

Panel Discussion #3: The Role of Economic Empowerment in Achieving Political Equality

(Ames Courtroom, Austin Hall)

8:00 pm - 10:00 p.m.

Banquet

Doubletree Guest Suites, Boston

Keynote Speaker: Myrlie Evers Williams, Chairperson, NAACP Board of Directors.

Tickets: \$40.00 per person. Transportation will be provided

Spring Career Forum

Friday, April 12, 3-6:00 p.m. on the 2nd floor of the Hark

- bring resumes for firms in which you are interested
- make contacts for next year's recruiting season
- stop by and say "hello" to lawyers from your past or present firms
- panel presentation on how to be a good summer associate from 3-4:00 p.m.

Casual Dress; refreshments will be served.

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West Bar Review

HLS Asia Law Society Sends Delegation to Witness First Democratic Chinese Elections

Amid threats of war between Taiwan and China, the Harvard Asia Law Society recently sent a delegation of 12 HLS students to monitor Taiwan's first-ever presidential elections. In addition to the election-day activities, the delegation visited Taiwan from March 23 to March 31 studying the island's democratization process and international status, particularly in light of current China-Taiwan tensions. Some of the highlights of the trip included meeting with Taiwan's Minister of Justice Ma Ying-jeou S.J.D. '81; Taipei Mayor Chen Shui-bian; Taiwanese legislators; and Taiwan's Straits Exchange Foundation, which coordinating negotiations with mainland China.

"One of the main goals of our trip was to observe how the forces of democracy in Taiwan have replaced an authoritarian regime in an amazingly short period of time, despite the constant pressure of mainland China," said Peter Kuo '97, HALS' spokesman. "I don't think the delegation was really concerned about personal safety."

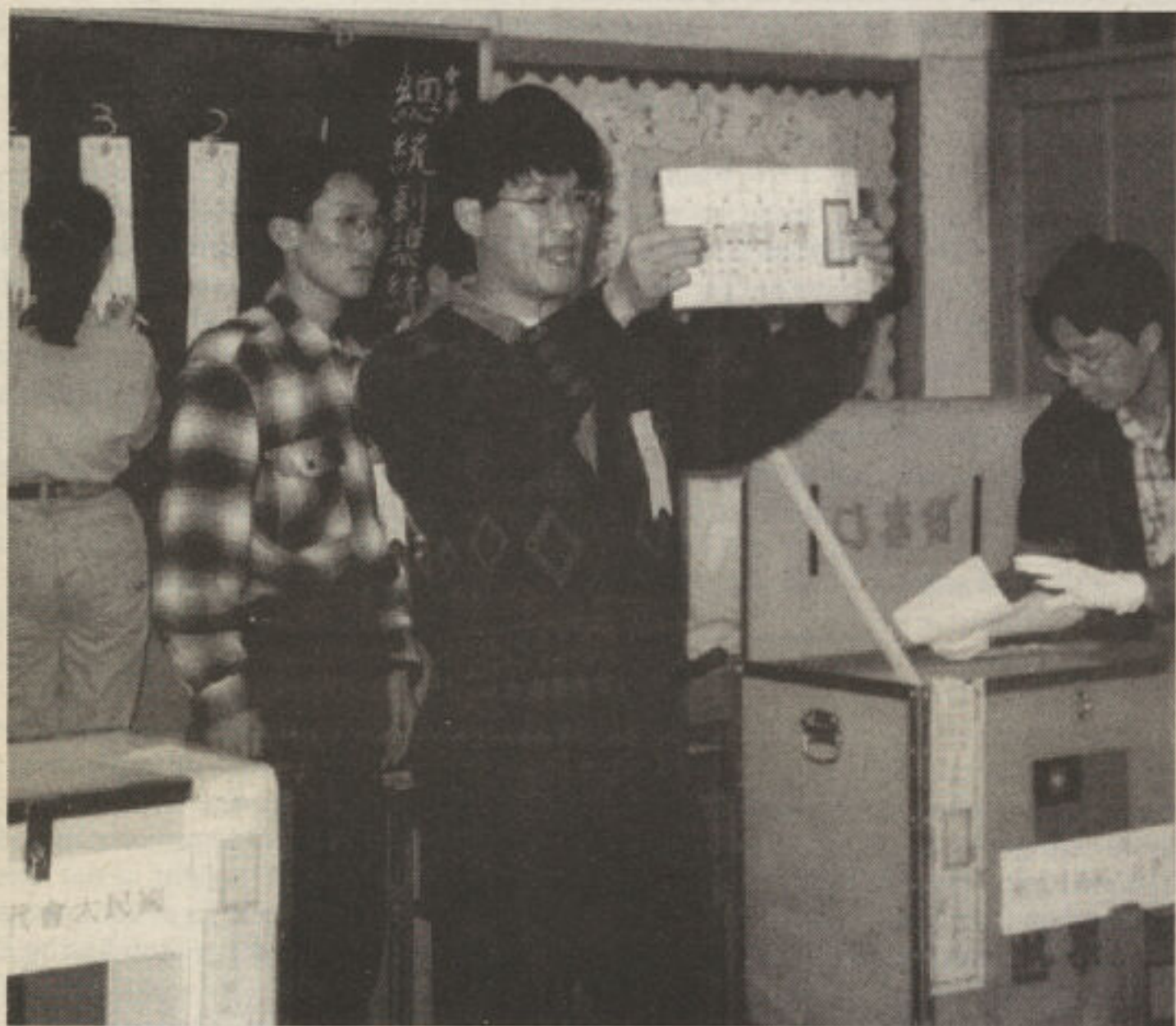


Photo courtesy of Albert Lee

At 4 p.m. on March 23, 1996, government officials began counting the ballots after the polls closed. To ensure the integrity of the election, each ballot was read aloud to the observing public.



Photo courtesy of Albert Lee

Taipei Mayor Chen Shui-bian (left) discusses Taiwanese politics with HALS president Albert Lee '97 in the VIP room of the Taipei City government building.

Just Cause

Long Slow Spring

By Carla A. Halpern '97
RECORD Columnist



As I write, the snow is driving down in medium-sized flakes ... not the fat, drifting flakes of winter, but not quite sleet yet either. As you read, we may be knee-deep in the white stuff or sweating in 60 degrees. But snow or not, T-shirts or parkas, we are definitely in the midst of spring, part of the long, slow spring that defines Massachusetts.

I used to believe that New England had no spring. Famous for the most beautiful autumns on the planet, we were clueless about the months between February and June. We used to say spring takes so long that by the time it gets here, it's summer.

I used to rush spring. As a child, I would run outside at the first thaw, my bulky winter coat pushed to the back of the closet in favor of a sweatshirt. In the balmy 50 degree weather, I could never resist tossing aside my sneakers to wade along in the brook, splashing happily with the freshly-melted snow. And every year, as I'd sneak back into the house with the cuffs of my jeans still damp, a spring cold, worse than any winter flu, would send me to bed, confused about the deceptive seasons. My mother worried that I would never understand. Spring is not to be toyed with. Spring is not a season of instant gratification.

I did attempt to make a home in a state where spring was touted as picture-perfect. For four years, plodding down the eventually aborted path of graduate

Spring is not to be toyed with. Spring is not a season of instant gratification.

school, I lived in a land that promised official springtime, done properly. Even though "the wildflower state" was deemed too wussy a slogan for Texas license plates, bluebonnets and buttercups did seem to arrive with a commanding presence on Valentine's Day and multiply with astounding rapidity until mid-March. But then, around the ominous Ides, the cruel Texas summer would descend, ready to fry up a confused Yankee like a thick-blooded, well-insulated blob of okra. I spent most of the hours between March and November cringing by my window unit air conditioner, terrified at the thought of eating okra, let alone becoming a chunk of it. Sprawling limply by the air conditioner, I counted the months until October.

October in Texas. It was the month that the heat might break, the rain might finally fall. But nothing interesting happened when October finally showed up. Fall simply fell flat. Like a glass of hard water, it saved me from dehydration but tasted terrible. All that time, breathing canned air and waiting for autumn, only to have it limp in, clammy and disappointing.

It was the crimson of maple leaves, not of Harvard, that brought me back to Massachusetts. The old Commonwealth opened her snowy arms and took me home. With cranberry juice and apple cider, she nursed my southern-fried brain back to alertness. Back to the land of tart young berries and sharp old liberals. But still, I didn't get it. I was still living for one season.

From an objective point of view, a field of Texas wildflowers is brilliant beauty: a stampede of color as clear and dazzling as any New England autumn. And, like the crimson glory of those two middle weeks in October, Texas spring stays only for a brief visit. The beauty of those miniature seasons can be captured by a camera. It is the Massachusetts spring that no photograh can express, that I finally learned to appreciate. Loving this snow-covered, sleet-splashed, muddy spring is the true test of Yankeehood.

The flakes outside are tiny, streaming harshly to the red sidewalks where they melt instantly. Any moment now, they might give up their fragile stars, their flake-hood, and turn to sleet. But then again, any little April shower could become a blizzard. Good old April. You can always count on it to be unpredictable. Perhaps March will forever play the lion and lamb scene; April defines itself as a chameleon. And still, this is spring snow: the grass is growing now, and the buds are getting fatter; under this snow, nothing sleeps. No more ice-skating, no more chickadees. The air has lost its bite. For the third time this year, crocuses push through the snow.

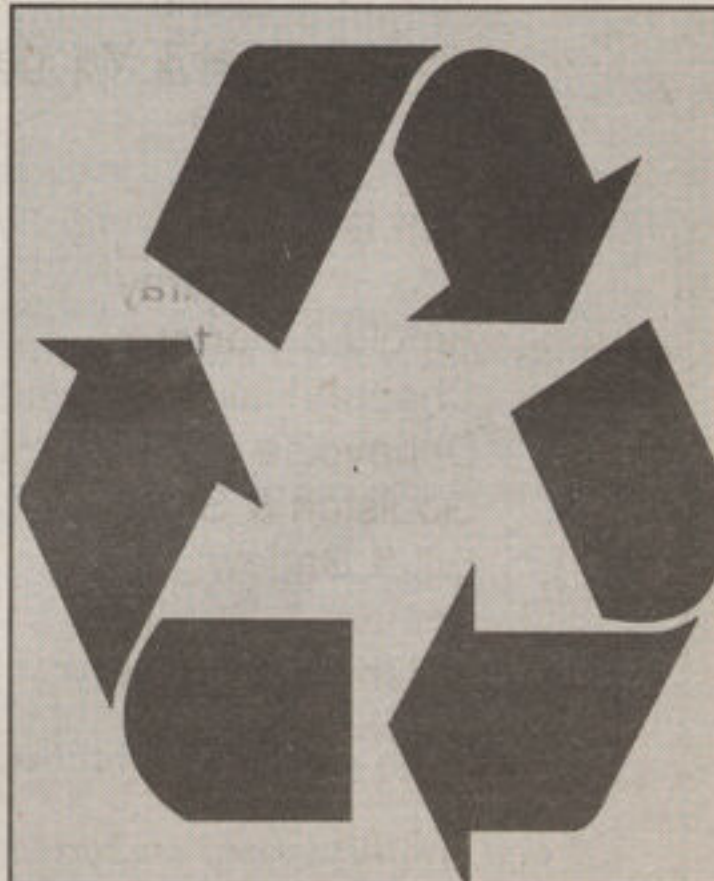
My mother's mother and my father's father both died in the spring. I light *yahrzeit* candles every March 21 in their memory and with the understanding that there is no easy transition from death to life. Spring is a time for that slow process. Snow or sweat, symbols of life and rebirth are essential to the spring rituals of many religions. To me, spring has become a reminder: "It is never easy; have patience, have faith." Spring will never come to New England in a bright blaze. Like the new beginning that it is, spring takes baby steps: ten degrees up and five degrees down. Each snowfall is a little more willing to turn to rain.

It's snowing once more as I look out the window. The flakes are fat again and back in drifting mode. They're in no hurry to reach the ground. Let them take their time; I'm in no hurry either.

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A Random Walk

Radio Shack: A Man's Nirvana



By William Hall '98

Guest Columnist

- Have you ever reflected on the fact that we'll soon all be lawyers?
- You only think I guessed wrong—that's what's so funny! I switched glasses when your back was turned! Ha-ha, you fool! You fell victim to one of the classic blunders, the most famous of which is "Never get involved in a land war in Asia," but only slightly less famous is this: "Never go in against a Sicilian, when death is on the line!"
- Have you noticed that almost nothing Alanis Morissette mentions in her song "Ironie" is, in fact, ironic? Unfortunate, maybe. But not ironic.
- It's that special time of year — baseball season. Time for some predictions that will, it turns out, end up being dead wrong.
- AL East: The Yankees should win this division rather easily, if their pitching holds up. The Orioles have enough power to slide them in as the AL wild-card.
- Those new Arizona flavored sodas are very good; the Chocolate Covered Cherry and the Vanilla Cola are the best of the bunch. They're expensive; however, I'll save the time involved in computing the cost per ounce.
- Where were you while we were getting high?
- AL Central: The Indians kick butt.
- This snow in April is absolutely ridiculous. It should be a law that it can't snow after Daylight Savings Time has begun.
- Radio Shacks were created by mall builders in order to provide a place for men to wait while the person they're shopping with is looking in Victoria's Secret. The sign of a true Radio Shack aficionado is someone who's excited by the Wall of Adapters™.
- Boston would be so much cooler if they allowed Jet Skis on the Charles River.
- AL West: I have a feeling nobody is gonna touch the Mariners out west. The Angels, though they won't make it into the playoffs, will surprise people early.
- 1L year at Harvard Law School is just like the first year of high school. You go to the same classes with the same people. You have lockers. You gossip. You eat lunch at the same cafeteria. And now . . . a semiformal! Egad.
- Snackwell's Cereal Bars — the official breakfast food of Harvard Law School!
- Unfortunately, I've never gone to Oxford. I guess that disqualifies me from being a RECORD columnist.
- NL East: The Braves are the best team in baseball, period. The Mets have a good enough pitching staff to get them the NL wild-card. (M-E-T-S. M-E-T-S, let's go!)
- We are no longer the Knights Who Say, "Ni." We are now the Knights Who Say, "Ekki-Ekki-Ekki-Ekki-PTANG! Zoom-Boing! Z'nourwringmm!"
- Why is it called Radio Shack, anyway? If you think about it, that kind of name evokes an image of something shabby and decrepit. Why not Radio Palace? Radio Mansion? Radio Boutique?
- Why do they have to ask me for my Coop number every time I get a newspaper? Thanks, but a one-cent rebate isn't worth that much to me.
- NL Central: The Reds take it again.
- Have you noticed that there are simple choices we make in life that end up reflecting on our personalities? Let me demonstrate. Do you drink Coke or Pepsi? Do you shop at the Disney Store or at the Warner Brothers Studio Store? Do you actually like Bon Jovi?
- THIS WEEK ON SATURDAY NIGHT LIVE: STEVE FORBES. Yeah! I can't wait to hear him introduce the musical guest, Rage Against The Machine.
- NL West: The Padres will surprise people and win the division; the Dodgers will be a stunning disappointment.
- Upon answering the questions above, it turns out that I am traditional, cynical and cheezily sentimental. You try and guess what my answers were.
- If anyone in 1L Section 4 can work the word "shibboleth" into a classroom discussion by the end of the year, you will have my utmost respect.
- Nobody wrote me a letter regarding my last column. I'm wounded.
- World Series: Braves over the Indians.
- Enough randomness for this week. Just one final thought. . .
- If my calculations are correct, when this baby hits 88 miles per hour, you're gonna see some serious sh*t.

The Law School Council

Committees Are Vehicle for Change

From the Law School Council

THE Law School Council is committed to improving communication between the Council and members of the student body. This column will appear periodically in the RECORD over the coming year and will provide you with information about what your student government is doing.

The Council will also provide more opportunities for you to communicate your concerns and questions to the Council. In Thursday's Adviser, the Council announced its new e-mail address: lsc@law.harvard.edu. We will offer office hours for the next few weeks, every Tuesday and Thursday in the Hark, noon-2 p.m. This fall, we hope to have a web page available.

Once you have communicated your concerns to the Council, the committees are the engine for putting ideas into action. There are five standing committees, addressing general aspects of the Council's activities. The Council also has two ad hoc committees addressing specific needs: one dedicated to public interest summer funding, and the other to the Langdell library renovation project. Each standing committee chair describes below what they plan to work for during the coming months. If you have additional ideas for the Council or its committees, please contact us. We look forward to doing whatever we can to represent your interests and improve the quality of life at the Law School.

Chip Nierlich '97, Rob Jancu '98 and Dina DeFalco '98

Facilities & Services

The Facilities & Services Committee oversees the Council's work to improve the quality of law school facilities and student services. Traditionally, this committee has been one of the most active on Council, with accomplishments in recent years ranging from equipment additions at Hemenway to the installation of the BayBank ATM in the Hark. In the coming year, the Facilities & Services Committee will continue to fight for improvements in Hemenway, review the pricing policies at the Hark Cafeteria and work for a universal copy card. If you have any suggestions for improvements to the law school's facilities and services, please e-mail me at holden@law.harvard.edu or stop by the LSC table in the Hark on Thursday, April 18 from noon-2 p.m.

Blythe Holden '97

Facilities & Services Committee Chair

Academic Affairs

As chair of the Academic Affairs Committee, I am considering issues for the committee to discuss, including the feasibility of decreasing class sizes or expanding the small section offerings for 1Ls, the pros and cons of a pass-fail grading system and possible changes in the course pre-registration process. Other possible projects include a review of the curriculum and the third-year paper requirement in light of the library renovation. If you have any ideas for other projects for the committee or comments on the above issues, please e-mail me at eapalmer@law.harvard.edu or stop by the LSC table in the Hark on Tuesday, April 16 from noon-2 p.m.

Erin Palmer '98

Academic Affairs Committee Chair

Programming & Public Services

The Programming & Public Services Committee organizes the Council's services to the Law School community. In past years, the committee coordinated the Law School book sale and blood drive efforts. The committee is currently examining other services such as a bulk résumé paper sale for first-year students. The committee will also work with the Dormitory & Student Affairs Council to co-sponsor parties throughout the school year. If you have any suggestions for services the Council may offer to the Law School community, please e-mail me at msweber@law.harvard.edu.

Mark Weber '98

Programming & Public Services Committee Chair

Rules & Procedures

As chair of the Rules & Procedures Committee, my primary objective is to transform the Council's Constitution and By-Laws into a document that will be practically workable and useful. In the past, some provisions have been summarily ignored when convenient. I plan to move for the elimination of all provisions to which the Council is not committed and to enforce remaining provisions with vigilance. I shall push for a procedural amendment to require at least a two-thirds majority vote to waive any Constitutional provision. The committee will undertake a comprehensive review of the Constitution and By-Laws to ensure their consistency. Finally, the committee will consider various election reform measures, such as a spending cap on candidates for Council officer positions. I welcome any suggestions you may have.

Daniel "Juice" Juceam '98

Rules & Procedures Committee Chair

Graduate Student Affairs

On March 20, the Law School Council unanimously decided to form the Graduate Student Affairs Committee. This committee currently consists of five LL.M. representatives and has been operating on an informal basis since October. The main goals of the committee have been to deal with the problems facing the LL.M. community and to organize various social events in order to make life at Harvard a little more pleasant for the LL.M. students.

Now that the committee officially exists under the auspices of the Council, we believe that we will be able to get more things done like improving services for the LL.M.s, organizing academic and social events for LL.M.s and J.D.s, and improving the J.D. host program. We truly hope that American students will also join with the committee in the future to actively participate in the LL.M. orientation process and improve the quality of life for all students at the Law School.

William Valasidis, LL.M. '96

Graduate Student Affairs Committee Chair

Ted Turner to Speak

continued from *TURNER*, page 1

Turner was that "the speaker had to be known, someone the parents would know," said class marshal Dave Aronberg '96. "We were worried that we would get someone obscure and the parents would be bored. Hopefully he'll bridge the gap between law students and their parents."

Recent Class Day speakers have included White House Counsel Abner Mikva, Supreme Court Justice Harry Blackmun '32 and Attorney General Janet Reno '63.

Both Aronberg and Goodreau credit-

ed Alissa Vradenburg '96, who sits on the Class of 1996 planning committee, with helping to land Turner, who finally agreed to speak after lengthy negotiations.

Class Day ceremonies will take place June 5, the day before the University-wide commencement exercise. The speech will begin at 2:30 p.m., with a question-and-answer period planned afterward.

It remains unclear, however, whether Turner's wife, political activist Jane Fonda, will also be attending to speak informally with graduates.

"The jury is out on Jane," Goodreau

Students Concerned About Lack of Courses

continued from *COURSES*, page 1

participation] may be unable to get it," said Jancu. "That would force students out of the clinical in which they are enrolled."

Students are also unhappy about the abruptness of the changes. "It's stupid that they changed [the schedule] at the last minute," said Perham Gorji '98, noting that students have had to completely rearrange their schedules in the last few days. "Everyone's more worried about [time] slots than what classes they really want to take."

Jancu said the decline in courses came without notice. "Rising 3Ls who postponed taking evidence, basic corporations, and tax are at real risk of never getting into these [courses]. People last year taking these courses were not notified that basics would be limited to such an extent. Had they known they would have faced being locked out, they would have scheduled their classes differently last year," he said.

"I'm shocked," said Jeff Place '96. "We have enough trouble [picking courses] last year."

Complaints are not limited to J.D. students. "In general, graduate students come to Harvard to study very specific areas of the law. When you reduce class diversity and specialization, you are defrauding and disappointing the graduate students," said Victor Chepenko I.T.P. '96.

Students are upset about class size as well. According to Nierlich and Jancu, seminar offerings are down seven percent this year and 20 percent from two years ago.

Nierlich said he thinks HLS is heading down the wrong path with its reduced schedule and increased class size.

"The slide in course offerings takes place against a backdrop of a successful \$175 million capital campaign and promises by Dean Clark to increase the number of professors," stated an LSC news release.

"Students arriving in the fall of 1994 might have expected such progress to result in greater class offerings and smaller classes; instead, these students have fewer choices and larger classes. . . If Harvard is to regain its position as the best law school in the country, it must make academics a top priority again."

Nierlich said he and Jancu have sent statements of concern to Dean Clark '72; assistant Dean Sandra Coleman; Dean of Students Suzanne Richardson; and Registrar Sue Robinson.

Rakoff said he believed there would be "a sufficient number of slots" for both rising 2Ls and rising 3Ls. He also said he believes the registration process can be structured to give students more flexibility

in scheduling, and is considering a two-tiered system by which students could first register for basics and then sign up for upper-level electives based on the results of their success in securing basic courses.

Rakoff said that rising 2Ls should feel confident that they will receive the basic courses if they rank them at the top. If there are not enough slots, Rakoff said class sizes would be increased to accommodate the demand,

and added that the Registrar has already reserved larger rooms for the basic electives.

"They [the Registrar] have scheduled basics in rooms with 175 capacity instead of 145," he said.

Nierlich faults Clark for failing to hire enough faculty to lower class sizes. While the faculty, through the Legal Education Committee, is working to improve the academic environment at the Law School, the administration is stifling the process, he said.

Lecturer Valerie Sanchez of the Harvard Negotiation Research Project, who was approached by Jancu with the problem, said she "would be available as a third-party mediator" to try to help work out a solution.

According to Nierlich and Jancu, seminar offerings are down seven percent this year and 20 percent from two years ago.

Personality? You Might As Well Rely on Your Good Looks

By Akhil Sharma '98

RECORD columnist

Baby Lips



Now that grades have been out a little while, I have noticed a new phrase on the lips of my fellow HLS students. "Success is all personality."

Perhaps because I had a relatively realistic sense of how I was going to do at Harvard, I began saying this before most people. Looking back, the fact that I could snooker myself into believing I could rely on my oceans of charisma makes me think I must have been truly fearful and unhappy at the start of the year. After all, the effort I am willing to put out to be likable doesn't go beyond brushing my teeth and shaving twice a week when my beard begins to itch.

I didn't realize I was deluding myself until the only two people I know who are even less capable of a modicum of politeness than I said that they, too, were expecting to rely on personality to get them through.

One of them sits in the back of class and kicks the seats of the people in front of him. The other, within a few weeks of school starting, had various people say flat out, "Stop calling us. Being with you is embarrassing." These two are not misunderstood or "different." They are genuinely irritating.

I admit that sometimes people who are this annoying can still succeed in personality-driven businesses. There are plenty of agents who are viewed with contempt both by their clients and the talent buyers. But neither I nor these other two people were thinking that we would succeed despite our personality.

We believed that the people who are smarter than us did not have our charm. This is the dumb jock/geeky intellectual fallacy. It's strange that we who have either been geeks or at least been around geeks for so long could think like this. But desperation leads to all sorts of rationalizations. I even know one nincompoop who thinks he wrote a brilliant exam, but his professor couldn't appreciate it.

There is a variation on the "Success is all personality" delusion. Because I have a venomous and petty nature, I feel compelled to point this out.

"You have to risk big if you want to win big." This phrase is understood to mean that you are going to go through some nervousness before you become fabulously rich.

Risk, of course, means that you will probably lose. Institutional investors are good enough at diversifying away risk that even in the most cutting-edge of venture capital, there is an efficient economy, and there are no windfall profits — windfall in the sense of the investment's value after it has been discounted for risk.

And remember, even if you are willing to be brave, there are plenty of people who are smarter and more likable than you. Their bravery therefore counts more than yours.

A woman whom I went out with used to talk a lot about risk-taking. One day, I was looking through her closet and found a cardboard box, big enough to pack a complete set of dishes and bowls. Inside were stacks of lottery tickets, neatly bundled with rubber bands. They went back seven or eight years. I found this so sad that I broke up with her.

I often feel sad like that for my fellow HLS students as they begin to grapple with the limits of their ability and luck.

At the close of Sentimental Education, two old friends meet after a long time and compare their lives. One had been very rich and lazy and wasted his fortune. The other had been poor, but very smart and worked hard. Both were utter failures.

The rich one says, "If I had had your drive and intelligence, I could have done so much with my money." The poor one says, "It isn't money. Life just throws so many things in front of you that you never know what will happen."

Recently I met Michael Wang (pronounced Wong, as in the Wa(o)ng outlines). He was at HLS for a conference. He spoke about what it's like to clerk on the Supreme Court. He is clerking right now for Ruth Bader Ginsburg.

Since I was very curious about Michael, I'll give a brief description. He's about five-and-a-half-feet tall, has a deep slow voice, wore a pin-striped suit and appeared uncomfortable but was quite friendly. He doesn't know what he's going to do after clerking. He is thinking of working for a firm so that he can pare down his debt.

Michael appreciated my thanks for his outlines but seemed to mind that people use them. He had not intended them to circulate, but he gave out some of them to his ITL students and others to friends.

Before coming to law school, he took off a year to work as a journalist for a mid-western newspaper. He came to law school because he wanted to combine writing with being able to have some impact on the world.

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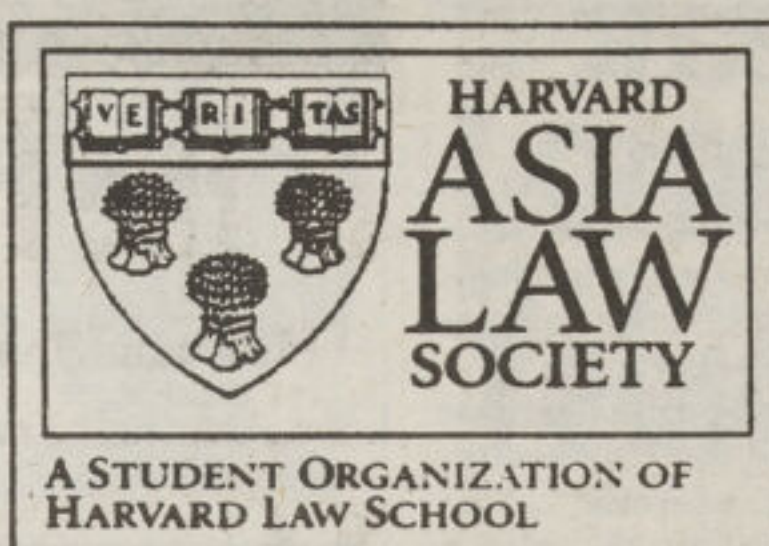
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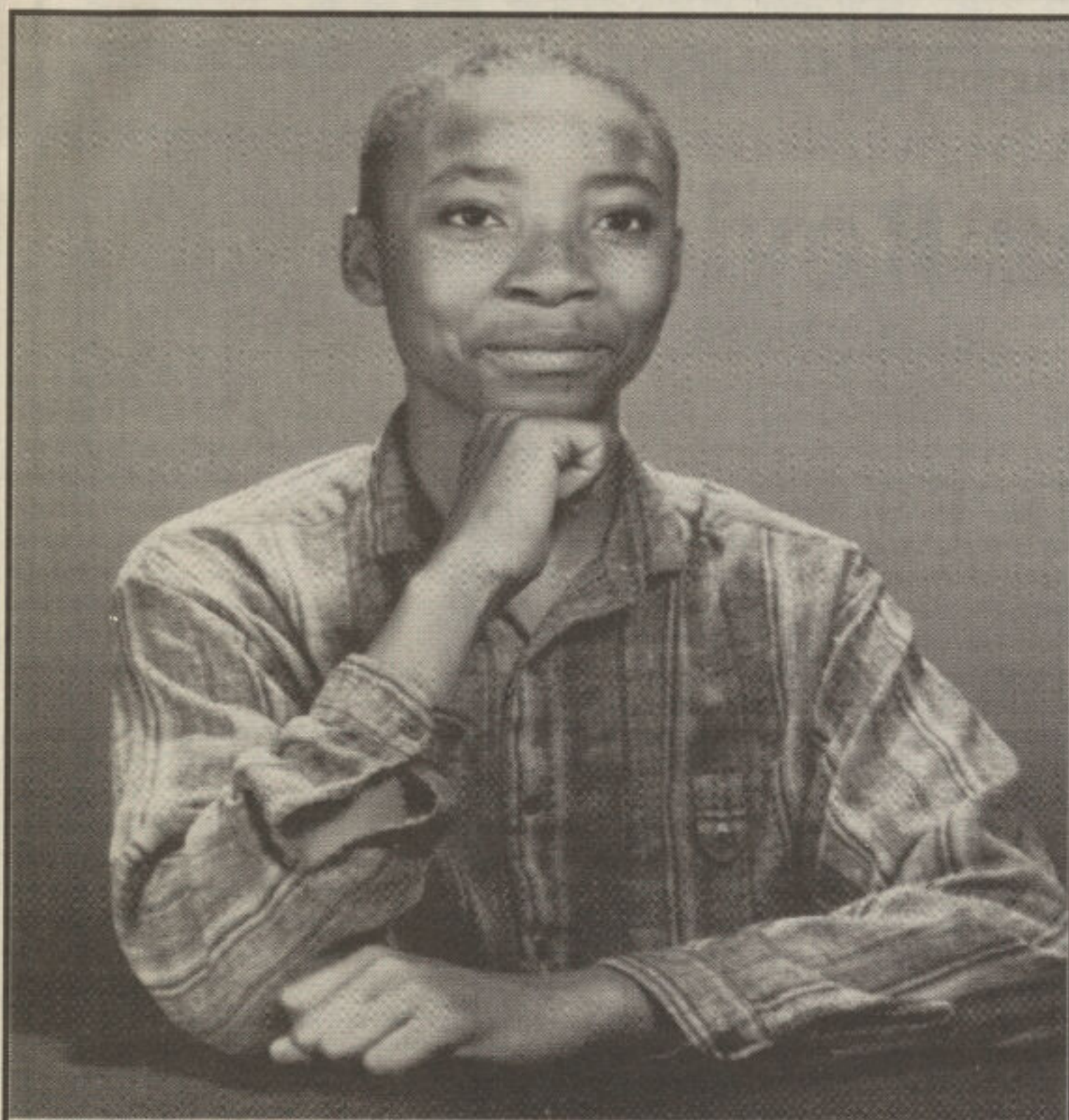
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The Kannonical View

In the Public Interest

By Kannon Shanmugam '98
RECORD Columnist



HERE at the Law School, the funding of public-interest programs is, like politics or religion, a taboo subject of dinner-table conversation. It was not always thus: upon his appointment eight years ago, Dean Clark 72 attempted to abolish public-interest programs and was nearly run out of town in the ensuing firestorm of debate. Since then, however, meaningful discussion about public-interest programs has been comparatively rare.

Lest public-interest advocates have their letter-writing pens at the ready, I hasten to say that I am a great believer in the value of public-interest programs. Too often, those needy of representation in our society are unable to obtain it. Surely, it is the responsibility of all lawyers to devote at least a portion of their time to helping those who cannot, for whatever reason, help themselves.

Believing in the value of public-interest programs is one thing. Subsidizing them indiscriminately is another.

I have no qualms with students voluntarily supporting public-interest programs, the recent public-interest auction being a perfect example. (Though I might question the sanity of paying \$1,000 for the opportunity of going to a Celtics game with Prof. Dershowitz: has the buyer seen just how bad the Celtics are this season? And I was woefully disappointed by my consortium's meager efforts to bid up the price of windsurfing for two with Prof. Fisher.)

Nor am I particularly troubled with students directly soliciting money from other students for public-interest programs, though I, like several others I have spoken to, feel somewhat uncomfortable having to say no to my peers. All in all, however, that seems a relatively small price to pay to enable students to take jobs in the public sector.

I have few qualms, either, with the Law School supporting the vast majority of public-interest work, though I premit the question of whether it should provide the \$25 million that some have advocated. By giving students the opportunity to work for federal attorneys, or for legal-aid groups defending the poor and dispossessed, the Law School offers students valuable exposure to kinds of work which they may not otherwise be able to obtain.

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What I am more concerned about, however, is the Law School's subsidizing what Prof. Rosenberg would term "special interests." It is not the role nor responsibility of the Law School to support work for politically-oriented groups that wrap themselves in the flag of "public interest." This applies equally to groups of all political persuasions, from Greenpeace to the National Right to Life Coalition.

Public-interest work both within and without the Law School is becoming increasingly infected with political bias — and more often than not, I posit, it is a liberal one. It need not, and should not, be. The politicization of public interest runs the risk of alienating conservatives and liberals alike who might otherwise be willing to work in the public sector.

Whichever way that bias goes, however, is only tangentially relevant to my thesis, which is this: The Law School should not provide money for students to work for groups whose primary purpose is to advance a political cause, rather than to directly help those in need. If the Law School gave \$25 million to the Democratic Party or the National Rifle Association (that'll be the day), there would be a huge outcry. Why should subsidies to politically-motivated "public-interest" groups be any different?

Some might object to imposing a litmus test on students wanting to receive public-interest money. But isn't the alternative to grant a few students the absolute right to do as they please with money to which all of us, at least in theory, have an equal moral claim?

Deciding to go into public-interest work is not an easy choice, especially in view of the unseemly amounts of money on offer in the private sector. But in an avowedly capitalist society like ours, those sorts of choices are necessarily made every day. Part of the reason I decided to become a lawyer instead of a journalist was simply because being a lawyer offers a more secure lifestyle. (In view of the quality of some of my columns, doubtless many of you would agree I made the right choice.)

The Law School should continue in its efforts to make the choice between public and private work an easier one. But nothing in life is free. Before giving out its money, the Law School should request at least some assurance that the money is going to help those in need, rather than to indulge political causes. And by those in need, I mean the truly needy — the poor and dispossessed, rather than that most privileged of animal, the Harvard Law School student.

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